

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL IP SUIT NO. 238 OF 2015**

Integrace Private Limited

... Plaintiff

Versus

Mas Pharmachem And Anr.

... Defendants

Mr. Mahesh Mahadgut a/w. Mr. Kaivalya Shetye, for the Plaintiff.

None for the Defendants.

CORAM : ARIF S. DOCTOR, J

RESERVED ON : 27th APRIL, 2026

PRONOUNCED ON : 15th JUNE, 2026

JUDGMENT:

1. The captioned Suit is filed for infringement of trade mark combined with a cause of action of passing off. The Plaintiff has sought a permanent injunction to restrain the Defendants from infringing the Plaintiff's registered trade mark 'BON – K2' and from using the trade mark 'BON K2 FORTE' ("**impugned mark**") to pass off the Defendants' goods as those of the Plaintiff's.
2. Mr. Mahadgut, the Learned Counsel appearing on behalf of the Plaintiff submitted that the impugned mark, i.e., 'BON K2 FORTE', is deceptively similar

to the said mark, i.e., ‘BON – K2’ (“**the Plaintiff’s mark**”), of which the Plaintiff is the registered proprietor. He also submitted that both the Plaintiff’s mark and the impugned mark were being used in relation to the same goods, i.e., medicinal and pharmaceutical preparations.

3. Mr. Mahadgut submitted that the facts pertaining to the present proceedings are as follows:

- i. The Plaintiff had filed a Notice of Motion No. 2601 of 2014 for ad interim reliefs, and vide an Order dated 27th November 2014, this Court granted the Plaintiff ad interim reliefs in respect of infringement of trade mark.
- ii. The Plaintiff had also filed a Leave Petition, seeking leave under Clause XIV of the Letters Patent, which was granted to the Plaintiff *vide* an Order dated 22nd December 2014, when the Court also granted the relief for passing off to the Plaintiff.
- iii. On 7th December 2015, this Court confirmed the ad-interim Orders dated 27th November 2014 and 22nd December 2014, namely, reliefs for infringement

as well as passing off in terms of prayer clauses '(a)' and '(b)' of the Notice of Motion, in favour of the Plaintiff.

- iv. Despite service of the writ of summons, the Defendants did not file a Written Statement. The present Suit was thus transferred to the list of undefended Suits as per the Order of the Prothonotary and Senior Master dated 23rd February 2016.
- v. On 6th April, 2026, the affidavit of evidence in lieu of examination in chief of the Plaintiff's Witness, i.e., Ms. Aditee Ghate, and also the affidavit of documents were tendered along with a compilation of documents upon which the Plaintiff has placed reliance. The Plaintiff's documents were marked in evidence unopposed.

Submissions on behalf of the Plaintiff:

4. Mr. Mahadgut submitted that in early 2010, the Plaintiff's predecessor in title, i.e., Glenmark Pharmaceuticals Ltd, adopted the Plaintiff's mark in respect of medicinal and pharmaceutical products. He submitted that the said mark has since then been put to use in relation to the medicinal products by the

Plaintiff's predecessor. The Plaintiff acquired the said mark, as well as the reputation and goodwill associated with it, by virtue of the Deed of Assignment dated 27th September 2018. Mr. Mahadgut submitted that the Plaintiff has been duly notified as the registered proprietor of the said mark in the records of the Registrar of Trade Marks. Mr. Mahdgut also submitted that the Plaintiff is the registered proprietor of a range of formative trade marks involving 'BON-K2', and the details thereof are as follows:

Trade Mark No.	Registration Date	Mark
1913228	25 th January 2010	BONK2
2005873	9 th August 2010	BON-K2
2005874	9 th August 2010	BON0K2 (Carton)
2391089	6 th September 2012	BON-K2 STRONG
2391090	6 th September 2012	BON-K2 HD

5. Mr. Mahadgut then submitted that the Plaintiff's predecessor in title as well as the Plaintiff have been using the said mark extensively and have achieved wide sales, acquiring a tremendous reputation. He pointed out from the Certificate of the Chartered Accountant at Exhibit 'B' to the Plaint, that the

Plaintiff's annual turnover of the year 2014 was at Rs. 10,16,14,624/- (Rupees Ten Crores Sixteen Lakh Fourteen Thousand Six Hundred Twenty Four only).

He also pointed out from another Chartered Accountant's Certificate appended at Exhibit 'C' to the Plaint, the amount incurred by the Plaintiff towards sales promotion was Rs. 3,29,83,000/- (Rupees Three Crores Twenty-Nine Lakhs Eighty-Three Thousand only) in the year 2014. He then invited my attention to the Plaintiff's products and packaging, which reflected the Plaintiff's mark. He thus submitted that the Plaintiff has earned a good reputation pursuant to its mark and the Plaintiff is associated with the said mark in the Indian pharmaceutical market.

6. Mr. Mahadgut then submitted that in May 2014, the Plaintiff's predecessors came across the Defendants' product ("**impugned product**") bearing the impugned mark, i.e., 'BON K2 FORTE', being sold in respect of products pertaining to medicinal and pharmaceutical preparation. He submitted that the packaging of the impugned product reflected the impugned mark.

7. Mr. Mahadgut submitted that upon discovering the impugned product, the predecessor of the Plaintiff issued a cease and desist notice on 27th May 2014, calling upon the Defendants to stop the use of the impugned mark. He submitted that the Defendants continued the use of the impugned mark.
8. Mr. Mahadgut further submitted that the essential and prominent feature of the impugned mark, i.e., 'BON – K2', which forms part of the Plaintiff's registered and distinct mark 'BON – K2'. He submitted that the Defendants are manufacturing and selling the impugned products bearing the impugned mark, which is deceptively similar to the said mark for which the Plaintiff has obtained registration. He further submitted that the Defendants are using the impugned mark only with a view to trade upon and cash in on the goodwill and reputation of the Plaintiff's registered mark. He further submitted that since the impugned mark is used in respect of medicinal preparations, it seriously exposes the members of the trade, the medical profession, and the public at large to the inevitable risk of deception and confusion, which imperils the interest of the public interest at large.

9. Mr. Mahadgut then placed reliance on the decision of the Hon'ble Supreme Court in the case of *K. R. Chinna Krishna Chettiar v. Shri Ambal & Co., Madras & Anr.*¹, to point out that while considering the issue of deceptive similarity between the traded marks SRI ANDAL and SRI AMBAL, the Hon'ble Supreme Court held as follows:

“6. The vital question in issue is whether, if the appellant’s mark is used in a normal and fair manner in connection with the snuff and if similarly fair and normal user is assumed of the existing registered marks, will there be such a likelihood of deception that the mark ought not to be allowed to be registered (see In the matter of Broadhead’s Application for registration of a trade mark). It is for the court to decide the question on a comparison of the competing marks as a whole and their distinctive and essential features. We have no doubt in our mind that if the proposed mark is used in a normal and fair manner the mark would come to be known by its distinguishing feature “Andal”. There is a striking similarity and affinity of sound between the words “Andal” and “Ambal”. Giving the due weight to the judgment of the Registrar and bearing in mind the conclusions of the learned Single Judge and the Divisional Bench, we are satisfied that there is a real danger of confusion between the two marks.

¹ (1969) 2 SCC 131.

7. There is no evidence of actual confusion, but that might be due to the fact that the appellant's trade is not of long standing. There is no visual resemblance between the two marks, but ocular comparison is not always the decisive test. The resemblance between the two marks must be considered with reference to the ear as well as the eye. There is close affinity of sound between Ambal and Andal”.

10. Mr. Mahadgut then placed reliance upon the decision of the Supreme Court in the case of *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.*² to point out that the Hon'ble Supreme Court had laid down therein the principles/tests for assessing deceptive similarity. He pointed out from the same that the factors such as the nature of the marks, degree of resemblance of the goods in respect of which they are used, class of purchasers, mode of purchase, etc. are the relevant factors to determine the similarity between disputing marks.

11. Mr. Mahadgut submitted that in considering the law laid down in the catena of decisions, a stricter approach should be adopted by the Courts while dealing

² (2001) 5 SCC 73.

with the cases involving medicinal products since it directly affects public health. He submitted that the possibility of confusion of one medicinal product for another by the consumer is very high and, therefore, stringent measures should be adopted in order to prevent the likelihood of confusion in respect of medicinal products since confusion between medicinal products may be life-threatening and not merely inconvenient.

12. Basis the above, he submitted that since the Plaintiff's trade mark 'BON – K2' and the impugned mark 'BON K2 FORTE' were both visually, phonetically and virtually identical, coupled with the fact that the Plaintiff was the registered proprietor of BON – K2, the Plaintiff is entitled to and had made out a case for the grant of relief in terms of prayer clauses (a), (b) and (d) of the Plaint which read as follows:

“(a) That the Defendants by themselves, their servants, Directors, dealers, distributors, stockists, franchisees, agents, sister concerns, subsidiaries, representatives, affiliates and/or assigns and all persons acting for and on their behalf be restrained by a perpetual order and injunction of this Hon'ble Court from in any manner manufacturing, marketing, selling, distributing, exporting and/or using in relation to medicinal and/or pharmaceutical preparations and/or such allied and cognate goods the

trade mark BON K2 FORTE or using any other mark being deceptively similar in any manner whatsoever to the Plaintiffs mark BON - K2 so as to infringe the Plaintiffs' registered trade mark BON - K2 registered under Nos. 1913228,2005873, 2005874 , 2391089 and 2391090 all in class 5 or otherwise howsoever;

(b) That the Defendants by themselves, their servants, Directors, dealers, distributors, stockists, franchisees, agents, sister concerns, subsidiaries, representatives, affiliates and/or assigns and all persons acting for and on their behalf be restrained by a perpetual order and injunction of this Hon'ble Court from in any manner manufacturing, marketing, selling, distributing, exporting and/or using in relation to medicinal and/or pharmaceutical preparations and/or such allied and cognate goods the trade mark BON K2 FORTE or using any other mark being deceptively similar in any manner whatsoever to the Plaintiffs mark BON - K2 so as to pass off the Defendants' goods as and for those of the Plaintiff or otherwise howsoever;

(d) That the Defendants be ordered and decreed to deliver up for destruction to the Plaintiff or to the authorised representatives of Plaintiff all the products, packs, packaging materials, goods and things bearing the impugned trademark;"

13. In addition to the above, Mr. Mahadgut submitted that the present Suit, being a Commercial Suit, was governed by the provisions of Section 35 of the Civil Procedure Code, 1908, (“CPC”) as amended by Section 16 of the Commercial Courts Act, 2015. He then pointed out that costs as contemplated under

Section 35 would include legal fees and all other expenses incurred in connection with the proceedings. He submitted that the amended CPC, provides that while awarding costs, due regard is also required to be given to the conduct of the Defendant. He then reiterated that in the present case, the Defendants had, despite being duly served with the writ of summons, failed to file a written statement, nor had they appeared in the Suit at any stage. He thus submitted that this evidences utter dishonesty and lack of bona fides on the part of the Defendants. He thus submitted that, in light of the Defendants' conduct, the Plaintiff was entitled to an order of costs. He pointed out that in addition to costs as contemplated under the Commercial Courts Act, 2015, this Court also has the inherent powers under Section 151 of the CPC to grant exemplary costs in favour of the Plaintiff.

14. He pointed out that in addition to costs, an Order granting exemplary costs was required to be passed to curb the misuse of the Plaintiff's trade mark, especially when the products were pharmaceutical products and medicines. He thus submitted that the Defendants' adoption of a deceptively similar

mark, compounded with the fact that the Defendants had, at no stage appeared to even justify or offer any explanation for adopting such a deceptively similar mark itself, made manifest the fact the Defendants' adoption and conduct was plainly dishonest and undertaken in bad faith. It was thus submitted that an appropriate order of costs be passed against the Defendants.

15. Mr. Mahadgut further submitted that the Defendants were also liable to pay damages of Rs. 1,00,000/- along with interest calculated at 21% per annum from the date of filing the present Suit till the final judgement in favour of the Plaintiff. He submitted that considering further the nature of infringement and passing off, the nature of rival goods being medicinal and pharmaceutical preparations, and with a view to dissuading others from indulging in such activities, it is imperative that damages be awarded to the Plaintiff.

16. After hearing the Learned Counsel for the Plaintiff and going through the original documents and the evidence of the Plaintiff, none of which has been disputed, much less denied, I am satisfied that the Plaintiff has made out a case for infringement and passing off, for the reasons are as follows:

A. Considering the evidence led by the Plaintiff which has remained entirely unchallenged, it is clear that the Plaintiff is the owner and proprietor of the said mark, i.e., 'BON K2'. It is evident from the legal proceeding certificates and registration certificates that the predecessor of the Plaintiff, i.e., Glenmark Pvt. Ltd. had obtained and used the said mark from 2010, and vide a Deed of Assignment dated 27th September 2018, the Plaintiff has acquired all the rights in the said mark. Through the said certificates, Deed of Assignment, as well as the evidence of Plaintiff's witness, i.e., Ms. Aditee Ghate, the Plaintiff has sufficiently proved its subsisting rights in the said trade mark.

B. The Plaintiff was also successful in indicating the use of the said mark by the Plaintiff's predecessor since the year 2010 through the Certificate of Annual Turnover as well as the Certificate of the Chartered Accountant, showing the annual publicity expense incurred by the Plaintiff's predecessor on the products bearing the marks, including the said mark. The Plaintiff's extensive commercial use of

the said mark demonstrates that the Plaintiff's predecessor had acquired sufficient goodwill and reputation in respect of the said mark.

C. A perusal of the rival trade marks makes plain that they are virtually identical. The Defendants' impugned mark, i.e., 'BON K2 FORTE', has entirely subsumed the Plaintiff's registered trade mark, i.e., 'BON-K2'. A comparison of both marks would in fact suggest that the products are effectively the same; only the Defendants product is a fortified version of the Plaintiffs product. The Defendants have used the exact same mark as that of the Plaintiff as the leading and essential feature of the impugned mark and therefore, the Defendants' adoption of the impugned mark is plainly dishonest, *malafide* and with a clear intent to deceive. It is also clear that Defendants' use of the impugned trade mark in respect of medicinal products is more than likely to cause confusion, deception, and misrepresentation amongst consumers and members of the trade. The Plaintiff's reliance upon the decision of ***K. R. Chinna***

Krishna Chettiar to make out a case of ocular resemblance between the rival marks is, therefore, entirely apposite.

D. The dishonesty and lack of bona fides on the part of the Defendants are also apparent from the fact that the Defendants have not, at any stage of the Suit appeared, either in person or through Advocate, despite due service of the Writ of Summons. The Defendants have also chosen not to even file a Written Statement so as to justify or offer any explanation for the adoption and use of the impugned trade marks. The Defendants have neither led evidence nor cross-examined the Plaintiff's witness. Thus, the case as pleaded in the Plaint has gone uncontroverted, and the evidence remains unchallenged.

E. From the material upon which the Plaintiff has placed reliance, the adoption of the impugned mark by the Defendants is subsequent to the Plaintiff's registration and use. Thus, adoption and use of the impugned mark by the Defendants is plainly dishonest and without any due cause. *Crucially*, the Defendants have adopted the impugned mark in respect

of the products involved in pharmaceutical and medicinal preparations. Since there exists a likelihood of confusion between the rival marks amongst the consumers as well as traders, the same would certainly result in the goods of the Defendants being passed off as those of the Plaintiff and therefore, a possibility of the threat to the public at large is apparent. The Hon'ble Supreme Court has, in the decision of *Cadila Health Care Ltd.* observed that stricter standards apply to matters of violation of intellectual property rights pertaining to medicinal and pharmaceutical preparations since the slightest possibility of confusion in cases of medical products is to be restrained. Therefore, the Plaintiff's reliance upon the decision of the Hon'ble Supreme Court in *Cadila Health Care Ltd.* is entirely apposite.

- F. Hence, for the reasons set out in (A) to (E), I find that the Plaintiff has made out a clear case for infringement of trade mark and passing off. The perusal of the rival marks makes it plain that the Defendants have adopted the impugned mark in a patently dishonest and entirely mala

in a fair and honest manner solely to ride upon the Plaintiff's goodwill and reputation and exclusivity associated with the Plaintiff's mark. The Plaintiff is thus entitled to the grant of relief of injunction in terms of prayer clauses '(a)', '(b)' and '(d)' of the present Suit. Though the Plaintiff has claimed damages to the tune of Rs. 1,00,000/- (Rupees One Lakh only), the Plaintiff has failed to lead any evidence in support of its claim for damages and is therefore not entitled to relief in terms of prayer clause '(c)'.

G. However, pertaining to the Plaintiff's claim of costs, it is well settled that under Section 35 of the CPC, as amended by Section 16 of the Commercial Courts Act, 2015, the costs shall ordinarily follow the event and be awarded to the successful party. The provision further requires the Court, while determining costs, to have due regard, *inter alia*, to the conduct of the parties. As observed in (D) above, the Defendants have chosen not to defend the Suit or offer any justification for the adoption of the impugned mark, as already noted, which makes

manifest the dishonest and negligent conduct of the Defendants. Such conduct is an additional factor that makes it clear that the Defendants' adoption of the impugned mark was dishonest and was actuated in bad faith.

H. Moreover, since the impugned products are medical products, a stricter order of costs must follow, as the Defendants have profited at the potential risk to the public at large. In these circumstances, the Plaintiff is entitled to an award of costs, considering the conduct of the Defendants and the statutory mandate under Section 35 of the CPC, as amended.

17. Hence, for the aforesaid reasons, I pass the following order:

ORDER

- i. The Suit is decreed in terms of prayer clauses (a), (b) and (d).
- ii. According to the reasons mentioned in (G) and (H) above, each of the Defendants shall pay costs of Rs. 1,00,000/-to the Plaintiff within a period

of 8 weeks from today. In the event the costs are not paid within a period of 8 weeks from today, interest at the rate of 8% shall apply.

- iii. The office shall return the original documents to the Advocate for the Plaintiff upon the Advocate of the Plaintiff handing over a true copy of this Order along with photostat copies of the said compilation of documents duly certified by them as true copies
- iv. The Suit is disposed of in the aforesaid terms.

[ARIF S. DOCTOR, J.]