



2026:DHC:6590-DB



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Reserved on: 08<sup>th</sup> July 2026.*

*Pronounced on: 10<sup>th</sup> August 2026.*

*Uploaded on: 13<sup>th</sup> August 2026*

+ **FAO(OS) (COMM) 268/2024 & CM APPL. 67780/2024**

**ALDER BIOCHEM PRIVATE LIMITED**

24-26TH FLOOR, TOWER- B, ALPHATHUM,  
SECTOR- 90, NOIDA, UTTAR PRADESH - 201304

**ALSO AT :**

108, SANDHU CENTER, DEHRADUN SOUTH,  
DEHRADUN – 248001

**ALSO AT :**

4A, SARA INDUSTRIAL ESTATE,  
RAMPUR, SELAQUI, UTTARAKHAND - 248197

EMAIL: abhishek@alderbiochem

...APPELLANT

Through: Mr. J Sai Deepak, Sr. Adv. with Ms.  
Sucheta Roy, Ms. Sucheta Roy and  
Mr. Shaurya Pandey, Advocates.

versus

**ZYDUS HEALTHCARE LIMITED & ORS.**

ZYDUS CORPORATE PARK, SCHEME NO. 63,  
SURVEY NO. 536, NR. VAISHNODEVI CIRCLE,  
S G HIGHWAY, AHMEDABAD – 382481

**ALSO AT:**

R-25, NR. SEHGAL TENT HOUSE

INDERPURI, CENTRAL DELHI, DELHI 110 012

EMAIL: [sachinsangare@zyduslife.com](mailto:sachinsangare@zyduslife.com)...RESPONDENT NO.1

**BIOCHEM PHARMACEUTICAL PRIVATE LIMITED**

ZYDUS CORPORATE PARK, SCHEME NO. 63,  
SURVEY NO. 536, NR. VAISHNODEVI CIRCLE,



S G HIGHWAY, AHMEDABAD – 382481

**ALSO AT:**

R-25, NR. SEHGAL TENT HOUSE  
INDERPURI, CENTRAL DELHI, DELHI 110 012  
EMAIL: [sachinsangare@zyduslife.com](mailto:sachinsangare@zyduslife.com) ...RESPONDENT NO. 2

GERMAN REMEDIES PHARMACEUTICALS  
PF 61 & 62, SANAND – II INDUSTRIAL ESTATE, SANAND,  
AHMEDABAD, GUJARAT – 382110

**ALSO AT:**

OFFICE BEARING NO. 11/T-A/L-2 (2211)  
THE CORENTHUM, 2ND FLOOR,  
PLOT NO. A-41, SECTOR-62, INSTITUTIONAL AREA,  
NOIDA, GAUTAM BUDDH NAGAR - 201301  
EMAIL: [sachinsangare@zyduslife.com](mailto:sachinsangare@zyduslife.com) ...RESPONDENT NO. 3

Through: Mr. Chander M Lall, Sr. Adv. with  
Ms. Aadya Chawla and Ms. Nandini  
Choudhary, Ms. Annanya Mehan and  
Ms. Mrinalini Goyal, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE NITIN WASUDEO SAMBRE**  
**HON'BLE MR. JUSTICE ANISH DAYAL**

**JUDGEMENT**

**ANISH DAYAL,J.**

1. This appeal assails judgement dated 13<sup>th</sup> November 2024 passed by the Single Judge in *I.A. No.14145/2023* in *CS (COMM)NO. 516/2023* [hereinafter “*impugned judgement*”]. The impugned judgement decided the application under *Order XXXIX Rules 1 & 2* of the Code of Civil Procedure 1908 [“*CPC*”] filed by the plaintiffs [*respondents herein*] seeking interim injunction for restraining the defendant [*appellant herein*] from



manufacturing, selling, offering for sale, advertising and/or promoting by using the trade mark / trade name '**ALDER BIOCHEM**' and any other mark name/ label/ device that contains the trademark '**BIOCHEM.**'

**Factual Background**

2. For ease of reference, the appellant's trademark and respondents' trademark are extracted as under:

| APPELLANT'S TRADEMARK                                                             | RESPONDENTS' TRADEMARK                                                              |
|-----------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|
|  |  |

3. Both the appellant and respondents are companies incorporated in India. Appellant was incorporated under the name *Alder Biochem Private Limited* around 2016, claiming to have started business as a full-service contract manufacturer of premium quality soft-gel products. It manufactures a variety of pharmaceutical and medical products, including inhalers, suppositories, pessaries, nutraceuticals, food supplements, veg soft-gel and soft gel capsules. It claims to have, over the years, become one of the most trusted manufacturers of soft gel capsules in the market and manufactures soft-gel capsules for many prominent pharmaceutical companies such as *Jubilant Generics Limited*, *Windlas Biotech Limited* etc.

4. On 29 August 2018, the appellant registered the domain name "*www.alderbiochem.com.*" In 2019, it adopted the trade mark '**ALDER**



**BIOCHEM**’/ **AlderBiochem** for manufacturing and marketing its own range of pharmaceuticals/ nutraceuticals.

5. On 24 April 2020, the appellant applied for trademark registration for the following marks in *Class 5* for pharmaceuticals and medical preparations:

| TradeMark                                                                                                  | Application Number | Application Date | User Date      |
|------------------------------------------------------------------------------------------------------------|--------------------|------------------|----------------|
| ALDER<br>BIOCHEM (Word Mark)                                                                               | 4491294            | 24 April 2020    | 1 January 2019 |
| <br><b>AlderBiochem</b> | 4495449            | 4 May 2020       | 1 January 2019 |

6. Appellant claims that its primary trade mark ‘**ALDER**’ and its products also use the same prefix in products such as *ALDERVit-e-400*, *ALDERKUFF ALDER NERVIVE*, *ALDER GEM*, *ALDER D3*, etc.

7. Respondents are part of *Zydus Cadila Group of Companies*, claiming reputation in both domestic and international markets. Respondent No.1 is a subsidiary company of *Zydus Lifesciences Ltd.* (earlier known as *Cadila Healthcare*). Respondent nos.2 and 3 are subsidiaries of respondent no.1. Respondent no.1 claims to be a fully integrated, global pharmaceutical company.

8. Respondent claims that the trademark ‘**BIOCHEM**’ forms an inseparable and essential part of respondent no.2’s company name. Moreover, the trademark ‘**BIOCHEM**’ is registered as a device in the name



of respondent no.1 and is being used by respondent no.1 and 3 for pharmaceutical products. The respondents claim that '**BIOCHEM**' was coined and first adopted by the entity *BIOCHEM Pharmaceutical Industries* in 1959.

9. In 2004, *BIOCHEM Pharmaceutical Industries* converted from partnership firm into a company, *BIOCHEM Pharmaceutical Industries Ltd.* In 2017 by an order of the *National Company Law Tribunal (Ahmedabad)*, the said company was amalgamated with *Zydus Healthcare Ltd.* (respondent no.1). Consequently, all intellectual property of *BIOCHEM Pharmaceutical Industries* including the trademark '**BIOCHEM**' was transferred to respondent no.1, which is now is the registered proprietor of said trademark. Details of the registration of the said trademark '**BIOCHEM**' are as under:

| Sr. No. | Trade Mark                                                                          | Proprietor                                            | Application Date | Application No. | Class & goods                                                        | User Date           |
|---------|-------------------------------------------------------------------------------------|-------------------------------------------------------|------------------|-----------------|----------------------------------------------------------------------|---------------------|
| 1.      |  | Zydus Healthcare Limited<br><br>Plaintiff No.1 herein | March 9, 1961    | 201091          | Class 5<br><br>Pharmaceutical Products                               | January 1, 1959     |
| 2.      |  | Zydus Healthcare Limited<br><br>Plaintiff No.1 herein | October 22, 1991 | 560743          | Class 5<br><br>Pharmaceutical, Medicinal and Veterinary Preparations | Proposed to be used |

10. Respondents claim that they diligently protected their intellectual property rights in the trademark '**BIOCHEM**' by initiating legal proceedings against any infringing mark, and the said trademarks are valid and subsisting as on date.



11. Respondents as plaintiffs, filed the suit [***CS (COMM) NO. 516/2023***] aggrieved by the appellant's/defendant's illegal, unauthorized and *mala fide* adoption of the identical and deceptively similar mark '**ALDER BIOCHEM**' and the trade name '***Alder Biochem Pvt. Ltd.***' in relation to pharmaceutical goods which amounted to infringement under *Section 29* of the Trade Marks Act, 1999 [***"TM Act"***], as well as passing off.

12. Respondents claim that in May 2022, their representatives in Delhi came across an application filed by the appellant for registration of the mark '**ALDER BIOCHEM**' claiming use since 1<sup>st</sup> January 2019.

13. A *cease & desist* legal notice was issued on 4<sup>th</sup> May 2022. On 1<sup>st</sup> August 2022, a reply was issued by the appellant refuting respondents' claim, asserting that they had been using the impugned mark for many years prior. In April 2023, respondent no.1's representative came across another application filed in *Class 5* for the device mark '**ALDER BIOCHEM**'. A notice of opposition was filed on 28<sup>th</sup> April 2023, which is still pending before the Trade Mark Registry.

14. The suit came up for hearing on 2<sup>nd</sup> August 2023, when it was duly registered and summons were issued. On the application [***I.A No.14145/2023***] under *Order XXXIX Rule 1 & 2* of CPC, the Single Judge of this Court issued an *ad interim* injunction restraining the appellant from using the impugned trademark/trade name '**ALDER BIOCHEM**' or any other mark or name which is deceptively similar to registered mark '**BIOCHEM**' of respondent, either in respect of pharmaceutical products or in respect of any other allied or cognate goods or services. While passing the *ad interim* injunction, the Single Judge *inter alia* noted as under:



“18. In any event, as the mark BIOCHEM stands registered in favour of the plaintiff, the plaintiff is entitled to a presumption of validity thereof under Section 31 (1) of the Trade Marks Act, at a prima facie stage.

19. Insofar as the aspect of deceptive similarity is concerned, it is ex facie clear that the marks BIOCHEM and ALDER BIOCHEM, especially when used in the context of identical pharmaceutical products, are deceptively similar to each other.

20. In view thereof, a prima facie case of infringement exists.”

(emphasis added)

15. Pleadings were completed in the said suit as well as in the application, and injunction application was finally disposed of by the impugned judgment. Relevant paragraphs of the said order are extracted as under:

*“25. In view of the aforesaid, the plaintiffs have established a prima facie case in their favour. There is presumption of validity of plaintiff’s registered trademark. The prominent, essential and dominant feature of plaintiff’s mark is the word BIOCHEM, which is being used by the defendant for identical goods, i.e. pharmaceuticals products. Further, the balance of convenience also lies in favour of the plaintiffs. The plaintiffs have filed on record documents pertaining to their sales figures of their products under the mark BIOCHEM, which is more than two hundred crores in the year 2022. In contrast, the defendant’s sale of products under the impugned mark ‘ALDER BIOCHEM’, were to the tune of Rs 21 lacs, in 2022-2023 and Rs 38 lacs, in 2023-2024. Further, irreparable injury and loss will be caused to the plaintiffs if the defendant is not enjoined. Law is settled that confusion between medical products is life threatening, not merely inconvenient. Further, the damage to a parties’ reputation and goodwill as a result of acts of infringement and passing off, cannot be compensated in cases relating to pharmaceutical, by damage alone.*



26. Accordingly, the defendant, its principal officers, assignees, family members, servants and agents, and all other persons claiming under the defendant, are restrained from selling, offering of sale, advertising and/or promoting and/or using the mark/trade



name **AlderBiochem** 'ALDER BIOCHEM' and any other mark/trade name/label/device that contains the mark 'BIOCHEM' and any other mark/name/label/device that is deceptively similar to the

plaintiffs' mark/trade name  and  'BIOCHEM'.

27. Further, the defendant and all other persons claiming under the defendant, are also restrained from using the domain name [www.alderbiochem.com](http://www.alderbiochem.com) or any other domain name that contains any mark identical or deceptively similar to the plaintiffs'

mark/label  and  'BIOCHEM'."

(emphasis added)

### **Proceedings in Appeal**

16. The present appeal was filed against the said impugned judgement, which was taken up by the Division Bench of this Court on 21<sup>st</sup> November 2024. The Court noted that the matter required consideration and did not grant any stay of operation of impugned judgement. The matter subsisted on the Board. Arguments were finally heard by the Court, written submissions and case laws were filed.

17. In the meantime, application under *Order XXXIX Rule 2A* of CPC being *I.A No.10834/2025*, alleging violation of injunction granted by the Single Judge, was filed by the respondents. The said application remains pending before the Single Judge of this Court.



**Submissions on behalf of appellant**

18. In support of their appeal, *Mr. J. Sai Deepak*, Senior Counsel for appellant, *inter alia* raised the following submissions:

18.1 Respondents cannot claim any exclusive right over the word '**BIOCHEM**', which is a common abbreviation/*portmanteau* of the words '*Biology*' and '*Chemistry*' and is commonly used in the pharmaceutical industry. The Merriam-Webster dictionary defines the word '**BIOCHEM**' as an abbreviation of word *Biochemical* and *Biochemistry*.

18.2 Use of the word '**BIOCHEM**' *qua* pharmaceutical companies is non-distinctive in character, the word being a descriptive of pharmaceutical products involving biochemistry/biochemicals. Use of the said word by appellant as part of its trademark is an honest practice in the trade and cannot be restrained.

18.3 Appellant claims that there are around 100 entities using the '**BIOCHEM**' mark as part of their corporate name, which have been tabulated by the appellant as under:

| S NO | NAME                                    | S NO | NAME                                      |
|------|-----------------------------------------|------|-------------------------------------------|
| 1.   | KESHAV BIOCHEM PRIVATE LIMITED          | 2.   | BIOCHEM IMMUNOASSAY INDIA PRIVATE LIMITED |
| 3.   | SKOPE BIOCHEM PRIVATE LIMITED           | 4.   | SONIC BIOCHEM EXTRACTIONS PRIVATE LIMITED |
| 5.   | ASG BIOCHEM PRIVATE LIMITED             | 6.   | NEEV BIOCHEM PRIVATE LIMITED              |
| 7.   | SMILES BIOCHEM PRIVATE LIMITED          | 8.   | VINTOSS BIOCHEM PRIVATE LIMITED           |
| 9.   | A1 BIOCHEM LABS (INDIA) PRIVATE LIMITED | 10.  | BIOCHEM PHARMACEUTICAL PRIVATE LIMITED    |
| 11.  | SANJIVANI BIOCHEM PRIVATE LIMITED       | 12.  | FOCUS BIOCHEM PRIVATE LIMITED             |
| 13.  | MAGNA BIOCHEM PRIVATE LIMITED           | 14.  | BADDI BIOCHEM LTD                         |
| 15.  | INDCAN BIOCHEM PRIVATE LIMITED          | 16.  | CIBA CKD BIOCHEM LIMITED                  |
| 17.  | UNIPEX BIOCHEM LIMITED                  | 18.  | KOTHARI FEMENTATION & BIOCHEM LIMITED     |



|     |                                          |     |                                          |
|-----|------------------------------------------|-----|------------------------------------------|
| 19. | SIMRAN BIOCHEM LLP                       | 20. | ARIHANT BIO-CHEM LIMITED                 |
| 21. | ANUBHA BIO-CHEM LIMITED                  | 22. | BIOCHEM FINANCE PRIVATE LIMITED          |
| 23. | BIOCHEM INSTRUMENTS PRIVATE LIMITED      | 24. | MODERN BIOCHEM PRIVATE LIMITED           |
| 25. | BIOCHEM ORGANICS (INDIA) PRIVATE LIMITED | 26. | AARIN BIOCHEM PRIVATE LIMITED            |
| 27. | APOLLO BIO-CHEM LIMITED                  | 28. | PRIME BIOCHEM PRIVATE LIMITED            |
| 29. | BIOCHEM DYES PRIVATE LIMITED             | 30. | KAMA BIOCHEM PRIVATE LIMITED             |
| 31. | CJEX BIOCHEM PRIVATE LIMITED             | 32. | MIAGRI BIOCHEM PRIVATE LIMITED           |
| 33. | LIPO BIOCHEM PRIVATE LIMITED             | 34. | INDUS BIOCHEM PRIVATE LIMITED            |
| 35. | KRASOMA BIOCHEM PRIVATE LIMITED          | 36. | SPRING BIOCHEM PRIVATE LIMITED           |
| 37. | STAS BIOCHEM PRIVATE LIMITED             | 38. | ORG BIOCHEM PRIVATE LIMITED              |
| 39. | BIOCHEM BIOCIENCE PRIVATE LIMITED        | 40. | APEX BIOCHEM LLP                         |
| 41. | ANKUR BIOCHEM PRIVATE LIMITED            | 42. | CROPCARE BIOCHEM PRIVATE LIMITED         |
| 43. | ABH BIOCHEM PRIVATE LIMITED              | 44. | AUGUST BIOCHEM PRIVATE LIMITED           |
| 45. | BRAHMAPUTRA BIOCHEM PRIVATE LIMITED      | 46. | KHARD BIOCHEM PRIVATE LIMITED            |
| 47. | ARCOTECH BIOCHEM LIMITED                 | 48. | CICIL BIOCHEM PRIVATE LIMITED            |
| 49. | KOMAL BIOCHEM PRIVATE LIMITED            | 50. | BIOCHEM (INDIA) LIMITED                  |
| 51. | ARHAM BIOCHEM PRIVATE LIMITED            | 52. | NVAS BIOCHEM PRIVATE LIMITED             |
| 53. | AMBEY BIOCHEM PRIVATE LIMITED            | 54. | NATURAL RESOURCE BIOCHEM PRIVATE LIMITED |
| 55. | DEXTER BIOCHEM PRIVATE LIMITED           | 56. | NAPCO BIOCHEM PRIVATE LIMITED            |
| 57. | ARISE BIOCHEM PRIVATE LIMITED            | 58. | VET BIOCHEM PRIVATE LIMITED              |
| 59. | RED BIOCHEM PRIVATE LIMITED              | 60. | ASTER BIOCHEM PRIVATE LIMITED            |
| 61. | DHANLAKSHMI BIOCHEM PRIVATE LIMITED      | 62. | MARS BIOCHEM PRIVATE LIMITED             |
| 63. | RAO BIOCHEM PRIVATE LIMITED              | 64. | HIND BIOCHEM PRIVATE LIMITED             |
| 65. | ARGO BIOCHEM PRIVATE LIMITED             | 66. | G M BIOCHEM PRIVATE LIMITED              |
| 67. | UCET BIOCHEM LLP                         | 68. | RUSHTECH BIOOHEM LLP                     |
| 69. | PLANT BIOCHEM PRIVATE LIMITED            | 70. | PUREO BIOCHEM PRIVATE LIMITED            |
| 71. | HANZ BIOCHEM PRIVATE LIMITED             | 72. | AUSAM BIOCHEM PRIVATE LIMITED            |
| 73. | ZORIN BIOCHEM PRIVATE LIMITED            | 74. | AFFAN BIOCHEM PRIVATE LIMITED            |
| 75. | RN BIOCHEM PRIVATE LIMITED               | 76. | GIKR BIOCHEM PRIVATE LIMITED             |
| 77. | ROYAL BIOCHEM PRIVATE LIMITED            | 78. | DIDAR BIOCHEM LLP                        |
| 79. | AVISH BIOCHEM PRIVATE LIMITED            | 80. | AVISH BIOCHEM PRIVATE LIMITED            |

|     |                                           |      |                                              |
|-----|-------------------------------------------|------|----------------------------------------------|
| 81. | MARES BIOCHEM PRIVATE LIMITED             | 82.  | REDRA BIOCHEM PRIVATE LIMITED                |
| 83. | UTD BIOCHEM PRIVATE LIMITED               | 84.  | UNICORE BIOCHEM PRIVATE LIMITED              |
| 85. | VAISHWIK BIOCHEM LLP                      | 86.  | SUDH BIOCHEM PRIVATE LIMITED                 |
| 87. | SEALINE BIOCHEM                           | 88.  | DEEP BIOCHEM LLP                             |
| 89. | NARMADA BIO-CHEM LIMITED                  | 90.  | GNX AGRO BIOCHEM PRIVATE LIMITED             |
| 91. | M'LUNIAS BIOCHEM OVERSEAS PRIVATE LIMITED | 92.  | HEXA BIOCHEM PRIVATE LIMITED                 |
| 93. | SAARTE BIOCHEM PRIVATE LIMITED            | 94.  | OMAX BIOCHEM PRIVATE LIMITED                 |
| 95. | ABNX BIOCHEM PRIVATE LIMITED              | 96.  | BIOCHEM HEALTHCARE LLP                       |
| 97. | ASV BIOCHEM LIMITED                       | 98.  | VXL BIOCHEM PRIVATE LIMITED                  |
| 99. | BIOCHEM PLANT PROTECTION PRIVATE LIMITED  | 100. | BIOCHEM360 DIAGNOSTIC CENTER PRIVATE LIMITED |



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18.4 Appellant claims that there are more than 15 registered trademarks which use the word '**BIOCHEM**'. Search report from the Trade Marks Registry appended by the appellant is extracted as under:

| Government of India<br>Ministry of Commerce & Industry<br>Department of Industrial Policy & Promotion<br>Controller General of Patents Design & Trade Marks<br>Public Search of Trade Marks |       |                                                |             |                            |                                                                                                                             |                          |       |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|------------------------------------------------|-------------|----------------------------|-----------------------------------------------------------------------------------------------------------------------------|--------------------------|-------|
| Class Search   Well Known Marks   Prohibited Marks   Vienna Code Classification   International Non-Proprietary Names(INN)   Help                                                           |       |                                                |             |                            |                                                                                                                             |                          |       |
| COMPUTER GENERATED TM-SEARCH REPORT                                                                                                                                                         |       |                                                |             |                            |                                                                                                                             |                          |       |
| Search Criteria: Wordmark                                                                                                                                                                   |       | Search Word(s): Biochem                        |             | Case: 5                    |                                                                                                                             | Search Date: 21-Sep-2023 |       |
| APPL. NO.                                                                                                                                                                                   | CLASS | CONFLICTING MARK                               | JOURNAL No. | PROPRIETOR NAME            | PROPRIETOR ADDRESS                                                                                                          | STATUS                   | Image |
| 1241651                                                                                                                                                                                     | 5     | KONARK BIO-CHEM (LABEL)                        | 1358        | JKGAR SHANKARSHAI PATEL    | UL-2, MAJULYA COMPLEX, SATTADKHAR CROSS ROAD, SOLA ROAD, AHMEDABAD 380 061,                                                 | Registered               |       |
| APPLICATION DATE: 07/10/2009                                                                                                                                                                |       |                                                |             | USER DATE: 07/12/2002      |                                                                                                                             |                          |       |
| GOODS/SERVICES: "PHARMACEUTICALS AND MEDICINAL PREPARATIONS."                                                                                                                               |       |                                                |             |                            |                                                                                                                             |                          |       |
| Vienna Code(s):                                                                                                                                                                             |       |                                                |             |                            |                                                                                                                             |                          |       |
| 1346022                                                                                                                                                                                     | 5     | BALANCING THE BIOCHEMY                         | 1331        | BIOCARE REMEDIES PVT. LTD. | PLOT NO. 707, G. I. D. C., SECTOR - 28, GANDHINAGAR - 382 028, GUJARAT                                                      | Registered               |       |
| APPLICATION DATE: 21/03/2005                                                                                                                                                                |       |                                                |             | USER DATE: 15/03/2005      |                                                                                                                             |                          |       |
| GOODS/SERVICES: PHARMACEUTICALS, MEDICINAL AND AYURVEDIC PREPARATIONS.                                                                                                                      |       |                                                |             |                            |                                                                                                                             |                          |       |
| Vienna Code(s):                                                                                                                                                                             |       |                                                |             |                            |                                                                                                                             |                          |       |
| 2286341                                                                                                                                                                                     | 5     | MANJARA BIO CHEM INDUSTRIES (DEVICE OF FLOWER) | 1713        | ANANT D. TERALE            | SURVEY NO. 773, MALEWADI ROAD, DEODHI, TAL- JAMKHED, DIST- AHMEDNAGAR-413 204, (MAHARASHTRA)                                | Registered               |       |
| APPLICATION DATE: 21/02/2012                                                                                                                                                                |       |                                                |             | USER DATE: 28/02/2010      |                                                                                                                             |                          |       |
| GOODS/SERVICES: BIO STIMULANTS, PLANT NUTRITIONS AND PESTICIDES USED IN AGRICULTURE FIELD.                                                                                                  |       |                                                |             |                            |                                                                                                                             |                          |       |
| Vienna Code(s): 270517, 240115, 290112                                                                                                                                                      |       |                                                |             |                            |                                                                                                                             |                          |       |
| 2340301                                                                                                                                                                                     | 5     | BIOCHEMDRVL                                    | 1691        | ZYDUS HEALTHCARE LIMITED   | Zydus Towers Satellite Cross Road, Satellite, Ahmedabad - 380015, Gujarat, India                                            | Registered               |       |
| APPLICATION DATE: 30/05/2012                                                                                                                                                                |       |                                                |             | USER DATE:                 |                                                                                                                             |                          |       |
| GOODS/SERVICES: PHARMACEUTICALS, MEDICINAL AND VETERINARY PREPARATIONS                                                                                                                      |       |                                                |             |                            |                                                                                                                             |                          |       |
| Vienna Code(s): 270517, 290100, 270502                                                                                                                                                      |       |                                                |             |                            |                                                                                                                             |                          |       |
| 2824833                                                                                                                                                                                     | 5     | Vetbiochem                                     | 1797        | VETBIOCHEM INDIA PVT. LTD. | ABHJEET COURT, B WING, 2ND FLOOR, OFFICE NO. 3, CTS NO. 799, PLOT NO. 137, BHANDARKAR ROAD, PUNE-411004, MAHARASHTRA, INDIA | Registered               |       |
| APPLICATION DATE: 15/10/2014                                                                                                                                                                |       |                                                |             | USER DATE: 04/10/2014      |                                                                                                                             |                          |       |
| GOODS/SERVICES: PHARMACEUTICAL AND VETERINARY PREPARATIONS INCLUDED IN CLASS 5                                                                                                              |       |                                                |             |                            |                                                                                                                             |                          |       |
| Vienna Code(s): 270517, 290112                                                                                                                                                              |       |                                                |             |                            |                                                                                                                             |                          |       |



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|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|--------------------------------|------|-----------------------------------|------------------------------------------------------------------------------------------------------------------------|------------|-------------------------------------------------------------------------------------|
| 3402374                                                                                                                                                                                                  | 5 | OrangeBiochem Gel<br>Power Gel | 1782 | ORANGE BIOCHEM PRIVATE<br>LIMITED | Shop No. G-1 & G-2, Amit<br>Chambers, 5-6, Jaan<br>Compound, Opposite M.Y.<br>Hospital, Indore ( M.P.) Pin -<br>452001 | Registered |  |
| APPLICATION DATE : 03/11/2016                                                                                                                                                                            |   |                                |      |                                   | USER DATE : 03/10/2014                                                                                                 |            |                                                                                     |
| GOODS/SERVICES : Veterinary Medicines for Animals Not for Human Use .                                                                                                                                    |   |                                |      |                                   |                                                                                                                        |            |                                                                                     |
| Vienna Code(s) : 250115, 270501, 290115                                                                                                                                                                  |   |                                |      |                                   |                                                                                                                        |            |                                                                                     |
| 3897442                                                                                                                                                                                                  | 5 | MEDIX<br>BIOCHEMICA            | 1986 | OY MEDIX BIOCHEMICA AB            | Klovnpellontie 1-3, FI-02180<br>Espoo, Finland                                                                         | Registered |                                                                                     |
| APPLICATION DATE : 25/07/2018                                                                                                                                                                            |   |                                |      |                                   | USER DATE : 28/09/2007                                                                                                 |            |                                                                                     |
| GOODS/SERVICES : Diagnostic preparations for medical use; reagent media for medical purposes; in vitro test kits for medical and clinical use consisting primarily of reagents and processing chemicals. |   |                                |      |                                   |                                                                                                                        |            |                                                                                     |
| 4084925                                                                                                                                                                                                  | 5 | BIOCHEMBR                      | 1892 | ANJALI JAIN                       | H. NO. 21-C,POCKET -B,NEAR<br>ASHRAM SIDHARTHA<br>EXTENSION,NEW DELHI.<br>110014                                       | Registered |                                                                                     |
| APPLICATION DATE : 12/02/2019                                                                                                                                                                            |   |                                |      |                                   | USER DATE :                                                                                                            |            |                                                                                     |
| GOODS/SERVICES : PHARMACEUTICAL,MEDICINAL AND VETERINARY PREPARATIONS INCLUDED IN CLASS 5                                                                                                                |   |                                |      |                                   |                                                                                                                        |            |                                                                                     |
| 4452576                                                                                                                                                                                                  | 5 | BIOCHEMGLMP                    | 1960 | ANJALI JAIN                       | H.NO. 21-C, POCKET -B, NEAR<br>ASHRAM, SIDHARTHA<br>EXTENSION, NEW DELHI.<br>110014                                    | Registered |                                                                                     |
| APPLICATION DATE : 25/02/2020                                                                                                                                                                            |   |                                |      |                                   | USER DATE :                                                                                                            |            |                                                                                     |



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GOODS/SERVICES : Pharmaceuticals, medical and veterinary preparations; sanitary preparations for medical purposes; dietetic food and substances adapted for medical or veterinary use; food for babies; dietary supplements for humans and animals; plasters, materials for dressings; material for stopping teeth; dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides.

445934 5 BIOCHEMBRACER 1953 ANJALI JAIN H-700, 23-C, POCKET-B, NEAR ASHRAM, SIDHARTH, EXTENSION, NEW DELHI, 110044 Registered  
APPLICATION DATE : 02/05/2020 USER DATE :  
GOODS/SERVICES : Pharmaceuticals, medical and veterinary preparations; sanitary preparations for medical purposes; dietetic food and substances adapted for medical or veterinary use; food for babies; dietary supplements for humans and animals; plasters, materials for dressings; material for stopping teeth; dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides.

4490410 5 A with ANKUR BIOCHEM PVT LTD 1950 ANKUR BIOCHEM PRIVATE LIMITED TETULIA, DEHRI, NIRSHA, Registered  
APPLICATION DATE : 23/04/2020 USER DATE :  
GOODS/SERVICES : Sanitizers for household use; Alcohol-based antimicrobial skin sanitizer gels  
Varna Code(s) : 540101, 180103, 270101, 280113



4799330 5 ash bio chemicals 1973 SALONI MANDAVGANE PROPRIETOR, ASH BIOCHEMICALS 11-A, Devon Road, Industrial Area, Nagaria, Ujjain (M.P.) Pincode-455001 Registered  
APPLICATION DATE : 19/10/2020 USER DATE :  
GOODS/SERVICES : Disinfectants, Pesticide, overicide & Insecticides.  
Varna Code(s) : 280114, 090311, 270501



4875805 5 B.S BIOCHEM 2028 VIJAY YADAV 1012, Bho Stani, Koli, Rawari, Baryasa 123102 Registered  
APPLICATION DATE : 23/02/2021 USER DATE :  
GOODS/SERVICES : Feed Supplements  
Varna Code(s) : 270501, 280112



4911390 5 KINGTECH BIOCHEM 1999 KINGTECH BIOCHEM PRIVATE LIMITED C-701, SIGNATURE-II, SARKHEJ-BANAND CROSS ROAD, SARKHEJ, AHMEDABAD - 382210 GUJARAT Registered  
APPLICATION DATE : 18/03/2021 USER DATE : 02/08/2023  
GOODS/SERVICES : Pesticides, Insecticides, Weedicides, Herbicides, Fungicides for agricultural purposes only.

4915890 5 VETBIOCHEM 1990 VETBIOCHEM INDIA PRIVATE LIMITED Adjacent Court B wing, 2nd floor, Office no. 3, CTS. no. 799, Plot no. 137, Shandekar Road, Pune 411004 Registered  
APPLICATION DATE : 22/03/2021 USER DATE :  
GOODS/SERVICES : Veterinary compositions, dietetic food and substances adapted for veterinary use, dietary supplements for animals

5134520 5 PLOUTOS BIOCHEM 2007 HUDRANSHI WELLNESS INDIA PVT. LTD. PRABHU DHAN, PLOT No. 145-A, CHAMPA NAGAR, GUSAR KI THADI, JAIPUR-302019 (RAJASTHAN) Registered  
APPLICATION DATE : 16/09/2021 USER DATE :  
GOODS/SERVICES : MEDICINES AND PHARMACEUTICALS PREPARATIONS.

5452156 5 FARMACEUTICA BIOCHEM INTERNATIONAL LLP 2009 FARMACEUTICA BIOCHEM INTERNATIONAL LLP 252, 25A, REGUS BUSINESS CENTRE, ALPHA, HRANANDH GARDENS, POWAI, MUMBAI-400 076 Registered  
APPLICATION DATE : 18/05/2022 USER DATE :  
GOODS/SERVICES : MEDICINAL AND PHARMACEUTICAL PREPARATION

18.5 Respondents do not have any exclusive rights on ‘BIOCHEM’. Importantly, they have not applied for registration of the word mark ‘BIOCHEM’ and only a device has been registered. Senior Counsel for appellant vehemently contended that the reluctance of respondents to apply for registration of word mark was obvious since it was a non-distinctive character and of generic use.

18.6 As per *Section 17* of the TM Act, respondents could only claim rights over the device mark as a whole and not over a non-distinctive part of the



mark. *Section 17* of the TM Act categorically provides that registration would confer on the proprietor exclusive rights of the whole trademark and not confer any exclusive right in respect of parts thereof, if the proprietor has not applied for registration of such part separately or if the said part is non-distinctive in character.

18.7 The Trade Marks Registry, while publishing the examination report, in appellant's TM application, did not cite respondents' mark or any other **BIOCHEM**-formative trademarks; in fact, the Trade Marks Registry itself considered '**BIOCHEM**' to be a mark over which no exclusive rights could be granted.

18.8 Reliance in this regard was placed on decision of the Division Bench of this Court in *Vardhman Buildtech Pvt. Ltd. and Ors v Vardhman Properties Ltd.* 2016 SCC OnLine Del 4738. The plaintiff had a registered trademark which was a label mark of "*Vardhman Plazas*". The defendants had been using word '*Vardhman*' as part of their corporate name in various companies and also the word '*Vardhman*' along with their logo. The Single Judge granted a restraint to the defendants from using the mark/brand '*Vardhman*' or '*Vardhman Plazas*', or the corporate name '*Vardhman*', or any other mark which is identical or deceptively similar.

The Division Bench relied on *Sections 15, 17, 28, 29* of the TM Act and held that neither '*Vardhman*' nor the word '*Plazas*' had any distinctive element of a trademark. The word '*Vardhman*' not being registered as a trademark, nor capable of being registered since it was commonly used as a reference to the name of Lord Mahavir, as well as the word '*Plazas*' which was commonly used, rendered both words non-distinctive. However, the two words taken together '*Vardhaman Plazas*' would be distinctive, and



therefore, the defendants could be restrained if they were using the two words in conjunction. By reason of being non-distinctive, appellant contended that the respondents would have to establish secondary meaning, which they had not done.

18.9 Mere sales figures were not sufficient to show that the word '**BIOCHEM**' had acquired secondary meaning. Establishing secondary meaning of a non-distinctive word was a matter of evidence to be established at the stage of trial. Reliance was placed on the decision of the Division Bench of this Court in *IHR Hospitality Pvt. Ltd. v. Bestech* 2012 SCC Online Del 2713, where it was held that extensive sales figures alone are not sufficient to show that a mark has gained secondary meaning.

18.10 The Single Judge failed to consider that the allegedly essential and dominant feature of the respondents' trademark '**BIOCHEM**' was non-distinctive and presumed the validity of respondents registered trademark, failing to note that the presumption was only in respect of the device mark and not for the word '**BIOCHEM**' *per se*. The benefit of the presumption under *Section 31(1)* of the TM Act had been wrongly given to the respondent at the *prima facie* stage.

18.11 The Single Judge had wrongly held that rival marks were structurally, phonetically and visually deceptive and confusingly similar to each other. When part of the trademark was non-distinctive/generic, the similarity, if any, between two marks had to be considered on the basis of other parts of the mark, to assess the likelihood of confusion. Reliance for this was placed on decision of the Supreme Court in *J. R. Kapoor v. Micronix India* 1994 Supp (3) SCC 215, where the two marks '*Microtel*' and '*Micronyx*' were compared, and it was held that no party can claim exclusivity over the



‘*Micro*’ prefix in the two marks and the comparison could only be made between the remainder of the marks, i.e. ‘*nix*’ and ‘*tel*’.

18.12 The Single Judge wrongly held that the question of non-distinctiveness was a matter of evidence and had to be considered at the stage of trial.

18.13 The Single Judge expanded the scope of respondents’ device mark registration to a non-distinctive part of the mark without establishing secondary meaning.

18.14 The Single Judge wrongly held that on a side-by-side comparison, appellant/defendant has slavishly imitated the respondent’s/plaintiff’s trademark by adding a prefix, ‘**ALDER**’. Counsel for the appellant, inverting to the comparison, appealed before the Court that there was no deceptive similarity or slavish imitation, which was particularly evident in a side-by-side comparison.

18.15 The Single judge wrongly held that appellant had failed to put on record a single instance of usage of the word ‘**BIOCHEM**’ by third parties on pharmaceutical products.

18.16 To support his submissions, Senior counsel for appellant relied on the judgment of the Supreme Court in ***Pernod Ricard India Private Limited vs Karanveer Singh Chhabra***, 2025 SCC Online SC 1701, wherein the Supreme Court elaborated the tests for distinctiveness and secondary meaning. In ***Pernod Ricard (supra)***, the case concerned the defendant’s use of the mark ‘*London Pride*’, infringing the plaintiff’s marks ‘*Blenders Pride*’ and ‘*Imperial Blue*’. The Supreme Court held that the ‘*London Pride*’ was substantially different from the plaintiff’s marks since the trade dress etc. were all distinctive and unrelated. The defendant’s mark did not imitate the



dominant features of the plaintiff's marks. Relevant paragraphs are extracted as under:

“ .....

*31.4. The strength of a trademark lies in its inherent distinctiveness or the distinctiveness acquired through use. Invented or coined marks - such as Kodak or Solio - are inherently distinctive and command the highest degree of protection. These marks immediately signify the commercial origin of the goods or services. In contrast, descriptive marks - such as Air India, Mother Dairy, HMT, Windows, Doordarshan, LIC, and SBI - are not inherently distinctive and must acquire secondary meaning in the minds of the public to qualify for protection. That is, the public must come to associate the mark with a particular source. Similarly, geographical terms like Simla or Liverpool, or generic trade terms, are generally not registrable unless they have acquired distinctiveness through long and exclusive use. The more distinctive a mark - whether inherently or through acquired reputation - the stronger its position in infringement or passing off actions.*

*31.5. In the case of composite marks - those contained multiple elements, such as words and logos - the overall impression created by the mark is relevant. However, proprietors cannot claim exclusive rights over individual components, particularly, non-distinctive or descriptive elements. Courts have often required disclaimers of such generic parts at the time of registration. For instance, in *Tungabhadra Industries Ltd. v. Registrar of Trade Marks*<sup>24</sup>, the registration of “Diamond T” in a diamond-shaped logo was granted, but the word “Diamond” was required to be disclaimed due to its non-distinctiveness.*

*31.6. Short marks, especially those consisting of two-letter or minimal-character combinations, are treated cautiously. These are often considered non-distinctive, because they tend to resemble abbreviations, product codes, or alphanumeric references - especially in industries such as textiles, chemicals and machinery. Unless secondary meaning is clearly demonstrated, such marks may be refused*



registration. However, courts have recognized exceptions for arbitrary or invented short marks that are not commonly used in the relevant trade - particularly in sectors like food and beverages, where even brief combinations can act as unique identifiers of origin.

.....

32.1. While Section 17 of the Trade Marks Act, 1999 restricts exclusive rights to the trademark as a whole and does not confer protection over individual, non-distinctive components per se, courts may still identify dominant or essential features within a composite mark to assess the likelihood of confusion. However, this does not permit treating such features in isolation; rather, they must be evaluated in the context of the overall commercial impression created by the mark.

.....

32.3. Consequently, in disputes involving composite marks, the mere presence of a shared or generic word in both marks does not, by itself, justify a finding of deceptive similarity. Courts must undertake a holistic comparison examining visual, phonetic, structural, and conceptual elements, to assess whether the overall impression created by the rival marks is likely to mislead an average consumer of ordinary intelligence and imperfect memory. If the marks, viewed in totality, convey distinct identities, the use of a common element - particularly if it is descriptive or laudatory - will not by itself amount to infringement.

.....

33.4. In the present case, the appellants contend that the respondent's use of the mark 'LONDON PRIDE' infringes their marks 'BLENTERS PRIDE' and 'IMPERIAL BLUE'. However, upon a holistic comparison, the overall commercial impression of 'LONDON PRIDE' is substantially different from either of the appellants' marks. The trade dress, label design, colour scheme, typography, and brand presentation are all distinctive and unrelated. Moreover, the term 'LONDON' introduces a geographical identifier that conveys a distinct brand identity, divergent from 'BLENTERS' or 'IMPERIAL'. The respondent's mark,



*therefore, does not imitate the dominant features of the appellants' marks. As such, there exists no real likelihood of confusion or false association in the mind of an average consumer exercising ordinary caution and imperfect recollection."*

(emphasis added)

18.17 Senior Counsel further relied on *paragraph 34 of Pernod Ricard (supra)*, where the Supreme Court held that a generic, descriptive, or auditory term commonly used in trade cannot be monopolized unless they acquire secondary meaning, which must be proved through cogent evidence such as consumer surveys or recognition studies. Mere duration of use or sales turnover is insufficient.

18.18 Senior Counsel for appellants thus submitted that respondents never applied for registration of the word mark '**BIOCHEM**' is fully understandable, since it was not registrable, and was prohibited under *absolute grounds* for refusal of registration under *Section 9* of the TM Act. The registration was therefore of the word '**BIOCHEM**' in a stylized device mark.

18.19 Counsel also distinguished *Pankaj Goyal v. Dabur India Limited*, 2008 SCC Online Del 1744, stating that the issue in the case was pertaining to the use of suffix '*MOLA*' which was not a dictionary word, while '**BIOCHEM**' was non-distinctive. Also, in the case of infringement, if part of the registered mark was non-distinctive, the principles of passing off were applicable.

18.20 Reliance was placed on *Three-N-Products Pvt. Ltd. v. Emami Ltd.*, 2010, SCC Online Cal 134 to emphasize that '**BIOCHEM**' being a dictionary word and inherently non-distinctive, secondary meaning has to be



established and it can only be done through trial. Reliance on ***United Biotech Pvt. Ltd.*** by the respondent was countered by submitting that ‘***FORZID***’ was not their distinctive mark and therefore can be easily distinguished.

**Submissions on behalf of respondents**

19. Mr. Chander M. Lall, Senior Counsel for respondents made, *inter alia*, the following submissions:

19.1 Respondent was the registered proprietor of ‘**BIOCHEM**’ (as a label) having registration since 1961, with a user claim since 1959, and was therefore entitled to a presumption in its favor under *Section 31(1)* of the TM Act, being *prima facie* evidence of validity. The word ‘**BIOCHEM**’ was an essential and dominant part of the label mark.

19.2 Appellant adopted a deceptively similar mark ‘**ALDER BIOCHEM**’ subsuming respondents mark in its entirety.

19.3 Appellant’s audited financial statements showed ‘*nil*’ sales under the impugned mark prior to 2022. Earliest invoice placed on record by appellant is dated 16<sup>th</sup> May 2022, which notably was after the receipt of the respondents’ legal notice dated 4<sup>th</sup> May 2022.

19.4 Appellant could not have been unaware of respondents’ prior registrations and use of 63 years before commencing use of the new mark. Appellant failed to explain the reason for adoption of the ‘**ALDER BIOCHEM**’ out of other innumerable options. The ‘*use in the course of trade*’, which forms part of *Section 29* of the TM Act, has to be considered in the context of the first evidence of use by the appellant on 16<sup>th</sup> May 2022, which is not disputed. The only use claimed by the appellant is as part of its corporate name since 2016. However, that would not amount to use in the



course of trade. Incorporation/operation of a company or registration of a domain name without actual use would not amount to use under *Section 29* of the TM Act. This would effectively come within the context and significance of TM Act, i.e. within the infringement contemplated under *Section 29 (5)* of the TM Act, which prohibits/disallow the use by a person of a registered trademark as part of the business concern dealing in goods or services in respect of which the trademark is registered. In any event, the use of the mark would still be 63 years after the respondents' use since 1959 (*registration since 1961*).

19.5 The business of the respondents is about *Rs.200 crores*, whereas the sum total of sales exhibited by the appellant is less than *Rs.50 lakhs*. These aspects, namely the fact of use and sales figures, have been taken into account by the Single Judge and noted in relation to balance of convenience in *paragraph 25* of the impugned judgment, which has been extracted above in *paragraph 15*.

19.6 Senior Counsel for the respondent highlighted that the Court has to be extra cautious in trademark matters involving pharmaceutical products. This has been specifically held by the Supreme Court in ***Cadila Healthcare Limited v. Cadila Pharmaceuticals Limited***, (2001) 5, SCC 73, in particular, *paragraph 32*. The Supreme Court held that even the possibility of a confusion has to be avoided in public interest. For many patients, who may be elderly, infirm or illiterate, differentiation becomes difficult. No proceedings under *Section 124 (1)* of the TM Act have been initiated by the appellant seeking invalidity of the respondent's mark. In fact, since such an application has not been made, *Section 124 (3)* of the TM Act, which deems an abandonment of the suit, would need to be proceeded with.



19.7 Counsel adverted to *paragraph 21* of the impugned judgment, which is extracted as under:

*“21. The defendant has contended that the word BIOCHEM is generic and non-distinctive, as it is commonly used abbreviation of the word biology and chemistry, which are common words in the pharmaceutical industry. It is further the case of the defendant that the word BIOCHEM is common to the trade. All these issues, as raised by the defendant, cannot be adjudicated at this stage, as the same are a matter of evidence, which shall be decided upon trial. It is settled law that the onus to establish the existence of the ingredients to substantiate a plea that a mark has become common to trade, has to be established by a party who raises such a plea. This Court is in agreement with the submissions of the plaintiffs that the defendant has failed to put on record a single instance of usage of the mark BIOCHEM by the third parties on pharmaceutical products.”*

19.8 The Court, in the impugned judgement, specifically recorded that it agreed with the respondents’ submission that the appellant had *“failed to put on record a single instance of usage of the mark BIOCHEM by third parties of pharmaceutical products.”* All the entities claimed as using ‘**BIOCHEM**’ as part of their mark or corporate name were not parties associated with pharmaceuticals but only with chemicals, fertilizers, or the metal industry. *Paragraph 22* of the impugned judgment was referred to submit that the Single Judge rightly held that the balance of convenience would be in favor of the party who was the first user of the mark, as held by this Court in ***Century Traders v. Roshan Lal Duggar & and Co.*** (1977) SCC OnLine Del 50, relying on *paragraphs 11, 14* and *21* of the said judgment.

19.9 *Paragraph 23* of the impugned judgment was also adverted to, wherein the Single Judge held that if a word mark is common to trade and is



of common use, the person relying on such a plea should show that it is of substantial use, and the registered owner is not expected to sue all small-time infringers which may not affect the party's business. Reliance in this regard was placed on the Division Bench of the Court in ***Pankaj Goyal v. Dabur India Limited*** (*supra*). Relevant paragraph is extracted as under:

*“21. As far as the Appellant's argument that the word MOLA is common to the trade and that variants of MOLA are available in the market, we find that the Appellant has not been able to prima facie prove that the said ‘infringers’ had significant business turnover or they posed a threat to Plaintiff's distinctiveness. In fact, we are of the view that the Respondent/Plaintiff is not expected to sue all small type infringers who may not be affecting Respondent/Plaintiff business. The Supreme Court in National Bell v. Metal Goods, (1970) 3 SCC 665 : AIR 1971 SC 898 has held that a proprietor of a trademark need not take action against infringement which do not cause prejudice to its distinctiveness. In Express Bottlers Services Pvt. Ltd. v. Pepsi Inc., (1989) 7 PTC 14 it has been held as under:—*

*“....To establish the plea of common use, the use by other persons should be shown to be substantial. In the present case, there is no evidence regarding the extent of the trade carried on by the alleged infringers or their respective position in the trade. If the proprietor of the mark is expected to pursue each and every insignificant infringer to save his mark, the business will come to a standstill. Because there may be occasion when the malicious persons, just to harass the proprietor may use his mark by way of pinpricks.... The mere use of the name is irrelevant because a registered proprietor is not expected to go on filing suits or proceedings against infringers who are of no consequence... Mere delay in taking action against the*



*infringers is not sufficient to hold that the registered proprietor has lost the mark intentionally unless it is positively proved that delay was due to intentional abandonment of the right over the registered mark. This Court is inclined to accept the submissions of the respondent No. 1 on this point... The respondent No. 1 did not lose its mark by not proceeding against insignificant infringers...”*

(emphasis added)

19.10 Submissions of the appellant on *Section 17* of the TM Act would not apply, as per the Senior Counsel for the respondents, considering there were no parts in the registered trademark of the respondent, it was only a device using one single word ‘**BIOCHEM**’. The issue relating to parts of the mark, or essential features of the mark, was dealt with by the Single Judge in *paragraph 10* of the impugned judgment. It was stated that:

*“.....The overall similarity between the two marks in respect of the same description of goods is likely to cause confusion. Adding of a prefix by the defendant is immaterial and does not deter from the fact that the impugned mark of the defendant is deceptively similar to the mark of the plaintiff.”*

19.11 Reliance in this regard was placed on the decision in **Kaviraj Pandit Sharma v. Navratna Pharmaceutical Laboratories**, 1964 SCC Online SC14, where the Supreme Court held that when the similarity between a plaintiff’s and defendant’s mark is so close, either visually, phonetically or otherwise, and the Court reaches a conclusion that there is an imitation, no further evidence is required to establish that the plaintiff’s rights are violated. The Court went on to say:

*“28.....Expressed in another way, if the essential features of the trademark of the plaintiff had been adopted by the*



defendant, the fact that the get up, packing and other writing or marks on the goods or on the packets in which he offers his goods for sale, show marked differences or indicate clearly a trade origin different from that of the registered proprietor of the mark, would be immaterial.”

(emphasis added)

19.12 Paragraph 15 of the impugned judgment was adverted to, where the Single Judge held that adoption of a prominent mark, a registered mark forming part of a label mark, is not permissible. The contention of the appellant that if the label mark was registered, but there was no registration for the word mark, it was not worthy of protection, was rejected by the Single Judge, citing *United Biotech Pvt. Ltd. v. Opium Chemicals and Pharmaceuticals Ltd. & Others* 2012 SCC Online Del 2942. In that case, the registered label mark was ‘ORZID’ and therefore, the use of the word mark ‘FORZID’ was rightly enjoined.

19.13 Senior Counsel for the respondents’ countered the submission of the appellant that ‘**BIOCHEM**’ was descriptive by giving certain examples to the Court, e.g. of *Barista*. While ‘*Barista*’ is a generic word, it had acquired a particular meaning by being used as a trademark registered/used by the *Tata Company* for its coffee outlet.

19.14 Reliance was also placed on *Section 35* of the TM Act, which states that the registration of a trademark would not become invalid for the reason of use, after registration, of words which the trademark contains or consists of, as a descriptor, and which are not being used in relation to goods or services connected to the course of trade.



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19.15 Appellant's application to register their own mark under *Section 17* of the TM Act gives right only on the whole mark and not on any part thereof, and therefore works against the appellant itself.

19.16 As regards the submission that '**BIOCHEM**' was suggestive of pharmaceutical products, a tabulation was provided by the respondent drawing out the industries and goods or services of the 16 companies pointed out by the appellant as having '**BIOCHEM**' as part of their trade name or trademark. It was clear, as per the Senior Counsel for the respondent, that none of these companies were in the field of pharmaceuticals. For ease of reference the said tabulation is extracted as under:

| Sr. No. | Trade mark | Application No. | Comments                                                                                                                      |
|---------|------------|-----------------|-------------------------------------------------------------------------------------------------------------------------------|
| 1.      |            | 2286341         | Goods are 'Bio Stimulants, plant nutritions and pesticides used in agriculture field'<br><br>Trade mark expired on 21.02.2022 |
| 2.      |            | 3402374         | Goods are 'veterinary medicines for animals not for human use'                                                                |
| 3.      |            | 4490410         | Goods are 'sanitizers for household use, alcohol-based antibacterial skin sanitizer gels'                                     |
| 4.      |            | 4875605         | Goods are 'Feed Supplements' (for animals)                                                                                    |



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|     |                                                                                   |         |                                                                                                                                                                                                                 |
|-----|-----------------------------------------------------------------------------------|---------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5.  | KINGTECH BIOCHEM                                                                  | 4911300 | Goods are 'pesticides, insecticides, weedicides, herbicides, fungicides for agricultural purposes only'                                                                                                         |
| 6.  | VETBIOCHEM                                                                        | 4915658 | Goods are 'Veterinary compositions, dietetic food and substances adapted for veterinary use, dietary supplements for animals'                                                                                   |
| 7.  |  | 2824833 | Goods are 'Pharmaceuticals and Veterinary Preparations'<br><br>The entity's website <a href="http://www.vetbiochem.in">www.vetbiochem.in</a> shows that the mark is being used for animal healthcare solutions. |
| 8.  | FARMACEUTICA BIOCHEM INTERNATIONAL LLP (logo)                                     | 5452356 | Application filed on May 18, 2022 on 'proposed to be used' basis<br><br>If at all the said party has commenced usage of the mark, it is more than 60 years subsequent to the Plaintiffs.                        |
| 9.  |  | 1241651 | No pharmaceutical products bearing the mark KONARK BIO-CHEM found in online search.                                                                                                                             |
| 10. | PLOUTOS BIOCHEM (logo)                                                            | 5134529 | Application filed on September 16, 2021 on 'proposed to be used' basis.<br><br>No pharmaceutical products bearing the mark PLOUTOS BIOCHEM found in online search.                                              |
| 11. | BALANCING THE BIOCHEMY                                                            | 1346022 | No pharmaceutical products bearing the mark 'Balancing the Biochemy' or 'BIOCHEM' found in online search.                                                                                                       |
| 12. | MEDIX BIOCHEMICA                                                                  | 3897442 | Goods are 'diagnostic preparations for medical use, reagent media for medical purposes, in vitro test kits for medical and clinical use consisting                                                              |

|     |                                                                                     |         |                                                                                                                                                                                                           |
|-----|-------------------------------------------------------------------------------------|---------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|     |                                                                                     |         | primarily of reagents and processing chemicals'<br><br>No pharmaceutical products bearing the mark BIOCHEM, standalone or in any combination, found in online search.<br><br>It has no presence in India. |
| 13. | BIOCHEMBR                                                                           | 4084925 | Application filed on February 12, 2019 on 'proposed to be used' basis<br><br>No pharmaceutical products bearing the mark 'BIOCHEMBR' found in online search.                                              |
| 14. | BIOCHEMGLIMP                                                                        | 4452576 | Application filed on February 25, 2020 on 'proposed to be used' basis<br><br>No pharmaceutical products bearing the mark 'BIOCHEMGLIMP' found in online search.                                           |
| 15. | BIOCHEMRABICER                                                                      | 4459334 | Application filed on March 2, 2020 on 'proposed to be used' basis<br><br>No pharmaceutical products bearing the mark 'BIOCHEMRABICER' found in online search.                                             |
| 16. |  | 4709330 | Goods are 'disinfectants, pesticide, weedicide & insecticides'                                                                                                                                            |

19.17 In this regard, it was further pointed out that 30 companies in the appellant's list of 100 were struck off. Almost all other companies in the list



were dealing with fertilizers, metals or chemicals. The oldest company in the list was incorporated in 1981, at least 22 years after the respondent's use of the trademark '**BIOCHEM**'. The appellant was obliged to place evidence on record to show actual use of the word '**BIOCHEM**' by third parties significant enough to pose a threat to the respondent's registered mark. Reliance in this regard was placed on *Rajasthan Aushadhaya v. Himalaya Global Holdings* 2025 SCC Online Del 4721 which had relied on *Pankaj Goel* (*supra*).

19.18 In any case, third party use was not a defence in case of trademark infringement.

19.19 The appellant was estopped from taking defence of non-distinctiveness since it had itself applied for registration of the word mark '**ALDER BIOCHEM**'.

19.20 In its reply to the examination report, the appellant stated that '**ALDER BIOCHEM**' was coined by concatenating two unique words '**ALDER**' and '**BIOCHEM**'. Appellant was not allowed to approbate and reprobate. Reliance in this regard reliance was placed on *paragraph 19* of *P&G Manufacturing v. Anchor Health and Beauty Care* 2014 SCC Online DEL 3374, and *paragraphs 16-28* of *P.E.P.S. Industries v. Curlon* 2022 SCC Online DEL 3275.

19.21 Combined or *portmanteau* words can be descriptive when two words are being combined together, like *biology* and *chemistry*, but the words themselves are not individually descriptive of a pharmaceutical product. Reliance in this regard was placed on *Frankfinn Aviation Services Pvt. Ltd. v. Fly High Institute & Ors.* 2022 SCC OnLine Del 4698, *particularly*



*paragraphs 20, 26-28, and **Biochem Pharmaceutical Industries v. Biochem Synergy Ltd** 1997 SCC Online Bom 639, particularly *paragraphs 19,25.**

19.22 Appellant's contention for protection under *Section 35* of the TM Act could not be accepted since the mark was used by the appellant in a magnified manner and not as a descriptor of the character or quality of its products. Appellant's pleas of not being aware of respondent's trademark '**BIOCHEM**' being used in the industry for more than 60 years was not believable.

19.23 Senior Counsel for the respondents submitted that the adoption of prominent and essential part of the trademark or prominent word in the label amounted to infringement. In this, reliance was placed on *inter alia* on **Ramdev Food Products Pvt. Ltd. v. Arvindbhai Rambhai Patel & Others**, 2006 8 SCC 726.

19.24 The *Rule of Dominant Feature* of a trademark is not antithetical to the *Principle of Anti-Dissection* contained in *Section 17(3)* of the TM Act, and the two rules work in tandem. Reliance was placed on **South India Beverages v. General Mills Marketing Inc. & Anr.** 2014 SCC OnLine Del 1953, particularly *paragraphs 19-21*, which was noted by the Single Judge in *paragraph 17* of the impugned judgment.

19.25 Appellant's submission that its primary business is contract manufacturing, does not reduce the probability of confusion in any manner, especially in the light of varying infrastructure of physicians and pharmacists. The test is of a person of average intelligence and imperfect recollection.

19.26 *Mr. Lall* relying on *paragraph 35.2* of **Pernod Ricard** (*supra*), stated that the Supreme Court held that the mark has inherent distinctiveness if it



identifies trade origin to the average consumer at the time of registration, and it may also acquire distinctiveness if, through consistent and prolonged use, it becomes associated by a significant portion of the relevant public with a particular commercial source. Relevant paragraph is extracted as under:

*“35.2. The test is equally relevant to both inherent and acquired distinctiveness. A mark has inherent distinctiveness if, by its very form and appearance, it identifies trade origin to the average consumer at the time of registration. A mark may acquire distinctiveness if, through consistent and prolonged use, it becomes associated by a significant portion of the relevant public with a particular commercial source - even if the consumer cannot name the source precisely. What matters is not that the consumer knows the producer, but that the mark serves as an indicator of origin.”*

(emphasis added)

19.27 Further, as per *Mr. Lall*, ***Pernod Ricard*** (*supra*) may not apply, since the defendant’s trademark in this case was only one word, unlike the plaintiff’s marks, ‘*Blender’s Pride*’ and ‘*Imperial Blue*’ in the said decision. The Supreme Court concluded that the dominant part of the plaintiff’s composite mark was ‘*Blenders*’ and not ‘*Pride*’ and ‘*Imperial*’, not ‘*Blue*’.

### **Analysis**

20. The Court has considered the submissions of the parties, perused the impugned judgment, the documents referred to by respective counsels as also the judgments relied upon by them.

21. The present appeal has been filed against the order granting an interim injunction in favour of the respondent/plaintiff and against the appellant/defendant, whereby the application under Order XXXIX Rule 1



and 2 of CPC, forming part of suit filed by the respondent/plaintiff, has been disposed of.

22. The principles governing the grant of an interim injunction, particularly in trademark, passing off and commercial disputes, have been authoritatively laid down by the Supreme Court in ***Wander Ltd. & Anr. v. Antox India Pvt. Ltd.***, 1990 Supp (1) SCC 727. The Court held that an interlocutory injunction is an equitable and discretionary relief granted pending the final adjudication of the rights of the parties, at a stage when such rights remain uncertain and are yet to be conclusively determined. The object of such relief is to preserve the status quo and to protect the subject matter of the litigation until the dispute is finally decided. The grant or refusal of an interim injunction is governed by the well-settled trinity of principles, namely: (i) whether the plaintiff has established a *prima facie* case; (ii) whether the balance of convenience lies in favour of granting the injunction; and (iii) whether refusal of the injunction would result in irreparable injury incapable of adequate compensation in damages.

23. Importantly, the Supreme Court also delineated the limited scope of appellate interference with discretionary orders granting or refusing interim injunctions. It was held that an appeal against the exercise of discretion is, in essence, an appeal on principle. An appellate court does not reassess the matter as though exercising the discretion afresh, nor can it substitute its own opinion merely because another view may also be possible. Interference is warranted only where the discretion has been exercised arbitrarily, capriciously or perversely, or where the Court has ignored settled principles of law regulating the grant or refusal of interlocutory injunctions. The Supreme Court succinctly observed:



*“In such appeals, the appellate court will not interfere with the exercise of the discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions.”*

(emphasis added)

The Court further held:

*“An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material.”*

(emphasis added)

24. Interference would be warranted only where the discretion has been exercised ‘arbitrarily’, ‘capriciously’ or ‘perversely’, or in disregard of settled legal principles. In all other cases, the appellate court ought not to interfere where the view taken by the Trial Court is reasonably sustainable on the material available on record.

25. The injunction sought by the respondent/plaintiff was to restrain the appellant/defendant from manufacturing, selling, offering for sale, advertising and/or promoting products the mark/trade name ‘**BIOCHEM**’ or any other mark/trade name that contain the word /trade mark ‘**BIOCHEM**’. This claim was founded in respondents/plaintiff’s registration (as a device mark) and its use by of the trademark ‘**BIOCHEM**’ since 1960s.

26. **First issue**, is with respect to the appellant/defendant adoption of the mark ‘**ALDER BIOCHEM**’ as part of its trade name and trademark; the former has been used since the incorporation of the company in 2016,



whereas the evidence of first commercial use is from 2022. The issue of *prior use*, therefore, cannot be disputed, as that aspect clearly lies in favour of respondent/plaintiffs.

27. **Second issue**, relates to the presumption of validity that registration confers under *Section 31 (1)* of TM Act. There is no substantive challenge to the validity of the mark, nor has any proceeding being instituted by the appellant/defendant challenging its '*distinctiveness*' under *Section 9* of the TM Act. Even otherwise, the plea of respondent/plaintiff that the mark has acquired '*distinctiveness*' in character and would be entitled for protection under *Section 32* of TM Act, is be a matter of evidence. *Prima facie*, considering the use of the mark since 1960s, and an annual turnover of approximately *Rs.200 crores*, the balance of convenience would tilt in favour of respondent/plaintiff on this aspect.

28. Considering that the appellant/defendant is also engaged in pharmaceutical sector and is using the word '**BIOCHEM**' in the same field of trade, it would be difficult to accept that the appellant/defendant was unaware of the respondent's/plaintiff's registrations and continuous use spanning over six decades.

29. *Section 29* of TM Act provides that a registered trademark is infringed, where another mark, which is identical with or deceptively similar to the registered mark, is used in relation to goods and services, in respect of which the mark is registered. *Section 29 (5)* of the Trade Mark Act further provides that a registered trademark is infringed where a person uses such registered trademark as part of his trade name or business name while dealing in goods or services in respect of which trademark is registered.



30. This brings the Court to the issue of ‘*likelihood of confusion, similarity and deceptive similarity*’. Apart from the fact that ‘**BIOCHEM**’ has been registered as a device mark, there is no dispute that pharmaceuticals products are marketed under the said trademark by respondent/plaintiff. The appellant/defendants’ contention that ‘**BIOCHEM**’ was registered only as a device mark, since it lacked distinctiveness and could not have been registered as a word mark, does not entitle the appellant/defendant to adopt a deceptively similar or confusing mark in respect of the same class of product. Moreover, the Supreme Court's decision in *Cadila Health Care (supra)*, which cautions Courts to adopt even a stricter approach while examining similarity of marks in relation to pharmaceutical products, also deserves due consideration. Relevant facts and extracts in *Cadila Health Care (supra)* have already been noted in paragraph 19.6 above.

31. The contention of the applicant/defendant that ‘**BIOCHEM**’ is a generic mark and is frequently used by various companies as part of their trade name and trademarks, has been rebutted by the respondent/plaintiff by submitting that those using ‘**BIOCHEM**’ as part of their corporate name or marks are not engaged in the pharmaceutical industry but operate in the fields of chemicals, fertilizers or metal. Furthermore, reliance on *Pankaj Goel (supra)*, wherein the Division Bench of the Court, held that a proprietor of a trademark is not expected to pursue each and every single infringer in order to preserve its rights, has been rightly noticed in the impugned judgement. Relevant facts and extracts in *Pankaj Goel (supra)* have already been noted in paragraphs 18.19 and 19.9 above.

32. *Prima facie*, by incorporating the word ‘**BIOCHEM**’ as part its trade name and trademark, the appellant/defendant has ventured too close to the



respondent's/ plaintiff's mark, even from the perspective of an average consumer.

33. The test laid down in *Kaviraj Pandit (supra)* is squarely applicable, considering that the essential features of the respondent's/plaintiff's trademark has been adopted by the appellant/defendant. On a plain comparison of the two marks, without reference to the elaborate submissions advanced by respective counsel, a consumer encountering product bearing

‘**ALDER BIOCHEM**’/  on one hand and ‘**BIOCHEM**’/  on the other is likely to assume that the former is a derivative or an extension of the respondent/plaintiff's product, particularly as both pertain to pharmaceutical products.

34. The submission regarding the absence of registration of ‘**BIOCHEM**’ as a word mark, has been considered by the Single Judge in *paragraph 15* of the judgment by relying on the *Forzid* case in *United Biotech (supra)*, wherein protection was extended to the prominent word forming part of a registered device mark, even though the word itself was not separately registered. Application of the principle of ‘*anti-dissection*’ vis-à-vis the *dominant feature doctrine* has also been comprehensively discussed in *paragraph 17* of the impugned judgment, and this Court finds itself in agreement with the said reasoning. Relevant paragraphs of the impugned judgement are extracted hereunder:

*“15. Clearly, adoption of a prominent part of the registered mark, forming part of a label mark of another party, is not permissible. Thus, holding that when a label mark is registered, it cannot be said that the word mark contained therein is not registered, and emphasizing that the word contained in the label mark, is also worthy of protection, a*



*Division Bench of this Court in the case of **United Biotech Pvt. Ltd. Versus Orchid Chemicals & Pharmaceuticals Ltd. & Ors.**, 2012 SCC OnLine Del 2942, has held as follows:*

*“xxx xxx xxx*

***26. We find that the learned Single Judge rightly held that when a label mark is registered, it cannot be said that the word mark contained therein is not registered.***

*We, thus, are of the opinion that although the word “ORZID” is a label mark, the word “ORZID” contained therein is also worthy of protection. The learned Single Judge has rightly observed that the judgment of the Supreme Court in Ramdev Food Products Ltd. (supra) is the complete answer. This aspect is considered and the argument of the appellant is rejected in the following words:*

***“27. On whether the OCPL could successfully ask for rectification for UBPL's word mark FORZID notwithstanding that OCPL held registration only for a label mark, the judgment of the Supreme Court in Ramdev Food Products Ltd. v. Arvindbhai Rambhai Patel, (2006) 8 SCC 726 : AIR 2006 SC 3304 is a complete answer. The Court there referred to an earlier decision in Registrar of Trade Marks v. Ashok Chandra Rakhit, AIR 1955 SC 558, which concerned the proprietary mark ‘Shree’ which formed part of the device as a whole and was an important feature of the device. The Supreme Court observed that registration of a trade mark as a whole would give the proprietor “a right to the exclusive use of word ‘Shree’ as if separately and by itself.” Therefore it would not be correct for UBPL to contend that the registration held by OCPL does not cover the work mark ORZID.”***

*xxx xxx xxx”*

*(emphasis supplied)*



16. Similarly, delving on the aspect of deceptive similarity between two marks, the Division Bench in the case of **United Biotech Pvt. Ltd. (Supra)**, has held as follows:

“xxx xxx xxx

**30.** The law on this aspect, where the Courts are called upon to consider the deceptive similarity between the two marks is firmly engraved in a series of judgments pronounced by the Courts in the last half century or more. Many are cited by the learned counsel for the appellant, note whereof is taken above. Judgment of Supreme Court in the case of *Cadila Health Care Limited (supra)*, which deals with pharmaceutical preparations, is a milestone on law relating to drugs. Application of the principles laid down in this judgment can be found in scores of subsequent judgments of this Court and other High Courts. The position which emerges from the reading of all these judgments can be summarized in the following manner:

**In such case, the central issue is as to whether the defendant's activities or proposed activities amount to a misrepresentation which is likely to injure the business or goodwill of the plaintiff and cause damage to his business or goodwill. To extend this use to answer this, focus has to be on the aspect as to whether the defendant is making some representation in course of trade to prospective customers which is calculated to injure the business or goodwill of the plaintiff thereby causing damage to him. In the process, difference between the confusion and deception is to be understood. This difference was explained by Lord Denning in “Difference: Confusion & Deception in\_ the following words:**

**“Looking to the natural meaning of the words, I would make two observations: first, the offending mark must „so nearly resemble” the registered mark as to be „likely” to deceive or cause confusion. It is not necessary that it should be intended to deceive or**



*intended to cause confusion. You do not have to look into the mind of the user to see what he intended. It is its probable effect on ordinary people which you have to consider. No doubt if you find that he did intend to deceive or cause confusion, you will give him credit for success in his intentions. You will not hesitate to hold that his use of it is likely to deceive or cause confusion. But if he had no such intention, and Was completely honest, then you will look carefully to see whether it is likely to deceive or cause confusion before you find him guilty of infringement.*

*Secondly, 'to deceive' is one thing. To 'cause confusion' is another. The difference is this: when you deceive a man, you tell him a lie. You make a false representation to him & thereby cause him to believe a thing to be true which is false. You may not do it knowingly, or intentionally, but you still do it, & so you deceive him. But you may cause confusion without telling him a lie at all, & without making any false representation to him. You may indeed tell him the truth, the whole truth & nothing but the truth, but still you may cause confusion in his mind, not by any fault of yours, but because he has not the knowledge or ability to distinguish it from the other pieces of truth known to him or because he may not even take the trouble to do so."*

*31. While examining the question of misrepresentation or deception, comparison has to be made between the two trademarks as a whole. Rules of Comparison was explained by Justice Parker in the following words:*

*"You must take the two words. You must judge of them, both by their look & by their sound. You must consider the goods to which they are to be applied. You must consider the nature & kind of customer who would be likely to buy those goods. In fact, you must consider all the surrounding circumstances; and you must further consider what is likely to happen if each of those trademarks is used in a normal way as a trademark for*



*the goods of the respective owners of the marks. If, considering all those circumstances, you come to the conclusion that there will be confusion - that is to say, not necessarily that one man will be injured & the other will gain illicit benefit, but that there will be confusion in the mind of the public which will lead to confusion in the goods - then you may refuse the registration, or rather you must refuse the registration in that case.”*  
xxx xxx xxx”

*(emphasis Supplied)*

*17. It is settled law that the rule of dominant feature of a trademark is not antithetical to the principle of anti-dissection, as contained in Section 17 of the Trade Marks Act, and the two Rules work in tandem with each other. In the present case, upon a comparison of the competing marks as a whole, the impugned mark is clearly infringing, since it prominently uses the dominant and essential part of the registered mark of the plaintiffs.”*

35. As regards the other companies using ‘**BIOCHEM**’ as part of their trade names, the submissions advanced by the Senior Counsel for respondent, as noticed in *paragraphs 19.16 and 19.17* of the impugned judgement, are noted by this Court. *Prima facie*, these submissions sufficiently dilute the argument advanced on behalf of the appellant/defendant regarding extensive third-party use of the word ‘**BIOCHEM**’, since most of those entities appear to be dealing with fertilizers, metals and other chemical products.

36. The plea of non-distinctiveness is also not available to the appellant/defendant, particularly when it has itself applied for registration of the composite mark ‘**ALDER BIOCHEM**’. Read in the context of *Section 17* of TM Act, such conduct does not support the plea that the respondent/plaintiff's mark lacks distinctiveness.



37. There can be no dominant part of the respondent/plaintiff's mark since it consists of only one word. Therefore, reliance on judgments such as ***Pernod Ricard*** (supra) may not be of much assistance. Relevant facts and extracts in ***Pernod Ricard*** (supra) have already been noted in paragraph 18.16 above.

38. The Court finds that the impugned judgment has duly considered all the relevant aspects, particularly in *paragraphs 6, 7 and 8* concerning use and adoption; *paragraphs 9 to 14* concerning deceptive similarity; *paragraphs 15 and 16* concerning the wider protection available to a device mark; *paragraph 17* concerning the dominant feature and anti-dissection principles; and *paragraph 18* concerning the ***Kaviraj Pandit*** test.

39. The issues relating to non-distinctiveness have been dealt with in *paragraphs 21 and 22*, while the plea that the word is common to the trade has been considered in *paragraph 23* of the impugned judgement. Additionally, it is noted that **Trademark Application No. 4491294** filed by appellant/defendant has been objected to by the Trade Marks Registry, and opposition proceedings against appellant/defendant's device mark have already been initiated by respondent/plaintiff.

40. Additionally, the Court had sought specific clarifications from the respective counsels on certain aspects. The submission made in regard also deserve consideration, which are as follows:

- (i) While appellant contends that '**BIOCHEM**' is widely used by over 100 entities, thereby demonstrating that the term is *publici juris* and is merely a combination of the words '*Biology*' and '*Chemistry*', incapable of exclusive appropriation, this contention is *prima facie* belied by the



fact that respondent has been the registered proprietor of the mark since 1959 and has been using it since 1968. The respondent/plaintiff has further submitted that the appellant/defendant has failed to produce any evidence demonstrating substantial actual use of the mark '**BIOCHEM**' by third parties in relation to pharmaceutical products. Mere registration does not establish actual commercial use. Moreover, most of the entities relied upon by the appellant have either been struck off from the Register or operate in the fields of fertilizers, metals and chemicals. Needless to state, these are matters for trial; however, *prima facie*, the balance tilts in favour of respondent/plaintiff.

- (ii) As regards the application of *Section 17* of TM Act, considering that the respondent/plaintiff's mark does not comprise separable components, appellant/defendant's contention that '**BIOCHEM**' is merely one part of the registered device mark and not an independently registered word mark is untenable. Even a bare comparison of '**ALDER BIOCHEM**' with '**BIOCHEM**' demonstrates that appellant/defendant's mark wholly subsumes the only and dominant element of the respondent/plaintiff's mark, namely '**BIOCHEM**'. Consequently, the mere addition of the prefix '**ALDER**' does not, *prima facie*, assist appellant/defendant. On the contrary, the use of



‘**BIOCHEM**’ in a distinctive manner as part of a device mark enjoys a strong recall value among consumers of pharmaceutical products, and the incorporation of that very mark into the appellant/defendant's trademark is likely to result in consumer confusion.

- (iii) Respondent/plaintiff has further drawn the attention of the Court to the fact that none of the appellant/defendant's trademark applications have proceeded to registration, and both applications have been **abandoned**. Consequently, the examination reports issued by the Trade Marks Registry in relation to the abandoned applications are of no relevance and need not be accorded any weight. The mere fact that the Trade Marks Registry may not have objected to the respondent's mark at the stage of examination does not bind either third parties or even the Registry itself, as contended by the respondent/plaintiff. This aspect must be viewed in the light of the statutory presumption of validity available to a registered trademark under Section 31 of TM Act. Any omission in the Registrar's examination report cannot constitute a conclusive determination regarding deceptive similarity or infringement under Section 29 of TM Act.
- (iv) As regards the judgment in *Vardhman* (*supra*), relied upon by the appellant, the real issue is whether ‘**BIOCHEM**’, though registered as a device mark, is



capable of exclusive protection. The respondent submits that '**BIOCHEM**' functions as the source identifier for its pharmaceutical products, thereby placing it in a distinct category from the common use of the word '**VARDHMAN**'.

- (v) Respondent/plaintiff has further contended that '**BIOCHEM**' is not descriptive of pharmaceutical products but is a *portmanteau* derived from the words '*bio*' and '*chemistry*', which has acquired distinctiveness and functions as a source identifier. Section 9(1) of the TM Act recognizes an exception in favour of marks that have acquired distinctiveness through long and extensive use. *Prima facie*, this submission deserves acceptance, since the respondent/plaintiff has placed on record material demonstrating use of the mark since the 1960s, whereas there is no evidence of use of the appellant/defendant's mark prior to 2016.
- (vi) Appellant/defendant sought to distinguish the *Forzid* case on the ground that it involved the addition of only a single alphabet '**F**' to the word '**ORZID**', which was held to be an insufficient distinguishing feature. According to the appellant/defendant, the invented word '**ALDER**' functions as the dominant feature of its trademark and stands on an entirely different footing. Respondent/plaintiff, on the other hand, has relied upon



the said judgment to contend that even where a mark is registered as a label or composite mark, its prominent feature is entitled to protection, and the mere addition of the prefix '**ALDER**' does not alter the overall commercial impression created by the mark. It is further contended that the entirety of the respondent/plaintiff's essential mark has been bodily lifted. This aspect has already been considered in *paragraph 18* of the impugned judgment.

- (vii) As regards the *anti-dissection rule* and the *dominant feature test*, respondent/plaintiff has submitted that since '**BIOCHEM**' is the only word forming part of its device mark used in relation to pharmaceutical products, it constitutes the essential and dominant feature of the mark. Appellant/Defendant, by wholly incorporating that feature in respect of identical pharmaceutical products, has created a likelihood of confusion with potentially serious consequences. Consequently, the application of the *anti-dissection rule* to the mark '**ALDER BIOCHEM**' may not be of much assistance, considering that it is being compared with the single and dominant mark '**BIOCHEM**', albeit registered as a device mark.



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41. In light of above discussion, this Court finds no reason to interfere with the decision passed by the Single Judge or with the injunction granted thereby.
42. Therefore, the appeal is accordingly dismissed, and the directions passed by the Single Judge shall continue to remain in force.
43. The observations made herein while considering the present appeal are purely *prima facie* in nature and shall remain subject to the final adjudication of the suit.
44. Pending applications (if any) are rendered infructuous.
45. Judgement to be uploaded on the website of this Court.

**(ANISH DAYAL)**  
**JUDGE**

**(NITIN WASUDEO SAMBRE)**  
**JUDGE**

**AUGUST 10, 2026/sm/tk**