



2026:DHC:9367



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

CNR No. DLHC010106292026

+ CS(COMM) 280/2026, I.A. 7346/2026, I.A. 7347/2026, I.A. 7348/2026, I.A. 7349/2026, I.A. 16922/2026 & I.A. 21183/2026**MANKIND CONSUMER PRODUCTS PRIVATE LIMITED**HAVING ITS REGISTERED OFFICE AT
208, OKHLA INDUSTRIAL ESTATE - III,
NEW DELHI – 110 020, INDIA

.....Plaintiff

(Through: Mr. Akhil Sibal, Sr. Advocate with Mr. Ankur, Mr. Prateush, Mr. Ankit, Ms. Saumya, Mr. Swastik, Ms. Sugandha, Advocates.)

versus

ALAINA HEALTHCARE PRIVATE LIMITEDKHASRA 127-133, BADDI- BAROTIWALA ROAD,
JHARMAJRI BADDI, SOLAN,
BADDI – 174 103
HIMACHAL PRADESH

AND ALSO AT

KHASRA 127-132, 707/133, 685/608/32
VILLAGE JHARMAJRI, BADDI,
DISTRICT SOLAN – 174 103
HIMACHAL PRADESH

.....Defendant No. 1

A.MENARINI INDIA PRIVATE LIMITEDHAVING ITS REGISTERED OFFICE LOCATED AT:
NO. 101, TOWER A, SHAPATH-4,
OPP. KARNAVATI CLUB, S.G. ROAD,Signature Not Verified
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AHMEDABAD,
GUJARAT – 380 015

AND ALSO AT
2102, TOWER 3, ONE INTERNATIONAL CENTRE,
SENAPATI BAPAT MARG,
ELPHINSTONE ROAD (W)
MUMBAI – 400 013

.....Defendant No. 2

(Through: Mr. Sandeep Sethi, Sr. Advocate and Mr. Manish K. Jha, Sr. Advocate with Mr. Ananya Kumar, Mr. Utkarsh Khandelwal, Mr. Ishan Gaur, Mr. Vaibhav Khanna, Ms. Shreya Sethi, Mr. Krisna Gambhir and Mr. Ritwik Sharma, Advocates for D-2.)

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Reserved on: 29.09.2026

Pronounced on: 16.10.2026

JUDGMENT

I.A. 7346/2026 (under Order XXXIX Rules 1 and 2 of CPC)

The instant application has been filed by the plaintiff under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (“CPC”), seeking an interim injunction restraining the defendants from using the mark ACNE SCAR / ACNE+SCAR / ACNESCAR (“impugned mark”), which, according to the plaintiff, is deceptively similar to its registered trade mark ACNESTAR.

2. Defendant no. 1, Alaina Healthcare Pvt. Ltd., is the manufacturer, and defendant no. 2, A. Menarini India Pvt. Ltd., is the marketer, of the product sold under the impugned mark. Reply to the application and written submissions have been filed on behalf of defendant no. 2.

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3. The case set up in the plaint, in brief, is that the plaintiff is the proprietor of the word mark ACNESTAR, registered under No. 1352577 in Class 5 with effect from 25.04.2005, in respect of “pharmaceutical and medicinal preparations included in Class 5”. The mark was originally registered in the name of Lifestar Pharma Pvt. Ltd., which was later amalgamated with Mankind Pharma Ltd. Mankind Pharma Ltd. assigned the mark to the plaintiff by a Deed of Assignment dated 19.02.2025, deemed effective from 03.09.2024. The plaintiff filed Form TM-P on 22.08.2025 for recording the assignment.

4. The mark ACNESTAR is stated to have been in continuous use since 2005, for a clindamycin and nicotinamide gel, and also for soaps and face washes. As per the certificate of the auditor, the sales under the mark since inception are about ₹ 540 crores, and the sales for FY 2024-25 were ₹ 76.39 crores.

5. The defendants manufacture and market a serum for acne scars under the name HEXILAK ACNE + SCAR. The product is manufactured at Baddi, Himachal Pradesh, under a cosmetics manufacturing licence. The mark HEXILAK stands registered under No. 1270019 in Class 5 in the name of A. Menarini Asia-Pacific Holdings Pte. Ltd., and defendant no. 2 is a part of the said group.

6. As per the plaint, the plaintiff came to know about the impugned product on 17.02.2026, and on enquiry learnt that the defendants had begun marketing it in May 2025. The suit was instituted on 11.03.2026. *Vide* order dated 20.03.2026, this Court granted an *ex parte ad interim* injunction in favour of the plaintiff and appointed Local Commissioners.

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7. The said order was assailed by defendant no. 2 in FAO (OS) (COMM) 107/2026. *Vide* order dated 24.04.2026, the Division Bench recorded the statement of learned senior counsel for the plaintiff that the plaintiff had no objection to the order dated 20.03.2026 being kept in abeyance till this Court decides the application afresh, after considering the reply of the defendants. The present application has, accordingly, been heard afresh.

Submissions on behalf of the plaintiff

8. Mr. Akhil Sibal, learned senior counsel appearing on behalf of the plaintiff, submits that the plaintiff is the registered proprietor of the mark ACNESTAR in Class 5 since 2005, and that the mark has been in continuous and uninterrupted use since then. It is submitted that a Division Bench of this Court has already recognised the statutory and common law rights of the plaintiff's predecessor in the mark ACNESTAR, and has enjoined a third party from using the mark ACNESTAR, in ***Mankind Pharma Ltd. v. Brinton Pharmaceuticals Ltd.***,¹ ("*Brinton*"). Reliance is placed on paras 41.1, 41.3 and 41.4 of the said decision, wherein it has been held that ACNESTAR is phonetically nearly identical to ACNESTAR, that the plea of ACNESTAR being a portmanteau of ACNE and STAR cannot save it from injunction, and that ACNESTAR cannot be regarded as descriptive.

9. He submits that ACNESTAR is a coined word, formed by combining a prefix with a distinctive suffix, and that such a combination is distinctive. The mark is to be compared as a whole. Reliance is placed on ***Wow Momo***

¹ FAO (COMM) 166/2024, decided on 22.09.2025



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Foods Pvt. Ltd. v. Wow Burger,² and ***Amritdhara Pharmacy v. Satya Deo Gupta***³. It is further submitted that through twenty years of use, the mark has come to be exclusively associated with the plaintiff.

10. It is contended that the present case falls squarely within para 41.3 of *Brinton*. The defendants use ACNE SCAR as a trademark, and in a prominent manner. The use of the house mark HEXILAK alongside does not amount to a defence. Reliance is placed on ***V-Guard Industries Ltd. v. Crompton Greaves Consumer Electricals Ltd.***,⁴ affirmed in ***Crompton Greaves Consumer Electricals Ltd. v. V-Guard Industries Ltd.***,⁵ to submit that use of a house mark with a prominently displayed mark amounts to sub-branding, and is no answer to infringement. It is submitted that once the essential features of a registered mark are adopted, added matter is immaterial. Reliance is placed on ***Kaviraj Pandit Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories***⁶.

11. Learned senior counsel submits that the impugned mark is nearly identical to ACNESTAR, the only change being the replacement of the letter “T” with “C”, which is a minute change calculated to superficially distinguish the marks. Differences in get-up are irrelevant in an action for infringement once the essential features are adopted. Reliance is placed on para 42.6 of *Brinton* and on ***Amar Singh Chawal Wala v. Shree Vardhman Rice and Genl. Mills***.⁷

² 2025 SCC OnLine Del 6545

³ 1962 SCC OnLine SC 13

⁴ 2022 SCC OnLine Del 1593

⁵ 2024 SCC OnLine Del 1838

⁶ AIR 1965 SC 980

⁷ 2009 SCC OnLine Del 1690

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12. It is submitted that both products are pharmaceutical or dermatological preparations for skin conditions associated with acne or its sequelae, and are sold across the same counters, through the same e-commerce platforms such as Flipkart, Amazon and 1mg, to the same class of consumers. Reliance is placed on paras 42.8, 42.9 and 50 of *Brinton*. It is further submitted that the difference between a medicinal and a cosmetic product is immaterial where the goods are allied and cognate. Reliance is placed on *Himalaya Wellness Co. v. Wipro Enterprises (P) Ltd.*,⁸ affirmed in *Wipro Enterprises (P) Ltd. v. Himalaya Wellness Co.*⁹

13. It is submitted that the test of likelihood of confusion is that of a consumer of average intelligence and imperfect recollection, and not of an informed consumer or a pharmacist. In the case of pharmaceutical products, even the slightest probability of confusion requires that the use of the impugned mark be restrained. Reliance is placed on *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.*,¹⁰ and *Glenmark Pharmaceuticals Ltd. v. Sun Pharma Laboratories Ltd.*¹¹

14. As regards the defence under Sections 30(2)(a) and 35 of the Trade Marks Act, 1999 (“Act”), learned senior counsel submits that the protection is available only where an expression is used in a descriptive sense, and not as a trade mark. The defendants use ACNE SCAR as the primary identifier of the product, which is evident from its typography, colour scheme and placement on the pack. The separate use of the words “Serum for Acne Scars” on the same pack only shows that ACNE SCAR is used to create an

⁸ (2023) 3 HCC (Del) 755

⁹ 2024 SCC OnLine Del 6859

¹⁰ (2001) 5 SCC 73

¹¹ 2024 SCC OnLine Del 2707

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independent brand identity. It is pointed out that the product permission of the defendants (p. 55 of the additional documents filed on 15.05.2026) and the e-commerce listings also use ACNE SCAR as the name of the product.

15. On the plea of delay, it is submitted that the plaintiff came to know about the impugned product on or about 17.02.2026 and instituted the suit on 11.03.2026, which cannot be termed as delay. The documents of the defendants show only vague and inconsistent use, and not any substantial market presence. In any event, delay is no defence to infringement. Reliance is placed on *Midas Hygiene Industries (P) Ltd. v. Sudhir Bhatia*,¹² *Chacha Saree Bazar (P) Ltd. v. Chacha Cloth House*,¹³ and *Dindayal Industries Ltd. v. Dindayal Ayurved Bhawan*¹⁴. It is also submitted that continuous use of an infringing mark gives rise to a continuous cause of action, for which reliance is placed on *Castrol Ltd. v. Sanjay Sonavane*¹⁵.

16. It is further contended that the adoption of the impugned mark was itself dishonest and calculated to trade upon the goodwill of ACNESTAR, and where the initial adoption is dishonest, subsequent use does not tilt the balance of convenience in favour of the defendant. Reliance is placed on *Ansul Industries v. Shiva Tobacco Co.*¹⁶ Learned senior counsel also relies on *Laxmikant V. Patel v. Chetanbhai Shah*,¹⁷ to submit that where a case of infringement or passing off is made out, an injunction ordinarily follows.

17. In response to the plea that the plaintiff is not the registered proprietor, it is submitted that the mark stands assigned to the plaintiff by

¹² (2004) 3 SCC 90

¹³ 2026 SCC OnLine Del 761

¹⁴ 2025 SCC OnLine Del 9473

¹⁵ 2025 SCC OnLine Del 8646

¹⁶ 2007 SCC OnLine Del 74

¹⁷ (2002) 3 SCC 65



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the Deed of Assignment dated 19.02.2025, and that Form TM-P has been filed. Non-registration of an assignment does not preclude a valid assignee from enforcing the mark. Reliance is placed on ***Sun Pharmaceutical Industries Ltd. v. Cipla Ltd.***¹⁸.

18. As regards the allegation of suppression, learned senior counsel submits that the registration of HEXILAK is irrelevant to the present dispute, and was in any case pleaded in para 16 of the plaint and noted in para 17 of the order dated 20.03.2026. The plaintiff's documents included a review of the defendants' product of May 2024 (p. 258 of the plaintiff's documents), and the date was inadvertently missed in the plaint. The plaintiff cannot be expected to scan the entire internet or monitor every e-commerce platform. Scattered digital traces of the defendants' product, such as archived web pages, reviews on judge.me, Instagram posts of 2023 and a research paper, do not amount to knowledge. It is submitted that only suppression of a material fact disentitles a party to relief. Reliance is placed on ***Arunima Baruah v. Union of India***¹⁹.

Submissions on behalf of defendant no. 2

19. *Per contra*, Mr. Sandeep Sethi, learned senior counsel appearing on behalf of defendant no. 2, at the outset, submits that the plaint suffers from material concealment and misrepresentation, and that the plaintiff has attempted to engineer a cause of action. It is submitted that para 25 of the plaint asserts knowledge on 17.02.2026 so as to make out urgency, while para 11 of the plaint itself pleads that defendant no. 2 has been marketing the product since May 2025. It is contended that the plaint deliberately does not

¹⁸ 2008 SCC OnLine Del 1135



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disclose that defendant no. 2 has been using ACNE SCAR, along with its brand HEXILAK, at least since 2022.

20. In support, he refers to the certificate of a Chartered Accountant, which places the sales of the product at ₹ 72.86 lakhs from August to December 2022, ₹ 283.43 lakhs in 2023, ₹ 313 lakhs in 2024 and ₹ 312.81 lakhs in 2025. Reference is also made to invoices from 2022 onwards, the Amazon listing showing the product as first available on 16.01.2025 with a review of 14.11.2024, Flipkart reviews of April 2025, an Instagram review of 08.06.2023, reviews on judge.me between 2022 and 2025, a research paper on the product published in 2023, and an announcement on the website of the Menarini group in 2019.

21. It is submitted that it is inconceivable that the plaintiff, being part of the Mankind group, which claims to be the fourth largest pharmaceutical company in India, was unaware of a product openly sold for over four years. The plaintiff chose to sit over its alleged rights and approached this Court at its own leisure. It is contended that a party who suppresses material facts is not entitled to any equitable relief, and the merits become secondary. Reliance is placed on *Manjula v. D.A. Srinivas*,²⁰ *Ramjas Foundation v. Union of India*,²¹ *S.P. Chengalvaraya Naidu v. Jagannath*,²² *Prestige Lights Ltd. v. State Bank of India*,²³ and *Kent RO Systems Ltd. v. Gattubhai*²⁴.

¹⁹ (2007) 6 SCC 120

²⁰ 2026 SCC OnLine SC 831

²¹ (2010) 14 SCC 38

²² (1994) 1 SCC 1

²³ (2007) 8 SCC 449

²⁴ 2022 SCC OnLine Del 791

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22. On merits, learned senior counsel submits that defendant no. 2 is the Indian subsidiary of the A. Menarini group, an established international pharmaceutical group. Its brand HEXILAK stands registered under No. 1270019 in Class 5, on an application filed on 03.03.2004, before the plaintiff applied for ACNESTAR. HEXILAK is used along with the house mark MENARINI on the product and its packaging.

23. It is submitted that the product of defendant no. 2 is a cosmeceutical serum for post-inflammatory repair. On the packaging, HEXILAK appears in a distinctive script as the essential feature, along with the MENARINI house mark and logo. ACNE + SCAR appear as a subordinate descriptor, with a green “+” between the two words, followed by the words “SERUM FOR ACNE SCARS”. The grievance of the plaintiff is confined to ACNE + SCAR, which is only a combination of two dictionary words, ACNE being a skin condition and SCAR the mark left behind by it. The expression communicates the intended purpose of the product, and its use is a *bona fide* description of the character and quality of the goods, protected by Sections 30(2)(a) and 35 of the Act.

24. It is contended that defendant no. 2 has never used ACNE + SCAR in a trademark sense, and the comparison, therefore, has to be between ACNESTAR and HEXILAK, between which there is no similarity at all. The Court must undertake a holistic comparison of the rival marks, discounting their descriptive elements. Reliance is placed on ***Pernod Ricard India (P) Ltd. v. Karanveer Singh Chhabra***²⁵.

25. It is further submitted that no one can claim monopoly over descriptive words, and that use of such words by others in a descriptive



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sense cannot be restrained. Reliance is placed on **Marico Ltd. v. Agro Tech Foods Ltd.**,²⁶ **Office Cleaning Services Ltd. v. Westminster Window and General Cleaners Ltd.**,²⁷ and **Living Media India Ltd. v. Alpha Dealcom (P) Ltd.**²⁸

26. Learned senior counsel submits that the word ACNE is *publici juris* in the trade of dermatological products, and is used by several third parties, such as ACNESOL, ACNETHRO, ACNEREX, ACNELISSA, ACNEDAC, ACNETOR and ACNEWAR. The plaintiff's predecessor had itself taken this stand in para 6(g) of its counter statement dated 08.12.2017 in the opposition filed by Biomedica Life Science against Application No. 2520524 for ACNESTAR in Class 3, stating that no exclusive right can be claimed over ACNE as it denotes a disease or disorder. Reliance is placed on **S.K. Sachdeva v. Shri Educare Ltd.**,²⁹ to submit that the plaintiff is bound by its stand before the Trade Marks Registry.

27. On passing off, it is submitted that the presence of HEXILAK and MENARINI, the different appearance of the product, the colour scheme, the font and the arrangement of features rule out any likelihood of confusion. Reliance is placed on **Britannia Industries Ltd. v. ITC Ltd.**,³⁰ **Schweppes Ltd. v. Gibbens**,³¹ and **Harrods Ltd. v. Harrodian School Ltd.**³². On the effect of a house mark, reliance is placed on **Star Bazaar (P) Ltd. v. Trent**

²⁵ 2025 SCC OnLine SC 1701

²⁶ 2010 SCC OnLine Del 3806

²⁷ (1946) 63 RPC 39 (HL)

²⁸ 2016 SCC OnLine Del 815

²⁹ 2016 SCC OnLine Del 473

³⁰ 2017 SCC OnLine Del 7391

³¹ (1905) 22 RPC 601 (HL)

³² 1996 RPC 697 (CA).

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Ltd.,³³ *Intex Technologies (India) Ltd. v. AZ Tech (India)*,³⁴ and *Meso (P) Ltd. v. Liberty Shoes Ltd.*³⁵

28. It is also submitted that the product of defendant no. 2 does not treat acne, but addresses the scars, texture and pigmentation left behind after the acne is gone. The plaintiff's ACNESTAR gel, on the other hand, is a clindamycin and nicotinamide preparation, a Schedule H drug sold only on prescription, for the treatment of active acne. The products share no active ingredient or mechanism of action, and are sequential and complementary rather than substitutes. A dermatologist prescribing an antibiotic for active acne would not mistakenly prescribe a collagen-stimulating scar serum. Nor is there any confusion online, since, as per the plaintiff's own documents, the product of defendant no. 2 appears on e-commerce websites only when "HEXILAK ACNESCAR" is searched, while a search for "ACNESTAR" shows only the plaintiff's products (p. 260 of the plaintiff's documents).

29. Lastly, it is submitted that the plaintiff has not shown any decline in its sales since 2022, rather, its sales have increased (p. 188 of the plaintiff's documents), which negates any plea of diversion of trade or irreparable injury. An injunction, on the other hand, would cause grave prejudice to the established business, inventory and distribution arrangements of defendant no. 2. It is, therefore, prayed that the application be dismissed.

Analysis

30. This Court has heard learned senior counsel for the parties at length and perused the material on record.

³³ 2010 SCC OnLine Del 4764

³⁴ 2017 SCC OnLine Del 7392

³⁵ AIR 2019 Bom 305



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31. Since learned senior counsel for defendant no. 2 has urged that the plaintiff, having suppressed material facts, ought not to be heard on merits at all, it would be apposite to deal with the said objection at the outset. There can be no quarrel with the proposition that a litigant who seeks a discretionary relief must approach the Court with clean hands. This Court in **ANZ Grindlays Bank Plc Vs. The Commissioner, MCD & Ors**³⁶, has held as under:

“87. When a party approaches the Court seeking relief of interim injunction more so when the relief sought for is projected as urgent- and is accompanied by a prayer for an ex parte relief the Court places implicit reliance on the plaintiff. They are the facts set out by the plaintiff in its pleadings and the documents filed which enable the Court forming an opinion whether to exercise or not to exercise jurisdiction in the matter of issuing ad interim injunction (behind the back of the opposite party who is yet to be noticed). The Court while reposing confidence in the plaintiff naturally expects him to make a clean breast of all material and relevant facts which would enable the Court forming a correct opinion and exercising judicial discretion at that stage. Mis-statement by itself would be enough to throw out the application.....”

32. At the same time, the principle enunciated in **ANZ Grindlays Bank Plc** (supra) is attracted where the misstatement or suppression relates to a fact which has a bearing on the exercise of the Court’s discretion. Not every inaccuracy in the pleadings would disentitle a party to relief. The fact suppressed must be one which is material for the determination of the *lis*. In **Arunima Baruah** (supra), the Supreme Court observed thus:

*“12. It is trite law that so as to enable the Court to refuse to exercise its discretionary jurisdiction suppression must be of material fact. What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. Material fact would mean material for the purpose of determination of the *lis*, the*

³⁶ 1995 SCC OnLine Del 376



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logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties, the Court may not refuse to exercise its discretionary jurisdiction. ...”

33. It was urged that the date of knowledge pleaded in para 25 of the plaint, namely 17.02.2026, is belied by para 11, which pleads marketing by defendant no. 2 since May 2025. There is no such inconsistency, since para 11 only records what the plaintiff learnt on an enquiry made after it came to know of the impugned product. The commencement of marketing pleaded in para 11, however, does not match the documents of defendant no. 2, which indicate sales from August 2022. At the same time, the plaintiff itself placed on record, along with the plaint, a Flipkart listing of the impugned product, captured on 10.03.2026, which carries a review of the product dated May 2024 (p. 258 of the plaintiff's documents). There was no compulsion on the plaintiff to file the document, and its production shows that the plaintiff placed the material in its possession before the Court in a *bona fide* manner. The discrepancy in para 11 is no more than an inadvertent error, and a party which itself files the document said to contradict its pleading cannot be said to have suppressed it.

34. Even otherwise, the discrepancy is not of a nature which would disentitle the plaintiff from being heard on merits. The plaint did disclose the registration of HEXILAK (para 16), the opposition proceedings with Biomedica Life Science (Document 12) and the decision in **Brinton**. The inaccuracy pertains to the date on which defendant no. 2 commenced use of the impugned mark, which is relevant to the plea of delay and to the balance of convenience, but not to the question of infringement.

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35. More importantly, the *ex parte* order dated 20.03.2026 has remained in abeyance since 24.04.2026, on the plaintiff's own statement before the Division Bench, and the application has now been heard afresh, with the reply and all the documents of defendant no. 2 on record. In **Kent RO Systems** (supra), the *ex parte* injunction was vacated because the plaintiffs had concealed their own correspondence with the defendants which established knowledge and acquiescence since 2012. No such material exists in the present case. Nor is the cause of action, which arises from the continuing use of the impugned mark, an illusory one of the kind contemplated in para 9.5 of **Manjula** (supra). The objection is, accordingly, not sustainable.

36. Coming to the merits, the plaintiff's title to the mark may first be noticed. The plaintiff claims under a Deed of Assignment dated 19.02.2025, and has filed Form TM-P for recording the assignment. In **Sun Pharmaceutical** (supra), it was held that "registered proprietor" in Section 28, rather than adopting a pedantic interpretation has to be interpreted as including a person having title as registered proprietor by way of assignment or transmission. *Prima facie*, therefore, the plaintiff is entitled to maintain the action.

37. It is not in dispute that the very mark ACNESTAR, and a rival mark ACNESCAR used for a cream meant for acne scars, came up for consideration before the Division Bench of this Court in *Brinton*. The Division Bench, while setting aside the order refusing interim injunction, held as under:

"41.1 Clearly, the mark ACNESCAR is phonetically nearly identical to ACNESTAR and, unless the two words are pronounced syllable by

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syllable, they are indistinguishable. A clear case of near phonetic identity, therefore, exists between the marks.

41.2 ... It is certainly open to any manufacturer to coin a mark under which it seeks to manufacture and sell its products. This principle would apply as much to pharmaceutical products or cosmetic products or as to any other product. While doing so, however, the manufacturer has to take care to ensure that the mark is not confusingly or deceptively similar to any registered trademark. If it is, he risks the chance of an injunction. Innocence is no defence. Infringement is not dependent on mala fides or mens rea.

41.3 The fact that the mark ACNESCAR may be a coined portmanteau of the words ACNE and SCAR cannot, therefore, save it from injunction on the ground of infringement, as it is clearly phonetically deceptively similar to the mark ACNESTAR of the appellant, for which the appellant has a subsisting trademark registration of 2005 vintage, i.e., of nearly two decades.

42.8 ... They are similar products, meant for treatment of similar ailments. They are available through the same trade channel and cater to the same consumer segment. The mark ACNESCAR, as used by the respondent, would, therefore, ipso facto infringe the mark ACNESTAR of the appellant within the meaning of Section 29(2)(b) of the Trade Marks Act.”

38. Learned senior counsel for defendant no. 2 has rightly pointed out that, *vide* order dated 17.02.2026 in Review Pet. 514/2025, the Division Bench corrected paras 38, 45.3 and 53 of the said judgment, and that para 53 now provides that the observations therein would not be binding on the learned Commercial Court at the final adjudication of that suit. The correction, however, concerns only the effect of the interim findings at the trial of that suit. The principles laid down by the Division Bench on the comparison of these very marks, and on the similarity of the goods in question, continue to bind this Court.

39. Defendant no.2 contends that ACNESTAR is a descriptive mark, that the word ACNE is *publici juris*, and that the plaintiff's predecessor had itself so stated before the Trade Marks Registry. This argument, at this stage, does





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not inspire the confidence of this Court. The Division Bench in *Brinton* has, in para 41.4, already held, *prima facie*, that ACNESTAR cannot be regarded as descriptive of the product for which it is used. The registration of ACNESTAR subsists, and Section 31(1) of the Act makes it *prima facie* evidence of validity. As held in para 44.2 of *Brinton*, “at the stage of Order XXXIX Rules 1 and 2 ... registration of the plaintiff’s mark itself discharges the onus on the plaintiff to prove that the mark is *prima facie* valid”.

40. The plaintiff, moreover, does not claim exclusivity over the word ACNE. It is well settled that, in the trade of drugs, the name of an ailment cannot be appropriated by any one trader. The Division Bench in *Astrazeneca UK Ltd. v. Orchid Chemicals & Pharmaceuticals Ltd.*,³⁷ which has been noticed in para 23 of *Glenmark* (supra), held thus:

“20. ... In the decisions of the Supreme Court and this Court also, it has been clearly held that nobody can claim exclusive right to use any word, abbreviation, or acronym which has become *publici juris*. In the trade of drugs, it is common practice to name a drug by the name of the organ or ailment which it treats or the main ingredient of the drug. Such an organ ailment or ingredient being *publici juris* or generic cannot be owned by anyone exclusively for use as a trade mark. ...”

41. The claim of the plaintiff, however, is to ACNESTAR as a whole, and not to ACNE alone. Where the rival marks share more than the generic element, the marks cannot be artificially dissected by isolating the generic part. In *United Biotech (P) Ltd. v. Orchid Chemicals & Pharmaceuticals Ltd.*,³⁸ noticed in para 48 of *Glenmark* (supra), the Division Bench approved the following reasoning of the coordinate bench, which upheld the finding that FORZID was deceptively similar to ORZID:

³⁷ 2007 SCC OnLine Del 237

³⁸ 2012 SCC OnLine Del 2942



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“24. ... As already noticed it is not just the generic part 'ZID' that is common to both marks. The further prefix 'OR' too is common. In other words, 'ORZID' is common to both marks. No parallel can therefore be drawn with the facts in Astrazeneca UK Limited. A person of average intelligence and imperfect recollection seeking to buy CEFTAZIDIME injection would hardly undertake any 'dissection' exercise ...”

42. In the present case too, what is common to the rival marks is not merely the word ACNE, but the entire structure ACNE-S_-A-R, save one letter.

43. As regards the stand taken in the counter statement dated 08.12.2017, it was taken in Class 3 proceedings, in response to the mark ACNESTAL of a third party. An identical submission was considered and rejected in *Brinton*, by applying **Raman Kwatra v. KEI Industries Ltd.**,³⁹ in the following terms:

“45.2 After the judgment of the Division Bench of this Court in Raman Kwatra, this submission cannot survive. In Raman Kwatra, it has clearly been held, in para 43 of the report, that prosecution history is relevant only where the history pertains to the rival marks. In other words, a stand adopted by the appellant when the respondent's mark is cited against the appellant in opposition may be relevant. However, a stand adopted by the appellant against Biomedica, apropos an opposition by Biomedica, cannot be relevant in a dispute between the appellant and the respondent, applying the law laid down in Raman Kwatra.”

44. In **S.K. Sachdeva** (supra), the Division Bench took an adverse view of the plaintiff having concealed its own stand before the Registry that SHRI RAM was the name of a deity, incapable of appropriation. In the present case, the opposition and the counter statement form part of the plaint itself.

45. That brings this Court to the core question, whether the impugned mark is deceptively similar to ACNESTAR. The test, in an action for

³⁹ 2023 SCC OnLine Del 38



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infringement, was laid down by the Supreme Court in **Kaviraj Pandit Durga Dutt Sharma** (supra) as under:

“28. ... In an action for infringement, the plaintiff must, no doubt, make out that the use of the defendant’s mark is likely to deceive, but where the similarity between the plaintiff’s and the defendant’s mark is so close either visually, phonetically or otherwise and the Court reaches the conclusion that there is an imitation, no further evidence is required to establish that the plaintiff’s rights are violated. Expressed in another way, if the essential features of the trade mark of the plaintiff have 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; whereas in the case of passing off, the defendant may escape liability if he can show that the added matter is sufficient to distinguish his goods from those of the plaintiff.”

46. The rival marks and products may be compared as under:

	Plaintiff	Defendants
Product		
Mark	ACNESTAR	ACNE + SCAR / ACNE SCAR, used with HEXILAK and MENARINI
Letters	A-C-N-E-S-T-A-R	A-C-N-E-S-C-A-R
Pronounced as	AK-NEE-STAR	AK-NEE-SKAR
Registration	No. 1352577, Class 5, from	None for the impugned mark

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	25.04.2005	
User claimed	Since 2005	Since August 2022
Goods	Clindamycin and nicotinamide gel; soaps and face washes	Serum for acne scars (cosmetics licence)
Trade channels	Chemists; Amazon, Flipkart, 1mg	Chemists; Amazon, Flipkart, 1mg, Clinikally

47. A bare perusal of the above would show that the impugned mark differs from the plaintiff's registered mark by a single letter, at the sixth position. Phonetically, the two are nearly indistinguishable, as already found in para 41.1 of **Brinton**. The insertion of the "+" device between ACNE and SCAR on the pack does not alter the position, since a purchaser asking for the product does not pronounce it. The Supreme Court in **Amritdhara Pharmacy** (supra) held that an unwary purchaser of average intelligence and imperfect recollection would go more by the overall structural and phonetic similarity and the nature of the medicine he has previously purchased, and would not split the name into its component parts.

48. The submission that the descriptive elements must first be discounted, so that the comparison is between ACNESTAR and HEXILAK, cannot be accepted. The Supreme Court in **Pernod Ricard** (supra) has reiterated that marks must be compared as a whole, and that the mere presence of a common generic or laudatory word does not by itself establish deceptive similarity. That was a case where the only common element between the word marks BLENDERS PRIDE and LONDON PRIDE was the laudatory word PRIDE, the leading words being entirely different. The Supreme

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Court, at the same time, observed in para 42 that “*even if a particular component of a mark lacks inherent distinctiveness, its imitation may still amount to infringement if it constitutes an essential and distinctive feature of the composite mark as a whole*”. In the present case, the comparison of the marks as a whole yield near identity, and not merely a common prefix.

49. The use of HEXILAK and MENARINI also makes no difference. In view of para 28 of **Kaviraj Pandit Durga Dutt Sharma** (supra), added matter is immaterial in an action for infringement once the essential features of the registered mark are adopted. On the pack, ACNE + SCAR appears immediately below HEXILAK, in larger letters than HEXILAK itself, and is the most prominent text on the pack. Defendant no. 2 uses HEXILAK for a range of scar products, including HEXILAK ULTRA (pp. 260 to 266 of the plaintiff’s documents), and ACNE+SCAR identifies this particular product within that range. Such use is in the nature of sub-branding, which, as held in **V-Guard Industries** (supra) and affirmed in **Crompton Greaves** (supra), is not recognised as a defence. The decisions in **Intex Technologies**, **Star Bazaar** and **Meso**, relied upon by defendant no. 2, considered the effect of a house mark in the context of passing off, or of discerning purchasers of premium goods, where added matter assumes significance.

50. Defendant no. 2 next contends that its use of ACNE + SCAR is a *bona fide* description of the intended purpose of the product, protected by Sections 30(2)(a) and 35 of the Act. Section 30(2)(a) provides that a registered trade mark is not infringed where the use “indicates the kind, quality, quantity, intended purpose, value.....or other characteristics of goods”, and Section 35 saves “the use by any person of any *bona fide* description of the character or quality of his goods”. The protection under



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these provisions is available only where an expression is used in its descriptive sense, and not as a trade mark. Whether the defence is attracted must, therefore, be tested on the manner in which the expression is actually used by defendant no. 2.

51. Examined thus, the material on record *prima facie* indicates that ACNE+SCAR is used to name the product, and not merely to describe it. The pack carries, immediately below ACNE + SCAR and in smaller letters, the words “SERUM FOR ACNE SCARS”, which is the description of the product. The product permission issued to defendant no. 1 refers to the product as “Hexilak Acne Scar Serum” (p. 55 of the plaintiff’s additional documents). The e-commerce listings carry it as “Hexilak Acne Scar Serum” or “Hexilak Acne Plus Scar Serum” (pp. 246 to 296 of the plaintiff’s documents), and the sales invoices filed by the defendant no. 2 describe it as “Hexilak Acne 15gm”. It is also the case of defendant no. 2 itself that its product does not treat acne, and is meant only for the scars left behind. ACNE + SCAR, read as it appears on the pack, would hardly be an accurate description of such a product.

52. The reliance placed by defendant no. 2 on **Marico** (supra) is misplaced. In that case, the plaintiff’s registered marks LOSORB and LOSORB were themselves held to be *prima facie* invalid, being only a minor variation of the descriptive expression “low absorb”, registered on a “proposed to be used” basis. The defendant had used the words only as part of the sentence “WITH LOW ABSORB TECHNOLOGY”, along with its own prominent mark SUNDROP, and it was on those facts that Section 30(2)(a) was held to be attracted. In the present case, ACNESTAR has been



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held, *prima facie*, not to be descriptive, and ACNE + SCAR is not used as part of a descriptive sentence, but as the name of the product itself.

53. ***Living Media*** (supra) and ***Office Cleaning Services*** (supra) also concerned plaintiffs whose own marks were made up of ordinary descriptive words, TODAY and OFFICE CLEANING, where small differences were held sufficient to avoid confusion. In ***Living Media***, the only element common to INDIA TODAY and NATION TODAY was the word TODAY. ***Office Cleaning Services***, as noticed in ***Living Media***, itself observed that the position is otherwise where a fancy word has been chosen as part of the name. ACNESTAR combines the name of an ailment with STAR, drawn from the name of its original manufacturer, and the impugned mark replicates it save for one letter. The defence under Sections 30(2)(a) and 35, therefore, does not, at this stage, disentitle the plaintiff to interim relief. It is, however, made clear that the defendants remain free to describe their product, in the ordinary descriptive sense, as a serum for acne scars.

54. As regards the plea that the products are different, the Division Bench in *Brinton*, in para 42.2, has held that an acne preparation and a cream for acne scars “are intended to treat associated skin ailments” and “cater to the same consumer segment”, and in para 42.8, that the medicinal character of one and the non-medicinal character of the other “makes no difference”. The same view was taken in ***Himalaya Wellness*** (supra), where a medicinal preparation and a cosmetic product, meant for the same consumers and sold through the same channels, were held to be allied and cognate, and was affirmed in ***Wipro Enterprises*** (supra). In the present case, both products are sold through chemists and the same online platforms, and the plaintiff itself

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sells cosmetic products, namely soaps and face washes, under the mark ACNESTAR.

55. The plaintiff's ACNESTAR gel is a Schedule H drug. In matters involving medicinal products, a stricter standard is to be applied. The Supreme Court in **Cadila Health Care** (supra) observed that “*public interest would support lesser degree of proof showing confusing similarity in the case of trade mark in respect of medicinal products as against other non-medicinal products*”, and that the fact that a drug is sold on prescription is not by itself sufficient to prevent confusion. The Division Bench in **Glenmark** (supra) held as under:

“63. ... In our considered opinion, the question of likelihood of confusion in case of competing drugs would have to be answered on a basis distinct from those that we may employ for ordinary consumer products. We would be erring if we were to fail to adopt strict principles of proof when it comes to drugs bearing in mind the need to completely obviate the possibility of an error or mistake. ...”

56. Applying the said principle, and having regard to para 42.9 of **Brinton**, the possibility of a consumer, or a chemist, applying one product for the other, on account of the near phonetic identity of the marks, cannot be ruled out. Accordingly, this Court is of the *prima facie* view that the use of the impugned mark amounts to infringement of the plaintiff's registered trade mark within the meaning of Section 29(2)(b) of the Act.

57. On the plea of delay, it is settled that delay is not, by itself, a ground to refuse an injunction against infringement. The Supreme Court in **Midas Hygiene** (supra) held thus:

“5. The law on the subject is well settled. In cases of infringement either of trade mark or of copyright, normally an injunction must follow. Mere delay in bringing action is not sufficient to defeat grant of injunction in such cases. The grant of injunction also becomes necessary if it prima facie appears that the adoption of the mark was



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itself dishonest.”

58. The same view has been reiterated in **Chacha Saree Bazar** (supra) and **Dindayal Industries** (supra). There is no material on record to show that the plaintiff had knowledge of the impugned product earlier and acquiesced in its use. As held in para 44 of **Ansul Industries** (supra), acquiescence implies positive act and not merely silence or inaction. Defendant no. 2 has claimed to have been using HEXILAK for long, and has a clinical study of the product funded by it. However, as held in para 41.2 of **Brinton**, innocence is no defence to infringement, and ACNESTAR stood registered for about seventeen years before defendant no. 2 claims to have adopted the impugned mark.

59. Thus, the plaintiff has been able to make out a *prima facie* case of infringement. As regards the balance of convenience, this Court has taken note of the fact that defendant no. 2 has been selling the impugned product since 2022. However, the plaintiff is the registered proprietor of ACNESTAR since 2005, with sales of about ₹ 540 crores, while defendant no. 2 has neither a registration nor an application for the impugned mark. The injunction would not affect the use of HEXILAK or MENARINI, or the sale of the product itself, and would only require defendant no. 2 to adopt a different name for the product. The balance of convenience, therefore, lies in favour of the plaintiff.

60. The submission that the plaintiff's sales have increased does not negate irreparable injury. The injury caused by infringement of a registered trade mark lies in the erosion of the exclusivity conferred by Section 28(1) of the Act, which cannot be adequately compensated in money. Where one of the products is a medicinal preparation, the public interest in avoiding

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confusion is an additional consideration. The plaintiff would, therefore, suffer irreparable harm if the injunction is refused.

Conclusion

61. In view of the foregoing discussion, this Court is of the considered opinion that the plaintiff has made out a *prima facie* case of infringement of its registered trade mark ACNESTAR.

62. Accordingly, till the final adjudication of the suit, the defendants, their directors, officers, servants, agents, distributors, dealers, and all others acting for and on their behalf, are restrained from manufacturing, selling, offering for sale, advertising or in any manner dealing in pharmaceutical or medicinal preparations, skin care preparations, or any allied or cognate goods, under the mark ACNE SCAR, ACNE + SCAR or ACNESCAR, or any other mark deceptively similar to the plaintiff's registered trade mark ACNESTAR.

63. The injunction in para 62 shall operate forthwith. However, considering that defendant no. 2 has been selling the impugned product since 2022, and that stock bearing the impugned mark has already been supplied to the trade, defendant no. 2 is granted a period of two months from today to recall such stock from its distributors, stockists, retailers and e-commerce sellers, and to cause the listings of the product under the impugned mark to be withdrawn. It is clarified that the time so granted is only for the purpose of recall, and shall not be construed as permitting the defendants to manufacture, advertise, offer for sale or supply any product under the impugned mark in the interim.

64. The application stands allowed in the aforesaid terms.

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65. It is made clear that the observations made hereinabove are only *prima facie*, for the purpose of deciding the present application, and shall not be construed as an expression on the merits of the case.

CS(COMM) 280/2026, I.A. 7346/2026, I.A. 7347/2026, I.A. 7348/2026, I.A. 7349/2026, I.A. 16922/2026 & I.A. 21183/2026

List on 02.03.2027

**(PURUSHAINDRA KUMAR KAURAV)
JUDGE**

**OCTOBER 16, 2026
SA**

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