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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **CS(COMM) 593/2024 & I.A. 33864/2024***Date of Decision: 29<sup>th</sup> October, 2024***GLAXO GROUP LIMITED & ANR .....Plaintiffs**Through: Mr. Urfee Roomi, Ms. Janaki Arun,  
Mr. Jaskaran Singh, Mr. Ayush Dixit,  
Ms. Anuja Chaudhry, Advocates

versus

**IVA HEALTHCARE PRIVATE LIMITED .....Defendant**Through: Ms. Nancy Thapar, Mr. Sudhanshu  
Sikka, Advocates (M:9873434944)**CORAM:****HON'BLE MS. JUSTICE MINI PUSHKARNA****MINI PUSHKARNA, J (ORAL)**

1. The present suit has been filed seeking relief against the defendant's unauthorised adoption and use of the defendant's ZENTOVATE mark in relation to pharmaceutical skin creams, on the grounds of trademark infringement, passing off and acts of unfair competition. It is the case of the plaintiffs that the defendant's ZENTOVATE mark is deceptively similar to the plaintiffs' marks, particularly the plaintiffs' BETNOVATE marks.

2. The plaintiffs are an International Global Health Care company involved in researching and developing a broad range of pharmaceuticals, medicines and vaccines. The plaintiffs have used numerous marks in relation to their pharmaceutical and medicinal preparations. Among these marks are BETNOVATE and TENOVATE.

3. Apart from using the BETNOVATE mark simpliciter, the plaintiffs also use marks which incorporate the BETNOVATE marks, which include,



marks such as BETNOVATE-N, BETNOVATE-S and BETNOVATE-GM. Further, the plaintiffs also use marks which incorporate the plaintiffs' TENOVATE mark, such as TENOVATE-GN, TENOVATE-M and TENOVATE-NM.

4. The plaintiffs have huge sales turnover running into more than INR 2,00,000 crores annually. The plaintiffs spend significant sums of money annually on marketing their pharmaceutical products and vaccines and plaintiffs have also marketed their pharmaceutical products through various media around the world, including, India.

5. The plaintiffs coined the term BETNOVATE for use as a trademark in respect of their pharmaceutical products since as early as 1963. On a global basis, including, in India, the plaintiffs have used and continue to use, the BETNOVATE marks as trademarks, continuously and extensively in relation to skin creams, ointments and lotions, for more than 60 years.

6. The plaintiffs have obtained nearly 150 registrations for, and filed applications to register, the plaintiffs' BETNOVATE marks in numerous countries and jurisdictions around the world. Thus, as per the plaintiffs, owing to extensive and continuous use of the BETNOVATE marks, the plaintiffs' pharmaceutical preparations sold under the BETNOVATE marks have come to be associated solely and exclusively with the plaintiffs.

7. Defendant is engaged in manufacturing, marketing and sale of pharmaceutical and medicinal products, including skin creams, under the defendant's ZENTOVATE mark.

8. The defendant filed *Trade Mark Application no. 4823491* for registration of its ZENTOVATE mark covering "medicinal and pharmaceutical preparations" in Class 05. The plaintiffs filed notice of



opposition against the said application. Since, the defendant did not file a counter statement within time, the Trade Marks Registry vide order dated 03<sup>rd</sup> July, 2024 deemed the defendant's application for its ZENTOVATE mark, as abandoned in accordance with Section 21(2) of the Trade Marks Act, 1999.

9. This Court vide order dated 22<sup>nd</sup> July, 2024 passed an *ex-parte* injunction against the defendant, restraining it from manufacturing the medicinal or pharmaceutical product bearing the defendant's ZENTOVATE marks. However, this Court allowed sale of the existing stock of the defendant.

10. Subsequently, vide order dated 08<sup>th</sup> August, 2024, the injunction order dated 22<sup>nd</sup> July, 2024 was modified to the extent that the defendant was restrained from further sale, display, advertising, marketing of the defendant's ZENTOVATE mark, or any other mark that is identical or deceptively similar to the plaintiffs' mark BETNOVATE.

11. As per directions of this Court, the defendant has filed its stock statement.

12. On pointed query by this Court as to whether the defendant is ready to change its mark, learned counsel appearing for the defendant submitted that the defendant is ready to change its mark. Hence, with the consent of the parties, the matter has been taken up for final disposal.

13. It is to be noted that the BETNOVATE mark of the plaintiffs, stands registered by the Trade Marks Registry vide *registration no. 219258* under Class 05. The date of filing of the application by the plaintiffs for registration of the mark BETNOVATE is 05<sup>th</sup> December, 1963.

14. Clearly, the defendant's ZENTOVATE mark is deceptively similar to



the plaintiffs' mark, particularly to the plaintiffs' BETNOVATE marks. The letter combination of 'OVATE' is common to the marks of the plaintiffs and the defendant. Except the first letter, all the letters forming part of the plaintiffs' BETNOVATE mark, have been incorporated entirely and even arranged almost identically to constitute defendant's ZENTOVATE mark. By no means, such changes can be said to be sufficient to differentiate the rival marks.

15. The significant similarities between the rival marks leave no manner of doubt that the defendant's adoption of the ZENTOVATE mark, is *ex facie* dishonest and is aimed solely at creating confusion and deception in the minds of the unwary consumers in order to invoke a sense of association with the plaintiffs and the plaintiffs' BETNOVATE and TENOVATE marks.

16. It is to be noted that the rival trademarks, when looked at in their entireties, are nearly identical/ confusingly similar in appearance, sound and structure. Moreover, the defendant's goods are pharmaceutical and medicinal products, as that of the plaintiffs. The rival products are sold through identical trade channels to the same consumers. It is well settled that a stricter approach should be adopted in judging likelihood of confusion in cases where the rival products are medicinal and pharmaceutical products, because such confusion may have disastrous effects on human health. Therefore, there is no manner of doubt that the defendant's ZENTOVATE mark is likely to cause confusion among the purchasing public as to the source of the goods sold by the defendant.

17. This Court notes the submission made on behalf of the plaintiffs that the BETNOVATE marks of the plaintiffs, has already been recognised as a



well-known trademark, and features in the list of well-known trademarks, as maintained by the Trade Marks Registry. The submission made by the plaintiffs in the plaint, with respect thereto, reads as under:

*"37. Clearly, the Plaintiff's Marks have come to be associated solely and exclusively with the Plaintiff and have developed a stellar reputation owing to the Plaintiff's long, extensive, and continuous use of the Plaintiff's Marks all over the world and this reputation has spilled over into India. Not only have the Plaintiff's Marks acquired trans-border reputation in India, the trade marks have also become well-known owing to extensive and continuous use within India. In fact, the Plaintiff's BETNOVATE mark has also been recognized as a well known trade mark and features in the list of Well-Known Trade Marks as maintained by the Registry. Relevant extracts from the website of the Registry evidencing recognition of the Plaintiff's BETNOVATE mark as a well-known trade mark is annexed hereto and marked as DOCUMENT- 25. "*

18. Pursuant to the directions of this Court, the defendant has filed its stock details, showing the sale of its product with the ZENTOVATE mark.
19. Accordingly, considering the facts and circumstances of the present case, it is apparent that the plaintiffs are entitled to a decree in their favour.
20. Considering the submissions made before this Court and considering the documents on record, this Court is of the view that the ends of justice shall be met if cost of ₹ 3,00,000/- is imposed upon the defendant.
21. Accordingly, following directions are issued:
  - 21.1 Decree is passed in favour of the plaintiffs and against the defendant in terms of Paragraph 66 (a) to (d) of the plaint.
  - 21.2 All the infringing material like packaging, labels, promotional and advertising material, price tickets, stationery, brochures or any other materials that contains the defendant's ZENTOVATE mark, shall be destroyed in presence of plaintiffs' representative. For this purpose, the plaintiffs are at liberty to communicate with the defendant and visit the



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premises of the defendant, at a convenient time for the purposes of carrying out the aforesaid exercise.

21.3 Defendant shall pay cost of ₹ 3,00,000/- to the plaintiffs within a period of six weeks, from today.

22. With the aforesaid directions, the present suit, along with pending applications stands disposed of.

23. The next date of hearing stands cancelled.

**MINI PUSHKARNA, J**

**OCTOBER 29, 2024**

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