

## Glaxo Group Limited & Anr vs Iva Healthcare Private Limited on 22 July, 2024

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(COMM) 593/2024, I.A. 33864/2024, I.A. 33865/2024, I.A. 33866/2024, I.A. 33867/2024, I.A. 33868/2024, I.A. 3386

GLAXO GROUP LIMITED & ANR.

Through:

Mr. Urfee Roomi, Ms. J  
Mr. Jaskaran Singh, Ms  
Bhatia, Ms. Aunja Chau  
Vanshika Bansal and Ms  
Arora, Advocates.  
Mob: 9811600017

versus

IVA HEALTHCARE PRIVATE LIMITED

.....Defendant

Through: Mr. Anil Kumar Thakur, Advocate

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA  
ORDER

% 22.07.2024 I.A. 33866/2024 (Exemption from filing clear/certified copies of documents)

1. The present is an application under Section 151 of the Code of Civil Procedure, 1908 ("CPC"), on behalf of the plaintiffs, seeking exemption from filing translated copies, clearer copies/documents with correct margins.

2. Exemption is granted, subject to all just exceptions.

3. Applicant shall file legible, clear, and original copies of the documents, on which the plaintiffs may seek to place reliance, within four weeks from today, or before the next date of hearing.

4. Accordingly, the present application is disposed of. I.A. 33865/2024 (For Addl. Documents)

5. This is an application seeking leave to file additional documents under the Commercial Courts Act, 2015.

6. The plaintiffs, if they wish to file additional documents at a later stage, shall do so strictly as per the provisions of Commercial Courts Act, and the DHC (Original Side) Rules, 2018.

7. The application is disposed of, with the aforesaid directions. I.A. 33868/2024 (Application seeking extension of time to file documents under Section 63(4)(C) of the BSA)

8. This is an application under Section 151 CPC seeking extension of thirty days for filing hash report and certificate of expert under Section 63(4)(c) of Bharatiya Sakshya Adhiniyam, 2023 ("BSA").

9. In view of the averments made in the application, the same is allowed and extension sought is granted.

10. Let the needful be done, accordingly.

11. With the aforesaid directions, the application is disposed of. I.A. 33869/2024 (for permission to file documents in sealed cover)

12. This is an application under Section 151 CPC read with Rule 19(2) and (3) of the Delhi High Court (Intellectual Property Rights Division) Rules, 2022, on behalf of the plaintiffs/applicant requesting permission to file documents in a sealed cover.

13. Considering the averments made in the application, the sealed cover is taken on record, which contains data relating to sales figures and sales volumes of the plaintiffs' products.

14. Let the same be filed in the Registry and be maintained in a sealed cover.

I.A. 33867/2024 (EX. from Pre-Institution Mediation)

15. Having regard to the facts of the present case and in the light of the judgment of Supreme Court in the case of Yamini Manohar versus T.K.D. Keerthi, 2023 SCC OnLine SC 1382, and Division Bench of this Court in Chandra Kishore Chaurasia Versus RA Perfumery Works Private Ltd., 2022 SCC OnLine Del 3529, exemption from attempting Pre-institution Mediation, is granted.

16. Accordingly, the application stands disposed of. CS(COMM) 593/2024

17. Learned counsel appearing for defendant appears on advance notice.

18. Let the plaint be registered as suit.

19. Issue summons.

20. Summons is accepted by learned counsel appearing for defendant.

21. Let written statement be filed by the defendant within 30 days. Along with the written statement, the defendants shall also file affidavit of admission/denial of the document of the plaintiffs, without which the written statement shall not be taken on record. Liberty is given to the plaintiffs to file a replication within 30 days of the receipt of the written statement. Along with the replication, if any, filed by the plaintiffs, affidavit of admission/denial of documents filed by the defendant, be filed by the plaintiffs, without which the replication shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

22. List before the Joint Registrar (Judicial) for marking of exhibits on 13th September, 2024.

23. List before the Court on 8th August, 2024.

24. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

I.A. 33864/2024 (under Order XXXIX Rules 1 and 2)

25. The present suit has been filed for permanent injunction restraining the defendant from infringing the plaintiffs' trademark, passing off, acts of unfair competition, seeking damages/rendition of accounts, delivery up and other appropriate reliefs.

26. It is submitted that the plaintiffs use/ has used numerous marks, on and in relation to its pharmaceutical and medicinal preparations. Among these marks are 'BETNOVATE' and 'TENOVATE'.

27. It is submitted that the most widely used, successful, prominent and immediate recognisable and the oldest trade mark in the Indian pharmaceutical market of the plaintiffs is 'BETNOVATE'. Apart from using the 'BETNOVATE' mark simpliciter, the plaintiffs also use marks, which incorporate the BETNOVATE mark for its products, which includes marks such as BETNOVATE-N, BETNOVATE-S, and BETNOVATE-GM. Further, the plaintiffs also use the marks which incorporate the plaintiffs' 'TENOVATE' marks, such as TENOVATE-GN, TENOVATE-M, TENOVATE NM.

28. It is submitted that as per the knowledge and belief of the plaintiffs, the defendant is engaged in manufacturing, marketing and sale of medicinal and pharmaceutical preparations, including creams bearing the mark 'ZENTOVATE'.

29. It is submitted that plaintiffs are seeking relief against the defendant's unauthorized adoption and use of the defendant's 'ZENTOVATE' mark, on and in relation to pharmaceutical skin creams, on the grounds of, inter alia, trademark infringement, passing off and unfair competition.

30. It is submitted that the defendant's 'ZENTOVATE' mark is deceptively similar to the plaintiffs' marks, particularly the plaintiffs' 'BETNOVATE' marks.

31. It is submitted that the plaintiffs coined the term 'BETNOVATE' for use as a trademark in respect of plaintiffs' pharmaceutical products many decades ago. The term 'BETNOVATE' does not convey to the ordinary public or to pharmacists, a description of the composition of the pharmaceutical and medicinal preparations. Thus, it is submitted that plaintiffs' 'BETNOVATE' marks are inherently distinctive and entitled to the highest degree of protection under the Trade Marks Act, 1999.

32. It is submitted that plaintiffs have obtained 150 registrations, and filed applications to register the plaintiffs' 'BETNOVATE' marks in numerous countries and jurisdiction around the world.

33. It is submitted that owing to the plaintiffs' extensive and continuous use of the 'BETNOVATE' marks, the plaintiff's pharmaceutical preparation sold under the plaintiffs' 'BETNOVATE' marks, have come to be associated solely and exclusively with the plaintiffs.

34. In fact, the plaintiffs' 'BETNOVATE' marks have acquired the status of well known marks under article 6bis of the Paris Convention, which covers the protection of well known marks.

35. It is submitted that the plaintiffs started using the plaintiffs' 'TENOVATE' marks in India, as early as in the year 1990.

36. The plaintiffs use the 'TENOVATE' marks in relation to its skin creams. It is submitted that pharmaceutical preparations bearing the plaintiffs' marks, have been and/or continue to be sold through a network of distributors and stockists throughout India, as well as online pharmacies.

37. It is submitted that as per the plaintiffs' information and belief the defendant is a subsidiary of the Theon Pharmaceuticals group of companies and is engaged in manufacturing, marketing and sale of pharmaceutical and medicinal products including creams under the defendant's 'ZENTOVATE' mark.

38. It is submitted that the plaintiffs first learned of the defendant when it came across the defendant's trademark application for the defendant's 'ZENTOVATE' mark, covering medicinal and pharmaceutical preparations in Class 5.

39. It is submitted that the plaintiffs came across the listing for the defendant's 'ZENTOVATE' cream on a third party listed platform, viz. 'PharmaHoppers'.

40. As per the records of the Registry, the said application was filed on 1st January, 2021, on a 'Proposed to be Used Basis' and was published in the Trade Marks Journal No. 2128 dated 30th October, 2023.

41. On coming across the said application, the plaintiffs filed a notice of opposition against the defendant's application. It is submitted that the defendant was required to file its counter statement by 14th May, 2024. However, the defendant did not file any counter statement within this time.

42. Thus, the Trademark Registry vide order dated 3rd July, 2024 has deemed the defendant's application for the defendant's 'ZENTOVATE' marks, as abandoned in accordance with Section 21(2) of the Trade Marks Act, 1999.

43. It is submitted that the plaintiffs also sent a cease and desist letter to the defendant. However, letter was received from the defendant, wherein, the defendant denied all the plaintiffs' contention and stated that the defendant owned rights in the defendant's ZENTO family of trademarks.

44. Thus, the present suit has come to be filed.

45. Learned counsel appearing for the plaintiffs submits that the defendant's 'ZENTOVATE' mark, is deceptively similar to the plaintiffs' marks, particularly the plaintiffs' 'BETNOVATE' marks owing to the letter combination 'OVATE', being common to all the rival marks. Further, the initial letter combination 'ZENT' in the defendant's 'ZENTOVATE' mark is also significantly deceptively similar, both visually and phonetically to the letter combination 'BETN' used by the plaintiffs.

46. It is submitted that the rival trademarks of the defendant, when looked at in their entirety, are nearly identical/confusingly similar in appearance, sound, and structure.

47. Further, just like the plaintiffs, the defendant's goods are pharmaceutical and medicinal products. The rival products are sold through identical trade channels to the same consumers.

48. Reference of this Court has been drawn to document 36 filed along with the present plaint to submit that the deceptive similarity between the rival marks is so apparent that a search for the string "ZENTOVATE CREAM" on the popular search engine Google.com, returns results for the plaintiff's 'BETNOVATE' products.

49. It is, thus, submitted that the defendant has adopted and is using the defendant's 'ZENTOVATE' mark, with a mala fide intention in order to unlawfully benefit from the reputation and goodwill attached to the plaintiffs' marks.

50. Thus, it is submitted that such conduct demonstrates the defendant's intention to bring to the consumers' minds, the plaintiffs' marks in order to unfairly benefit from the immense goodwill and reputation of the plaintiffs.

51. Issue notice. Notice is accepted by Mr. Anil Kumar Thakur, learned counsel appearing for the defendant.

52. Learned counsel appearing for the defendant submits that he needs time to take instructions.

53. Considering the submissions made before this Court, the plaintiffs have made a prima facie case in their favour. The balance of convenience also lies in favour of the plaintiffs.

54. This Court is of the view that irreparable harm shall be caused to the plaintiffs, if interim directions are not passed in favour of the plaintiffs.

55. This Court is of the prima facie view that the defendant's 'ZENTOVATE' mark is extremely likely to deceive the consumers and traders alike into believing that there is a connection between the plaintiffs and the defendant.

56. Considering the submissions made before this Court, the defendant is restrained from manufacturing the medicinal or pharmaceutical product bearing the defendant's 'ZENTOVATE' marks.

57. It is clarified that this Court has not injuncted the sale of the existing stock of the defendant.
58. It is further directed that the defendant shall file the details of the existing stock, along with batch numbers and date of manufacturing.
59. Let reply be filed within a period of four weeks. Rejoinder thereto, if any, be filed within a period of two weeks, thereafter.
60. List before the Joint Registrar (Judicial) for marking of exhibits on 13th September, 2024.
61. List before the Court on 8th August, 2024.

MINI PUSHKARNA, J JULY 22, 2024 ak