

# The Stream Of Administration Of Justice ... vs Navaratna Pharmaceutical ...

**Author: K.B.K.Vasuki**

**Bench: K.B.K.Vasuki**

A.Nos.1333, 1334, 1337 and 1338 of 2012  
OA.Nos.137 and 139 of 2012  
in CS.No.137 of 2012  
K.B.K.VASUKI, J

OA.Nos.137 and 139 of 2012 are filed by the plaintiff seeking protection against

2. A.Nos.1333 and 1334 of 2012 and A.Nos.1337 and 1338 of 2012 are filed by the

3.The suit is filed by the plaintiff for the reliefs of permanent injunction aga

4.The suit is filed along with three applications viz., (i) for interim injuncti

5.The plaint proceeds as if, the plaintiff is the proprietor of suit mentioned r

6.Whereas, the defendant has been since January 2012 started marketing its milk

7.This court, on the basis of the averments raised in the plaint as well as in t

8.The defendant has come forward with 3 set of applications to suspend and vacat

1.the plaintiff is guilty of suppression of material fact regarding the disclaimer of pa

2.order of injunction is obtained by playing fraud upon the court.

3.there is no statutory protection available to the disclaimed portion

4.there is difference in trade mark obtained and the trademark used by the plaintiff

5.there are dissimilarities in the rival trademarks color scheme and get up which is cap

6.The trade name used is geographical in nature and is protected from any infringement a

9.Both the learned counsel on record, have also cited authorities in support of

10.Heard the rival submissions made on both sides.

11.As already referred to, the suit reliefs as well the reliefs sought for in th

1.copy of the incorporation certificate.

2.certificate of registration under VAT.

3.Auditor's certificate.

4. copy of trademark registration certificate along with renewal certificate.
5. Copy of trademark Application under No.1007423 in Class 29.
6. publication of the trademark application under No.1007423 in the trademark journal.
7. copy of the certificate of registration under copyright Act; and
8. specimen of the plaintiff's sachet under Thirumala milk.

12. The perusal of the copy of trademark registration certificate along with renewal certificate

13. Be that as it may, in the course of argument in these applications, the respondent

14. Thus, the combined appreciation of the registration of trade mark of the plaintiff

15. In order to lay emphasis on such averments, the averments raised in the plaint

16. At this juncture, it is but necessary to consider the definition of "mark" and "2(m)- "mark" includes a device, brand, heading, label, ticket, name, signature, trade

17. It cannot be disputed that the registration is obtained only in respect of the

18. In the case referred to above, the plaintiff filed identical suit for injunction

19. The learned senior counsel for the defendant has sought to place identical arguments

20. The other authorities cited on the side of the plaintiff in this regard is (1)  
1. The stream of administration of justice has to remain unpolluted so that purity  
2. Anyone who takes recourse to fraud, deflects the course of judicial proceedings  
8. To enable the courts to ward off unjustified interference in their working, the

21. It may be true that in this case, the adoption of the trade mark for the product

22. It may be true that the plaintiff has enclosed in the type set the copy of print

23. It is also relevant to consider at this stage that the registration of print

24. On the contrary, the learned counsel for the defendant would contend that the

25. The discussion held above would disclose that the case pleaded in the plaint

25(a). Even otherwise, as it is now found that the Registration is only in respect

26. However, the same, in my considered view, will in no manner affect the claim

27. That being the legal position, though this court in the foregoing paragraph

28. Here again, it is contended by the learned counsel for the defendant that a

29. The act of passing off is a form of tort. Goodwill, misrepresentation and d

30. Once misrepresentation is established, it is reasonable to infer that custom

31. In (1970) 2 SCR 213 (F.Hoffmann-La Roche and Co. Ltd v. Geoffrey Manners and

32. In order to succeed an action for passing off, the plaintiff must either sat

33. Before going into other material aspects referred to above, the first aspect
34. In an action for infringement and passing off, the similarity rather than di
35. As the mode for comparison of testing two trade marks is both by look and so  
"It is therefore clear that in order to come to the conclusion, whether one mark  
That being the legal position, the plaintiff's claim has to be appreciated only in the l
36. Admittedly, two rival trade marks involved in the present case are 'Thirumala
37. It is sought to be argued herein that the names of "Thirumala" and "Thiruvan
38. Few instances wherein phonetically and visually identical marks came up for
- (a) 1951 -68- RPC 103 (De Cordova and others Vs. Vick Chemical Co.) [ "Vaporub"
  - (b) AIR 1963 SC 449 (Amritdhara Pharmacy Vs. Satya Deo Gupta) ["Amritadhara" a
  - (c) 1972 (1) SCC 618 (Parle Products (P) Ltd., Vs. J.P. and Co., Mysore) ["G
  - (d) 1990 PTC 131 (Mad) (S.P.S. Sevlaraj Vs. V. Muthusamy Naicker) ["Gopal Tooth P
  - (e) 1990 PTC 10 (Madras) (MRF Tyres Vs. Metro Tyres Limited) ["Nylogrip" and "
  - (f) 1989 PTC 127 (Delhi) (Blue Star Ltd. Vs. Sidwal Refrigeration Industries
  - (g) PTC Supple. (2) 650 (Mad) (Bombay Vestors Vs. Crystal Knitters) ["Costal"
  - (h) 1985 PTC 389 (Del) (Colgate Palmolive Co. Vs. Sundeeep Enterprises) ["Colgat
  - (i) 1997 PTC 651 (Del) (Madan Lal Arora Vs. Soni Udyog) ["Tiger Brand" and "L
  - (j) 1977 PTC 573 (Del) (Goel Pocket Books Vs. Raja Pocket Books) ["Nagputra"
  - (k) 1989 PTC 54 (Mad) (DB) (Kali Aertaed Water Works Vs. Rashid) ["Kali Mark"
  - (l) 1998 PTC 689 (Del) (HI-Tech Foods Vs. Khanna Enterprises) ["Catch" and
  - (m) 2001 (5) SCC 95 (Uniply Industries Ltd. Vs. Unicorn Plywood Pvt. Ltd.)
  - (n) 2004 (3) CTC 90 (Midas Hygiene Industries (P) Ltd., Vs. Sudhir Bhatia and
  - (o) 2006 (8) SCC 726 (Ramdev Food Products (P) Ltd. Vs. Arvindbhai Rambhai Pate
  - (p) 1998 PTC 151 (Del) (Radhika Agro Industries Pvt. Ltd. Vs. Pawan Agro Foods
  - (q) 2004 (29) PTC (Del) (Alfred Dunhill Limited Vs. R.P.S. Chawla) ["Dunhill"
  - (r) 2007 (34) PTC 109 (Del) (Glaxo Group Limited Vs. Manjit patel) ["Fortum" a
39. In the judgment reported in (1972) 1 SCC 618 (Parle Products (P) Ltd. v J.P.
40. The supreme Court has by citing the earlier judgment of the Supreme Court i
41. The same view is applicable to the facts of the present case. In the case d
42. Among the surrounding circumstances to be taken into account one of consider
43. The other factors to be considered are that the plaintiff is admittedly carr
44. Further, our High court has, in the judgment reported in 2011 (4) CTC 397 (As
45. As far as the case of the defendant is concerned, the defendant was carrying

46. As far as the plea of damage is concerned, the plaintiff is not bound to sh

47. In the result, the defendant's applications A.Nos.1333 and 1334 of 2012 are a

48. In the result, A.Nos.1337 and 1338 of 2012 are dismissed and the O.A.No.139

30-3-2012

Index:Yes/No

Internet:Yes/No

rk/gcg

K.B.K.VASUKI, J.

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