

# Psychotropic India Limited vs Meridian Medicare Ltd And Anr on 31 March, 2025

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.O. (COMM.IPD-TM) 370/2021

PSYCHOTROPIC INDIA LIMITED

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Through: Mr. Rishabh Srivastava, Mr. Sanj

Aggarwal, Ms. Yasheswini Sharma

Mr. Sahil Gupta, Advoc

(M:9737708556)

versus

MERIDIAN MEDICARE LTD. AND ANR.

.....Respond

Through: Mr. Amit Singh, Mr. Matloob Alam,

Advocates for R-1 (M:9818934544)

Mr. Nishant Gautam, CGSC with Mr.

Vardhman Kaushik, Mr. Dhruv Joshi,

Mr. Prithviraj Dey, Advocates for

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

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06.03.2025

MINI PUSHKARNA, J (ORAL)

1. The present petition has been filed under Sections 47, 57 and 125 of the Trade Marks Act, 1999 ("Trade Marks Act") seeking removal/cancellation of the trademark "TROMA" registered in Class 05, bearing registration no. 1383114 in the name of respondent no. 1 from the Register of Trade Marks.

## Brief Facts

2. Brief facts leading to the filing of present petition, are as follows:

2.1 Petitioner is a company engaged inter alia in the business of manufacturing and marketing of various medicinal and pharmaceuticals preparations, since many years.

2.2 Petitioner claims to have adopted, invented and conceived the trademarks TROMANIL, TROMA PLUS, TROMA and TROMAZIN for its pharmaceutical preparations.

2.3 Petitioner has registration of the trademark TROMANIL in its favour under no. 825826 in Class 5, with user date of 31st January 1997. 2.4 Subsequently, petitioner

also obtained registrations for the trademarks TROMA PLUS, TROMA and TROMAZIN under nos. 1476790, 3431867 and 4124105 in Class 5, with user date being, 25th January 2002, 18th December 2015 and 20th March, 2019, respectively.

2.5 Respondent no. 1 is engaged in similar business as that of the petitioner's goods i.e., pharmaceutical, and medicinal preparations, and is using the similar trademark TROMA, which is registered in Class 5, bearing registration no. 1383114.

2.6 Hence, the present petition has come to be filed. Submissions on behalf of petitioner:

3. Submissions on behalf of the petitioner are as under:

3.1 Petitioner, in the year 1997, adopted and invented the arbitrary mark TROMANIL in respect of medicinal preparation and since then has been manufacturing, marketing, and selling medicine under the mark TROMANIL.

3.2 The petitioner honestly conceived and coined the mark, with 'TROMA', being derived from the word 'trauma', reflecting the medicine's purpose of relieving pain.

3.3 The petitioner started using the mark TROMA in 2002 and launched various variants of the mark TROMA with different suffixes and prefixes like TROMAZIN, TROMA PLUS and TROMA.

3.4 TROMA forms the essential and dominant part of the registered mark of the petitioner TROMANIL, and is also a well-reputed mark of the petitioner.

3.5 The trademarks TROMANIL, TROMAZIN, TROMA and TROMA PLUS by virtue of extensive publicity, sales, promotional work and the superior quality of products, as marketed by the petitioner, have acquired distinctiveness and have come to be identified exclusively with the petitioner.

3.6 The respondent could not have claimed any ownership over the impugned trade mark as respondent is neither the owner nor is the originator of the impugned trademark.

3.7 The impugned mark of the respondent no. 1 is deceptively similar to the petitioner's mark as the respondent no.1 has replicated the entire mark of the petitioner in its entirety for similar and allied class of goods. 3.8 Respondent no. 1 has adopted the mark TROMA, to encash the goodwill and reputation of the TROMANIL, being fully aware of the usage of various marks which uses TROMA, as an essential and dominant part of the marks. Thus, the adoption and use of the trademark TROMA by the respondent, in respect of pharmaceutical and medicinal products, amounts to infringement.

Submissions on behalf of respondent no. 1:

4. Submissions on behalf of the respondent no.1 are as under:

4.1 The trademark TROMA bearing registration no. 1383114 in Class 5 has been granted in favour of respondent no. 1 after receiving and rejecting all objections on the application dated 07th September, 2005, for which a trademark certificate has been issued in favour of the respondent no. 1 in the year 2018.

4.2 Respondent no. 1 has been manufacturing, distributing, and selling medicines, i.e., capsule through Troma 50 trademark with ingredient Tramadol HCL and Tablet Troma P with ingredient Tramadol HCL and Paracetamol IP, since 2003-2004.

4.3 The brand name of respondent no. 1 is well accepted for the range of products mentioned hereinabove amongst leading surgeons, general practitioners, dentists, orthopedics, etc. and has been prescribed by the medical fraternity.

4.4 The brand name TROMA has been claimed since 1992-93 by one person named Manoj Kumar Lal. The claim has been abandoned despite making the application for trademark twice on 02nd November 1992 and 14th December 2006. Similarly, the application has also been abandoned by one M/s Euglow Pharma Pvt. Ltd. for grant of trademark TROMA, wherein, prior usage has been claimed since 09th June 2006.

4.5 The application by the petitioner is pending before the respondent no. 2 in category - "opposed", wherein, the prior usage has been claimed since 18th December 2016.

4.6 The brand name and trademark TROMA has remained with respondent no.1 since 2004, exclusively used and well established in the market. Thus, grant of other similarly sounding trademarks in favour of the petitioner do not make it entitled for the trademark TROMA, which has been validly granted in favour of the respondent no.1. Analysis and findings:

5. I have heard learned counsel for the parties and perused the documents on record.

6. At the outset, this Court notes that the petitioner is the first adopter and prior user of the marks TROMANIL, TROMA PLUS, TROMA and TROMAZIN, having the earliest user date of 31st January 1997 for the mark TROMANIL, registered in Class 5.

7. Invoices showing the sale of products, under its various trademarks containing the mark 'TROMA', have been placed on record before this Court. The petitioner has also placed on record a list of its various pharmaceutical products containing the mark 'TROMA', which is reproduced, as under:

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8. The petitioner has also placed on record the invoices from the year 1998 onwards showing sale of its pharmaceutical products with the marks in question. One such

invoice dated 30th June, 1998 for sale of its pharmaceutical product under the name 'TROMANIL', is reproduced, as under:

9. Another invoice for petitioner's pharmaceutical product under the mark 'TROMA' dated 28th November, 2002, placed on record before this Court, is reproduced, as under:

10. Thus, it is manifest that the petitioner has acquired immense goodwill in the market with respect to its medicinal and pharmaceutical preparations.

11. In order to determine whether the trademark of respondent no.1 is identical to the trademarks of the petitioner, it would be apposite to refer to the said trademarks in question, which are as under:

12. A perusal of the comparison of the marks TROMANIL, TROMA PLUS, TROMA and TROMAZIN of the petitioner with the mark TROMA of the respondent no. 1, shows that the respondent no. 1 has adopted the dominant part of the registered mark of the petitioner, i.e., TROMANIL. The impugned mark of the respondent no.1 is deceptively similar to the petitioner's mark, as the respondent no.1 has replicated the mark of the petitioner in its entirety, for similar and allied class of goods.

13. Further, this Court notes that the petitioner's trademarks TROMANIL, TROMA PLUS, and TROMAZIN share a common feature, namely TROMA. This essential component forms the integral part of petitioner's brand identity and serves as a distinguishing element across its various trademarks. The resemblance between TROMA and the petitioner's trademarks is likely to cause confusion among consumers, leading them to associate the respondent no.1's goods with those of the petitioner.

14. This Court in the case of Mankind Pharma Ltd. Versus Cadila Pharmaceuticals Ltd., 2015 SCC OnLine Del 6914, while holding that the essential/predominant part of the trademark cannot be copied when a party is the prior user in the market for sale of pharmaceutical products, has held as under:

"xxx xxx xxx

19. In this context, the submission of the learned counsel for the plaintiff that registration of his trade mark 'MANKIND' for the sale of pharmaceutical products and the plaintiff admittedly having several other registrations either with the prefix or suffix to the word 'KIND' and although the 'KIND' admittedly has no co-relation with the sale of the pharmaceutical products, the plaintiff having established his first user of the word 'KIND' in the pharmaceutical market, the ratio of this judgment entitles him to a higher protection for the word 'KIND' is an argument which has force. In the instant case the plaintiff is using the word 'KIND' with the prefix 'MAN'

since the year 1986; his registration for the mark 'METROKIND' is of the year 2003. The defendant cannot copy the essential/predominant part of the trade mark of the plaintiff which in this case is 'KIND' as admittedly the plaintiff has a registration for the trade mark 'MANKIND' from the year 1986 and for 'METROKIND' since the year 2003 and at the cost of repetition the plaintiff being the prior user in the market of the word 'KIND' for sale of pharmaceutical products stands established by him.

20. The Supreme Court in *Kaviraj Pandit Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories* AIR 1965 SC 980 had quoted with approval the following text : -

"if the essential features of a 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 sales 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."

21. The test of phonetic similarity was considered by the Supreme Court in the case of *Amritdhara Pharmacy v. Satya Deo*. In this context, the Court had noted as under : -

"an unwary purchaser of average intelligence and imperfect recollection would not split the name into its component parts and consider the etymological meaning thereof or even consider the meaning of the composite words as 'current of nectar' or 'current of Lakshman'. Where the trade relates to goods largely sold to illiterate or badly educated persons, it is no answer to say that a person educated in the Hindi language would go by the etymological or ideological meaning and see the difference between 'current of nectar' and 'current of Lakshman'. It was emphasized that the whole word had to be considered. It was held that "the overall similarity between the two names in respect of the same description of the goods would likely to cause confusion within the meaning of Section 10(1) of the Trade Marks Act, 1940."

22. Thus it is the overall similarities of the mark which are the test to decide as to where they can cause confusion to a man of average intelligence.

23. Pharmaceutical products which are sold over the counter as in the instant case both the products of the plaintiff and of the defendant being 'non-scheduled drugs', they can be bought without a prescription require a stricter, greater and higher standard of care.

xxx xxx xxx"

(Emphasis Supplied)

15. On the aspect of dishonest adoption, while holding that dishonest adoption of somebody else's trademark and trying to ride on the goodwill created by the competitor who entered the market prior in time, should be discouraged, this Court in the case of Ishi Khosla Versus Anil Aggarwal & Anr., 2007 SCC OnLine Del 126, has held as under:

"xxx xxx xxx

23. What is relevant is the admission on the part of the defendants in using the word "DIET WHOLE FOODS" in respect of the same products which are marketed by the defendants with same techniques and same benefits. As on the date of filing of the application by the defendants for registration of this mark in 2004, they had not started marketing their products under this label. Even if it is taken that the defendants' products hit the market in the year 2004, the plaintiff had been marketing her products with trademark 'Whole Foods' since the year 2001. Obviously, the defendants could see through the benefits of products as conceptualised by the plaintiff and they wanted their own share in the pie. It is not to suggest that the plaintiff has monopoly over these products. Any other person may enter the trade and be a competitor. Competition is healthy for not only consumers but for manufacturer as well and is, therefore, in public interest. However, what is to be discouraged in the dishonest adoption of somebody else's trademark and trying to ride on the goodwill created by the competitor who entered the market prior in time. This is what is sought to be done by the defendants by clever manipulation, namely, adding the word 'DIET' in their mark after adopting identically the entire trademark of the plaintiff i.e. 'Whole Foods'. This intention of the defendants becomes manifest as they have also adopted same style of the trademark and same labels/packing etc. I may mention that during arguments learned counsel for the defendant conceded this and offered to change the writing style as he accepted that artistic feature could not be used. However, what is emphasized is the manner in which the defendants adopted the trademark 'DIET WHOLE FOODS'. Addition of one word with same style in which these letters are written explains the obvious, namely, dishonest adoption. With such adoption, confusion is inevitable. In Ruston Hornsby v. Zamindara Engineering, PTC (Suppl) (1) 175 SC, the Supreme Court deprecated the defendant's adoption of plaintiff's trademark 'RUSTON' by adding word 'INDIA' to its mark and held that mere addition of the word 'INDIA' could not be held to be a distinguishing factor as the said word had no trademark value or signification.

xxx xxx xxx"

(Emphasis Supplied)

16. Learned counsel for the petitioner has drawn the attention of this Court to the invoices filed by the respondent no. 1, showing the alleged usage of the trademark TROMA by the respondent no. 1 from the year 2004. The invoice dated 05th June 2004, as filed by the respondent no. 1, mentions

the words "CST/GST" at the bottom of sub-total of the bill. However, "GST" was only introduced in the year 2017. Thus, it is apparent that the invoice relied upon by the respondent no. 1, is a forged and fabricated document. The invoice dated 05th June 2004 of respondent no.1, is reproduced as under:

17. Further, attention of this Court has been drawn to the same invoice dated 05th June 2004, as filed by respondent no. 1, which mentions the website of the respondent no. 1 - "www.merimed.com" at the bottom of the said invoice of the year 2004. However, the document of Whois relied upon by the petitioner, shows that the aforesaid website of the respondent no. 1, was registered only in the year 2011. This again makes it evident that the invoice dated 05th June 2004, filed by respondent no.1, is a forged document, as the said website was not in existence in the year 2004. The copy of Whois, consisting of the domain information of the website "www.merimed.com", is reproduced as under:

18. The reliance by respondent no.1 on forged and fabricated documents undermines the credibility of the submissions of respondent no.1, with respect to its rights, in the impugned mark 'TROMA'.

19. In this regard, Division Bench of this Court in the case of Suresh Kumar Jain Versus Union of India and Anr., 2012 SCC OnLine Del 12, has held that where a party is not able to show that a mark is being used from the claimed date, which was the basis of seeking registration, then, the conclusion would be that the registration was obtained on the basis of false statement and would amount to fraud. Thus, it has been held, as follows:

"xxx xxx xxx

7. The aforesaid finding of the IPAB is based on evidence on record which has been accepted by the learned Single Judge. In this appeal, that too, which arises from the order passed in the writ petition by the learned Single Judge in exercise of his power under Article 226 of the Constitution of India, this Court is not supposed to go into the factual findings recorded by the IPAB which is a fact finding authority. Once we accept that the appellant has not been able to place on record any evidence to show that the appellant had been using the trademark since April, 1995 which was the basis of seeking the registration, the conclusion would be that the registration was obtained on the basis of false statement and would amount to fraud.

xxx xxx xxx"

(Emphasis Supplied)

20. The documents and pleadings on record establish undisputedly that the petitioner is the prior adopter and user of the various marks containing the word 'TROMA', and has regularly, continuously and extensively been using the same.

21. The trademark of the respondent being deceptively similar to that of petitioner's trademark, there is every possibility of buyers with ordinary average intelligence being led to buy the products of respondent, as those of petitioner. The impugned mark of the respondent no.1 would cause confusion in the normal course of business activities, as the goods in question are same/allied/cognate.

22. The respondent no.1 cannot pick and adopt the essential or dominant part, i.e., TROMA from the trademarks TROMANIL, TROMA PLUS, TROMA and TROMAZIN of the petitioner, who is the prior user for the goods, i.e., medicinal and pharmaceuticals preparations in the market, having its first ever registration for the mark TROMANIL with user date of the year 1997, which further solidifies the petitioner's claim to the exclusive use of the said dominant feature. This Court takes note of the submission made by learned counsel for the petitioner that the public, over the years has come to associate the mark TROMA with the petitioner's brand, making it a key identifier of their medicinal and pharmaceutical goods. The respondent's attempt to adopt or imitate the said distinctive part of the petitioner's trademark, would likely cause confusion in the marketplace and dilute the established goodwill of the petitioner that has been built over nearly three decades.

23. As regards the contention of the respondent no.1 regarding other entries existing in the Trademarks Register, with the name 'TROMA', no documents have been produced on record as regards their usage. The presence of a mark in the Register does not prove its user. No inference can be drawn as to the use of a mark from the mere presence of such mark in the Register of Trademarks.

24. Considering the facts and submissions of the present case, and taking into account the forged and fabricated documents filed by the respondent no. 1, there is no doubt that the respondent no. 1 has adopted the mark TROMA for its products with malafide and dishonest intention. The adoption of the said mark by the respondent no. 1, for an identical and similar class of goods, cannot be considered as honest, or with a bonafide intent. Thus, this Court is of the view that the registration in favour of respondent no. 1 is in contravention of provisions of the Trade Marks Act.

25. In view of the aforesaid, the impugned trademark is liable to be cancelled and removed from the Register of Trade Marks.

26. Accordingly, the rectification petition is allowed and the impugned trademark registered under trademark application no. 1383114, in the name of respondent no. 1 in Class 05, is hereby cancelled.

27. The Registrar of Trade Marks is directed to remove the aforesaid entry from the Register of Trade Marks, and carry out the necessary rectification.

28. The Registry is directed to supply a copy of the present order to the Trademark Registry, at E-mail: llc-ipo@gov.in, for compliance.

29. Petition is disposed of, in the aforesaid terms.



MINI PUSHKARNA, J MARCH 6, 2025/KR Corrected and released on:

31st March, 2025