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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.11.2025

PRONOUNCED ON : 06.01.2026

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

O.P.(TM)Nos.48, 49 and 50 of 2024

O.P.(TM)No.48 of 2024:-

The Procter @ Gamble Company,
One Procter and Gamble Plaza,
Cincinnati, State of Ohio,
45202-3315, United States of America,
represented herein by its Power of Attorney Holder,
Shubham Istrewal,
Having office at P & G Plaza,
Cardinal Gracious Road Chakala,
Andheri East, Mumbai - 400 099.

.... Petitioner

-vs-

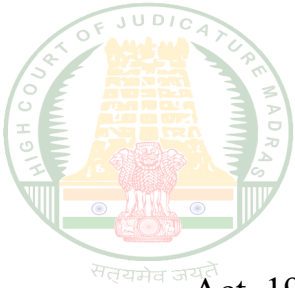
1.IPI India Private Limited,
represented by its Autorised Signatory,
Top Floor, Plot No.16, Jayabheri Enclave,
Sy.Nos.103/1, 105, 106, Gachibowli,
Serilingampally, R.R District-500 032,
Telangana, India.

2.The Registrar of Trade Marks,
Office of the Trade Marks Registry,
Boudhik Sampada Bhavan, G.S.T. Road,
Guindy, Chennai - 600 032.

.... Respondents

PRAYER : Petition filed under Sections 47, 57 and 125 of the Trade Marks

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Act, 1999,

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a) To remove the entry in the Register in respect of the registration under No.3897775 in Class 03 in the name of the Respondent No.1 from the register of Trade Marks;

b) To direct the first respondent to pay the cost of the proceedings; and

c) To pass such other orders as the Hon'ble Court may deem fit and thus render justice.

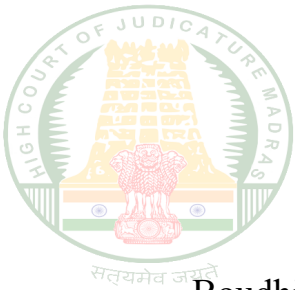
O.P.(TM)No.49 of 2024:-

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Shubham Istrewal,
Having office at P & G Plaza,
Cardinal Gracious Road Chakala,
Andheri East, Mumbai - 400 099. Petitioner

-VS-

1.IPI India Private Limited,
represented by its Authorised Signatory,
Top Floor, Plot No.16, Jayabheri Enclave,
Sy.Nos.103/1, 105, 106, Gachibowli,
Serilingampally, R.R District-500 032,
Telangana, India.

2.The Registrar of Trade Marks,
Office of the Trade Marks Registry,



Boudhik Sampada Bhavan, G.S.T. Road,
Guindy, Chennai - 600 032.

.... Respondents

PRAYER : Petition filed under Sections 47, 57 and 125 of the Trade Marks Act, 1999,

a) To remove the entry in the Register in respect of the registration under No.4285435 in Class 05 in the name of the Respondent No.1 from the register of Trade Marks;

b) To direct the first respondent to pay the cost of the proceedings; and

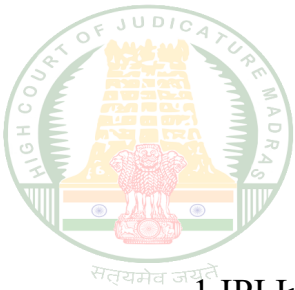
c) To pass such other orders as the Hon'ble Court may deem fit and thus render justice.

O.P.(TM)No.50 of 2024:-

The Procter @ Gamble Company,
One Procter and Gamble Plaza,
Cincinnati, State of Ohio,
45202-3315, United State of America,
represented herein by its Power of Attorney Holder,
Shubham Istrewal,
Having office at P & G Plaza,
Cardinal Gracious Road Chakala,
Andheri East, Mumbai - 400 099.

.... Petitioner

-vs-



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1.IPI India Private Limited,
represented by its Autorised Signatory,
Top Floor, Plot No.16, Jayabheri Enclave,
Sy.Nos.103/1, 105, 106, Gachibowli,
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2.The Registrar of Trade Marks,
Office of the Trade Marks Registry,
Boudhik Sampada Bhavan, G.S.T. Road,
Guindy, Chennai - 600 032.

.... Respondents

PRAYER : Petition filed under Sections 47, 57 and 125 of the Trade Marks Act, 1999,

a)To remove the entry in the Register in respect of the registration under No.3461733 in Class 03 in the name of the Respondent No.1 from the register of Trade Marks;

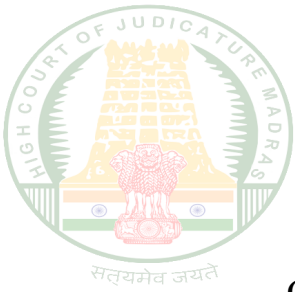
b)To direct the first respondent to pay the cost of the proceedings; and

c)To pass such other orders as the Hon'ble Court may deem fit and thus render justice.

For Petitioner
For 1st Respondent

:Mr.Abishek Jenasenan
:Mr.Ramesh Ganapathy
for M/s,Mission Legal
(in all cases)

COMMON ORDER



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O.P(TM)No.48 of 2024 has been filed (a)to remove the entry in the Register in respect of the registration under No.3897775 in Class 03 in the name of the Respondent No.1 from the register of Trade Marks and (b)to direct the first respondent to pay the cost of the proceedings.

2.O.P(TM)No.49 of 2024 has been filed (a)to remove the entry in the Register in respect of the registration under No. 4285435 in Class 05 in the name of the Respondent No.1 from the register of Trade Marks and (b)to direct the first respondent to pay the cost of the proceedings.

3.O.P(TM)No.50 of 2024 has been filed (a)to remove the entry in the Register in respect of the registration under No.3461733 in Class 03 in the name of the Respondent No.1 from the register of Trade Marks and (b)to direct the first respondent to pay the cost of the proceedings.

The brief case of the petitioner is as follows:-

4.The petitioner is one of the largest and most reputed multinational



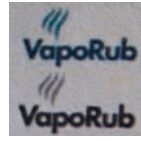
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companies established in the business of manufacturing and trading of health care, personal care, personal hygiene products etc. It was founded in the year 1837. One of the leadership brands of the petitioner in respect of pharmaceutical products and medicinal preparations is “VICKS” and it was launched internationally in the year 1890 and in India, it was launched in the year 1964 and is extremely well known amongst the trade and public. Under the VAPO formative marks, the petitioner offers a wide range of products such as, VICKS VAPORUB, VICKS VAPOCOOL, VICKS VAPOPATCH, VICKS VAPOEASE, VICKS VAPAPADS, VICKS COUGH DROPS, VICKS INHALER etc. The petitioner's product under the trade mark “VICKS”, “VAPORUB” as well as the various other VICKS and VAPO formative marks earn tremendous reputation, goodwill and loyalty amongst the consumers.

5.The petitioner's trademarks “VICKS” and “VAPORUB” being its extremely valuable intellectual property have been registered in jurisdictions across the world in the year 1928. The petitioner has registered the trademark “VICKS” in India in the year 1954, the trade mark “*VAPORUB*” in India in the year 1977, the trademark



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in the year 2007 and the device mark



in the year 2008. Further, the petitioner has copyright subsisting in the artistic work of the packaging specifically designed, created and developed by the petitioner. The trademarks of the petitioner have been recognized by various Courts across the country and orders have been granted from time to time protecting these marks.

6.The details of the petitioner's registration for the trade mark VICKS, the VAPORUB and other VAPO formative marks in India in various classes are as follows:



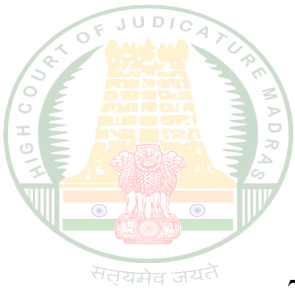
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S. No.	Registration/ Application No.	Trade Mark	Date of Application	Class	Status
1.	162610		February 1, 1954	5	Registered
2.	328354	VAPO RUB	August 30, 1977	5	Registered
3.	1974989	VICKS VAPORUB	June 4, 2010	5	Registered
4.	1564959		June 4, 2007	5	Registered
5.	1646053		January 25, 2008	5	Registered



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6.	575530	VICKS VAPOSYRUP	June 19, 1992	5	Registered
7.	5339958		February 22, 2022	5	Registered
8.	4190685		May 29, 2019	5	Registered
9.	1994236	VAPOCOOL	July 15, 2010	5, 30	Registered
10.	2162714	VAPOINHALER	June 20, 2011	5	Registered
11.	5222974	VAPOPATCH	November 25, 2021	3	Registered
12.	5425412	VAPOSTEAM	April 27, 2022	5	Registered
13.	1501137		November 3, 2006	3, 5, 30	Registered



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7. In the meanwhile, the petitioner came to know that the first respondent is carrying out business for the similar products, namely, “*Vapor In, Stress Out. Anytime, Anywhere*”, “*VAPORIN COLD RUB*” and “*VAPORIN*”. Hence, they issued a cease and desist notice, dated 27.09.2022 to the first respondent. The petitioner contended that the first respondent's products are deceptively similar to petitioner's and therefore, they have filed the above petitions to remove the registration with regard to the first respondent's products.

8. Mr. Abishek Jenasanen, learned Counsel for the petitioner has made the following submissions:

(a) The registration and usage of the petitioner's well known marks “*VICKS*” and “*VAPORUB*” are significantly prior to the first respondent's marks.

(b) The trademarks “*VAPORUB*” of the petitioner and the trademarks “*VAPORIN*” of the first respondent are phonetically, visually, structurally and conceptually deceptively similar. The marks cannot be dissected and meticulously compared and the same have to be compared as a whole. On the



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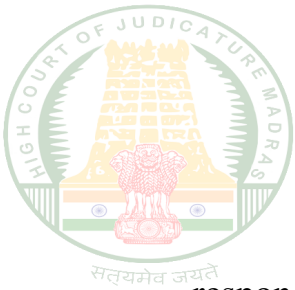
basis of this, it is apparent that the petitioner's mark "**VAPORUB**" and the first respondent's mark "**VAPORIN**" are deceptively similar to each other.

(c)The marks have to be compared from the perspective of an average man with ordinary intelligence and imperfect recollection and the likelihood of such person getting deceived or confused to be considered.

(d)The marks are used to sell identical products that are marketed through the same business channels to the same customers and the petitioner and the first respondent are in the same line of business.

(e)The trade mark "**VICKS**" of the petitioner is its house mark, which is used in conjunction with its other trademarks such as "**VAPORUB**", "**VAPOCOOL**", "**VAPOINHALER**" etc. VICKS being the common element or house mark in the aforesaid products, the differentiating factor/identifier is the name of the product, such as "**VAPORUB**", which has its own independent trademark, registration, brand value, goodwill and reputation. However, the first respondent has dishonest intention in using such a deceptively similar mark to unjustly and illicitly enrich itself the goodwill and reputation of the petitioner.

(f)The artistic packaging, trade dress, colour and layout used by the first



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respondent including the bottle, size, dimension, etc., are deceptively similar to the petitioner's product and have been used with the specific dishonest intention to capitalize the petitioner's goodwill and reputation.

(g)The claim of the first respondent that “**VAPO**” is descriptive and common to trade and “*publici juris*” cannot be accepted, as the mark “**VAPORIN**” incorporates the very same element.

(h)It is their further contention that their product carries a well known trade mark, which is evident from the Trade Mark Journal No.2144 published on 19.02.2024, in which, the petitioner's product VICKS is available in Sl.No.8.

(i)When some other products come to the market, which are deceptively similar, it will dispel the first impression created by the petitioner through tremendous establishment, commercial advertisement and marketing. Therefore, the registrations, which stand in the name of the first respondent, should be rectified.

9.The learned Counsel for the petitioner relied upon Sections 9 and 10 of the Trade Marks Act, 1999, which are extracted hereunder:

“9.Absolute grounds for refusal of registration.—(1) The trade



marks—

(a) which are devoid of any distinctive character, that is to say, not capable of distinguishing the goods or services of one person from those of another person;

(b) which consist exclusively of marks or indications which may serve in trade to designate the kind, quality, quantity, intended purpose, values, geographical origin or the time of production of the goods or rendering of the service or other characteristics of the goods or service;

(c) which consist exclusively of marks or indications which have become customary in the current language or in the bona fide and established practices of the trade, shall not be registered: Provided that a trade mark shall not be refused registration if before the date of application for registration it has acquired a distinctive character as a result of the use made of it or is a well-known trade mark.

(2) A mark shall not be registered as a trade mark if—

(a) it is of such nature as to deceive the public or cause confusion;

(b) it contains or comprises of any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India;

(c) it comprises or contains scandalous or obscene matter;

(d) its use is prohibited under the Emblems and Names (Prevention of Improper Use) Act, 1950 (12 of 1950).

(3) A mark shall not be registered as a trade mark if it consists exclusively of—

(a) the shape of goods which results from the nature of the goods themselves; or

(b) the shape of goods which is necessary to obtain a technical result; or

(c) the shape which gives substantial value to the goods.

Explanation.—For the purposes of this section, the nature of goods or services in relation to which the trade mark is used or proposed to be used shall not be a ground for refusal of registration.

10. Limitation as to colour.—



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(1) *A trade mark may be limited wholly or in part to any combination of colours and any such limitation shall be taken into consideration by the tribunal having to decide on the distinctive character of the trade mark.*

(2) *So far as a trade mark is registered without limitation of colour, it shall be deemed to be registered for all colours.”*

10. In support of his arguments, the learned Counsel for the petitioner relied upon the following judgments:

(1) The judgment of Hon'ble Supreme Court in the case of ***Amritdhara Pharmacy vs Satya Deo Gupta***, reported in ***1962 SCC OnLine SC 13***, wherein, the Hon'ble Supreme Court held as follows:

“7. Let us apply these tests to the facts of the case under our consideration. It is not disputed before us that the two names “Amritdhara” and “Lakshman-dhara” are in use in respect of the same description of goods, namely a medicinal preparation for the alleviation of various ailments. Such medicinal preparation will be purchased mostly by people who instead of going to a doctor wish to purchase a medicine for the quick alleviation of their suffering, both villagers and townsfolk, literate as well as illiterate. As we said in Corn Products Refining Co. v. Skangrila Food Products Ltd. [(1960) (1) SCR 968] the question has to be approached from the point of view of a man of average intelligence and imperfect recollection. To such a man the overall structural and phonetic similarity-of the two names “Amritdhara” and “Lakshmandhara” is, in our opinion, likely to deceive or cause confusion. We must consider the overall similarity of the two composite words “Amritdhara” and “Lakshmandhara”. We do not think that the learned Judges of the High Court were right in saying that no Indian would mistake one for the other. An unwary purchaser of average intelligence and imperfect recollection would not, as the High Court supposed, 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”. He would go more by the overall structural and phonetic similarity and the nature of the medicine he has previously purchased, or has been told about, or about which has otherwise learnt and which he wants to purchase. 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”. “Current of Lakshman” in a literal sense has no meaning; to give it meaning one must further make the inference that the “current or stream” is as pure and strong as Lakshman of the Ramayana. An ordinary Indian villager or townsman will perhaps know Lakshman, the story of the Ramayana being familiar to him; but we doubt if he would etymologise to the extent of seeing the so-called ideological difference between “Amritdhara” and “Lakshmandhara”. He would go more by the similarity of the two names in the context of the widely known medicinal preparation which he wants for his ailments.”

(2)The judgment of Hon'ble Supreme Court in the case of ***Parle Products (P) Ltd vs J.P. And Co., Mysore***, reported in ***(1972) 1 SCC 618*** , wherein, the Hon'ble Supreme Court held as follows:

“9.It is, therefore, clear that in order to come to the conclusion whether one mark is deceptively similar to another, the broad and essential features of the two are to be considered. They should not be placed side by side to find out if there are any differences in the design and if so, whether they are of such character as to prevent one design from being mistaken for the other. It would be enough if the impugned mark bears such an overall similarity to the registered mark as would be likely to mislead a person usually dealing with one to accept the other if offered to him. In this case we find that the packets are practically of the same size, the colour scheme of the two wrappers is almost the same; the design on both though not identical bears such a close resemblance that one can easily be mistaken for the other. The essential features of both are that there is a girl with one arm raised



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and carrying something in the other with a cow or cows near her and hens or chickens in the foreground. In the background there is a farm house with a fence. The word “Gluko Biscuits” in one and “Glucose Biscuits” on the other occupy a prominent place at the top with a good deal of similarity between the two writings. Anyone in our opinion who has a look at one of the packets today may easily mistake the other if shown on another day as being the same article which he had seen before. If one was not careful enough to note the peculiar features of the wrapper on the plaintiffs' goods, he might easily mistake the defendants' wrapper for the plaintiffs' if shown to him some time after he had seen the plaintiffs'. After all, an ordinary purchaser is not gifted with the powers of observation of a Sherlock Homes. We have therefore no doubt that the defendants' wrapper is deceptively similar to the plaintiffs' which was registered. We do not think it necessary to refer to the decisions referred to at the bar as in our view each case will have to be judged on its own features and it would be of no use to note on how many points there was similarity and in how many others there was absence of it.”

(3)The judgment of Delhi High Court in the case of ***Indian Hotels Company Ltd and another vs Jiva Institute of Vedic Science and Culture***, reported in ***2008 SCC OnLine Del 1758***, wherein, the Delhi High Court held as follows:

“39.It was next argued by Mr.Rohtagi that the word ‘JIVA’ is a descriptive word which cannot be protected as a trade mark by a Civil Court. We do not think so, the appellant has itself applied for registration of the Jiva as a trade mark and cannot, therefore, argue that the mark is descriptive. In Automatic Electric Limited. v. R.K. Dhawan, (1999) 91 PTC 81 this court has in similar circumstances repelled the contention and held that since the defendant had itself sought to claim a proprietary right and monopoly in “DIMMER DOT”, the disputed trade mark it did not lie in its mouth to say that the said mark was a generic expression. The Court observed:



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16. The defendants got their trade mark “DIMMER DOT” registered in Australia. The fact that the defendant itself has sought to claim trade proprietary right and monopoly in “DIMMER DOT” is a generic expression.”

(4)The judgment of Bombay High Court in the case of ***Ultra Tech Cement Limited vs Alaknanda Cement Private Limited and another***, reported in ***2011 SCC OnLine Bom 783***, wherein, the Bombay High Court held as follows:

“38. Thus, mere presence of a mark in a Register does not prove its user. The person relying on such marks having common elements is required to establish extensive user. The Defendants have failed to prove extensive user of the mark containing the word “ULTRA”. In view thereof the defendants contention that the word ULTRA is common to the trade and therefore there is no likelihood of deception or confusion is also not sustainable.”

(5)The judgment of Bombay High Court in the case of ***Neon Laboratories Limited vs Themis Medicare Limited***, reported in ***2014 SCC OnLine Bom 1087***, wherein, the Bombay High Court held as follows:

“21. Mr. Parikh submits that if a composite label contains distinctive (XY, which cannot be slurred over while pronouncing XYLOX) and non-distinctive (LOX) matters, then the mark as a whole must be considered for registration.¹⁰ This, Mr. Parikh says, is the mandate of Section 17(2)(b) of the Act:

“17. Effect of registration of parts of a mark.—



(1) When a trade mark consists of several matters, its registration shall confer on the proprietor exclusive right to the use of the trade mark taken as a whole.

(2) Notwithstanding anything contained in sub-section (1), when a trade mark—

(a) contains any part—

(i) which is not the subject of a separate application by the proprietor for registration as a trade mark; or

(ii) which is not separately registered by the proprietor as a trade mark; or

(b) contains any matter which is common to the trade or is otherwise of a non-distinctive character,

the registration thereof shall not confer any exclusive right in the matter forming only a part of the whole of the trade mark so registered.”

(Emphasis supplied)

25. I see no merit in this submission. When one compares two marks that are not identical, the Plaintiff must establish that the rival mark so nearly resembles its own that it is likely to deceive. The purpose of this comparison is to determine whether the essential features of the Plaintiff's trade mark are to be found in the mark used by the Defendant.¹³ Every test of deceptive similarity must make allowances for imperfect recollection, careless pronunciation and speech.¹⁴ As the Supreme Court said in *F. Hoffman-La Roche and Co. Ltd. v. Geoffrey Manners and Co. Private Ltd.* : ¹⁵

“7. ... It is necessary to apply both the visual and phonetic tests. In *Aristoc Ltd. v. Rysta Ltd.*, 62 R.P.C. 65 the House of Lords was considering the resemblance between the two words “Aristoc” and “Rysta”. The view taken was that considering the way the words were pronounced in English, the one was likely to be mistaken for the other. Viscount Maugham cited the following passage of Lord Justice Luxmoore in the Court of Appeal, which passage, he said, he completely accepted as the correct exposition of the law:

“The answer to the question whether the sound of one word resembles too nearly the sound of another so as to bring the former within the limits of Section 12 of the Trade Marks Act,



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1938, must nearly always depend on first impression, for obviously a person who is familiar with both words will neither be deceived nor confused. It is the person who only knows the one word and has perhaps an imperfect recollection of it who is likely to be deceived or confused Little assistance, therefore, is to be obtained from a meticulous comparison of the two words, letter by letter and syllable by syllable, pronounced with the clarity to be expected from a teacher of elocution. The Court must be careful to make allowance for imperfect recollection and the effect of careless pronunciation and speech on the part not only of the person seeking to buy under the trade description, but also of the shop assistant ministering to that person's wants."

The learned counsel referred to the above judgments and argued that the 1st Respondent's products are deceptively similar to the petitioner's products and therefore, the registration of the impugned marks are liable to be removed from the register.

11.*Per contra*, Mr.M.Ramesh Ganapathy, learned Counsel for the first respondent made the following submissions:

(a)The petitioner's product is invariably perceived as “**VICKS**”, which is prominently displayed on all packaging. The suffix “**VAPORUB**” plays a secondary and descriptive role. Whereas, the first respondent's mark appears as “**VAPORIN**” or “**VAPORIN COLD RUB**” with an entirely different structural and phonetic ending. The first respondent has adopted the trademark



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in an unique manner and the theme are wholly dissimilar from that of the petitioner's product. The rival trademarks are extracted hereunder:



12. The overall visual appearance, sound, layout and trade dress reinforce that the marks occupy separate and distinct identities in the market. Hence, the first respondent's mark “*VAPORIN*” is different from that of the petitioner's

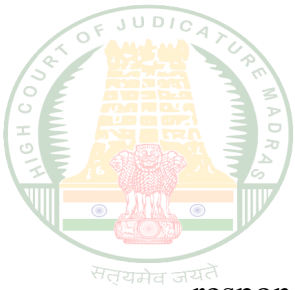


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mark “**VAPORUB**”.

(b)The petitioner's entire case rests on an impermissible dissection of the competing marks, isolating the descriptive prefix “**VAPO**”. The petitioner is alleging similarity, merely because this common, non-distinctive element appears in both the marks. Such an approach is fundamentally flawed and contrary to the established legal principles that a trademark must be compared as a whole and not by breaking it into parts.

(c)The petitioner has no registration *per se* for the stand alone expression “VAPO” or “VAPOUR. Both are descriptive and commonly used in the trade to describe vapour based or vapour-action medicinal preparations. The petitioner's mark must, therefore, be viewed in its complete and composite form, namely, “**VICKS VAPORUB**”, which is also how the petitioner advertises and presents its product in the market. The dominant and source-identifying component of the petitioner's mark is undeniably “**VICKS**” and it is this word that the public associates with the petitioner's products, not the descriptive term “**VAPORUB**”. Hence, the petitioner cannot artificially isolate the generic prefix “VAPO” and claim exclusive right over the same nor can such dissection create any basis for alleging descriptive similarity with the first



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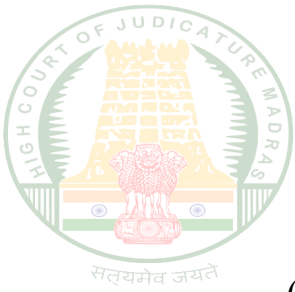
respondent's entirely distinct mark “**VAPORIN**”.

(d)The term “**Vapour**” is an ordinary English word and “**VAPO**” is merely its abbreviated form and that the prefix “**VAPO**” and the word “**Vapour**” are descriptive and common to trade and *publici juris* in relation to vapour based medicinal preparations.

(e)The petitioner's own promotional strategy reinforces that “**VICKS**” is the badge of origin, while “**VAPORUB**” merely describes the nature of a vapour rub formulation. Hence, the contention of the petitioner that consumers are confusing first respondent's product “**VAPORIN**” with the petitioner's product “**VICKS VAPORUB**” cannot be accepted and that the minds of the general public are associated only with the brand name “**VICKS**” and that element is absent from the first respondent's marks.

(f)The word “**VAPORUB**” is a composite of the ordinary words “**Vapour**” and “**Rub**”. A minor variation in spelling cannot transform a descriptive phrase into an invented word.

(g)The petitioner's claim of well-known status does not extend to “**VAPORUB**” or “**VAPO**” and no special protection is available for these descriptive elements.



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(h)The first respondent has put on record that it has been extensively promoting and advertising “*VAPORIN*” for over a decade, since 2013. During this prolonged period, the petitioner did not initiate any action or even issue an objection. Such prolonged inaction by a vigilant multinational brand amounts to passive consent within the meaning of Section 33 of the Trade Marks Act, 1999.

(i)The 1st Respondent's contention is that the very question/issue raised in the present suit is that the usage of the mark by the 1st respondent is not an infringement of the petitioner's trademark and the same is raised before the Hon'ble High Court of Bombay. Moreover, it is the same parties who have instituted the litigation under the same title, the controversy in two suits is the same. It is a duty and responsibility on the petitioner to make the court aware about the pending of former suit.

(j)The petitioner's rectification action is an over broad attempt to prevent legitimate use of a descriptive prefix indispensable to the trade. The first respondent's adoption is honest, distinctive, long-standing and protected. The competing marks differ fundamentally in their overall impression, structure, commercial identity and trade dress. The petition founded on dissection and



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misplaced assertions deserve to be rejected in its entirety.

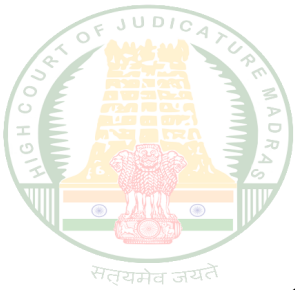
12. The learned Counsel for the first respondent drew the attention of this Court to Section 2(M) and 2(ZB) of Trade Marks Act, 1999, which are as follows:

“2. Definitions and interpretation.—

(m) -mark includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof;

(z) -Service? means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising;

(zb) -trade mark? means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours; and— (i) in relation to Chapter XII (other than section 107), a registered trade mark or a mark used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right as proprietor to use the mark; and (ii) in relation to other provisions of this Act, a mark used or proposed to be used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right, either as proprietor or by way of permitted user, to use the mark whether with or without any indication of the identity of that person, and includes a



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certification trade mark or collective mark;”

13.He also referred to Section 17 of the Trade Marks Act, 1999, which reads as follows:

“17.Effect of registration of parts of a mark.—

*(1) When a trade mark consists of several matters, its registration shall confer on the proprietor exclusive right to the use of the trade mark taken **as a whole**.*

(2) Notwithstanding anything contained in sub-section (1), when a trade mark—

(a) contains any part—

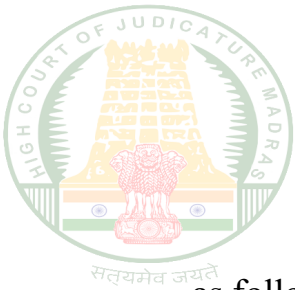
(i) which is not the subject of a separate application by the proprietor for registration as a trade mark; or

(ii) which is not separately registered by the proprietor as a trade mark; or

(b) contains any matter which is common to the trade or is otherwise of a non-distinctive character, the registration thereof shall not confer any exclusive right in the matter forming only a part of the whole of the trade mark so registered.”

14.He lamented that on a plain reading of Section 17 of the Act, it is clear that the trademark has to be read **as a whole**, without splitting or dissecting the same.

15.He referred to Section 34 of the Trade Marks Act, 1999, which reads



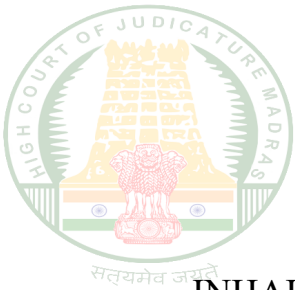
as follows:
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“34. Saving for vested rights.—Nothing in this Act shall entitle the proprietor or a registered user of registered trade mark to interfere with or restrain the use by any person of a trade mark identical with or nearly resembling it in relation to goods or services in relation to which that person or a predecessor in title of his has continuously used that trade mark from a date prior—

(a) to the use of the first-mentioned trade mark in relation to those goods or services by the proprietor or a predecessor in title of his; or

(b) to the date of registration of the first-mentioned trade mark in respect of those goods or services in the name of the proprietor of a predecessor in title of his; whichever is the earlier, and the Registrar shall not refuse (on such use being proved) to register the second mentioned trade mark by reason only of the registration of the first-mentioned trade mark.”

16.The learned counsel submitted that the first respondent's device was registered through their application No.3462733 dated 20.01.2017 in certificate No.1604307, dated 14.07.2017 and they also have their word mark for their product, “VAPORIN” through application No.3897775 under Class-3 vide their application, dated 25.07.2018. The word and nature of product in the name of “VAPORIN COLD RUB” was registered under Class-5 through its trade mark application No.4285435. He further lamented that the name “VAPORIN” was also registered across the globe, which is evident from the typed set filed by them in Volume-1 from page Nos.12 to 21, namely, DR.S.WONG'S VAPORIN

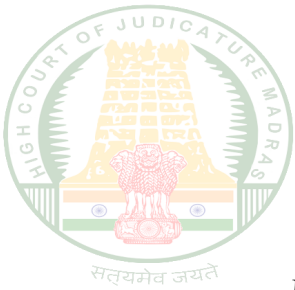


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INHALANT, DR.S.WONG'S VAPORIN AIR SANITIZER, DR.S.WONG'S VAPORIN AROMATHERAPY and other distinctive names, which carry the foreign registration.

17.He also relied upon the list of words beginning with **VAPO**. According to the first respondent, there are 75 words that begin with “**VAPO**”, which are as follows:

“VAPOR, VAPORABILITIES, VAPORABILITY, VAPORABLE, VAPORED, VAPORER, VAPORERS, VAPORESCENCE, VAPORESCENCES, VAPORESCENT, VAPORETTI, VAPORETTO, VAPORETTOS, VAPORIER, VAPORIENT, VAPORIFIC, VAPORIFORM, VAPORIMETER, VAPORIMETERS, VAPORING, VAPORINGS, VAPORISABLE, VAPORISATION, VAPORISATIONS, VAPORISE, VAPORISED, VAPORISER, VAPORISERS, VAPORISES, VAPORISH, VAPORISHNESS, VAPORISHNESSES, VAPORISING, VAPORIZABLE, VAPORIZATION, VAPORIZATIONS, VAPORIZE, VAPORIZED, VAPORIZER, VAPORIZERS, VAPORIZES, VAPORIZING, VAPORLESS, VAPORLIKE, VAPOROSITIES, VAPOROSITY, VAPOROUS, VAPOROUSLY, VAPOROUSNESS, VAPOROUSNESSES, VAPORS, VAPORWARE, VAPORWARES, VAPORY, VAPOUR, VAPOURABILITIES, VAPOURABILITY, VAPOURABLE, VAPOURED, VAPOURER, VAPOURERS, VAPOURIER, VAPOURIENT, VAPOURING, VAPOURINGLY,

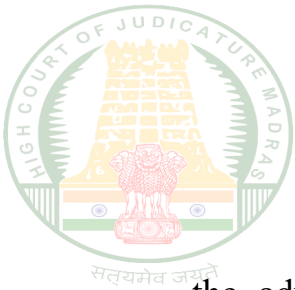


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*VAPOURINGS, VAPOURISH, VAPOURISHNESS,
VAPOURISHNESSES, VAPOURLESS, VAPOUROUS, VAPOURS,
VAPOURWARE, VAPOURWARES, and VAPOURY.”*

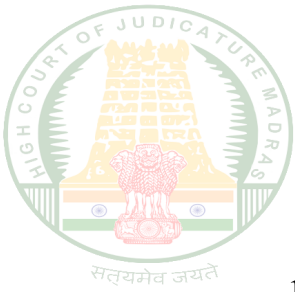
16.He also referred to the website of the Government of India, Ministry of Commercial and Industry, where a certificate with the computer generated trade marks, which reflect the products registered in various names which begin with “**VAPO**”. He further contended that the petitioner's product “**VAPORUB**” was registered under Class-3 through their application No.1300649 and the first respondent product “**VAPORIN**” was also registered under Class-3 through their application No.3462733 and the computer generated trade mark search would show that the products are also available in Class-5 as “**VAPORUB**” through their application No.129177 and as “**VAPORIN**” through their application No.1564959. He further contended that the petitioner being a giant business entity should not crush the first respondent, who is also in the same trade.

18.He also produced several invoices to show that the first respondent has marketed its product in several parts of the country and he also produced



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the advertisements made for their product, more specifically “VAPORIIN COLD RUB” in the metro trains and online shopping, which are available in Page Nos.366 to 404 of the typed set of papers Volume-II. He further pointed out that apart from the petitioner and the first respondent, there are several suppliers in the same trade with different names, namely, “Softskin VAPORIZING Chest Rub”, “Menthodex Vaporizing Rub”, TOP ACTION Ayurveda Vaporizing Rub”, “Medicated Care Rub”, “Optima Vaporizer Steam Inhaler”, “Coolairmax Vapo Capsule”, “Hatric Vapo Capsule”, “MANAVATA PHARMA VAPO-G1”, “NOBURG VAPO”, “Solvin Vapocaps 10's”, “Vapobreathe Inhalant Softgel Cap 10's”, “VAPO RUBBING OIL”, “MEDICATED Nose Relief VAPORIZING RUB”, “XL – Vapo Inhalant Softgel Capsule”, “Personal Care Vaporizing Chest Rub”, “XtraCare Vapor Stick”, “amazon basic chest rub”, “Careway Vapour Rub 50g”, “Bells Healthcare Children's Vapour Rub 6+ Months”, “Mentholatum Vapour Rub 30g jar”, “Covonia Vapour Drops”, “Bells Vapour Rub 50g”, “SnuffleBabe Vapour Rub 35g”, “Komal Shwaas Baby Vapour Rub”, “Numark Vapour Rub 50g”, etc.



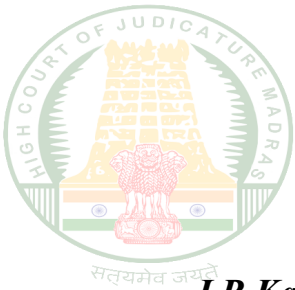
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19. To strengthen his arguments, the learned Counsel for the first respondent relied upon the following judgments:

(1) The judgment of the Hon'ble Supreme Court in the case of ***F. Hoffmann-La Roche & Company Limited, vs Geoffrey Manners and Company Private Limited***, reported in (1969) 2 SCC 716, wherein, the Hon'ble Supreme Court observed as follows:

“8. In order to decide whether the word “Dropovit” is deceptively similar to the word “Protovit” each of the two words must, therefore, be taken as a whole word. Each of the two words consists of eight letters, the last three letters are common, and in the uncommon part the first two are consonants, the next is the same vowel ‘O’, the next is a consonant and the fifth is again a common vowel ‘O’. The combined effect is to produce an alliteration. The affidavits of the appellant indicate that last three letters “Vit” is a well known common abbreviation used in the pharmaceutical trade to denote vitamin preparations. In his affidavit, dated January 11, 1961 Frank Murdoch, has referred to the existence on the register of about 57 trade marks which have the common suffix “Vit” indicating that the goods are vitamin preparations. It is apparent that the terminal syllable “Vit” in the two marks is both descriptive and common to the trade. If greater regard is paid to the uncommon element in these two words, it is difficult to hold that one will be mistaken for or confused with the other. The letters ‘D’ and ‘P’ in “Dropovit” and the corresponding letters ‘P’ and ‘T’ in “Protovit” cannot possibly be slurred over in pronunciation and the words are so dissimilar that there is no reasonable probability of confusion between the words either from the visual or phonetic point of view.”

(2) The judgment of the Hon'ble Supreme Court in the case of

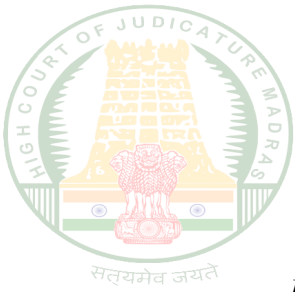


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J.R.Kapoor vs Micronix India, reported in **1994 Supp (3) SCC 215**, wherein,

the Hon'ble Supreme Court observed as follows:

“6. There are two things which impress us. Firstly, the appellant is not manufacturing any one product such as the boosters, which has been mainly taken into consideration by the High Court. He is producing various electrical and electronic apparatus in many of which micro-chip technology is used. Even the boosters which he manufactures and sells are of two types, viz., transistorised boosters and integrated circuit boosters whereas the respondent-plaintiff manufactures aerial boosters only of the first type. Thus micro-chip technology being the base of many of the products, the word ‘micro’ has much relevance in describing the products. Further, the word ‘micro’ being descriptive of the micro technology used for production of many electronic goods which daily come to the market, no one can claim monopoly over the use of the said word. Anyone producing any product with the use of micro-chip technology would be justified in using the said word as a prefix to his trade name. What is further, those who are familiar with the use of electronic goods know fully well and are not likely to be misguided or confused merely by, the prefix ‘micro’ in the trade name. Once, therefore, it is held that the word ‘micro’ is a common or general name descriptive of the products which are sold or of the technology by which the products are manufactured, and the users of such products are, therefore, not likely to be misguided or confused by the said word, the only question which has to be prima facie decided at this stage is whether the words ‘tel’ and ‘nix’ in the trade names of the appellant and the respondent are deceptive for the buyers and users and are likely to misguide or confuse them in purchasing one for the other. According to us, phonetically the words being totally dissimilar are not going to create any such confusion in the mind of the users. Secondly, even the visual impression of the said two trade names is different. In the first instance, the respondent's trade name ‘MICRONIX’ is in black and white in slimmer letters and they are ensconced in designs of elongated triangles both above and below the said name. On the other hand, the appellant's trade name ‘MICROTEL’ is in thick bold letters in red colour without any design around. As regards the logo, the respondent's logo consists of the word ‘M’ in a slim letter with ‘I’ sporting a dot on it and drawn in the well of ‘M’.



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Below the letter 'M' in small letters is written the word 'MICRONIX' and all these letters and words are written in white in a black square in north-south direction. As against this, the appellant's logo is one letter, viz., 'M' which is drawn in bold broad letter with its left leg slimmer than all other parts which are in thick broad brush. The letter has also white lines drawn across it which is in blue colour. There is no other letter nor is it set against any background. We are, therefore, unable to see how the visual effect of both the logos will be the same on the mind of the buyers. This being the case, we are of the view that there is not even the remotest chance of the buyers and users being misguided or confused by the two trade names and logos. Same is the case with the carton which merely reproduces both the trade names and the logos.

(3)The judgment of the Delhi High Court in the case of ***Cadila Healthcare Limited vs Gujarat Co-operative Milk Marketing Federation Limited and others***, reported in ***ILR (2008) I Delhi 1242***, wherein, the Delhi High Court observed as follows:

“51.It is noteworthy that throughout the course of the proceedings before this Court, the main plank of the plaintiff's contentions has been that the right to use a descriptive word even when it has acquired a secondary meaning would be permissible if and only if that is the only manner in which the product can be described and in no other. To make good its point, the plaintiff has proposed various similar permutations and combinations, viz. 'No Sugar', 'Without Sugar', 'Free of Sugar', etc., using which the defendant can convey the special attributes of its product Pro Biotic Frozen Dessert. This contention of the plaintiff per se does not impress me. Simply because a number of alternatives are available to defendant to describe its product Pro Biotic Frozen Dessert does not imply that the plaintiff be allowed to arrogate to itself the monopoly to use the expression 'Sugar Free', especially when the said expression being inherently descriptive in nature has become public juris in relation to foods and beverages.



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57.No doubt that the confusion emanating from the conspicuous display of the expression 'Sugar Free' on the packaging of the defendant's product is hard to ignore. However, I am afraid that imposing a blanket injunction on the use of a public juris expression like 'Sugar Free' will inequitably allow the plaintiff to monopolise the use of such expression, and this, in effect, will be antithetical to fair competition in trade and commerce. Thus, the challenge, in essence, before this Court is to provide such relief which would maintain the balance between the private right of the plaintiff to use the expression 'Sugar Free' as its trade mark and the larger public right of traders to use the said expression in its descriptive sense.

(4)The judgment of the Delhi High Court in the case of **Scherring Corporation and others vs Alkem Laboratories Limited**, reported in **2009 SCC OnLine Del 3886**, wherein, the Delhi High Court observed as follows:

"13.The learned Single Judge relied on the decision of this Court in Kalindi Medicure Pvt. Ltd. v. Intas Pharmaceuticals Limited, 2007 (34) PTC 18 (Del), wherein this Court had taken note of the established practice that in pharmaceutical trade names of various drugs are often almost similar to each other, having common prefixes or suffixes, for the reason that the name of the drug conveys as to which salt/compound it is a derivative of. In that case, while one of the products was sold in the form of pills in aluminum foils, the other competing product was sold in pre filled syringes. The price difference in the competing products was also taken into account for vacating the ex parte injunction granted in favour of the plaintiff in that case.

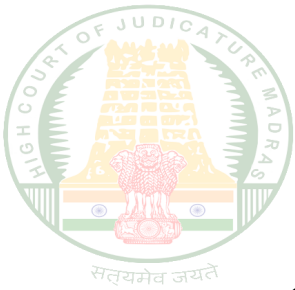
14.The learned Single Judge heavily relied on the Division Bench judgment of this Court in Astrazeneca UK Ltd. v. Orchid Chemicals & Pharmaceuticals Ltd., 2007 (34) PTC 469 (DB) (Delhi), which concerned the claim for infringement of the plaintiffs/appellants registered trademark 'MERONEM' by the defendants/respondents use of the trademark 'MEROMER'. Both the products were derived from



the active ingredient 'MEROPENEM'. The Division Bench of this Court came to the conclusion that 'MEROPENEM' is a molecule which is used for treatment of bacterial infection and the term 'MERO' being an abbreviation of the generic term 'MEROPENEM' was publici juris. Consequently, the appellants/plaintiffs in that case were held not entitled to claim exclusive rights to the use of the term 'MERO' as a constituent of the trademark in question as it was descriptive of the appellants'/plaintiffs' drug. The Division Bench further held that the common feature in both the competing marks 'MERO' being descriptive and publici juris, the customers would tend to ignore the common feature and would pay more attention to the uncommon features namely 'MER' and 'NEM', which were clearly dissimilar. The following paragraph from the said decision of the Division Bench was particularly referred by the learned Single Judge:

"19. Admittedly, 'Mero', which is common to both the competing marks, is taken by both the appellants/plaintiffs and the respondent/defendant from the drug 'Meropenem', taking the prefix 'Mero' which is used as a prefix in both the competing marks. Both the appellants/plaintiffs and the respondent/defendant are marketing the same molecule 'Meropenem'. Neither the appellants/plaintiffs nor the respondent/defendant can raise any claim for exclusive user of the aforesaid word 'Meropenem'. Along with the aforesaid generic/common prefix, 'Mero', the appellants/plaintiffs have used the syllables 'nem', whereas, the respondent/defendant has used the syllable 'mer'. It is true that the aforesaid words/trade names cannot be deciphered or considered separately, but must be taken as a whole. But even if they are taken as a whole, the prefix 'Mero' used with suffix in the two competing names, distinguishes and differentiates the two products. When they are taken as a whole, the aforesaid two trademarks cannot be said to be either phonetically or visually or in any manner deceptively similar to each other."

15. The learned Single Judge noted the view of the Division Bench in *Astrazeneca* (supra) that in the trade of drugs it was a common practice to name the drug by the name of the organ or ailment which it treated or the main ingredient of the drug. The name of such an organ, ailment or ingredient being publici juris or generic, could not be claimed by anyone exclusively for use as a trademark. The argument



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of the appellant that it was the first to have adopted and use the name 'TEMO', and that the appellants had trans-border reputation [which were claimed to be the distinguishing feature from the Astrazeneca (supra) case] was rejected by the learned Single Judge as the claim of the appellants was founded upon an alleged infringement of registered trademark. It was also not a case where the respondents had raised a defence of prior use under Section 34 of the Act, where again, the question of who used the mark first, would be relevant. The case of the appellants was one of infringement under Section 29 of the Act and the only question which required consideration was whether the respondent's trademarks were deceptively similar to the appellants registered trademarks, which could lead to confusion in the mind of the purchaser to purchase the drugs of the respondents, while intending to purchase the appellants drugs.

.....

30. The observation of the Division Bench in Astrazeneca (supra) in paragraph 19 has been taken note of by the learned Single Judge and has been extracted by us above. The Division Bench also took note of the fact that there are other similar names with the prefix 'MERO'. The Division Bench further observed:

“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 trademark. In the Division Bench decision of this Court in SBL Limited (supra) it was also held that possibility of deception or confusion is reduced practically to nil in view of the fact that the medicine will be sold on medical prescription and by licensed dealers well versed in the field and having knowledge of medicines. It was further held that the two rival marks, 'Liv.52' and 'LIV-T', contain a common feature, 'Liv' which is not only descriptive, but also publici juris and that a customer will tend to ignore the common feature and will pay more attention to



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uncommon features i.e. '52' and 'T' and that the two do not have such phonetic similarity so as to make it objectionable.

21. In our considered opinion the facts of the said case are almost similar and squarely applicable to the facts of the present case. 'Meropenem' is the molecule which is used for treatment of bacterial infections. In that view of the matter, the abbreviation 'Mero' became a generic term, is publici juris and it is distinctive in nature. Consequently, the appellants/plaintiffs cannot claim exclusive right to the use of 'Mero' as constituent of any trademark. The possibility of deception or confusion is also reduced practically to nil in view of the fact that the medicine is sold only on prescription by dealers. The common feature in both the competing marks i.e. 'Mero' is only descriptive and publici juris and, therefore, the customers would tend to ignore the common feature and would pay more attention to the uncommon feature. Even if they are expressed as a whole, the two did not have any phonetic similarity to make it objectionable. There are at least four other registered users of the prefix 'Mero' in India whereas the names of 35 companies using 'Mero' trademarks, which have been registered or applied for registration, have been furnished in the pleadings."

.....

32.No doubt, in Astrazeneca (supra) the additional factor in favour of the respondent/defendants that weighed in the mind of the Court was that the mark of the respondent/defendant had also been registered, in respect whereof the appellant/plaintiff had applied for rectification. However, to us it is clear that the salient features which led the Court to deny the grant of interim injunction to the appellant/plaintiff were:

- (a) The admission that 'MEROPENEM' was the active salt/drug in the medicines manufactured by both the parties which was publici juris;
- (b) That nobody could claim exclusive right to use any word, abbreviation, or acronym which has become publici juris and which is used descriptively;
- (c) 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. The name of an organ, ailment or



ingredient being publici juris or generic if the use of the name is descriptive, the generic name cannot be claimed by anyone for exclusive use as a trademark;

(d) 'MERO' which was common to both the competing marks was taken from 'MEROPENEM' in respect whereof neither party could claim exclusive user for 'MEROPENEM' based drug. Both the parties had used three letter suffixes i.e. 'NEM' had been used by the appellant/plaintiff and 'MER' had been used by the respondent/defendant, which were distinct and not deceptive;

(e) Even if the competing marks were to be taken as a whole, the suffixes 'NEM' and 'MER' distinguish and differentiate the two products. When they are taken as a whole, the aforesaid two trademarks could not be said to be either phonetically or visually, or in any manner deceptively similar to each other;

(f) The possibility of deception or confusion is reduced to practically 'Nil' in view of the fact that the medicine would be sold by medical prescription and by licensed dealers well versed in the field and having knowledge of medicines. When two rival marks contain a common feature, which is not only descriptive but also publici juris, the consumer will tend to ignore the common feature and will pay more attention to the uncommon feature (for example in the case of Liv-52 v. Liv-T). If the uncommon features do not have phonetic similarity, the offending mark cannot be objected to. The drugs in question are Schedule H drugs available only on Doctor's prescription and are not over the counter medicines;

(g) There was a vast difference in the prices of the two products. This fact by itself would ensure that there is no possibility of any deception/confusion, particularly, in view of the fact that the customer who comes with the intention of purchasing the product of the appellant/plaintiff would never settle for the product of the respondent/defendant which is priced much lower.

.....

113. The aforesaid trademarks cannot be deciphered or considered separately i.e. by fragmenting them, but must be taken as a whole. But even if they are taken as a whole, the prefix TEMO used with suffix KEM and GET in the two competing names distinguish and differentiate the products of the appellants from those of the two respondents. When they are taken as a whole, the aforesaid two



trademarks of the two respondents cannot be said to be either phonetically or visually or in any manner deceptively similar to the trademarks of the appellants i.e. TEMODAL and TEMODAR.

114. The common feature in the competing marks i.e. TEMO is only descriptive and publici juris and, therefore, the customers would tend to ignore the common feature and would pay more attention to the uncommon feature. Even if they are expressed as a whole, the two do not have any phonetic similarity to make them objectionable.”

The learned counsel relied upon the aforesaid judgments and contended that 'VAPO' is a descriptive term and is *publici juris*. Therefore, the petitioner cannot claim exclusive right over the same.

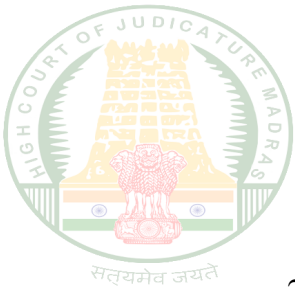
20. This Court has carefully considered the submissions made on either side and perused the documents available on record.

21. Considering the submissions as well as the documents available on record, the issue that arises for consideration in these petitions are:

(1) Whether the petitioner's product “VICKS VAPORUB” and the first respondent's products “Vapor In, Stress Out. Anytime, Anywhere”, “VAPORIN”, “VAPORIN COLD RUB” are deceptively similar?

2) Whether there is a dishonest intention on the part of the first respondent in adopting the impugned trademarks?

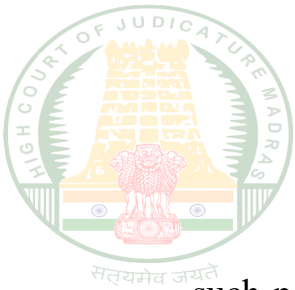
3) Whether the term 'VAPO' is Publici juris?



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22.The claim made by the petitioner is that the first respondent has adopted the trademarks “*Vapor In, Stress Out. Anytime, Anywhere*”, “*VAPORIN*” and “*VAPORIN COLD RUB*” which are deceptively similar to the petitioner's trademark namely “*VICKS VAPORUB*”. The first respondent has produced the details with regard to the names of 75 other products beginning with “*VAPO*”. The first respondent's trade marks are beginning with the name “*VAPORIN*”, which also contains the term 'VAPO'. The tax invoices produced by the first respondent shows that the first respondent's products are widely sold in their brand name “*VAPORIN*” and it is advertised in metro trains and online platforms. Mere comparison of the trademarks of the petitioner and the 1st respondent would show that the name of the products of the petitioner and the first respondent are different. The colour, size, packing and letters of the marks are not deceptively similar.

23.It is the argument of the petitioner that while adjudicating upon the similarity between the rival marks, the trademarks cannot be dissected and meticulously compared, rather be viewed from the perspective of an average man with ordinary intelligence and imperfect recollection and the likelihood of

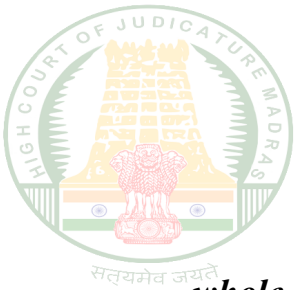


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such person being deceived or confused. In the case on hand, when the rival marks are taken as a whole and compared without any dissection or meticulous comparison, the marks are not similar and it cannot be stated that the product of the first respondent will create a doubt or impression to an average man with ordinary intelligence and imperfect recollection that the products are originating from the petitioner as the marks are phonetically dissimilar and the visual appearance is also distinct.

24.The documents produced by the learned Counsel for the first respondent would show that 75 other products beginning with the name “VAPO” are available in the market and it is common to the trade. Therefore, it cannot be said that there is a dishonest intention on the part of the first respondent in adopting the impugned trademarks.

25.Further, from the judgments extracted above, it is clear that the claim made by the petitioner cannot be acted upon as the claim is not in line with Section 17 of the Trade Marks Act, 1999, wherein, it has been clearly stated that *“when a trade mark consists of several matters, its registration shall confer on the proprietor exclusive right to the use of the trade mark taken as a*



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whole and when a trademark contains any matter which is common to the trade or is otherwise of a non-distinctive character, the registration thereof shall not confer any exclusive right in the matter forming only a part of the whole of the trademark so registered". As rightly pointed out by the learned counsel for the 1st respondent, the term VAPO is merely an abbreviation of the word vapour and it is descriptive and common to the trade.

26. The term 'VAPO' is *publici juris* and as such the use of the word 'VAPO' in the 1st Respondent's mark will not render it deceptively similar to that of the petitioner's mark. The petitioner's product "VICKS VAPORUB" and the first respondent's products "*Vapor In, Stress Out. Anytime, Anywhere*" "*VAPORIN COLD RUB*" and "*VAPORIN*" are distinct and not similar and identical. As the words 'VICKS VAPORUB' and 'VAPORIN' are phonetically dissimilar, it will not create any confusion in the minds of the users, especially, in this case, as the visual appearance of the said trade marks are also completely different. Moreover, nobody can claim exclusive right to use any abbreviation, which has become *publici juris*. Accordingly, there is no difficulty in coming to the conclusion that the rival marks are not deceptively similar.



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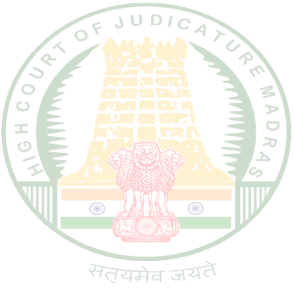
27.In fine, the Original Petitions stand dismissed. No costs.

06.01.2026

Index:Yes
Speaking order
Neutral Citation:Yes/No
cmr

To
1.IPI India Private Limited,
represented by its Autorised Signatory,
Top Floor, Plot No.16, Jayabheri Enclave,
Sy.Nos.103/1, 105, 106, Gachibowli,
Serilingampally, R.R District-500 032,
Telangana, India.

2.The Registrar of Trade Marks,
Office of the Trade Marks Registry,
Boudhik Sampada Bhavan, G.S.T. Road,
Guindy, Chennai - 600 032.



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N.SENTHILKUMAR, J.

cmr

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