

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on: 16th December, 2010
Judgment Pronounced on: 22nd December, 2010

+ **CS(OS) No.326/2004**

GLAXO GROUP LTD.& ANR.

.....Plaintiffs

- versus -

MR.S.D.GARG & ORS.

....Defendants

Advocates who appeared in this case:

For the Plaintiffs: Mr. Manav Kumar with Mr.
Sushant Singh and Mr. P.C.
Arya, Adv.

For the Defendants: Mr. Inderdeep Singh, Adv.

CORAM:-

HON'BLE MR JUSTICE V.K. JAIN

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in Digest? | Yes |

V.K. JAIN, J

1. This is a suit for permanent injunction and rendition of accounts. Plaintiff No.1 Glaxo Group Ltd. is a company incorporated in United Kingdom, whereas plaintiff No.2 GlaxoSmithKline Pharmaceuticals Ltd. is a company incorporated under the Companies Act, 1956. Both the

plaintiffs are members of GlaxoSmithKline Groups of Companies of which GlaxoSmithKline plc. is the parent company. The plaintiffs are engaged in manufacturing and marketing a wide range of products including pharmaceutical and medicinal preparations throughout the world and are one of the largest pharmaceutical and healthcare companies and had worldwide sales of £21.44 billion in the year 2000.

2. The trademark BETNOVATE is registered in India in the name of plaintiff No.1 in class 5 since 5th December, 1963 in respect of pharmaceutical, veterinary and sanitary substances and is an invented word having no dictionary meaning and connoting exclusively the goods of the plaintiffs. The trademark is stated to be registered in more than 30 countries in the name of plaintiff No.1 and is being used for creams, ointment and lotion as also for topical treatment of skin irritations, such as redness, itching and swelling of skin conditions. The sale of goods by plaintiff No.2 under the name BETNOVATE in India amounted to Rs.7253.30261 lacs, Rs.7896.16792 lacs and 7662.53576 lacs during the years 2001, 2002 and 2003 respectively. The plaintiffs claimed to have spent Rs.10.2 millions, 13.1

millions and 2.5 millions in the years 1999, 2000 and 2001 respectively on the promotion of this trademark. BETNOVATE is being sold by the plaintiffs in different variations including BETNOVATE-N which is the combination of betamethasone Valerate and Neomycin and BETNOVATE-C which is the combination of Betmethasone and Clioquinol Cream BP. The plaintiffs claim copyrights under Section 2(c) of the Copyright Act in the outer cartons and tubes in which BETNOVATE-N and BETNOVATE-C are sold by them.

3. It is alleged that in or about 2004, the plaintiffs came to know that the defendants had copied the colour scheme of BETNOVATE-N for their product BECNATE-N and that of BETNOVATE-C for their product BECNATE-C. The case of the plaintiffs is that the mark BECNATE is deceptively similar to their registered trademark BETNOVATE and the defendants are using the mark BECNATE in respect of identical goods thereby causing infringement of their registration.

4. This is also the case of the plaintiffs that the defendants have cleverly copied the essential features of packaging for BETNOVATE-N and BETNOVATE-C used in

India. The plaintiffs have given the following comparisons of their cartons and the cartons of the defendants to make out a case of reproduction and imitation of their colour scheme, get up, lay out, arrangement of features etc.

Plaintiffs' Outer Carton & Tube Packaging for BETNOVATE-N	Defendants' Outer Carton & Tube packaging for BECNATE-N
Use of an overall colour scheme of white/green background with a combination of trademarks and descriptive matters appearing in white, black and green.	Use of an overall colour scheme of white background with a combination of trademarks and descriptive matters appearing in white, black and green.
'Glaxo SmithKline' appears in white letters on a green background at the right hand side of the tube in an oblique angle.	'Systochem' appears in white letters on a green background at the right hand side of the tube.
The name of the product and trademark BETNOVATE-N is written in the middle of the packaging starting from the extreme left.	The name of the product and the trademark BECNATE-C is written in the middle of the packaging started from the extreme left.
The essential ingredient of the cream "Betamethasone Valerate and Neomycin" appears on the face of the packaging, just above the trademark BETNOVATE-N	"Beclomethasone Dipropionate and Neomycin Sulphate" appears on the face of the packaging, just above the trademark BECNATE-N.
Plaintiffs' Outer Carton & Tube Packaging for BETNOVATE-C	Defendants' Outer Carton & Tube Packaging for BECNATE-C
The overall colour scheme is that of a pale yellow base with a combination of trademarks and description	The overall colour scheme is that of a yellow base with a combination of trademarks and description matters

matters appearing in a pink, white and black.	appearing in a pink, white, brown and black.
The plaintiffs' corporate name "Glaxo SmithKline" in white letters on a pink background at the right hand side of the packaging.	"Systochem" appears in white letters on a brown background at the right hand side of the outer packaging in a diagonal angle.
The essential ingredient of the cream "BETAMETHASONE and CLIOQUINOL Cream BP" is printed in large pink letters at the very top of the face of the packaging. Below this, in large, black letters is written the name of the product and trademark BETNOVATE-C.	The essential ingredient of the cream "Beclomethasone Dipropionate and Chinoform Cream" is printed in large brown letters at the very top of the face of the packaging. Below this, in large, black letters is written the name of the product and trademark BECNATE-C.

It is also claimed by the plaintiffs that the class of customers and class of trade are identical for their products BETNOVATE-N and BETNOVATE-C as well as defendants' products BECNATE-N and BECNATE-C and that their products as well as the products of the defendants fall in the same category viz. Dermatological Skin Cream.

5. It is also alleged that BETNOVATE is an OTC product and, therefore, the plaintiffs have to take extreme care to maintain the quality and standard of their products and have also to ensure that no harm is caused to the public on account of the confusion and deception which will

be caused to them on account of use of the mark BECNATE by the defendants. The plaintiffs also claim to have obtained injunction against the use of the marks Betnate, Betnefate, Getanate and Beclovate-C & Beclovate in suit No.1618/1999, 2627/2001, 2516/2001 and 1232/2002 respectively. They have sought permanent injunction restraining the defendants from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in skin care products or other related goods under the trademark BECNATE or under any other mark deceptively similar to their trademark BETNOVATE. They have also sought injunction against imitation or reproduction of packaging used by them for the products sold by them under the name BETNOVATE. They have also sought mandatory injunction directing defendants to hand over all goods, packaging cartons, unfinished products, bill boards etc. bearing the impugned packaging similar to the plaintiffs' product BETNOVATE. They have further sought rendition of accounts from the defendants for the profits made by them on account of using the trademark BECNATE and the impugned packaging.

6. The defendants have contested the suit. They have

alleged that the products BECNATE-N and BECNATE-C were introduced by defendant No.2 in September, 2002 and the name BECNATE has been invented by defendant No.2. It has been further alleged that there is no similarity between the products of the plaintiffs and the products of defendant No.2. They have also denied having copied the colour scheme of the plaintiffs products in respect of BETNOVATE-N and BETNOVATE-C. It is further alleged that there is a total mismatch of (i) name (ii) essential features (iii) get up and layout (iv) colour scheme of the products.

It is also alleged that unlike the products of the plaintiffs, the products of the defendants are not OTC products.

7. The following issues are framed on the pleadings of the parties:-

(i) Whether plaintiff No.1 is the registered proprietor of the trademark BETNOVATE-C registered under No.219258 in class 5?

(ii) Whether the plaintiff No.1 is the owner of the artistic work of BETNOVATE-C and BETNOVATE-N and packaging material as detailed in para 14 of the plaint?

(iii) Whether the use of the trademark BECNATE-C and BECNATE-N and packaging material used by the defendants amounts to infringement of the trademark and copyright of the plaintiffs?

(iv) Whether the defendant is passing off its goods as those of the plaintiffs?

(v) Whether there is any delay in bring the action against the defendants and to what effect?

(vi) Relief.

8. **Issue No. 1**

Ex.PW-2 is the certificate of registration of trademark BETNOVATE in favour of plaintiff No.1 in class A to Registration 219258, w.e.f. 05th December, 1963 in respect of pharmaceutical, veterinary and sanitary substances. According to PW-1, the aforesaid trademark has been renewed from time to time and is subsisting in full legal force. There is nothing on record to dispute the deposition of PW-1 in this regard. The issue is, therefore, decided against the defendants and in favour of the plaintiff.

9. **Issue No.2**

According to PW-1 Mr Rahul Sethi, plaintiff's BETNOVATE products comprises of distinctive outer

packaging and a sample of the packing used by them as Ex.PW-4. The essential features of the packaging being used by the plaintiff as given in para 14 of the plaint are as under:

- The overall colour scheme is that of a pale green base with a combination of trademarks and descriptive matters appearing in a dark green, white and black.
- The plaintiff's corporate name "Glaxo SmithKline" appears in large bold white letters on a darker green background at the right hand side of the packaging. Along the beginning of this oblique appears GSK logo in orange colour.
- The essential ingredient of the cream "BETAMETHASONE VALERATE AND NEOMYCIN" is printed in large dark green letters at the very top of the front of the packaging. Underneath this is in smaller dark green letters is written the skin cream.
- Below this, in large, black letters is written the name of the product and trade mark BETNOVATE-N.

Essential features of the BETNOVATE-N tube

- The overall colour scheme is a white background with

a combination of trademarks and descriptive matters appearing in white, green and black.

- The plaintiff's corporate name "Glaxo SmithKline" appears in large bold white letters on a green background at the right hand side of the tube in an oblique angle.
- "BETAMETHASONE VALERATE AND NEOMYCIN" is printed in large green letters at the very top of the tube. Underneath this in smaller green letters are the words skin cream.
- Below this, in large, black bold letters is written the name of the product BETNOVATE-N.

Essential features of the outer packaging for BETNOVATE-C

- The overall colour scheme is that of a pale yellow base with a combination of trademarks and descriptive matters appearing in a link, white and black.
- The plaintiffs' corporate name "Glaxo SmithKline" appears in large bold white letters on a pink background at the right hand side of the packaging. Along the beginning of this oblique appears GSK logo

in orange colour.

- “BETAMETHASONE AND CLIOQUINOL CREAM BP” is printed in large pink letters at the very top of the front of the packaging
- Below this, in large, black bold letters is written the name of the product BETNOVATE-C.

Essential features of the BETNOVATE-C tube

- The overall colour scheme is a white background with a combination of trade marks and descriptive matters appearing in white and pink.
- The plaintiff’s corporate name “Glaxo SmithKline” appears in large bold white letters on a pink background at the right hand side of the tube in an oblique angle.
- “BETAMETHASONE AND CLIOQUINOL CREAM BP” is printed in large pink letters at the very top of the tube. Underneath this in smaller black letters are the words skin cream
- Below this, in large, black bold letters is written the name of the product BETNOVATE-C.

10. The defendants do not claim any copyright in the

packaging being used by the plaintiffs. I, therefore, hold that plaintiff No.1 is the owner of the work comprised in the packagings being used by it to sell BETNOVATE-N and BETNOVATE-C. The issue is decided against the defendants and in favour of the plaintiff.

11. **Issue No.5**

According to PW-1, it was in the month of January, 2004 that the plaintiffs came to know of the use of the mark BECNATE-C by the defendants for skin creams. There is nothing on record to prove that the plaintiffs had come to know of the user of the marks BECNATE-C and BECNATE-N by the defendants prior to January, 2004. The defendants have not produced any evidence at all. Since the suit was filed in March, 2004, it cannot be said that there was any abnormal delay in initiating action against the defendants. The issue is decided against the defendant in favour of the plaintiff.

12. **Issue Nos. 3, 4 and 6**

These issues are interconnected and can be conveniently decided together. The admitted facts are that the plaintiffs are selling their products under the name BETNOVATE-N and BETNOVATE-C, whereas the

defendants are selling their products BECNATE-C and BECNATE-N. Admittedly, the products being sold by the plaintiff under the name BETNOVATE-N and BETNOVATE-C as well as the products being sold by the defendants under BECNATE-N and BECNATE-C are pharmaceuticals products and are meant to be used externally on human skin. A perusal of the packagings filed by the plaintiff would show that the compounds being used by the plaintiff in BETNOVATE-N are BETAMETHASONE VALERATE and NEOMYCIN and the compounds used in BETNOVATE-C are BETAMETHASONE AND CLIOQUINOL CREAM BP. The defendants on the other hand are using the compounds BECLOMETHASONE DIPROPIONATE & NEOMYCIN SULPHATE CREAM in BECNATE-C and the compound BECLOMETHASONE DIPROPIONATE CHINOFORM CREAM in its product being sold under the name BECNATE-N. It has also been proved that the plaintiffs are the registered proprietors of the trademark BETNOVATE, whereas the defendants hold no such registration in respect of its trademark BECNATE.

13. The evidence produced by the plaintiff shows that the trademark BETNOVATE is being used by them since

1963, whereas there is no evidence of the defendants using the mark BECNATE prior to January, 2004. The plaintiff had sale of Rs. 7896.16/- lacs, Rs. 7662.53 lacs and Rs. 9321.83/- in the year 2002 to 2004 in India and has incurred promotional expenditure of Rs 30.12 million, 48.73 million and 98.86 million during this period. The sales of the plaintiff in the year 2005 up to the month of August were Rs 7227.37/- lacs, whereas it had incurred promotional expenditure of Rs 69.61 million during this period. There is no evidence on record to prove the sale of the products being sold by the defendants under the name BECNATE-N and BECNATE-C and the promotional expenditure, if any, incurred by it on promoting these products and building the brand name BECNATE.

14. Section 28 of Trade Marks Act, 1999 gives exclusive rights to its registered proprietor, to the use of the trademark in relation to the goods or services in respect of which the trademark is registered and to obtain relief in respect of infringement of the trademark. Section 29 of the Act, to the extent it is relevant, provides that a registered trademark is infringed by use of a mark which is identical

with or deceptively similar to the trademark in relation to the goods or services in respect of which the trademark is registered. Sub-section (2) of Section 29 provides that a registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which because of (a) its identity with the registered trade mark and the similarity of the goods or services covered by such registered trade mark; or (b) its similarity to the registered trade mark and the identity or similarity of the goods or services covered by such registered trade mark; or (c) its identity with the registered trade mark and the identity of the goods or services covered by such registered trade mark, is likely to cause confusion on the part of the public, or which is likely to have an association with the registered trade mark.

15. A comparison of the name BETNOVATE with the name BECNATE would show that the first two letters as well as the last three letters of the two marks are same being BE and ATE respectively. Phonetically the name BECNATE would appear to be similar to the name BETNOVATE to a

layman who while purchasing a product of this nature is hardly likely to undertake a careful comparison of the two names. If the marks BETNOVATE and BECNATE are read and/or heard as a whole, without dissecting the words, it is difficult to dispute that they are phonetically as well as visually similar or identical. There is reasonable probability of the product bearing the trademark BECNATE-N and BECNATE-C being passed off to an unwary customer as BETNOVATE-N and BETNOVATE-C respectively, by the chemist who may be interested in selling the product of the defendants or may be having only the product of the defendants in his shop or the customer himself picking up the product bearing the trademark BECNATE-N, assuming the same to be BETNOVATE-N and the product bearing the mark BECNATE-C assuming the same to be BETNOVATE-N, since both the products are primarily skin ointment though different compounds have been used in their manufacture.

16. In **Cadila Health Care Ltd. vs. Cadila Pharmaceuticals Ltd.**, *AIR 2001 SC 1952*, Supreme Court was of the view that public interest would support lesser degree of proof showing confusing similarity in the case of trade mark in respect of medicinal product as against other

non-medicinal products. There should be as many clear indicators as possible to distinguish medicinal products from each other. It was noted that in our country, it was not uncommon that in hospital, drugs can be requested verbally and/or under critical/pressure situations and many patients may be elderly, infirm or illiterate, may not be in a position to distinguish between the medicine prescribed and bought and is ultimately handed over to them. In this context, the Court referred to McCarthy on Trade Marks, 3rd Edition, para 23.12 wherein it was noted that confusion of source or product between medicinal products may produce physically harmful results to purchasers and greater protection is required than in the ordinary case. It was further noted that if the goods are designed even for subtly different uses, confusion amongst the products caused by similar marks could have disastrous effects. Taking note of the fact that in our country, there is no single common language, a large percentage of population is illiterate and a small fraction of people know English, the Court was of the view that in our context, to apply the principles of English law regarding dissimilarity of the marks or the customer knowing about the distinguishing

characteristics of the plaintiff's goods seems to overlooking the ground realities in India. It was also observed that while examining such cases in India, what has to be kept in mind is the purchaser of such goods in India who may have absolutely no knowledge of English language or of the language in which the trademark is written and to whom different words with slight difference in spellings may sound phonetically the same.

Noticing that Schedule "H" drugs are to be sold by the chemist only on the prescription of the Doctor but Schedule "L" drugs are not sold across the counter but are sold only to the hospitals and clinics, Supreme Court observed that it was not uncommon that because of lack of competence or otherwise, mistakes can arise specially where the trademarks are deceptively similar.

Supreme Court was also of the view that for the drugs having a marked difference in composition with completely different side effects the test should be applied strictly as the possibility of harm resulting from any kind of confusion by the consumer can have unpleasant if not disastrous results. It was further observed that the Courts need to be particularly vigilant where the defendant's drug,

of which passing off is alleged, is meant for curing the same ailment as the plaintiff's medicine but the compositions are different since the confusion is more likely in such cases.

In the case before this Court also, the compounds being used in the products of the plaintiff being different from the compound being used in the products of the defendant and the drugs of both the parties being skin ointment, the test to be applied by the Court needs to be stricter so as to avoid any possibility of a person intending to purchase medicine containing a particular compound being passed off as the medicine containing an altogether different compound. Since the products of the plaintiffs are OTC drugs, there is a greater possibility of the products of the defendants, which also are skin ointments, being picked up by the customer himself, assuming them to be the products of the plaintiffs on a count of the visual and phonetic similarity of the two marks.

17. In **Corn Products Refining Company Vs Shangrila Food Products Limited** AIR 1960 SC 142, M/s Shangrila Food Products had applied for registration of the mark "Glucovita" and M/s. Corn Products, who were the owners of registered trademark "Glucovita" filed its

objections to its registration to the mark "Glucovita". The Deputy Registrar was of the view that the words "Glucovita" were not visually or phonetically similar and that there was no reasonable likelihood of any deception being caused by or any confusion arising from the use of respondent's proposed trademark. The learned Single Judge of Bombay High Court disagreed with the finding of the Deputy Registrar. The Division Bench, however, restored the decision of the Deputy Registrar. Allowing the appeal filed by Corn Products, Supreme Court was of the view that the Division Bench was in error in deciding in favour of the respondent basing themselves on the series of marks having "Gluko" or "Vita" as a prefix or a suffix". The Court was of the view that the syllable 'co' was not such as would enable the buyer in our country to distinguish one mark from the other. During the course of the judgment, the Court, *inter alia*, observed as under:

“Again, in deciding the question of similarity between the two marks we have to approach it from the point of view of a man of average intelligence and of imperfect recollection. To such a man the overall structural and phonetic similarity and the similarity of the idea in the two marks is reasonable likely to cause a confusion between them.

The absolute identity of the two competing marks or their close resemblance is only one of the tests for deterring the question of likelihood of deception or confusion. Trade connection between different goods is another such test. Ex hypothesi, this latter test applies only when the goods are different. These tests are independent tests. There is no reason why the test of trade connection between different goods should not apply where the competing marks closely resemble each other just as much as it applies, as held in the "Black Magic" and "Panda" cases, where the competing marks were identical."

18. In **Amritdhara Pharmacy Vs . Satya Deo**, AIR 1963 SC 449, Supreme Court was dealing with medicinal preparation for the alleviation of various ailments. The trademark of the plaintiff in that case was "Amritdhara", whereas the mark used by the defendant was "Lakshmandhara". The Court noted that such medicinal preparation will be purchased mostly by people mostly by people who instead of going to a doctor wish to purchase a medicine for the quick alleviation of their suffering, both villagers & townfolk, literate as well as illiterate. The Court was of the view that to such a man the overall structural and phonetic similarity of the two names 'Amritdhara' and 'Lakshmandhara' was likely to deceive or cause confusion

since an unwary purchaser of average intelligence and imperfect recollection would not split the name into its component parts. He would go by overall structure and phonetic similarity and the nature of the medicine he has previously purchased, or has been told about, or about which he has otherwise learnt and which he wants to purchase. The observations made by the Supreme Court would equally apply to the cases before this Court since BETNOVET as well as BECNET both are skin ointment and a customer with average intelligence and imperfect recollection is hardly likely to notice the difference between the two names when he finds phonetic as well as visual similarity between the words BETNOVATE and BECNATE when the words are read as a whole. It is also to be kept in mind that the customer is hardly likely to find the product of the plaintiff and the product of the defendant, lying side by side in the same shop, and, therefore, may not have an opportunity to compare the two marks.

19. In **Glaxo Group Limited & Others vs. Vipin Gupta and Ors.** 2006(33) PTC 145 (Del.), the plaintiff-company was granted injunction by this Court against use of the mark BETAVAT by the defendants.

In *Bio-Chem Pharmaceutical Industries vs Astron Pharmaceuticals 2003(26) PTC 200 (Delhi)*, the mark of the plaintiff was BIOCILLIN, whereas the mark being used by the defendant was BICILLIN. The defendant was enjoined from using the mark BICILLIN.

In *Ranbaxy Laboratories Ltd. vs. Universal Twin Labs 2008 (36) PTC 675 (Bombay)*, the plaintiffs' mark was "VOLINI", whereas the defendant was using the mark "VONIGEL". The contention of the defendant was that their mark was not word for word similar to the mark of the plaintiff and, therefore, was not deceptively similar. Rejecting the contention, Bombay High Court reiterated the settled proposition of law that the Court has to have due regard to the rival marks as a whole and to the impact which they would make on an ordinary and unwary purchaser.

20. For the reasons given in the preceding paragraphs, I am of the considered view that the mark BECNATE being used by the defendants is similar to the registered mark BETNOVET of the plaintiff and thereby infringes the trademark of the plaintiff in terms of Section 29 of Trade Marks Act, 1999 on account of the phonetic, structural and

visual similarity between the two marks and there is a strong probability of an unwary customer with average intelligence and imperfect recollection picking up the products of the defendants assuming them to be the products of the plaintiff since the product of both the parties are ointment to be used externally on human skin. Also, there is a reasonable probability of a chemist stocking only the goods of defendants or interested in selling only their goods passing off the products of the defendants to an ordinary customer as the products of the plaintiff. Since the compounds used in the products of the defendants are different from the compounds being used in the products of the plaintiffs, use of the products of the defendants by a person seeking to use the products of the plaintiff may result in harmful effect on the skin of the customer. It is, therefore, in the interest not only of the plaintiff's company, but also of the general public that such deceptively similar marks are not allowed to be used, particularly with respect to medicinal preparations. This is more so, when the products of the parties fall in the same category being skin products to be used externally. The issues are decided accordingly.

21. **Issue No. 6**

In view of my findings on the other issues, the plaintiffs are entitled to injunction against the use of the word BECNATE by the defendant No.2 on the products being manufactured and/or sold by it. Since defendant No.1 is only the Managing Director of defendant No.2, the plaintiff is not entitled to any relief against him. As far as defendant No.3 is concerned, no cause of action against it has been proved by the plaintiff nor was any relief against defendant No.3 pressed during arguments. The relief of rendition of account was also not pressed during arguments.

As regards the packing being used by the defendants for selling the products BECNATE-C and BECNATE-N on a comparison of those packagings with the packagins being used by the plaintiffs, I am unable to take a view that the packagings being used by the defendants are deceptively similar or identical to the packagings being used by the plaintiffs. The packaging of the plaintiffs in respect of BETNOVATE-N is in green colour, whereas the packaging being used by the defendants in respect of BECNATE-N is pre-dominantly in white colour. There is a globe on the

packaging of the defendants which is not found on the packaging of the plaintiffs. The names of compounds given on the packagings of the plaintiff are different from the names of the compounds given on the packagings of the defendants. The name GlaxoSmithKline is printed in white colour on a green triangle in the packaging of the plaintiffs. Nothing like that is found on the packaging of the defendants in respect of BECNATE-N. The name GSK has been prominently printed In orange colour on the packagings of the plaintiffs. There is no such feature on the packaging of the defendants. The get up, lay out and colour scheme of the packagings of the defendants appear to be substantially different from those of the packagings of the plaintiffs. The packagings of the plaintiff in respect of BETNOVATE-C are in yellow colour with red triangles on it. The packaging of the defendants in respect of BECNATE-C is in yellow and brown colour with no triangle on the packaging. The word GSK and GlaxoSmithKline have been printed in white colour on the packaging of the plaintiffs in respect of BETNOVATE-C. On the other hand, Systochem in yellow colour has been printed on the packaging of the defendants in respect of BECNATE-C. The names of the

manufacturers have been prominently written in the packaging of the plaintiff as also in the packaging of the defendants and are in fact in bigger letters on the packing of the defendants. The names of the compounds which have been prominently written on the packaging of both the parties are altogether different and have been written in different colours. The name of compounds on the packaging of the plaintiff is in capital letters, whereas that on the packaging of the defendant is primarily in small letters. The same is the position with respect to the name BETNOVATE-C on the packagings of the plaintiff and the name BECNATE-C on the packagings of the defendant, except for the letter 'B' on the packaging of the defendant. In these circumstances and also considering that use of the mark BECNATE is being injuncted by the Court, there is no need of injuncting the defendants from using the packagings Ex.P-1 and P-2 which are the packagings they were using for selling BECNATE-N and BECNATE-C.

22. A decree for permanent injunction is hereby passed in favour of the plaintiff and against defendant No.2 restraining defendant No.2 from selling, offering for sale or advertising any product using the name BECNATE or any

other name similar to the trademark BETNOVATE of the plaintiffs. Defendant No.2 is also directed to destroy all the packagings, cartons, bill boards and other packing material bearing the name BECNATE whether with or without product, in the presence of an authorized representative of the plaintiff's company within 30 days from today. The suit against defendant Nos. 1 and 3 is dismissed. Considering all the facts and circumstances of the case, there shall be no order as to costs.

Decree sheet be prepared accordingly.

(V.K. JAIN)
JUDGE

DECEMBER 00, 2010
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