



\$~4

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ C.O. (COMM.IPD-TM) 257/2022

MANKIND PHARMA LTD. 208, OKHLA INDUSTRIAL ESTATE
PHASE-III, NEW DELHI Petitioner

Through: Mr. Hemant Daswani, Advocate.

versus

GURINDER SINGH, 205, CEDAR ANSAL TOWNSHIP,
TALAAWALI CHAANDA, INDORE-452010, MP Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
02.05.2024

%

1. The present petition under section 57 of the Trademarks Act, 1999¹

seeks the cancellation/removal of the trademark/device mark “”,²
registered under No. 4515152 in Class 5, from the Register of Trademarks,
currently in the name of Respondent No. 1– Gurinder Singh.

2. Briefly, the Petitioner’s case is as follows:

2.1. They are well-established pharmaceutical company engaged in the
business of manufacturing and marketing– medicinal, pharmaceutical, and
veterinary preparations. The mark “MANKIND” was first adopted in 1986
by the Petitioner’s predecessors. The Petitioner holds more than 300

¹ The Act

² Impugned mark



trademarks that include the word “MANKIND” and/or “KIND” as part of their trademarks.³ The Petitioner is also the proprietor of the “MANKIND” mark in all 45 classes.⁴ Registration certificates for the “KIND” family of marks, registered in the Petitioner’s favour, are part of the record.⁵ Additionally, the Petitioner owns various websites incorporating the word “MANKIND.” The Petitioner has furnished a CA Certificate indicating that the company’s turnover for 2018-2019 was approximately Rs. 3877.48 crores. The turnover for products sold under the “KIND” family of marks from April 2019 to 2020 was approximately Rs. 1968 crores. The “KIND” family of marks has been advertised in various newspapers, magazines, and news channels across India.

2.2. Due to the prolonged use of the mark “MANKIND” and the “KIND” family of marks, these trademarks have acquired the status of a “well-known trademark” under Section 2(1)(zg) of the Trademarks Act, 1999. Specifically, the trademark “MANKIND” has been declared as a well-known and included in the trademark Journal no. 1978 dated 14th December, 2020.

2.3. The Petitioner came across the registration of the Impugned mark



“V-KIND HEALTHCARE” *vide* registration No. 4215152 for medicines intended for human use in Class 5 in India. The application for the Impugned trademark was filed on 24th June, 2019, with a claimed use starting from 1st April, 2019. A Cease-and-Desist notice was issued to the registered proprietor on

³ hereinafter referred to as the ‘family of marks’.

⁴ Registration Certificates at Pages 207 to 274

⁵ Pages 275 to 430 of the petition



28th September, 2020, to which a reply was received on 9th October, 2020.

2.4. Due to the long and continuous usage of the “MANKIND” trademark and the “KIND” family of marks, the Petitioner has acquired goodwill and reputation, and the public exclusively associates the “MANKIND” mark and the “KIND” family of marks with the Petitioner.

2.5. The Petitioner is also the prior user and owner of the “MANKIND” mark and the “KIND” family of marks, and therefore, the Impugned trademark has been wrongly entered in the Register and is liable to be cancelled under Section 57 of the Act.

PROCEEDINGS IN THE CASE

3. The petition was initially filed with the erstwhile Intellectual Property Appellate Board (IPAB). Following the enactment of the Tribunals Reforms Act, 2021, which resulted in the abolishment of the IPAB, this matter was transferred to this Court. Subsequently, a fresh notice was issued to Respondent No. 1 on 14th November 2022. Despite confirmed service of this notice, no appearance has been made on behalf of Respondent No. 1, nor has any reply or counter-statement been submitted to the Court. On 26th July, 2024, noting the Respondent’s continued absence, they were proceeded against *ex parte*.

4. According to Mr. Daswani, counsel for the Petitioner, the Respondents have not used the impugned trademark to date. These facts suggest that Respondent No. 1 has nothing substantial to present on the merits in response to present petition. Nonetheless, the Court has taken note of the Respondent No.1’s case as made out in the reply dated 9th October, 2024 to the Cease and Desist notice dated 28th September, 2020.



5. Respondent No.1's contentions in their reply to the Petitioner's Cease and Desist notice are summarised as follows:

5.1. Respondent No.1 is a sole-proprietor trading as 'V-KIND HEALTHCARE' which was established on 20th March, 2020. Respondent No.1 has been using the Impugned mark since its inception, continuously and uninterruptedly.

5.2. The Respondent No.1 has spent huge amount of money in the promotion and advertisement of its mark "V-KIND HEALTHCARE" and therefore products and services under the mark are solely associated with the Respondent.

5.3. Respondent No. 1 has developed the trademark "V-KIND HEALTHCARE," drawing inspiration from the phrase "We are all Kind." In this context, letter 'V' is intended to represent 'We,' making 'V-Kind' synonymous with 'We-Kind.' The impugned mark includes a device that depicts a group of human beings, visually embodying the concept of "WE ARE ALL KIND."

5.4. Respondent No.1 deny the claim made by the Petitioner that their mark- "MANKIND" has been recognised as well-known.

5.5. Respondent No.1 has not copied and have no reason to copy the Petitioner's mark "MANKIND". The mark adopted by Respondent No.1 is different from the Petitioner's mark. Petitioner may have 200 registrations of trademarks with word element "KIND," but it is also pointed out that merely presence of suffix "KIND" in the Impugned mark does not implicate the deceptive similarity between the competing marks as the Petitioner has not secured rights in the mark "KIND". While Petitioner has filed various trademark applications with "MANKIND," but it cannot claim right over the



mark “KIND” as a family mark since “KIND” is a generic word and Petitioner cannot claim monopoly over a common word.

5.6. There are large number of trademarks in class 5 with the prefix/suffix “KIND” as a part of their mark either registered or applied for in the name of different players in the market.

5.7. Various judgements of this Court have held that merely having same prefix/suffix does not render the trademark deceptively similar.⁶

5.8. The Competing marks “V-KIND HEALTHCARE” and Petitioner’s tradename “MANKIND PHARMA LIMITED” are visually, conceptually, phonetically different and the same would not cause confusion to the consumers and members of the trade.

ANALYSIS

6. In addressing Petitioner’s objection to the Impugned registered mark, we must first note the established status and historical use of the Petitioner’s “MANKIND” and the ‘KIND’ family of trademarks. Since its adoption in 1986, the “MANKIND” mark has been extensively used by the Petitioner, a leading pharmaceutical company, and is part of an extensive portfolio that includes over 300 related trademarks. This portfolio spans all 45 classes, emphasizing the significant market presence and value these marks have acquired, evidenced by an impressive turnover of approximately Rs. 1968 crores from products under the “KIND” family between April 2019 and 2020. Moreover, “MANKIND” has been recognised as a well-known trademark, published in the trademark Journal no. 1978 dated 14th December 2020. Thus, the strength of the mark extends beyond its primary

⁶ *Bigtree Entertainment Pvt Ltd vs Brain Seed Sportainment Pvt Ltd & Anr.*, in CS (COMM) 327/2016 *P.P. Jewellers Pvt. Ltd. vs P.P. Buildwell Pvt. Ltd.* (2010) ILR 2 DEL 165 *Reliance Industries Ltd. vs*



classes to offer wide protection against similar marks that could cause confusion or dilution.



7. The Respondent No.1's mark "V-KIND HEALTHCARE" features both design and textual elements, with the depiction of human figures alongside the textual terms. This composite nature necessitates an in-depth assessment of visual, conceptual, and phonetic similarities to accurately determine the potential for public confusion. While the inclusion of a design introduces a distinctive component, the textual element 'V-KIND' remains visually dominant. In the pharmaceutical sector, the significance of textual elements in trademarks cannot be overstated, as they perform several critical functions. Text provides clear and unambiguous identification of the product, which is essential in a field where precise information is crucial for consumer safety. Given these considerations, the graphic component of the 'V-KIND HEALTHCARE' mark, though unique, might not sufficiently counterbalance the implications of textual similarity. This is particularly true in a market where the Petitioner's 'KIND' trademarks are already well-established and recognized. The dominance of 'KIND' in the Respondent's trademark could easily lead to confusion regarding the source or affiliation of the goods, as consumers and healthcare professionals.

8. Further, we can also notice that the usage of 'KIND' in both trademarks establishes a conceptual link that could lead consumers to assume a connection between the two brands, particularly due to the

Reliance Polycrete Ltd. 1997 PTC (17) 581



established reputation of the Petitioner's 'KIND' family of marks. The addition of the letter 'V' attempts to set the Respondent's mark apart; however, it does not mitigate the phonetic and semantic similarities associated with the use of 'KIND.' These elements, combined with the substantial goodwill associated with the Petitioner's marks, could extend to the 'V-KIND HEALTHCARE' products, particularly if consumers focus more on the shared term than the differing graphical representation. The risk of confusion remains significant due to the prominence of 'KIND' in both marks, especially within the same pharmaceutical industry where specific attributes of products are critically assessed based on textual branding.

9. Pertinently, both parties operate within the same Class 5 category for pharmaceutical products. The term "Healthcare" included in the Respondent's mark, while generic and descriptive, further aligns it with the Petitioner's field of operation, intensifying the likelihood of consumer confusion. It could be perceived as an extension or affiliate of the Petitioner's product line, particularly to those familiar with the "MANKIND" and "KIND" trademarks within similar contexts.

10. In conclusion, the integration of design elements in the Respondent N0.1's mark does not sufficiently differentiate it to prevent confusion with the Petitioner's established trademarks. The substantial textual similarities within the highly regulated pharmaceutical market necessitate a stringent assessment,⁷ supporting the Petitioner's claim of likely confusion.

11. Absent any defense from the Respondent to counter the allegations of dishonest adoption and use of the impugned trademark, and given the

⁷ *Cadila Healthcare Limited vs Cadila Pharmaceuticals Limited* 2001 (5) SCC 73



identical nature of the goods provided under Class 5, it is reasonable to infer that the Respondent's actions were motivated by a desire to capitalize on the Petitioner's established goodwill and reputation. Thus, the use of the "V-KIND HEALTHCARE" mark is deemed to be a deliberate attempt to trade upon the recognition and trust associated with the Petitioner's marks.

12. It would be relevant to refer to decision of this Court in *Mankind Pharma Ltd. v. Cadila Pharmaceuticals Ltd.*⁸ which effectively highlights the strong protection awarded to the Petitioner's use of the word "KIND" within its trademarks. The Court recognized that although "KIND" does not inherently relate to pharmaceutical products, the Petitioner has established significant goodwill and market presence since first using "MANKIND" in 1986 and subsequently "METROKIND" in 2003. These actions have developed a distinctive family of marks where "KIND" serves as a central element. This judgment has emphasized that the Petitioner, as the prior user, is entitled to heightened protection against any infringing use that copies the essential or predominant parts of its trademark, affirming the Petitioner's exclusive rights over the "KIND" component within the pharmaceutical industry.

13. In light of the above, the registration of the impugned trademark



"V-KIND HEALTHCARE" violates Section 11(1) and 11(2) of the Act. Section 11(1) prohibits the registration of a mark that is identical or similar to an earlier mark, leading to confusion among the public. Section 11(2) prohibits the registration of a latter mark that competing with an earlier mark that is well-



known, even if the goods or services are dissimilar. Given that the Petitioner's "MANKIND" mark has acquired well-known status, as supported by document placed on record, the registration of the impugned mark is untenable and is liable to be cancelled under Section 57 of the Act.

14. Moreover, Respondent No. 1 has failed to effectively rebut the Petitioner's contention that the impugned trademark was registered without any bona fide intention on the part of the registered proprietor to use it in relation to the products covered by the registration.

15. Accordingly, the present petition is allowed and the Impugned



trademark "V-KIND HEALTHCARE" registered under trademark application no. 4215152 in the name of the respondent no. 1 in Class 5 is removed from the Register of Trade Marks.

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

SANJEEV NARULA, J

MAY 2, 2024/da

⁸ 2015:DHC:715