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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 621/2022, I.A. 14546/2022, I.A. 14549/2022, I.A.
14552/2022, I.A. 22348/2022, I.A. 765/2023 & I.A. 10224/2023
GLAXO GROUP LIMITEDPlaintiff

Through: Mr. Urfee Roomi, Ms. Janaki Arun,
Mr. Jaskaran Singh and Mr. Ritesh
Kumar, Advs.
M: 9811600017
Email: scip@sc_ip.in

versus

MANISH MODI & ANR.Defendants

Through: Ms. Neha Singh, Mr. Rahul, Mr. N.K.
Chaturvedi, Mr. Saurabh Singh and
Mr. Sukhendra, Advs.
M: 9625699912

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER
06.09.2024

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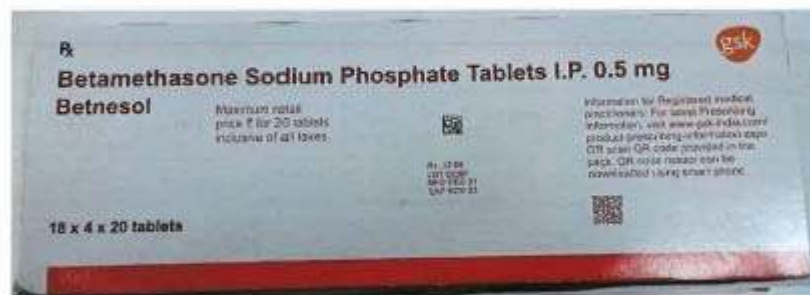
1. The present case has been filed seeking permanent injunction against the defendants and its related parties from using the infringing mark 'BETASOL' on the ground that it infringes the plaintiff's registered mark, i.e., 'BETNESOL'.
2. As per the case canvassed by the plaintiff in the present case, the plaintiff's tablets under the plaintiff's 'BETNESOL' tablet strip packaging, are sold in silver coloured aluminium strip packaging, contained in an outer packaging, as follows:



Plaintiff's Strip Packaging



Plaintiff's Outer Packaging



3. The defendants are engaged in the business of manufacture and sale of pharmaceutical and medicinal products, including, most prominently, tablets bearing the mark 'BETASOL'. The defendants' tablets bearing the defendants' 'BETASOL' mark contain the active ingredient, Betamethasone Sodium Phosphate.

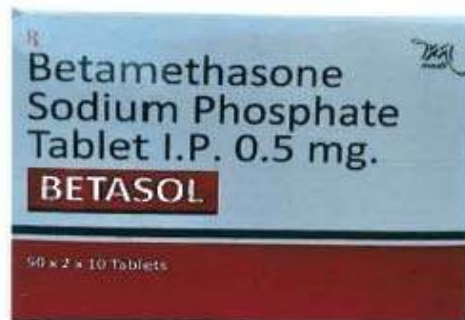


4. The defendants' tablets bearing the defendants' 'BETASOL' mark are sold in a silver coloured aluminium strip packaging, with red lettering. The packaging of the defendants, as shown in the plaint, is reproduced as under:

Defendants' BETASOL Tablet Strip Packaging



Front of the Defendants' BETASOL Tablet Outer Packaging



Back of the Defendants' BETASOL Tablet Outer Packaging





5. The plaintiff is the proprietor of a valid and subsisting registration, namely, registration no. 200822, for the mark ‘BETNESOL’ covering “pharmaceutical, veterinary and sanitary substances” in Class 5. The said registration is dated 21st February, 1961, and has been renewed till 21st February, 2030. The plaintiff became the subsequent proprietor of registration no. 200822, owing to an assignment from Glaxo Laboratories Limited in 1981.

6. The said suit has been filed since the defendants were found to be using the mark ‘BETASOL’, which is deceptively similar to the plaintiff’s ‘BETNESOL’ mark.

7. Side by side comparison of the rival tablet strip packaging, as given in the plaint, is shown as under:



8. This court notes the submission on behalf of the plaintiff that the plaintiff first conceived its mark ‘BETNESOL’, in the early 1960’s. Around the same time, the plaintiff began using the said marks on and in relation to



medicinal and pharmaceutical preparations, including, but not limited to tablets, used to treat a wide variety of diseases, including allergies, arthritis, and inflammatory disorders.

9. This Court had recorded on the last date of hearing that the defendants are ready to give up the mark 'BETASOL'. It is further submitted that after the injunction order dated 07th September, 2022, the use of the mark 'BETASOL' has been stopped by the defendant.

10. Pursuant to the last order, an affidavit of undertaking has been filed on behalf of the defendants, which reads as under:

IN THE HON'BLE HIGH COURT OF DELHI AT NEW DELHI
(Ordinary Original COMMERCIAL Jurisdiction)
C.S. (COMM) NO. 621/2022

IN THE MATTER OF:-
GLAXO GROUP LIMITED PLAINTIFF
VERSUS
MANISH MODI & ANR. DEFENDANTS

UNDERTAKING BY WAY OF AFFIDAVIT

I Mr. Manish D Modi S/o Mr. Denesh Bhai, aged about 58 years, Indian national, registered office at 28, GIDC, OPP Creata cold storage, Torrent power substation, Gdhav, Ahmedabad- 382315.

That I am the Authorized Representative of the Defendants herein and well-conversant with the facts and circumstances of the case.

That I, sincerely apologies for the inconvenience caused to the plaintiff due to the act of the defendants in above mentioned suit. Plaintiff was not aware of the fact that his trademark is closely similar to the plaintiff's trade dress and such practices are not allowed and prohibited under the Indian Trademarks Act 1999. The act of the Defendants was not deliberate and ill motivated and not to gain any illegal benefit/financial gain out of it. I take full responsibility of my previous conduct and assure you that in future you will not be witnessed of such kind of infringement of your trade dress/product by the defendant Company in any manner.



(3)

Moreover, I undertake that the defendant Company shall not manufacture impugned trade dress/ shape/label identical or deceptively identical to that of the plaintiff's, in case any infringement occurs on the part of the defendant company, then the Hon'ble Court may take any action as this Court deems fit. I would really appreciate if you will consider my undertaking and the circumstances which caused the problem.

DEPONENT

VERIFICATION

I, Mr. Manish D Modi, do hereby declare that the contents of this undertaking by way of affidavit are true and correct to the best of my knowledge and belief. No part of it is false and nothing material has been concealed therein.

Verified at _____ on this AUGUST 2024.

DEPONENT

NEW DELHI

DATE: 08.2024

Solemnly Affirmed deponent
by Manish D Modi
who is identified by K K Choudhary
whom I know Personally

K. K. CHOUHARY
NOTARY
GOVT. OF INDIA

29 AUG 2024

11. Learned counsel appearing for the defendant submits that the affidavit of undertaking filed on behalf of defendant no.1 shall be binding on defendant no.2 also. The said statement is noted and taken on record.

12. Learned counsel appearing for the defendants further submits that the



defendants shall not use the mark 'BETASOL' as well as the trade dress and packaging, which is deceptively similar to the plaintiff's trademark 'BETNESOL' or their trade dress/packaging.

13. The aforesaid undertaking on behalf of both the defendants is taken on record. The defendants are held bound by their undertaking given before this Court.

14. This Court notes that at the time of issuing summons, a local commissioner had been appointed, who has duly filed his report. As per the report of the local commissioner, the following products were confiscated during the course of execution of the local commission:

1.) Betasol S	1547 boxes each contains 1200 tablets (per box) =18,56,400 tablets. The copy of the Betasol S box is annexed herewith and referred to as Annexure-E.
2.) Betasol	1.) 490 boxes x 1000 tablets=4,90,000 tablets. 2.) 7 boxes (sample) x 1000= 7000 tablets. The copy of the Betasol box is annexed herewith and referred to as Annexure-F.
3.) Betasol Sprinted foil a.) Roll weight of (3) = 28 kgs. b.) other roll weight (3) = 24.78 kgs. c.) (1) Roll weight =1.4 kg. d.) (1) Roll weight = 3.4 kgs.	8 rolls/foils. The copy of the rolls/foils are annexed herewith and referred to as Annexure-G (Colly).
4. Empty Boxes of Betasol S	550Boxes. The picture of empty boxes of Betasol S is annexed herewith and referred to as Annexure- H
5. Labels of Betasol	6000 approx. tablets. The picture of the Labels of Betasol is annexed herewith and referred to as Annexure-I.



15. Considering the aforesaid, this Court is of the view that the plaintiff is entitled for damages.

16. Considering the documents on record and the submissions made before this Court, this Court is of the view that ends of justice shall be met if cost/damages of ₹4 lacs is paid by the defendants, to the plaintiff.

17. At this stage, learned counsel appearing for the plaintiff submits that the cost/damages payable to the plaintiff be paid through the counsel for the plaintiff.

18. Learned counsel appearing for the defendant on the other hand submits that some time may be granted to give the said amount of ₹4 lacs to the plaintiff.

19. Accordingly, it is directed as follows:

19.1 The suit is decreed in favour of the plaintiff in terms of prayer Clause paragraph 67 (a) to (d) of the plaint.

19.2 Cost/damages of ₹4 lacs shall be paid by the defendants to the plaintiff, through the plaintiff's counsel, i.e., Sujata Chaudhri IP Attorneys, within a period of ten weeks.

19.3 The seized goods, as detailed in the Local Commissioner's report, shall be destroyed by the defendants, in the presence of the plaintiff's representatives.

20. Decree sheet, accordingly, be drawn up.

21. The suit, along with the pending applications, is disposed of.

MINI PUSHKARNA, J

SEPTEMBER 6, 2024/kr