



2024:DHC:10127



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

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Date of decision: 20th December, 2024+ CS(COMM) 783/2022 with I.A. 18350/2022, I.A. 36369/2024 and
O.A. 78/2023

GLAXO GROUP LIMITED

..... Plaintiff

Through: Mr. Urfee Roomi, Ms. Janaki Arun
and Ms. Anuja Chaudhury, Advocates

versus

GURMUKH KAPOOR,
TRADING AS LEVOTIC PHARMA

..... Defendant

Through: Mr. Yogesh Kumar, Advocate

CORAM:**HON'BLE MR. JUSTICE AMIT BANSAL****AMIT BANSAL, J. (Oral)**

1. The present suit has been filed seeking relief of permanent injunction restraining the defendant from infringing the trademark and copyright of the plaintiff, passing off, along with other ancillary reliefs.

PLEADINGS IN THE PLAINT

2. The plaintiff, Glaxo Group Limited, is part of the GSK group of companies, and is an international science-led global healthcare company that researches and develops a wide range of innovative medicines and vaccines.

3. The plaintiff has been selling skin creams under the mark 'BETNOVATE' globally since 1963. It is stated that skin creams bearing



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the plaintiff's 'BETNOVATE' marks are packaged and distributed through a network of distributors and stockists across India. These products are also available to Indian consumers through online pharmacies.

4. The plaintiff has been using various marks on and in connection with pharmaceutical products and medicines. These include the mark 'BETNOVATE', as well as its formative marks, such as BETNOVATE-N, BETNOVATE-C, BETNOVATE-S, BETNOVATE-M and BETNOVA TE-GM (hereinafter collectively referred to as the "plaintiff's 'BETNOVATE' marks").

5. The plaintiff coined the term 'BETNOVATE' many decades ago and the term 'BETNOVATE' does not convey any indication of the composition of the pharmaceutical and medicinal products to the ordinary public or to pharmacists. As a result, the plaintiff's 'BETNOVATE' marks are inherently distinctive and are entitled to the highest protection under the Trade Marks Act, 1999. Since the initial use, the plaintiff's 'BETNOVATE' marks have been prominently used in multiple countries worldwide, including India, for skin creams, ointments, and lotions designed to treat skin irritation, itching, swelling, and redness.

6. The plaintiff owns a valid and subsisting registration for the mark 'BETNOVATE', registered *via* Registration No. 219258 covering "pharmaceutical, veterinary and sanitary substances" in Class 5 in India.

7. The plaintiff has secured almost one hundred and fifty (150) registrations for its 'BETNOVATE' marks and has also filed applications to register these marks in various countries and jurisdictions.

8. The plaintiff has provided its annual turnover figures from the year 2001-2021. Since the year 2001, the plaintiff's annual turnover has exceeded



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GBP 20 billion. Details of the annual sales turnover of the plaintiff are provided in paragraph 16 of the plaint. The plaintiff has filed invoices from the years 2011-2021 for the products under its mark 'BETNOVATE'. Details of sales figures of the plaintiff in respect of its skin creams, ointments and lotions in paragraph 37 of the plaint.

9. The plaintiff extensively advertises its products bearing the 'BETNOVATE' marks. The plaintiff has provided marketing expenditure from the years 2010 to 2020 for the products under its mark 'BETNOVATE' for its skin creams, ointments and lotions in paragraph 38 of the plaint.

10. The plaintiff has had a presence in India since 1919 through local distributors, however, its direct trading within India officially commenced in 1924. Over the years, the plaintiff has received numerous prestigious awards and recognitions for its significant contributions to the medicinal industry in India. The plaintiff has provided details of its awards and recognitions in paragraph 35 of the plaint.

11. The plaintiff's 'BETNOVATE' skin creams sold in the plaintiff's packaging have come to be associated solely and exclusively with the plaintiff owing to its extensive and continuous use of the packaging all over the world.

12. The defendant, Gurmukh Kapoor, is an Indian citizen, operating under the name Levotic Pharma. He is engaged in the manufacturing, marketing, and sale of pharmaceutical products including skin creams.

13. In February, 2022, the plaintiff came to know that a nearly identical product of the defendant bearing the mark 'BETNOTIC-N' was being used



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for skin creams containing the active ingredient, Neomycin with similar packaging.

14. On 16th February, 2022, the plaintiff issued a Legal Notice to the defendant demanding the defendant to cease the use of the defendant's mark. As there was no response to the said Legal Notice, the plaintiff issued a reminder notice dated 24th February, 2022 to the defendant *via* email. Thereafter, the plaintiff's Indian representative, on 12th August, 2022, sent a letter to the same effect to the defendant *via* courier and email.

15. Subsequently, on 29th August, 2022, the plaintiff's Indian representative received a response from the defendant *via* email, stating that he had ceased all use of the defendant's BETNOTIC-N Mark for its skin creams pursuant to the plaintiff's letters dated 16th February 2022, and 24th February 2022, respectively, and that he had already complied with the demands as laid out in the plaintiff's letter dated 16th February 2022.

16. Upon an investigation conducted in September, 2022, it was revealed that the defendant had been selling skin creams containing the active ingredient Neomycin under a new mark BETATIC-N with similar packaging.

17. Being aggrieved by the aforesaid activities of the defendant, the plaintiff instituted present suit for infringement of trademark and copyright, passing off against the defendant.

PROCEEDINGS IN THE SUIT

18. On 11th November 2022, this Court granted an *ex-parte ad-interim injunction* against the defendant restraining the defendant from using the mark "BETNOTIC-N" and "BETATIC-C" or any other identical/deceptively similar mark which is deceptively or confusingly similar to



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plaintiff's 'BETNOVATE' trademark and packaging/ trade dress of their product.

19. The said interim injunction was made absolute vide order dated 15th December, 2023.

20. On 8th August, 2024 the plaintiff filed an application under Order-XXXIX Rule 2A of Code of Civil Procedure, 1908 ('CPC') seeking the initiation of contempt proceedings against the defendant for violating the *ex-parte* order dated 11th November, 2022 and subsequent order of confirmation dated 15th December, 2023. It was stated that pursuant to the order dated 11th November, 2022, the defendant/Contemnor merely replaced "BETNOTIC-N" with "BETATIC-C" while continuing to use the same packaging.

21. On 22nd November, 2024, the defendant was physically present in the court and undertook that he will not use the impugned packaging resembling the plaintiff's packaging. An affidavit incorporating an unconditional apology as well as an undertaking has been filed on behalf of the defendant.

ANALYSIS AND FINDINGS

22. I have heard the submissions of the counsel and also perused the material on record. The plaint has been duly verified and is supported by the affidavit of the plaintiff. From the averments made in the plaint and the evidence on record, the plaintiff has been able to prove that it is the registered proprietor of the mark 'BETNOVATE' and its formative marks and has a copyright over the trade dress of the mark 'BETNOVATE' comprised in packaging of its products. The plaintiff has also been able to demonstrate and prove its goodwill and reputation in respect of the same. The trade dress has been used by the plaintiff since 2003 and comprises of



combination of colour, a distinctive get up and layout, including its size, arrangement of wording, colour scheme of pale and dark green, etc. Due to its long and continuous use, the plaintiff has also acquired a copyright over its packaging. The plaintiff has also filed several documents in support of its contentions including but not limited to sales invoices in support of prior user claim, CA Certificates establishing goodwill and reputation.

23. The plaintiff has placed on record images of the defendant's impugned trademarks/packaging to show that the defendant is indulging in the infringement and passing off of the plaintiff's registered mark, 'BETNOVATE' and other formative marks. A comparison table illustrating the similarities between the plaintiff's marks/packaging and the defendant's impugned marks/ packaging is set out below:

PLAINTIFF'S MARK/ PACKAGING	DEFENDANT'S IMPUGNED MARK/ PACKAGING
BETNOVATE-N	BENOTIC-N BETATIC-N
	 

24. From the comparison above, it is evident that the packaging is identical and the mark of the defendant is deceptively similar to the plaintiff's 'BETNOVATE' marks. Additionally, the defendant has adopted a



nearly identical trade dress and substantially reproduced the plaintiff's artistic work in the packaging of the Impugned Product 'BETNOTIC-N' and 'BETATIC-C'.

25. Moreover, the colour combination on the packaging employed by the defendant, with an overall colour scheme of green base with written material appearing in black is identical to plaintiff's packaging. The layout of house mark in defendant's packaging includes a dark green solid triangle placed at bottom right hand corner is identical to plaintiff's house mark in the packaging of its product.

26. The defendant has merely replaced the letters V, A and E with the letters I and C and altered the placement of the letter T to create the defendant's 'BETNOTIC-N' mark. Further, the defendant uses the letter N after a hyphen as a suffix to the word 'BETNOTIC' in a manner identical to that of the plaintiff. This makes the marks structurally, visually and phonetically similar and therefore nearly identical. These changes are insufficient to distinguish the defendant's 'BETNOTIC-N' mark from the plaintiff's 'BETNOVATE' marks especially when defendant's packaging is compared to the plaintiff's 'BETNOVATE-N' packaging. Furthermore, the rival marks have similar connotations of being coined words. Thus, the rival marks, when viewed as a whole in its entirety have a similar appearance.

27. Both the plaintiff and the defendant are selling identical products i.e., skin creams. Additionally, the rival skin creams are sold through identical trade channels to the same consumers. It follows that there would be a likelihood of confusion on the part of the public which includes a likelihood of association that the public would associate the defendant's mark and packaging with the plaintiff's 'BETNOVATE' marks and packaging. The



likelihood of consumer confusion is further enhanced by the fact that both the rival products have the same therapeutic uses and nearly identical active ingredients. Thus, it is evident that the defendant's mark and packaging are almost identical to the plaintiff's 'BETNOVATE' marks and packaging, and are likely to cause confusion among consumers.

28. The defendant's *mala fide* intention is also evident from the fact that, despite receiving a legal notice from the plaintiff, the defendant continued using the infringing mark and packaging to benefit from their unauthorized use. Clearly, the defendant was trying to ride on the goodwill of the plaintiff's 'BETNOVATE' marks and tried to pass off its goods as those of the plaintiff's goods.

29. Based on the discussion above, a clear case of infringement of trademark and copyright is made out. The defendant has taken unfair advantage of the reputation and goodwill of the plaintiff's trademark/artistic work and have also deceived the unwary consumers of into believing their association with the plaintiff by dishonestly adopting the plaintiff's registered marks without any plausible explanation. Therefore, the plaintiff has established a case of passing off as well.

30. At this stage, it may be relevant to note that pursuant to the plaintiff filing an application under Order XXXIX Rule 2A of CPC, an affidavit has been filed on behalf of the defendant incorporating an unconditional apology as well as an undertaking.

31. The relevant paragraphs 7, 8, and 9 from the said affidavit are set out below: -

"7. That I undertake not to sell skin cream with similar packaging and similar colour, as that of the plaintiff, and also



obliged to the kind order of this Hon'ble Court.

8. That I also undertake that I will not adopt similar packaging and similar colour of the skin cream like as that of the plaintiff.

9. That I tender my apology for the inconvenience to this Hon'ble Court, the same shall not repeat in future, in the interest of justice."

32. The aforesaid apology is taken on record and accepted. The defendant shall be bound by the undertaking given in the aforesaid affidavit.

33. In view of the above, a decree of permanent injunction is passed in favour of the plaintiff and against the defendant in terms of prayer clauses 74(a) to (d) of the plaint.

34. In terms of the paragraph (e) of the plaint, the defendant is directed to destroy all impugned product, packaging, labels, promotional and advertisement material, brochures, that may be in possession of the defendant, which shall be done in the presence of the representatives of the plaintiff.

35. In light of the foregoing analysis, the Court concludes that the defendant's conduct not only warrants but also necessitates the imposition of costs. Taking into account the entire facts and circumstances presented in this case, the Court also awards costs amounting to ₹4,00,000/- in favour of the plaintiff and against the defendant, out of which ₹2,00,000/- shall be paid within three weeks from today.

36. The remaining cost of ₹ 2,00,000/- shall be paid in two equal instalments on or before 31st January, 2025 and 28th February, 2025 in favour of the plaintiff and against the defendant.

37. Let the decree sheet be drawn up.



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38. All pending applications stand disposed of.

AMIT BANSAL, J

DECEMBER 20, 2024

Corrected and uploaded on: 03rd January, 2025

Vivek/-

Signature Not Verified

Digitally Signed
By: DHARMENDER SINGH
Signing Date: 03.01.2025
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