



2025:DHC:1232



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

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Date of decision: 18th February, 2025

+ C.O. (COMM.IPD-TM) 350/2022

MANKIND PHARMA

.....Petitioner

Through: Mr. Hemant Daswani, Ms. Pranjali &
Ms. Saumya Bajpai, Advocates.

versus

LEMFORD BIOTECH PVT LTD. AND

THE REGISTRAR OF TRADE MARKS

.....Respondents

Through: Dr. B. Ramaswamy, CGSC.

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

1. The present rectification petition has been filed under Section 57 of the Trade Marks Act, 1999 (hereinafter, 'the Act') seeking removal of the trademark 'LENOKIND' bearing trademark registration no.4225327 in class 5, from the Register of Trade Marks.

PROCEEDINGS IN THE PETITION

2. The present petition was received on transfer after the abolition of the Intellectual Property Appellate Board (IPAB) pursuant to the Tribunal Reforms Act, 2021. Since previous order sheets were not available with the counsel for the petitioner, the Joint Registrar issued court notice to the respondents on 19th July, 2022.

3. *Vide* order dated 2nd November, 2022, this Court issued notice in the present petition through all permissible modes. Counsel for the respondent no.2 accepted notice and four weeks' time was granted to file reply.



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4. Counsel for the respondent no.1 entered appearance on 2nd February, 2023 and four weeks' time was granted to file reply. On the same date, the parties were directed to file written submissions along with relevant judgments in support.

5. Despite accepting notice, neither any reply was filed on behalf of the respondents no. 1 and 2, nor any appearance was made on behalf of the respondents no. 1 and 2 after 5th April, 2023. Accordingly, the Joint Registrar closed the right of the respondents no.1 and 2 to file reply *vide* order dated 29th May, 2023.

6. Consequently, the respondents no.1 and 2 were proceeded against *ex-parte vide* order dated 5th July, 2023. This Court also directed the petitioner to file evidence by way of an affidavit within eight (8) weeks.

7. The petitioner filed the evidence of Mr. Aviral Shukla (PW-1) affirming the facts of the petition. *Vide* order dated 31st July, 2024, the examination in chief of PW-1 was concluded and the petitioner's evidence was closed.

8. *Vide* order dated 9th September, 2024, the petitioner was granted four weeks' time to file written synopsis. Subsequently, the petitioner filed the written synopsis on 26th September, 2024.

BRIEF FACTS

9. Brief facts leading to the filing of the present petition are as follows:

9.1. The petitioner company was incorporated in the year 1991 and is engaged in the business of manufacturing and marketing medicinal, pharmaceutical and veterinary preparations. The predecessor-in-interest of the petitioner adopted the mark 'MANKIND' in the year 1986.



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9.2. The petitioner has more than 300 registered trademarks wherein the word 'MANKIND' and/or 'KIND' forms a part of its trademarks (hereinafter also referred to as 'family of marks'). Additionally, the petitioner is also the registered proprietor of the mark 'MANKIND' in all 45 classes. The table showing various registrations of the marks with the word element 'KIND' along with copies of Registration Certificates as issued by the Registrar of Trade Marks have been exhibited as **EXHIBIT PW -1/E (Colly)**.

9.3. The petitioner has also applied for more than 80 trademarks in respect of the marks 'MANKIND' in at least 10 different countries. Copies of Registration Certificates and applications received from/made in various countries have been exhibited as **EXHIBIT PW -1/F(Colly)**. The petitioner is also the registered owner of various websites which include the mark 'MANKIND'.

9.4. Since the year 2011, the petitioner company has retained number 1 rank in the Indian pharmaceutical industry by way of generating highest number of Prescriptions per Month per Doctor (PMD Audit). At present, 277 brands of the petitioner company are placed amongst the Top 5 brands, with 67 brands at number 1 position and 77 brands at number 2 position. In this regard, a copy of the extract of current Intercontinental Medical Statistics Report (IMS Report) has been exhibited as **EXHIBIT PW - 1/G (Colly)**.

9.5. The sales turnover of the petitioner company for the financial year 2016-2017 amounts to Rs. 3,525.56 crores. Copy of audited turnover of the petitioner company as obtained from its Chartered Accountant has been exhibited as **EXHIBIT PW-1/H**. Furthermore, for the year 2018, the petitioner group, in respect of its top 24 products containing the word element



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“KIND”, had achieved annual turnover of over Rs. 1300 crores. Copies of certificates issued by the petitioner company’s auditor for the turnover of the said 24 products have been exhibited as **EXHIBIT PW-1/I (Colly)**. The products bearing petitioner’s family of marks have been extensively advertised in various newspapers, magazines such as Debonair, Filmfare, Femina, Grihshobha, Sarita, Saras, Salil, etc. as well as on billboards and other advertising spaces, including large-scale advertisement on national television.

9.6. Due to the long and continuous usage of the mark ‘MANKIND’ and ‘KIND’ family of marks, the said marks have acquired the status of ‘well-known trademark’ in terms of Section 2(1)(zg) of the Act. A copy of Journal no. 1978 dated 14th December, 2020 declaring ‘MANKIND’ as a well-known mark has been exhibited as **EXHIBIT PW-1/N**.

9.7. The respondent no.1 was granted registration of the mark ‘LENOKIND’ (hereinafter referred to as “the impugned mark”) vide registration no. 4225327 in respect of pharmaceuticals and medicinal preparations under class 5 in India. The application for registration of the impugned mark was filed on 4th July, 2019 claiming user from 14th September, 2017.

SUBMISSIONS OF THE PETITIONER

10. Mr. Hemant Daswani, counsel appearing on behalf of the petitioner, submits that the petitioner has been using the mark ‘MANKIND’ since 1986 through its predecessor-in-interest whereas the respondent no.1 had applied for registration of the impugned mark with user claim since 14th September, 2017. However, the petitioner is yet to come across goods bearing the impugned mark. Hence, the user claim of the respondent no.1 is denied.



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11. He further submits that the petitioner has spent a significant amount of time, resources, effort and expense in use and promotion of its family of marks and due to such voluminous use and promotion of the petitioner's family of marks, the petitioner has acquired immense goodwill and trade reputation in the community dealing with drugs and pharmaceuticals not only in India but abroad also.

12. It is further submitted that the word element 'KIND' used in relation to pharmaceutical preparations cannot be deemed to be generic or descriptive or laudatory. The word 'KIND' is not related to the products being sold by the petitioner, but due to its long and continuous usage, the said word has been exclusively associated with the petitioner. In this regard, counsel for the petitioner has relied upon the judgment of the Co-ordinate Bench of this Court in *Mankind Pharma Ltd. v. Cadila Pharmaceuticals Ltd.*, 2015 SCC OnLine Del 6914 [decided on 22.01.2015].

13. It is submitted that the use of the impugned mark in relation to the similar goods is likely to cause confusion in the market and among the members of trade and is bound to cause erosion of the distinctive character of the petitioner's 'KIND' family of marks. The impugned mark is neither distinctive, nor capable of distinguishing the goods of the respondent no.1 from that of the petitioner.

14. In light of the above, it is stated that the petitioner is the prior user and owner of the mark 'MANKIND' and 'KIND' family of marks, and the impugned mark has been wrongly entered in the Register. Therefore, the impugned mark is liable to be cancelled in terms of Section 57 of the Act.

15. Accordingly, the petitioner has filed the present petition.



ANALYSIS

16. I have heard counsel for the petitioner and perused the record of the present petition.

17. The respondent no.1 has not filed its reply to the present petition, which indicates that it has nothing substantial to put forth on merits, by way of a response to the averments made in the petition. In view of the above, the averments made in the petition are deemed to be admitted.

18. In ***Mankind Pharma Ltd.*** (Supra), the Co-ordinate Bench of this Court held as follows:

“19. In this context, the submission of the learned counsel for the plaintiff that registration of his trade mark ‘MANKIND’ for the sale of pharmaceutical products and the plaintiff admittedly having several other registrations either with the prefix or suffix to the word ‘KIND’ and although the ‘KIND’ admittedly has no co-relation with the sale of the pharmaceutical products, the plaintiff having established his first user of the word ‘KIND’ in the pharmaceutical market, the ratio of this judgment entitles him to a higher protection for the word ‘KIND’ is an argument which has force. In the instant case the plaintiff is using the word ‘KIND’ with the prefix ‘MAN’ since the year 1986; his registration for the mark ‘METROKIND’ is of the year 2003. The defendant cannot copy the essential/predominant part of the trade mark of the plaintiff which in this case is ‘KIND’ as admittedly the plaintiff has a registration for the trade mark ‘MANKIND’ from the year 1986 and for ‘METROKIND’ since the year 2003 and at the cost of repetition the plaintiff being the prior user in the market of the word ‘KIND’ for sale of pharmaceutical products stands established by him.”

19. The petitioner has several trademark registrations granted in its favour that use the word “KIND” as a suffix. Hence, the petitioner has developed a family of marks with the word “KIND” as an essential part of the petitioner’s trademarks. Although, the word “KIND” is not related to the pharmaceutical



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products being sold by the petitioner, but due to its continuous and extensive usage, the said mark has come to be exclusively associated with the petitioner and this would entitle the petitioner to a higher protection for the “KIND” family of marks. Merely changing the first part of the impugned mark and using the distinguishing family name (i.e., “KIND” in the present case) or characteristic is likely to cause confusion in the market.

20. From the averments made in the petition and the evidence on record, the petitioner has established that it is the prior registered proprietor and a prior user of the mark ‘MANKIND’ and ‘KIND’ family of marks since the year 1986 through its predecessor.

21. Not only is the trademark of the respondent no.1 confusingly/deceptively similar to the petitioner’s prior adopted, registered mark ‘MANKIND’ and ‘KIND’ family of marks but the nature of the goods of the petitioner and the respondent no.1 are identical, i.e. pharmaceuticals and medicinal preparations falling in class 5.

22. In view of the discussion above, it is clear that the impugned trademark has been adopted by the respondent no.1 dishonestly to trade upon the established goodwill and reputation of the petitioner and to project itself to be associated with the petitioner. Therefore, the continuation of the impugned registration on the Register of Trade Marks is in contravention of the provisions of Section 11 of the Act and is liable to be cancelled under Section 57 of the Act.

23. Accordingly, the present petition is allowed and the Trade Mark Registry is directed to remove the impugned registered trademark ‘LENOKIND’ bearing trademark registration no. 4225327 in class 5 from the



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Register of Trade Marks.

24. The Registry is directed to send a copy of the present order to the Trade Mark Registry at e-mail - llc-ipo@gov.in for compliance.

AMIT BANSAL, J

FEBRUARY 18, 2025

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