Newsletter

June – July 2015 Edition

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News from the Controller General of Patents, Designs and Trade Marks (CGPDTM)

ISO certification for Designs Office and Geographical Indications Registry

BSI India, a part of the BSI Group, a multinational business service provider whose principal activity is the production of standards and the supply of standards-related services, has honored the Design wing of the Indian Patent Office and the Geographical Indications Registry with ISO 9001-2008 certificates for their Quality Management Systems.

Recruitment Drive by the Indian Patent Office

The Indian Patent Office has published an advertisement for recruitment of Examiners for Patents and Designs. According to the advertisement, the Patent Office intends to recruit 459 Examiners. This is one of the most awaited moves by the Indian Patent Office as the recruitment will certainly reduce the backlog at the Patent Office and ensure speedy disposal of patent and design applications.

Decommissioning of the PCT-EASY functionality of PCT-SAFE

The International Bureau (IB) is taking steps to implement the decommissioning of the PCT-EASY functionality of the PCT-SAFE software with effect from 1 July 2015. PCT-EASY was introduced in 1998, and was intended to be an interim step prior to the development of a fully electronic filing system. PCT-EASY allowed a diskette (or now CD-R) containing bibliographic data and the abstract in text format to be provided, together with a printout of the request form and the application body in paper form, at a time when it was not possible to submit the request form and application body in electronic form. PCT-EASY became very popular and by 2003 was used for 45% of all international applications. However, during that year, fully electronic applications became possible at several receiving Offices and the use of PCT-EASY began to decline. It is now used in only about 2.5% of all international applications compared to 89% being filed in fully electronic format.

It is possible to file fully electronic PCT-SAFE applications with 26 e-filing receiving Offices, including the International Bureau and the applicants who file their international applications fully electronically benefit from a larger reduction in the international filing fee than that which is offered for applications filed using PCT-EASY.

Delhi High Court upholds validity of DASATINIB patent

The plaintiffs, Bristol-Myers Squibb Company, incorporated under the laws of the State of Delaware, USA, along with its subsidiary Bristol-Myers Squibb India Private Limited, a private limited company incorporated in 2004, engaged in development, production and marketing of pharmaceutical drug ‘DASATINIB’, an INN which is an anti-cancer drug used for the treatment of adults with chronic, accelerated, or myeloid or lymphoid blast phase chronic myeloid leukemia (CML) with resistance or intolerance to prior therapy including imatinib, as well as in the treatment of adults who have a particular form of acute lymphoblastic leukemia(ALL) called Philadelphia chromosome positive (Ph+) ALL, initiated an action against the defendants (BDR Pharmaceuticals International Private Limited), a private limited company engaged in the business of selling and/or offering for sale various generic pharmaceutical products and Active Pharmaceutical Ingredients (API), and one of its directors which were apprehending launch of a generic product which would infringe the claims of the patent IN 203937.

The plaintiffs contended that the patent 203937 in respect of the product is valid and subsisting and has a term of 20 years from 12th April, 2000 in India. Further, the product in question was approved by the US Food and Drug Administration on 28th June, 2006 and is presently sold in approximately 50 countries throughout the world. A marketing approval for DASATINIB was also granted by the Drug Controller General of India ("DCGI") on 30th August, 2006 to the plaintiff no.2, who has since that time been marketing DASATINIB under the brand name "SPRYCEL" across India. Ever since launch in India, the plaintiffs have addressed the access and affordability needs of the patients by an aggressive commercial Patient Access Program (PAP) through which price of the drug is reduced to a fraction of the Maximum Retail Price (MRP).

In December 2008, the plaintiffs became aware of the defendants’ intention of launching the generic product after obtaining the marketing approval from DCGI and in the apprehension of being infringed by the defendants, the plaintiff no. 1 filed a suit against the defendants on December 3, 2009 for the infringement of IN 203937. During the pendency of this suit, the defendants requested the plaintiffs for a voluntary license for IN 203937 to manufacture and market DASATINIB. The Court dismissed the defendants’ request of voluntary licence as they did not make efforts to obtain a licence from the plaintiffs on reasonable terms and conditions and restrained the defendants from manufacturing, selling, distributing, advertising, directly or indirectly any product which infringes the plaintiffs' registered patent 203937.

However, the defendants (allegedly acting through another person), without informing the plaintiffs or the Court obtained a manufacturing licence for DASATINIB tablets 20/50/70 mg from the Food and Drug Control Administration, Maharashtra and a manufacturing licence for producing the drug in bulk from the Food and Drug Control Administration, Gujarat.

On March 4, 2013, the defendants applied for a compulsory licence for IN 203937 before the Patent Controller and started advertising and offering for sale of DASATINIB Tablets under the head “Finished formulations” on its website. Further, in view of the apprehension that the defendants intended to circumvent the ad-interim injunction granted in the first suit and might introduce the drug by infringing the suit patent, the plaintiffs filed another suit on the basis of a fresh cause of action and earlier proceeding being four years old against the defendants in the nature of a *quia timet action* for the infringement of IN 203937 (“Second Suit”) on April 11, 2013.

The defendants averred that the suit patent is invalid as it is obvious, lacks utility (under section 64 (1) (g)) and does not fulfil the requirement of section 8 of The Patents Act, 1970. It stated that the suit patent claiming DASATINIB, is primarily a thiazolecarboxamide derivative and the same is obvious to a person skilled in the art. It also contended that the compounds claimed are mere derivatives and not patentable under section 3 (d) of The Patents Act, 1970. It alleged that the suit patent is merely a library of compounds, insufficient and vague. Further, that the supply of the claimed product by the plaintiffs in India was highly inadequate.

The defendants reiterated their arguments on the basis that the claimed product was available in the market but beyond the reach of the public. They also contended that the generic version was cheaper and available at a cost of Rs. 8,100 per month whereas the claimed product was available at a cost of Rs. 1,65,000 per month. Further, the plaintiffs were trying to perpetuate monopoly with multiple patents as the monohydrate version of the DASATINIB was not covered by the suit patent and was a matter of separate application.

While rendering its decision, the Court relied on the judgement of *Kuldip Singh versus Subhash Chander Jain and Ors*. and *Rohtas Industries Limited v. IHP. Co. Ltd.* wherein it was held that, if there is proof of an intention to infringe, apart from actual infringement and if it is established to the satisfaction of the Court that the alleged infringer is taking the invention claimed by the patent, then injunction is justifiable. The Court observed that the defendants had failed to justify their contention of non-availability of the drug in public. Rejecting the plea of obviousness, the argument of the sufficiency and inadequacy of the utility by the defendants, the objection under section 3(d) of the Patents Act raised, the Court opined that the plaintiffs have a *prima facie* case of valid patent and grave prejudice will be caused to the plaintiffs if the defendants are allowed to manufacture and market generic DASATINIB in which the patentee has the exclusive rights in IN 203937 under Section 48(a) of the Patents Act, 1970. The Court issued the same interim order which was passed on December 4, 2009 for the first suit restraining the defendants from manufacturing, selling, distributing, advertising, directly or indirectly any product which infringes the plaintiffs' registered patent 203937. Further, the Court held that the defendants are at liberty to move a fresh application for compulsory licence with the Controller of Patents or voluntary licence with the plaintiffs.

Comfort Inn regarded as a distinctive trade mark

The plaintiff initiated the present suit for permanent injunction restraining the defendants from infringement of trade mark and passing off. The plaintiff's business consisted of franchising, promoting and licensing high quality hotel services in various countries of the world. It held several trade mark registrations for its brands like Comfort Inn, Comfort Suites, Clarion, Quality, Sleep Inn, Main Stay Suites, Econo Lodge and Rodeway Inn. The trade marks relevant for the purpose of the suit are COMFORT, 'COMFORT INN' and the variants thereof. These marks appeared prominently in websites, travel brochures, letter heads and newspapers having circulation in India and had acquired high degree of distinctiveness due to long, continuous and extensive use so much so that COMFORT, COMFORT INN and COMFORT formative marks are among the most widely protected of the plaintiff's brands registered in over 143 countries across five continents.

The plaintiff noticed that the defendants were using the trade mark/trade name HOTEL RAJ COMFORT INN for a hotel in Hyderabad and had served a cease and desist notice in an endeavour to have them discontinue using plaintiff's trade/service mark COMFORT INN or COMFORT and their website www.hotelrajcomfortinn.com.The defendants sent a reply and attempted to justify their use of the offending trade mark/trade name.

In the written statement filed by the defendants, it was contended that the suit was not maintainable on various grounds *viz*:

- No infringement as the plaintiff is not holding a registration for 'Comfort Inn' in Class 42;
- The plaintiff had relied upon registration certificate under Form 2 which could not be used in legal proceedings;
- Also, the defendants were carrying on business at Hyderabad and the court had no territorial jurisdiction to entertain and decide the suit;
- There was an inordinate delay in filing the suit by the plaintiff;
- The word 'Raj' is defendant's family name, while 'COMFORT' and 'INN' are descriptive.

The Court relied on *Bloomberg Finance LP v Prafull Saklecha* and *Others* and held that a 'well known trade mark' can be protected even in relation to dissimilar goods/ services used by the defendants. Thus,a case of infringement of trade mark is made out by the plaintiff against the defendants. The Court further opined that the plaintiff has made out a classic case of passing off as the defendants were aware of the goodwill and reputation of the plaintiff at the time of adoption of the name of their hotel. Resultantly, the interlocutory application of the plaintiff was allowed and the defendants were restrained from using 'COMFORT INN'.

Government to allow foreign lawyers to arbitrate in India by amending statute

As a first step towards liberalization of legal services, the government would seek to pass an amendment to the Arbitration and Conciliation Act, that would allow foreign lawyers to come to India to act for their clients in arbitrations something which had been prohibited under the Advocates Act.

According to the proposed amendment, the arbitrator deciding on a commercial dispute will have to clear the case within a nine month time –frame, however the arbitrator will be free to seek an extension from the High Court. But in case of further delays, the High Court will be free to debar the arbitrator from taking up fresh cases for a certain period. This is a crucial amendment to the arbitration law as many foreign companies are said to be hesitant to do business in India because of long-drawn litigation.

India Poses hindrance to Colgate-Palmolive's bid to Patent mouthwash Formula

The Council of Scientific and Industrial Research's Traditional Knowledge Digital Library (CSIR-TKDL) claimed before the European Union Patent Office that a mouthwash containing extracts from the Myristica Fragrans herb could not be a subject matter of patent as it was used in traditional Indian medical practices to cure oral diseases. Proof in the form of references from ancient books was submitted which helped thwart attempts of the consumer goods giant, Colgate-Palmolive from patenting the mouthwash formula considering a known herb extract.

Supreme Court dismisses Special Leave Petition of the Union of India

In the Feb-March 2015 and April-May 2015 issues of our Newsletter, we had discussed the landmark decision of the Madras High Court (WP No.1256 of 2011) where it had:

- struck down certain key provisions of the Trade Marks Act, 1999;
- laid down the criteria for appointment of a Technical Member under the Trade Marks Act, 1999;
- held that a Technical Member under the Patents Act, 1970 shall not be appointed to the post of Vice-Chairman unless the criteria prescribed by it is met.

Aggrieved by the order, a Special Leave Petition (SLP) was filed by the Union of India before the Hon'ble Supreme Court of India. In a momentous step, on July 27, 2015, a Supreme Court two-judge bench dismissed Union of India's petition and upheld the validity of the order passed by the Madras High Court. It was observed by the Hon'ble Supreme Court that there is no legal and valid ground to interfere with the decision.

Glenmark gets a green signal to manufacture Linezolid API

The Delhi High Court *vide* order dated July 17, 2015, permitted Glenmark to continue manufacturing and selling "Linezolid API" used for drugs treating pneumonia and other bacterial infections. The Single Judge bench had issued an interim injunction restraining Glenmark from manufacturing, selling, offering for sale, advertising or directly or indirectly dealing in the production of linezolid. However, the same was vacated by the Division Bench *vide*order dated February 5, 2015 (covered in our newsletter of February March, 2015).

As per the present order (July 17, 2015), it is agreed upon by the parties that in terms of the expert report filed by Glenmark, the appellant company shall use the Glenmark processes which is virtually identical to the Upjohn process as indicated in the said report. It is also indicated in the said report that the Glenmark process and the Upjohn process are different from the process of preparation of linezolid, which is employed by Symed. Counsel for Glenmark further stated that Glenmark has not used and shall not use the patented process.

The court, clarified that Glenmark may use any other process which may be a development of the Glenmark process/Upjohn process as long as it does not infringe the said patented processes of the respondent. Accordingly, with these directions and objections, the Court disposed of the appeal.

No restraint on use of Multi Cherry

Indchemie Health Specialties Private Limited is the registered proprietor of the trade mark ‘CHERI’ for pharmaceutical preparations in class 5. The mark is mainly used for haematinic preparations used to cure iron deficiency and was sold in the form of syrup, tablets and capsules. The plaintiff claims to use the mark since 1987 and garnered extensive reputation and goodwill in the trade mark CHERI. In June, 2011, plaintiff had come across use of CHERI FOL by defendant no.1 and sent a cease and desist notice. In response, defendant no.1 claimed CHERRY to be common to the trade but offered to give up use of the offending mark. The launch of a new product MULTI CHERRY by the defendants in January 2014 led to another cease and desist notice by the plaintiff to the defendants. The defendants, however, refused to comply and defended their use of the words MULTI CHERRY for their multivitamin syrup.

The defendants claimed that their product was not a pharmaceutical preparation, but a mere dietary supplement. It is a proprietary food not meant for medicinal use, but to be used as per a dietician's recommendation. The plaintiff couldn’t prevent the defendants’ use of the mark “MULTI CHERRY” for such dietary supplement on the basis of the registration of the mark ‘CHERI’ limited to pharmaceutical preparations.

The Court delved into the question of how the word ‘CHERI’ fairs as a registered mark. It noted that it is nothing but a phonetic equivalent of common dietary word CHERRY and if it indicates an ingredient then it is surely a descriptive term. No one can possibly claim as exclusive property in the word. The High Court of Bombay opined that considering all the factors there was no concrete likelihood of deception or confusion between both the products. While the plaintiff’s goods were ‘drugs’ within the meaning of Drugs and Cosmetics Act, 1940 meant to be therapeutic in nature, the defendants’ product were ‘proprietary food’ covered under the Food Safety and Standards Act which were not for medicinal use. The prices of both the products were different and also their end uses. Moreover, the defendants had acquired sizeable reputation and goodwill in ‘MULTI CHERRY’ products. The Court evaluating the balance of convenience and noting that it was in favor of the defendants found no merit in the plaintiff’s interlocutory application.

Section 62, Copyright Act and Section 134, the Trade Marks Act revisited

The question for consideration in the present case is with regard to the place where a suit can be instituted by the plaintiff, India Performing Rights Society Ltd.

The plaintiff/appellant had filed a suit praying for relief against the defendants so as to prevent infringement of the rights of the plaintiff. The defendants own cinema halls in Maharashtra and Mumbai and the entire cause of action, as alleged in the plaint arose in Mumbai. The plaintiff, however had a branch office in Delhi and head office in Mumbai and as a matter of convenience, filed against the defendants at the High Court of Delhi. Objection was raised by the defendants with regard to the territorial jurisdiction of the court at Delhi. The Single Bench and the Division Bench of the High Court upheld the objection and held that the suit should have been filed in the court at Mumbai. The order was then questioned before the Supreme Court by the plaintiff/appellant.

It was submitted by the plaintiff that a special right has been conferred under section 62(2) of the Copyright Act and section 134 of the Trade Marks Act containing non obstante clause to the applicability of the CPC or any other law for the time being inforce. In addition, the plaintiff has also been conferred a right to sue where it carries on its business which cannot be whittled down by combining with it the cause of action. The plaintiff relied on the decision of the court in *Dhodha House V. S.K Maingi* to contend that under the aforesaid provision, accrual of cause of action wholly or in part is not necessary at a place where the plaintiff chooses to file a suit. The plaintiff also submitted that while interpreting section 62 of the Copyright Act and section 134(2) of the Trade Marks Act, the intention of the parliament is to be gathered from plain and natural meaning.
Respondents, however submitted that abuse of provisions of section 62 of the Copyright Act and section 134 of the Trade Marks Act cannot be permitted at the hands of multi-national corporations to harass the defendants.

The Court observed that the very intendment of the concerned provisions in the Copyright Act and the Trade Marks Act is the convenience of the plaintiff. The object is to ensure that the plaintiff is not deterred from instituting infringement proceedings “because the court in which proceedings are to be instituted is at a considerable distance from the place of their ordinary residence.” However, the provisions of section 62 of the Copyright Act and section 134 of the Trade Marks Act never intended to operate in the field where the plaintiff is having its principal place of business at a particular place and the cause of action has also arisen at that place so as to enable it to file a suit at a distant place where its subordinate office is situated though at such place no cause of action has arisen. Such interpretation would cause harm and would be juxtaposed to the very legislative intendment of the provisions so enacted.

The law which was governing before these provisions of law were passed was section 20 of the Code of Civil Procedure. It did not provide for the plaintiff to institute a suit except in accordance with the provisions of section 20. The defect/anomaly in existing law was inconvenience/ deterrence caused to the authors suffering from financial constraints on account of having to vindicate their intellectual property rights at a place far away from their residence or the place of their business. Thus, the remedy was provided by incorporating the provisions of section 62 of the Copyright Act. The provisions enabled the plaintiff to file a suit at the aforesaid places, but at the same time, did not enable plaintiff to take the defendants to farther place. The said provisions of law never intended to be oppressive to the defendants.

In the present case, the Court dismissed the appeal and held that the principal place of business is admittedly in Mumbai and the cause of action has also arisen in Mumbai. Thus, the provisions of section 62 of the Copyright Act and section 134 of the Trade Marks Act cannot be interpreted in a manner so as to confer jurisdiction on the Delhi Court to entertain such suits. The Delhi Court would have no jurisdiction to entertain it.

Bombay High Court reiterates delay per se not a valid ground to refuse protection

Plaintiffs were engaged in the business of jewelry. Plaintiff no.1 (Pranda Jewelry Pvt. Ltd) designs, markets and sold *inter alia* deities and religious symbols made out of gold sheets under the brand name 'Prima Art'. While plaintiff no1.created drawings for each of the articles on computers using specialized software through qualified graphic designers, plaintiff no.3 manufactured the same in Thailand. Plaintiff no. 1 and 2 imported and sold them in India. The plaintiffs claimed that they are entitled to reproduce the original artistic work in any material form including three dimensional depiction in any material. In August 2010, the plaintiffs learnt about infringement of their copyright in 22 product drawings by the defendants. Defendant no. 1 being the partnership firm and defendant nos. 2 to 7 are its partners and allegedly producers of identical gold articles of deities and religious symbols. The plaintiffs also claimed that their Head Sales was now the CEO of defendant no. 1.

The defendants, at the hearing of the notice of motion, contended that the artistic works of the plaintiffs are general in nature and common to trade and there is no originality in the works to enable the plaintiffs to claim any copyright in them. Further, the artistic works referred to by the plaintiff were designs, capable of being registered under the Designs Act, 2000, though not so registered and as per section 15 of the Copyright Act, 1957, the copyright in the designs had ceased after they were applied more than fifty times by an industrial process by the plaintiffs. Also, delay of over a year in bringing the action disentitles the plaintiffs to any interim relief.The Court found that defendants have used substantial and material copies of the plaintiffs' artistic works to reproduce the same in three dimensional form. Further, the Court on careful analysis and elucidation of various precedents observed that what is reproduced is the artistic work itself and that this work ought to enjoy full protection under the Copyright Act. Thus, any imitation of the said images in gold plates or indeed any material is clearly violative of the plaintiffs' copyright in them.

As to the defendants' contention that there is a delay on the plaintiffs' part in approaching the court which disentitles the plaintiffs to any interim relief, the court observed that delay *per se* is never considered as a ground in itself to refuse relief in an action to protect intellectual property. The defendants must allege a case of acquiescence or estoppel or special equities arising in favor of the defendants as a result of such delay.

The Court opined that work of the plaintiffs fell under the ambit of artistic work, hence needs to be protected against the infringement of the same. It was a clear case for the grant of interim relief and interim injunction was granted against the defendants.

Use of SHRI RAM: SRF Foundation and Another vs. Ram Education Trust

The Hon'ble High Court of Delhi recently delved into the interim application filed by the plaintiffs seeking interim injunction against the defendant from using the mark/name "SHRI RAM" in respect of schools. It is claimed that the plaintiffs' schools under the name "SHRI RAM" have carved out unique space as institutions of excellence and are well known for their value based innovative caring and child centered approach to educate young children and the institutions are popularly known as THE SHRI RAM SCHOOL. The plaintiffs claimed to be associated with schools at six different locations. In or around June 2011, the defendant opened "SHRI RAM GLOBAL PRE SCHOOL" right next to the plaintiff no. 1's school. Despite repeated letters from the plaintiffs, the defendant continued to open schools under the name "SHRI RAM" and had around 19 schools all over India.

As per the plaintiffs, they had no objection with the defendant's use of the mark "SHRI RAM", provided that the use was with respect to some other activity or service than in relation to services pertaining to schools, as this may lead to confusion and deception since the plaintiffs' claim to have acquired unique goodwill in the business and allowing the mark to be used by the defendant would be detrimental to the interest of the plaintiffs. The defendant, however alleged that the use of the mark "SHRI RAM" was a bona fide use. It also claimed that the plaintiffs cannot have the monopoly with respect to the mark 'SHRI RAM'. The plaintiffs cannot claim the prior user in respect of the educational institutions like school if the college under the mark SHRI RAM is being run prior to the use of the plaintiffs. The defendant claimed that the plaintiffs cannot claim the proprietorship and are not entitled to claim the monopoly of the mark/word SHRI RAM. Also, both the defendant and the plaintiffs had the concurrent right to use their family name "SHRI RAM" with respect to their respective schools. A pertinent point was also raised by the defendant that the names of their schools "SHRI RAM GLOBAL SCHOOL", "SHRI RAM PRE SCHOOL", and "SHRI RAM CENTENNIAL SCHOOL' were distinct from that of the plaintiffs' as their names make use of additional elements which clearly distinguish the school of the defendant from those of the plaintiffs. The court observed that in order to succeed in an action for passing off, four main primary requirements have to be satisfied by a party to seek the relief of injunction:-

i) Prior Use;
ii) Party which is claiming right must be the proprietor of the mark;
iii) Confusion of deception; and
iv) Delay, if any.

From the circumstances of the case, it was clear that the plaintiffs are the prior user of the name/ mark "SHRI RAM" in relation to the services of schools. As to the issue of confusion/deception and passing off, the court relied on *Laxmikant V. Patel vs. Chetanbhat Shah and Another*, where it was observed that an action for passing off will lie wherever the defendant company's name, or its intended name, is calculated to deceive, and to divert business from the plaintiffs, or to occasion a confusion between the two businesses.

If this is not made out, there is no case. In the present case, the defendant has many schools in the same vicinity as the plaintiffs, both in Delhi and Gurgaon. Moreover, the defendant had never been in the field of running of schools until the year 2011 when its first school was established. It adopted the trade mark “SHRI RAM” after 23 years of use of the same by the plaintiffs for its schools and it tends to create confusion and deception amongst the students, parents and large number of people in India when two sets of schools are operating under the same name.

There was however, unexplained delay of three years on the part of the plaintiffs in initiating the action, which is a relevant consideration for passing off action, the grant of the relief in which rests on the equitable considerations and is affected by the principle of applicability of acquiescence. The court has to weigh the comparative hardship of one party as against another and has to decide whether the injunctory relief is warranted or interim directions would suffice.

In order to safeguard the interests of the students and their family members who have already paid their fees and have taken admission in the school, the Court passed restricted interim order instead of injunction against the defendant. The defendant was allowed to continue the schools under the mark SHRI RAM, but directed to display/use a disclaimer that they have no connection or relation with the plaintiffs’ schools within a period of six months. Notwithstanding, the defendant was restrained from using the mark/name “SHRI RAM” in relation to schools which were under construction.

VOLT vs. BOLT

The Hon'ble Madras High Court rejected the application for interim injunction filed by Wipro Enterprise Limited (herein referred to as 'the plaintiff') against Heinz India Private Limited and others (herein referred to as 'the defendants') for using the mark 'VOLT' or similar sounding marks, in the course of their business and passing off .

The plaintiff, in the year 2012, had adopted and conceived the mark "BOLTS" and used it along with the house mark GLUCOVITA to market and sell a new segment of glucose based chewy tablets. In the year 2014, the plaintiff came across an identical product being marketed and manufactured by the defendants under the trade mark VOLT along with their brand name GLUCON-D. The plaintiff claimed it was the prior user of the trade mark "BOLTS" and the defendants not only adopted the nearly identical trade mark "VOLT" but also copied the color scheme, get up for packaging, pricing of the product, placement and manner of putting MRP and even the tagline 'INSTANT ENERGY ANYTIME ANYWHERE". The defendants had made a conscious copy of the get up of the product of the plaintiff with a view to trade upon the goodwill and reputation that have been built up by the plaintiff. The plaintiff also contended that the defendants adopted the tagline with expression "ENERGY OF GLUCON-D ANYWHERE ANYTIME" interchangeably. These similarities were not out of chance or coincidence but a mala fide, fraudulent attempt to ride on the plaintiff's reputation.

The defendants,*inter-alia*, argued that the mark BOLT / BOLTS are common generic expression over which no one can claim a standalone monopoly. Further, the plaintiff is not the prior user of the expression BOLTS and hence cannot claim any right or seek an injunction from the Court. Moreover, VOLT and BOLT does not seem to be similar or identical on all counts, viz. visually, phonetically, and structurally.

The Hon'ble High Court observed that there were lot of dissimilarities between the two marks. While the plaintiff was using the word 'BOLTS' along with its house name GLUCOVITA, the defendants used their mark VOLT, along with GLUCON-D. The mark BOLTS meant any sudden event, while VOLT is the SI unit of electromagnetic force. With respect to the tagline used by the plaintiff "INSTANT ENERGY, ANYTIME ANYWHERE", no material was produced before the Court to show that the plaintiff has advertised their products in the tagline "ANYTIME ANYWHERE". This term was found only on the jar containing the products of the plaintiff and not on the product. Further, no document was produced before the Court, which showed that the term was advertised extensively by the plaintiff. The Court, thus did not accept the submission of the plaintiff that the expression 'INSTANT ENERGY, ANYTIME, ANYWHERE…", found on the label of the plaintiff has to be protected by way of injunction.

The Hon'ble High Court concluded that the plaintiff did not make a *prima facie* case so as to be granted an order of interim injunction. Further, the balance of convenience did not lie in the plaintiff's favor. The issues which were involved in the case are to be decided at the time of trial.

Zara Tapas Bar restrained by Zara

In the present case, the plaintiff/applicant, INDUSTRIA DE DISENO TEXTIL, S.A., an internationally reputed company engaged in the manufacture, design, sale and the distribution of fashion and related lifestyle products in various classes of International Classification of goods and services sought and *interim* injunction restraining infringement of its trade mark/trade name Zara by the defendants, Oriental Cuisines Pvt. Ltd. who are in the business of restaurants.

It was averred by the plaintiff that it has been using the trade mark ZARA and its derivatives like ZARA KIDS, ZARA HOME, ZARA FOR MUM, ZARA MAN, ZARA WOMAN or TEXTURES ZARA on a global scale and the mark ZARA is one of the most valuable assets and same has been featured in to 50 brands among 100 most valued trade marks in the world as per the Interbrand ranking. It is thus a well know mark within the meaning of Section 2(1)(zg) of the Trade Marks Act, 1999. It was further contended by the plaintiff, that the defendants were using the plaintiff's trade mark Zara for their business with the generic expression, "TAPAS BAR", which is a name given to appetizers or snacks in Spanish cuisine. It was pleaded that adoption of the mark Zara in isolation does not provide a Spanish feel, the expression has no meaning in Spanish language and is neither a proper nor a common name in Spain. Thus, the concept TAPAS BAR by the defendants is fraudulent and harming the reputation and goodwill of the plaintiff's brand name ZARA.

The Court opined that the defendants' adoption of the mark Zara Tapas Bar and Zara, the restaurant and bar is fraudulent. If the defendants did not went to ride on the plaintiff's reputation, they would not have used the word ZARA prominently in the words ZARA TAPAS BAR or ZARA, THE BAR and RESTAURANT.

Pharmaceutical company awaits compulsory license for Saxagliptin

The present application is for grant of Compulsory License (CL) by Lee Pharma Limited for manufacturing and selling the product 'SAXAGLIPTIN' in India, which is protected and covered by Indian Patent No. 206543 titled 'A CYCLOPRPYL-FUSED PYRROLIDINE-BASED COMPOUND' granted on April 30, 2007 to Bristol-Mayers Squibb Company (BMS) of USA for a patent term of 20 years. By virtue of an Assignment Deed submitted in Indian Patent Office in 2014, BMS transferred the ownership rights in the Indian Patent No. 206543 to AstraZeneca AB. As a result the said product 'SAXAGLIPTIN' is marketed and sold in India by AstraZeneca AB in tablet dosage form as a single active agent under the brand name 'ONGLYZA' and also in combination with Metformin under the brand name 'KOMBIGLYZE XR' .

The Applicant, Lee Pharma Limited claims to be a pharmaceutical company involved in research and development, production, distribution, sales, marketing and export of pharmaceutical formation, intermediates and APIs for more than 17 years and sells its products in India as well as in more than 48 countries worldwide. It has developed the technology, infrastructure and facilities for industrial scale preparation of DPP4 inhibitor compound Saxagliptin. It has developed the capabilities to manufacture and sell Saxagliptin both as API and in tablet form. It has also applied for Drug Licence before the Drug Controller Administration, Govt. of Telangana to manufacture Saxagliptin tablets along with combination tablets of Saxagliptin and Metformin. It has the capacity to manufacture 10,00,000 tablets/day, ensuring that it is capable of fulfilling the requirements of the country and satisfying the requirements of the public of India.

The applicant has relied upon various grounds for a grant of compulsory licence which are:-

a) ***Voluntary License not granted*** - The applicant had made a request to the patentee for voluntary licence in 2014 to which the patentee initially sought certain clarifications about the applicant company and at the same time denied the applicant's submission that the Saxagliptin tablets are not available to the general public at reasonable affordable price and thereby the reasonable requirements of the general public is not being met. Even after exchange of correspondence between the parties, the applicant was not granted voluntary licence.

b) ***Invention not worked in India*** – Even after about eight years from the date of grant, the patentee has not taken adequate steps to manufacture Saxagliptin in India and make full use of the invention in India that is reasonably practicable.

c) ***Reasonable requirement of the public not satisfied*** – The quantity of the drug supplied by the patentee in the market only fulfills 0.23% as a result there is a shortage of more than 99% of total requirements. Hence, demand for the patented product has not been met to an adequate extent.

d) ***Product Imported, import cost and MRP in India*** - Saxagliptin is imported in finished dosage (tablet) form in packaged form. Cost of importing one tablet of ONGLYZA in India is only about Rs 0.80 (per tablet price), whereas, same tablet is being sold in the Indian market at a market price of about Rs 41-45/- per tablet. This clearly demonstrates the monopoly of patentee and high price of the tablet despite a small amount of cost incurred in manufacturing / importing a single tablet.

e) ***Product Exported*** - A majority of imported medicine is being exported back to foreign countries making this medicine virtually unavailable to Indian patients.

f) The working of the patented product in the territory of India is hindered by importation of the patented product by the patentee and those claiming under it.

The applicant, Lee Pharma Limited awaits response of the Controller.

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