

International Update

INDIA

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Deceptively similar trade marks have by and large met restraint, more so when these pertain to the pharmaceutical domain. A recent case of GlaxoSmithKline Pharmaceuticals Ltd. & Anr. v Sarath Kumar Reddy reiterates the principal of 'exacting judicial scrutiny' in case of pharmaceutical products. At the same time, interestingly, this case witnessed the Court's refusal of grant of punitive damages to the Plaintiff, marking this as a significant development.

The Plaintiffs - GlaxoSmithKline Pharmaceuticals Limited and Smithkline Beecham Limited (GSK group), engage in the business of manufacturing and marketing a wide range of pharmaceutical/ medicinal preparations and healthcare products, and are proprietors of several registrations for GSK and other related marks in various classes such as 1, 3, 5, 9, 10, 16, 21, 29, 30, 32, 35, 41 and 42. The said registrations are valid and still in force. In 2009, the Plaintiffs learnt of a company named GSK Life Sciences Private Limited through the records of the Registrar of Companies. On enquiries, it was found that the Defendant - Sarath Kumar Reddy, is a Director of the said company and that the company's registered office was a fake address and that no balance sheet or annual returns had been filed by the said company. Thereafter, the plaintiffs filed a complaint under the Companies Act to declare the company as defunct. The said complaint is stated to be pending.

On learning about the use of GSK as part of the trading style by the Defendant and

also as a trade mark similar to the one used by the Plaintiffs, a Cease & Desist notice was addressed to the Defendant which was responded to by stating that GSK in the company GSK Life Sciences Private Limited was an anagram taken after the Director's initials – Dr. Gadikota Sarath Kumar Reddy. This led to a case being filed in this court by the GSK group against this entity. In 2013, this court passed an ex parte ad-interim injunction restraining the defendant from using GSK or any other mark similar to Plaintiff's name/mark/GSK logo. The instant case adjudicates on the suit for permanent injunction moved by the Plaintiff, restraining infringement of trade mark, passing off, damages etc.

Perusing all material offered by the Plaintiffs, the Court agreed on their proprietorship over the GSK and related marks. The defendant's products were also offered to the Court for assessment of similarity re adoption and inscribing of the GSK logo. Holding the infringing products to be deceptively similar, the Court ruled in favor of the plaintiffs restraining the defendants from using GSK as part of their trading style and/or the similar logo by itself or in conjunction therewith.

The Plaintiffs had also prayed for grant of punitive damages. However, the court observed that besides the copies of packaging of infringing products, there was no other material which would indicate the extent of sales by the defendant. Further, the loss to Plaintiff, if any, on account of sales by the Defendant also could not be quantified. Thus, the Court rejected their prayer for grant of punitive damages. This is an interesting development and marks a shift from the recent trend.