

# Law Lore & Practice



Pharmaceutical  
Trade Marks Group

Dec 2015

## International Update

### India

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Trade marks concerning medicinal and pharmaceutical preparations usually undergo strict examination, and their similarity to prior marks is adjudged keeping in mind the doctrine of dangerous consequences. While disparity in goods is usually considered a valuable defence to objections on relative grounds, this argument is rendered challenging vis-à-vis pharmaceutical/medicinal goods given the consequences involved and a consumer driven perspective unwilling to compromise on adverse effects. It also means precedents differentiating between medicinal and pharmaceutical preparations are scarce. In this context, the Bombay High Court's June 2015 verdict in *Indchemie Health Specialities Pvt. Ltd v Intas Pharmaceuticals Ltd.* is a significant one.

The plaintiff, Indchemie Health Specialities Pvt. Ltd., manufactured pharmaceutical preparations treating iron deficiency and had been selling their product under the mark Cheri since 1987. On learning of the defendant's (Intas Pharmaceuticals Ltd.) use of Multi Cherry (since 2012) for multivitamin supplements, the plaintiff brought forth an action of infringement and passing off asserting its prior rights and seeking grant of injunction against the defendant's use of the said mark.

The defendant countered by making known the limitation imposed by the Registrar on Cheri - its specification had been restricted to 'pharmaceutical preparations' while 'medicinal preparations' had been struck off since Cheri/Cherry could be construed as descriptive of the latter on account of its medicinal properties. The defendant also argued that Cheri, a pharmaceutical

preparation, was dissimilar in nature to the product Multi Cherry, a dietary supplement. For its part, the plaintiff asserted that though its registration had been limited to 'pharmaceutical preparations', the statutory definition of infringement was wider and protected against misuse re identical and similar goods, provided there was likelihood of confusion.

The court held that as the plaintiffs had specifically given up a claim over 'medicinal preparations', the word 'similar' for the purposes of determining infringement in the case at hand would have to be construed more narrowly than in the usual course and rights over the mark Cheri could not be extended to other goods for which protection was never meant to be in the first place. Further the plaintiff's product was a pharmaceutical preparation governed under the Indian Drugs and Cosmetics Act, 1940, whereas the defendant's product was essentially a proprietary food product governed under Indian Food Safety and Standards Act, 2006. While the former was a 'drug', therapeutic in nature, and meant to be used 'as directed by a physician', the latter was a food product to be consumed on a dietician's recommendation and one which clearly disclaimed it could prevent or cure any disease. Considering these factors, the court held there was sufficient evidence to say that the goods of the plaintiff and defendant were dissimilar. In its opinion, the facts also established that likelihood of consumer confusion was unlikely. Thus, it refused to injunct use of Multi Cherry.

The court's nuanced reasoning is a welcome comment on the blurred line between pharmaceutical products and dietary supplements. However, whether the factors considered will be as apparent to consumers rendering them impervious to confusion, is a question only time will settle.