IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL IP SUIT NO. 231 OF 2015

Blue Cross Laboratories Private Limited ...Plaintiff
Verus
RB Remedies Private Limited & Anr. ...Defendants

Mr. Vinod Bhagat a/w Ms. Twisha Singh i/b Mr. Vinod A. Bhagat for the Plaintiff.
None for the Defendants.

CORAM	**: ARIF S. DOCTOR J.**
RESERVED ON	**: 4th DECEMBER 2025**
PRONOUNCED ON	**: 16th DECEMBER 2025**

JUDGMENT :

1. The present Suit is instituted for infringement of trade mark combined with a cause of action of passing off. The Plaintiff in the present Suit is a company incorporated under the Companies Act, 1956, having its registered office at the address mentioned in the cause title of the Plaint. The Plaintiff seeks a permanent injunction to restrict the Defendants from infringing the Plaintiff's registered trade mark "CEDON" and from using the trade mark "CEFDON" (**"the impugned mark"**) to pass off the Defendants' goods as and for those of the Plaintiff.

2. It is the case of the Plaintiff that the impugned mark is deceptively similar to the Plaintiff's registered trade mark "CEDON", and that both the marks are used in relation to the same goods, i.e., cough syrup, both being medicinal and pharmaceutical preparations and other like goods.

3. By an Order dated 27th January 2015, this Court granted the Plaintiff (i) leave under clause XIV of the Letters Patent, (ii) dismissed the Defendants' application under Order 7 Rule 11 of the Code of Civil Procedure, 1980 (CPC), and (iii) ad interim relief in terms of prayer (a) and (b) of Notice of Motion No. 392 of 2015 . The Defendants did not challenge the Order dated 27th January 2015, and thus the same attained finality.

4. Since, despite service of the Writ of Summons on both the Defendants, did not file any Written Statement the Suit was transferred to the list of undefended Suits. Accordingly, the Suit was taken up for hearing on 4th December 2025, under the caption For Final Hearing.

Submissions on behalf of the Plaintiff

5. Mr. Bhagat, the learned counsel appearing on behalf of the Plaintiff submitted the Plaintiff is the registered proprietor of the trade mark "CEDON" under registration No. 714042 dated 14th August 1996, which registration was valid and subsisting at all times. He then submitted that the Plaintiff coined and adopted the word "CEDON" in 2004 and that the Plaintiff has at all times since the year 2004 been continuously using "CEDON", as its trade mark in relation to its dry cough syrup all over India and

had carved out a niche for itself in the pharmaceutical industry by its distinctive products. He then submitted that the Plaintiff had done enormous business under the trade mark "CEDON", and the said mark had become distinctive of the Plaintiff's products, and thus valuable common law rights had accrued in favour of the Plaintiff.

6. Mr. Bhagat then submitted that in August 2014, the Plaintiff discovered that Defendant No.1 was using the mark "CEFDON" (**"the impugned mark"**) in respect of its antibacterial dry syrup used to treat cough (**"impugned product"**). The impugned product bearing the impugned mark was being manufactured by one Origin Formulations Pvt. Ltd, Uttarakhand for Defendant No.1. It was thus that he submitted that the Plaintiff had, on 18th August 2014, issued a cease and desist notice to the Defendant No.1 and to its then manufacturer, i.e., Origin Formulations Pvt. Ltd., asking them to refrain from using the impugned mark "CEFDON" for the manufacture of a similar product. The cease and desist notice mentioned that the impugned mark used by the Defendants was almost identical/confusingly similar to the Plaintiff's registered trade mark "CEDON". Whilst the Defendant No.1, despite receipt of the said notice, refused to stop using the impugned mark "CEDON", Origin Formulations Pvt. Ltd. informed the Plaintiff that it was manufacturing the said medicinal preparation bearing the impugned mark for and on behalf of the Defendant No.1 and agreed that it shall stop manufacturing the said medicinal preparation bearing the impugned mark "CEFDON".

7. On 18th November 2014, the Plaintiff came across Defendant No.1's impugned product bearing the impugned mark "CEFDON" being sold in the markets of Warangal District in Telangana and accordingly procured Defendant No.1's impugned product bearing the impugned mark "CEFDON" from a retailer. Upon reviewing the impugned product, the Plaintiff discovered that the same was being manufactured by Defendant No.2 and was also in respect of identical description of goods , which was identical to the product being manufactured by the Plaintiff.

8. Mr. Bhagat then pointed out that the Plaintiff entire registered trade mark "CEDON" had been subsumed into the impugned trade mark "CEFDON". He thus submitted that the Defendants' use of the impugned mark "CEFDON" was therefore clearly mala fide and dishonest and that the Defendants were clearly attempting to encash on the Plaintiff's goodwill and reputation. He submitted that the Defendants have clearly infringed the Plaintiff's trade mark "CEDON" and have attempted to pass off their goods as and for those of the Plaintiff and have thereby caused loss and damage to the Plaintiff. It was thus that the Plaintiff was seeking a permanent injunction restraining the Defendants from infringing the Plaintiffs trade mark and passing off by the impugned products as being that of the Plaintiff, in addition to damages of Rs. 51,000/-.

9. Mr. Bhagat then placed reliance upon the decision of the Hon'ble Supreme Court in the case of ***K.R. Chinna Krishna Chettiar v. Shri Ambal & Co.***[1], to point out

1 (1969) 2 SCC 131

that deceptive similarity must be assessed by comparing the marks as a whole, focusing on their distinctive and essential features, including the phonetic resemblance, which may create a real likelihood of confusion even without visual similarity. Similarly, he pointed out that this Court in the case of ***Hiralal Prabhudas v. Ganesh Trading Co.***[2], reiterated well-established principles that (i) marks are remembered by overall impressions rather than precise details; (ii) the test is that of an average purchaser with imperfect recollection; (iii) both visual and phonetic similarity must be considered; (iv) microscopic comparisons are impermissible; and (v) the broad, salient features and overall similarity determine deceptive similarity.

10. Mr. Bhagat submitted that the Plaintiff's representative, Ms. Nivedita Bagwe, had led evidence by filing her Affidavit of Evidence in lieu of examination-in-chief in support of the case pleaded in the Plaint. He also pointed out that the documents relied upon by the Plaintiff had been duly marked in evidence and that the Defendants, despite having been served with the Writ of Summons, had not appeared and contested the Suit. He thus pointed out that the Plaintiff's evidence was uncontroverted and that the Plaintiff was therefore entitled to the relief as prayed for, including costs.

11. Mr. Bhagat then submitted that, the present Suit being a Commercial Suit, the regime of costs under Section 35 of the Code of Civil Procedure, 1908, as amended by Section 16 of the Commercial Courts Act, 2015, is attracted. He pointed out that under

2 AIR 1984 Bom 218

the amended Section 35, the Court is required to award realistic rather than nominal costs, and the Court must also take into consideration (i) the conduct of the parties, (ii) whether a party has succeeded on part or the whole of the case, and (iii) whether any reasonable offer to settle was made and unreasonably refused. He submitted that these factors, read with the statutory mandate that costs should ordinarily follow the event, place an obligation on the Court to ensure that a successful litigant is compensated for the actual costs incurred. In the present case, he submitted that the Defendants' conduct was clearly dishonest since the Defendants had adopted a deceptively similar mark and had, despite ample opportunity, failed to appear, much less made an offer to settle the matter. He submitted that the Court must take all these factors into consideration, including the fact that the products involved were pharmaceutical preparations, where public health and safety considerations were involved, which warrants a stricter award of costs, both to compensate the Plaintiff and to deter similar conduct by others.

12. After going through the original documents, the Plaint, and hearing the submissions of Mr. Bhagat, Learned Counsel for the Plaintiff, I am satisfied that the Plaintiff has made out a case which entitles the Plaintiff to the reliefs sought for. The Plaintiff is the registered proprietor of the trade mark "CEDON", as is evidenced from the registration and renewal of the Registration Certificate appended at Exhibit B and B1 to the Plaint. The Plaintiff has also pleaded and proved through the evidence of Plaintiff Witness - 1, i.e., Mrs. Nivedita Bagwe (Senior Manager of the Plaintiff), that

the Plaintiff is the prior user of the said trade mark and for the same, reliance is placed on the sales invoices from the year 2005 appended at Exhibit D to the Plaint. The Plaintiff has also demonstrated continuous, extensive, and exclusive use of the mark over the years, as reflected in its steadily increasing turnover from Rs. 13,93,54,708/- in 2014/2015 to Rs. 25,65,22,695/- in 2024/2025. The Plaintiff has also produced chartered accountant certificates substantiating its commercial use of the mark. The evidence establishes that "CEDON" has acquired distinctiveness and is exclusively associated by the public and the trade with the Plaintiff alone. Thus the Plaintiff has established goodwill in its registered trade mark "CEDON". There can be no manner of doubt that the Plaintiff's registered trade mark "CEDON" has been entirely subsumed in the impugned mark "CEFDON". Equally, there can be no doubt that there is both visual and phonetic similarity between "CEDON" and "CEFDON" and that the marks are deceptively similar and that the likelihood of confusion and deception is evident. This likelihood of confusion and the evident deception are more than likely to cause consumers to purchase the Defendant's product and thereby cause loss to the Plaintiff. The Plaintiff's reliance upon the decision in the case of ***K.R. Chinna Krishna Chettiar v. Shri Ambal & Co.*** and ***Hiralal Prabhudas v. Ganesh Trading Co. is*** entirely apposite. Thus, the Plaintiff has made out a strong case of both passing off and infringement and is therefore entitled to the reliefs as prayed for.

13. The present Suit, being a commercial suit, is governed by the provisions of the Commercial Courts Act, 2015. Section 35 of the Code of Civil Procedure, 1908, as

amended by Section 16 of the Commercial Courts Act, mandates that costs shall ordinarily follow the event and be awarded to the successful party. The provision further requires the Court, while determining costs, to have due regard, *inter alia*, to the conduct of the parties.

14. In the facts of the present case, the record demonstrates that the Defendants have been negligent in prosecuting the matter and have, by their conduct, compelled the Plaintiff to incur substantial and wholly avoidable expenditure. Despite being duly served, the Defendants have chosen not to appear or contest the Plaintiff's claim. There is, therefore, nothing on record to even remotely suggest that the adoption of the impugned mark **"CEFDON"** by the Defendants was honest or bona fide.

15. On the contrary, the Defendants' complete failure to contest the proceedings is a relevant circumstance which lends further credence to the Plaintiff's case that the adoption of the impugned mark is entirely dishonest and actuated by bad faith. In these circumstances, having regard to the conduct of the Defendants and the statutory mandate under Section 35 of the CPC as amended, the Plaintiff is entitled to an award of compensatory costs.

16. Hence, I pass the following order:

ORDER

i. The Suit is decreed in terms of prayer clauses (a) to (c).

ii. The Defendants shall each pay a sum of Rs. 5 Lakhs as costs to the Plaintiff within a period of 8 weeks from today.

iii. In the event, the Defendants do not pay the costs within a period of 8 weeks from today, then the said sum will be payable with interest at the rate of 8% per annum.

iv. The Plaintiff shall be at liberty to apply for the return of the original documents.

v. The Suit is disposed of in these terms.

[ARIF S. DOCTOR, J.]