



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL IP SUIT NO. 520 OF 2016

Blue Cross Laboratories Private Limited

...Plaintiff

Versus

Alto Healthcare Private Limited & Anr.

...Defendants

Mr. Siddhant Gupta a/w. Ms. Prachi Shah, Ms. Apeksha Mehta and Ms.
Rashi Thakur i/b. Mr. Vinod A. Bhagat for the Plaintiff.

None for the Defendants.

CORAM : ARIF DOCTOR, J.
RESERVED ON : 8th MAY 2026
PRONOUNCED ON : 17th JUNE 2026

JUDGMENT:

1. The present Suit is instituted for infringement of the Plaintiff's registered trade marks viz. 'MEFTAL-SPAS' and 'MEFTAL' as well as the Plaintiff's registered and subsisting copyright in the artwork depicted on its 'MEFTAL-SPAS' strip and carton combined with a cause of action of passing off.
2. It is the case of the Plaintiff that the Defendants are using 'MEFIAL-SPAS'

(“**the impugned mark**”) and the depicted artwork thereunder (“**the impugned artistic work**”), which is deceptively/substantially similar to the Plaintiff’s registered trade marks as well as its artwork, and such are used by the Defendants in relation to analgesic and antispasmodic preparations, both being medicinal and pharmaceutical preparations.

3. It is noted that this Court had, vide an Order dated 18th November 2015, passed an *ex-parte* order of ad-interim injunction against the Defendants in terms of prayer clause ‘(a)’. Thereafter, by an Order dated 30th November 2015, this Court *inter-alia* granted the Plaintiff : (i) leave under Clause XIV of the Letters Patent, (ii) ad-interim reliefs in terms of prayer clauses ‘(b)’ and ‘(c)’ of Notice of Motion No. 1071 of 2016. Vide a further Order dated 19th September 2016, this Court confirmed the ad-interim Orders as aforementioned and the Plaintiff’s Notice of Motion was made absolute in terms of prayers ‘(a)’, ‘(b)’ and ‘(c)’. The said orders were never challenged and thus the same have attained finality.
4. Defendant No. 1 had, on 31st March 2017, filed its Written Statement, however, pursuant thereto, Defendant No. 1 has never appeared.

Accordingly, the Suit against Defendant No. 1 has proceeded *ex-parte*.

Despite service of the Writ of Summons on Defendant No. 2, no Written Statement was filed by Defendant No. 2. The Suit was thus transferred to the list of undefended Suits against the Defendant No. 2 vide order dated 15th July 2016.

5. The Plaintiff has filed an affidavit of evidence in lieu of examination-in-chief dated 27th March 2026 of Ms. Nivedita Bagwe along with an affidavit of documents, a compilation of documents and a certificate under Section 65-B of the Evidence Act, 1872. The Plaintiff has also filed an affidavit of evidence in lieu of examination-in-chief dated 27th March 2026 of Mr. Suresh Mahalingam. The affidavits of evidence and the documents filed in the compilation of documents have been marked in evidence. Accordingly, the Suit was taken up for hearing on 07th May 2026, under the caption For Final Hearing.

Submissions on behalf of the Plaintiff:

6. Mr. Gupta, the learned counsel appearing on behalf of the Plaintiff, submitted that the Plaintiff is a company incorporated under the Companies

Act, 1956. He submitted that by way of the present Suit, the Plaintiff has sought a permanent injunction to restrain the Defendants from infringing and from using the mark ‘MEFIAL-SPAS’ (“**the impugned mark**”) and the depicted artwork thereunder (“**the impugned artistic work**”) and from passing off the Defendants’ goods as and for those of the Plaintiff.

7. Mr. Gupta submitted that the Plaintiff is the registered proprietor of the trade marks ‘MEFTAL’ and ‘MEFTAL-SPAS’ under registration Nos. 384238 and 538416, respectively, both in class 05 (“**Plaintiff’s marks**”), which registrations are valid and subsisting to date. He then submitted that the Plaintiff’s trade mark ‘MEFTAL’ is a coined and an invented word, first conceived, adopted and used since the year 1981 and that in the year 1982 the Plaintiff had adopted and commenced using a ‘MEFTAL’ variant, being ‘MEFTAL-SPAS’, for use in relation to its analgesic and antispasmodic preparations, and both the said trade marks have been in continuous use since then. He submitted that the trade mark ‘MEFTAL-SPAS’ had carved out a niche for itself in the pharmaceutical industry by its distinctive products.

8. Mr. Gupta submitted that the Plaintiff's 'MEFTAL-SPAS' tablets are packed and sold in strips and cartons bearing original works of art which were designed, developed and created in the years 2004 and 1982, respectively. He submitted that the Plaintiff is the registered proprietor of the copyright in the original artistic work of 'MEFTAL-SPAS' depicted on its strip under the provision of the Copyright Act, 1957, vide registration No. A-80641/2007 dated 18th September 2007 ("**Plaintiff's artistic work**").
9. Mr. Gupta then submitted that Plaintiff's marks combined with its artistic work have been extensively used by the Plaintiff and thus the same have become distinctive of the Plaintiff's products, and thus valuable common law rights have accrued in favour of the Plaintiff.
10. Mr. Gupta submitted that in October 2015, the Plaintiff discovered that Defendants were using the impugned mark, i.e., 'MEFIAL-SPAS', in respect of its analgesic and antispasmodic preparation ("**impugned product**"), from Gorakhpur, Uttar Pradesh. He submitted that the impugned product bearing the impugned mark was being marketed by Defendant No. 1 and manufactured by Defendant No. 2, and therefore, the Plaintiff effected a

purchase of the impugned product bearing the impugned mark from a retailer, for which no invoice was issued.

11. Mr. Gupta then pointed out that the Defendants have lifted the whole of the Plaintiff's trade mark, i.e., 'MEFTAL-SPAS', and have merely replaced the fourth letter, i.e., 'T', with the letter "I", to make up the impugned mark 'MEFIAL-SPAS', which is deceptively similar to the Plaintiff's trade marks. He then submitted that the Defendants have copied the entire artistic work appearing on the 'MEFIAL-SPAS' carton of the Plaintiff's which is in fact original artistic work registered and owned by the Plaintiff. He further submitted that the Defendants have also copied the blue and red colour scheme for depicting the impugned products on their label on its strips and have also copied the geometric design bordering the said impugned mark, and, infact the Defendants have copied the entire packaging of the Plaintiff's product under the 'MEFTAL-SPAS' mark. The rival marks are reproduced herein below for the purpose of comparison:

Plaintiff's Product	Defendants' Product
	
	

12. Mr. Gupta submitted that the Defendants' use of the impugned mark, impugned artistic work and copying the Plaintiff's packaging for their products is clearly mala fide and dishonest. He submitted that it is evident from the perusal of the rival products that the Defendants were attempting to encash on the Plaintiff's goodwill and reputation, and thus the Defendants have clearly infringed the Plaintiff's trade mark, its original artistic work and its packaging, and the Defendants have attempted to pass off their goods

as and for those of the Plaintiff and have thereby caused loss and damage to the Plaintiff. He thus submitted that the Plaintiff was seeking a permanent injunction restraining the Defendants from infringing the Plaintiff's trade mark, copyrights and passing off the impugned products as being that of the Plaintiff, in addition to claiming damages of Rs. 1,00,000/-.

13. Mr. Gupta 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 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 has, in the case of *Hiralal Prabhudas v. Ganesh Trading Co.*², reiterated the 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

¹ (1969) 2 SCC 131.

² AIR 1984 Bom 218.

considered; (iv) microscopic comparisons are impermissible; and (v) the broad, salient features and overall similarity determine deceptive similarity. He then placed reliance upon the decision of this Hon'ble Supreme Court in the case of *Parle Products (P) Ltd. v. J. P. and Co., Mysore*³, to point out two marks should not be placed side by side to find out if there are any differences in the design and is so, whether they are of such character as to prevent one design from being mistaken for the other and that it would be enough if the impugned mark bears such an overall similarity to the registered mark as would be likely to mislead a person usually dealing with one to accept the other if offered to him.

14. Mr. Gupta submitted that the Plaintiff's representatives, Ms. Nivedita Bagwe and Mr. Suresh Mahalingam, had led evidence by filing their Affidavits 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, have not appeared and contested the Suit. He

³ (1972) 1 SCC 618.

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.

15. Mr. Gupta then submitted that, the present Suit being a Commercial Suit, the regime of costs under Section 35 of the Code of Civil Procedure, 1908 ("CPC"), as amended by Section 16 of the Commercial Courts Act, 2015, is applicable and costs should follow the event, as the Court is required to ensure that a successful litigant is compensated for the costs incurred on litigation. He pointed out that under the said provision, the Court is required to award realistic rather than nominal costs, and the Court must also take into consideration the conduct of the parties. In the present case, he submitted that the Defendants' conduct was clearly dishonest since the Defendants had adopted a deceptively similar mark depicted under an impugned pirated artwork and had, despite ample opportunities, failed to appear, much less justified their adoption of the impugned mark and artistic work. He submitted that the Court must take all these factors into consideration, including the fact that the products involved are pharmaceutical preparations, where public health and safety considerations

are involved, which warrants a stricter award of costs, both to compensate the Plaintiff and to deter similar conduct by others.

Reasons and conclusion:

16. After going through the documents, the Plaintiff, hearing the submissions of the learned counsel for the Plaintiff and further upon a perusal of the rival marks and labels, I am satisfied that the Plaintiff has made out a case which entitles the Plaintiff to the reliefs sought. I say so for the following reasons:

A. It is clearly evident that the Defendants have simply copied the whole of the Plaintiff's trade mark 'MEFTAL-SPAS' except for one letter, 'T', with the letter 'I' to form the impugned mark 'MEFIAL-SPAS'.

Comparison of the rival products makes it plain that the impugned mark and the artistic work are deceptively similar to the Plaintiff's trade marks and artistic work. It is clear that the Defendants have also copied the blue and red colour scheme packaging of the Plaintiff's products and its trade dress on the packaging and the body of the impugned products.

I am also of the view that besides the stark visual similarity between the Plaintiff's and the Defendants' impugned products, there evidently

exists a phonetic resemblance between the Plaintiff's trade marks viz., 'MEFTAL' and 'MEFTAL-SPAS', and the impugned mark 'MEFIAL-SPAS', which is likely to cause confusion and deception amongst the unwary members of the trade and public. Thus, there can be no manner of doubt that the visual, phonetic and deceptive similarity between the Plaintiff's products and the impugned products demonstrate that the Defendants have blatantly imitated the Plaintiff's products.

- B. It is clear that the Plaintiff is the registered proprietor of the trade marks 'MEFTAL' and 'MEFTAL-SPAS', as is evidenced from the legal proceeding certificates appended at Exhibit PW – 1/4 and PW – 1/5, respectively, and such registrations are valid and subsisting. Furthermore, the Plaintiff is the registered proprietor of the copyright in the original artistic work of 'MEFTAL-SPAS' depicted on its strip, as is evidenced from the copyright registration certificate appended at Exhibit PW – 1/8. Importantly, the Plaintiff has also shown through the evidence of Plaintiff's Witness No. 1, that the Plaintiff is the prior and continuous user of the trade marks 'MEFTAL' and 'MEFTAL-SPAS'

and for the same, reliance is placed on a statement of Plaintiff's duly certified sales figures, the sales invoices from the year 1991 are appended at Exhibits PW – 1/9, PW – 1/10 and PW – 1/11, respectively. The Plaintiff has also demonstrated use of the trade marks 'MEFTAL' and 'MEFTAL-SPAS' overseas, and for the same, reliance is placed upon a list giving sales figures for the products sold in overseas countries for the period from 2001-02 to 2015-16 under the trade mark 'MEFTAL-SPAS', appended at Exhibit PW – 1/13, and also upon a few export invoices appended at Exhibit PW – 1/14. The Plaintiff has led evidence of Plaintiff's Witness No. 2, i.e., Mr. Suresh Mahalingam (Company Secretary of the Plaintiff), substantiating the sale figures of the Plaintiff. Therefore, it is plain that the Plaintiff's marks and artistic works of 'MEFTAL-SPAS' have acquired distinctiveness and are exclusively associated by the public with the Plaintiff alone, and the Plaintiff has also established goodwill in its registered trade marks and artworks as aforesaid.

C. Crucially, the Plaintiff has demonstrated the visual, phonetic and

deceptive similarity between the Plaintiff's marks, artistic work and the impugned mark and artistic work. Impugned products are clearly an imitation of the Plaintiff's products, and there exists a likelihood of confusion and deception amongst the rival products, and such confusion is likely to cause consumers to purchase the Defendants' product and thereby cause loss to the Plaintiff. The Plaintiff's reliance upon the decisions in the case of *K.R. Chinna Krishna Chettiar, Hiralal Prabhudas* and *Parle Products (P) Ltd.* are 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. Moreover, the Plaintiff has, in the present case, claimed for damages to the tune of Rs. 1,00,000/- (Rupees One Lakh only), however, the Plaintiff has failed to lead any evidence in support of such claim. Thus, in my view, the Plaintiff is not entitled for the relief of damages.

D. The present Suit, being a commercial suit, is governed by the provisions of the Commercial Courts Act, 2015. Section 35 of the CPC, 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.

E. 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 'MEFIAL-SPAS' by the Defendants was honest or bona fide.

F. 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.

17. Hence, for the reasons mentioned above, I pass the following order:

ORDER

- i. The Suit is decreed in terms of prayer clause ‘(a)’ to ‘(e)’.
- ii. Each of the Defendants shall pay a sum of Rs. 5,00,000/-
(Rupees Five Lakhs only) 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 on such Application being made.
- v. The Suit is disposed of in the above terms. Interim
Applications, if any, are accordingly disposed of

[ARIF S. DOCTOR, J.]