



**BEFORE THE SPECIAL JUDGE, COMMERCIAL COURTS AND
6th ADDITIONAL DISTRICT & SESSIONS JUDGE AHMEDABAD
(RURAL) AT MIRZAPUR, AHMEDABAD.**

Commercial Trade Mark Suit No.20 of 2022

La Renon Healthcare Private LimitedPlaintiff.

V E R S U S

Stallion Laboratories Private Limited & Ors.Defendants.

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Appearances:-

Learned Senior Advocate Mr. Devang Nanavati along with Ld. advocates
Ms.J.B.Shah, Mr.Luv Virmani, Ms. Bitika Sharma for the plaintiff.

Learned Advocate Mr.B.D. Shukla for Defendant No.1.

Defendant Nos. 2 & 3- Ex-parte.
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-.:ORDER BELOW EXH.-5:-

1. Plaintiff has filed the present suit for seeking permanent injunction against defendants restraining the violation, infringement and passing off of statutory and common law rights of plaintiff in the trademark "RENOLOG" as the defendants are alleged to be using the trademark "RENALOG" which is identical and deceptively similar to the prior used registered trademark of the plaintiff "RENOLOG" alongwith one application for interim injunction i.e. present application under order *inter alia* with the following prayers:-

*(A)During the pendency and final disposal of the present Suit, the Hon'ble Court may be pleased to pass order of **Temporary Injunction** restraining the Defendants, their principal officers, assignees, its Partners, Agents, dealers, distributors, stockists, retailers, servants, family members, and persons as the case may be, from manufacturing, using, marketing, advertising, importing, exporting, dealing, selling, promoting, offering forsale, and/or directly or indirectly using the impugned mark "RENALOG" or any other trademark as may be deceptively similar to the Registered Trademark of the Plaintiff "RENOLOG", amounting to infringement of its Registered Trade Mark "RENOLOG";*

- (B) During the pendency and final disposal of the present Suit, the Hon'ble Court may be pleased to pass order of **Temporary Injunction** restraining the Defendants, their principal officers, assignees, its Partners, Agents, dealers, distributors, stockists, retailers, servants, family members, and persons as the case may be, from manufacturing, using, marketing, advertising, importing, exporting, dealing, selling, promoting, offering for sale, and/or directly or indirectly using the impugned mark "RENALOG" or any other trademark as may be deceptively similar to the Registered and prior used Trademark of the Plaintiff "RENOLOG", amounting to passing off of the Defendants' goods as those of the Plaintiff;
- (C) During the pendency and final disposal of the present Suit, the Hon'ble Court may be pleased to pass order of Temporary Injunction restraining the Defendants from in any manner allowing misuse of the registered mark/ name and/or any of the other registered brands and names of the Plaintiff whatsoever so as to result in the violation of Plaintiff's statutory and common law rights;
- (D) During the pendency and final disposal of the present Suit, the Defendants, their principal officers, assignees, its Partners, Agents, dealers, distributors, stockists, retailers, servants, family members, and persons as the case may be, directed to make disclosures of Books of Accounts, Balance Sheets and Assets under the impugned mark, and the defendants be restrained from disposing of or dealing with the assets in any manner whatsoever including in a manner which may adversely affect the Plaintiff from recovering damages, costs or other pecuniary remedies from the Defendants as this Hon'ble Court may award;
- (E) During the pendency and final disposal of the present Suit, the Hon'ble Court be pleased to pass an Interim Order directing the Defendants to give delivery of the infringing goods of the defendants, including the impugned packaging, promotional materials, stationery, dyes, block, etc., bearing the impugned mark "RENALOG" to an authorized representative of the Plaintiff for destruction/erasure;
- (F) During the pendency and final disposal of the Suit as well as the present Interim Application, the Hon'ble Court may be pleased to pass an ex-parte, ad-Interim Injunction in terms of (a) to (e) above;
- (G) Cost of the present proceedings may be ordered against the Defendants and in favour of the Plaintiff;
- (H) Any other and further order that may be deemed fit and appropriate in the facts and circumstances of the case be passed in favour of the Plaintiff and against the Defendants.

2. Ld. Senior Advocate Mr.Devang Nanavati appeared along with Ld. Advocate Ms.J.B.Shah on behalf of plaintiff and argued the matter. During arguments, Ld. Senior Advocate for the plaintiff reiterated the contents of application under order by referring the contents of plaint and documents relied upon by the plaintiff and further submitted that

the plaintiff is a leading Indian Pharmaceutical Company which is an integrated health care provider, established in the year 2007 having vast experience and expertise in the field of Pharmaceutical products and services especially for chronic diseases management.

It is further submitted that the plaintiff is the first company in Nephrology to foray into the domain with the focus on early stage Chronic Kidney Disease (CKD) patients and is having pan India presence, with about 1776 number of employees and plaintiff started with a capital of INR 8,38,000/- in the year 2007 and at present the net worth of the plaintiff is approximately INR 538.48 crores. It is further submitted that the plaintiff is proprietor of several registered and unregistered trademarks. It is further submitted that plaintiff's research center is a Government approved laboratory which has been accorded recognition of Department of Scientific and Industrial Research (DSIR), a Department of science and technology, under the aegis of Government of India.

It is further submitted that the plaintiff has conducted extensive research and manufactured multiple pharmaceutical products which covers a range of treatment including Hemodialysis, Renal Medicine, Transplant and Renal Nutrition and presently the plaintiff has more than 315 SKUs marketed and distributed across the country and exported to several other countries. It is further submitted that the consolidated annual turnover of the Plaintiff for the financial year 2021-2022 was approximately INR 716.6918 Crores and plaintiff has become one of the top 50 pharmaceutical companies of India within the first 10 years of its inception and in or around April 2020, the plaintiff ranked 34th in the market with a promising growth rate. It is further submitted that the plaintiff has been selling its products through wide and extensive marketing network spread over the length and

breadth of various States and Nations worldwide including 22 distributors and approximately 1375 stockist.

It is further submitted that plaintiff has incurred expenses in several Crores of rupees in building its commendable position and strong reputation in the Health Care Industry. It is further submitted that the plaintiff is a registered proprietor of trademark 'RENOLOG' in classes 5 and 30 and the same was coined, invented and first adopted by the plaintiff in the year 2007 and this trademark was coined by the plaintiff by combining the word "**RENO**" from their company name La **Renon** and the word "**LOG**" from the drug Alpha Keto Analogue and using the same continuously, extensively and uninterruptedly since 22.06.2009. It is further submitted that the plaintiff's product "RENOLOG" is a tablet comprising Alpha-Keto Analogues and Essential Amino Acids and is used as a nutritional supplement for treating chronic kidney disease and consumption of tablet "RENOLOG" is indicated for preventing and treating renal damages due to protein metabolism disorder in Chronic Kidney Disease and in this way it delays the risk of undergoing long-term dialysis.

It is further submitted that the product sold under the trade "RENOLOG" is one of the most preferred medicine/pharmaceutical product prescribed by medical practitioners in India, Cambodia, Nepal, Uganda, Zambia, Tanzania, Nigeria and many more nations and is number one brand of Alpha-Keto Amino Acid in India with market share of 49.5% as per AIOCD Awacs data. It is further submitted that the plaintiff has sold, supplied and distributed more than 15,15,96,340 tablets under the trademark 'RENOLOG' till date.

It is further submitted besides registration in India trademark RENOLOG is registered in several other countries worldwide as per details mentioned in Paragraph 15 of the present application. It is

further submitted that the defendants are using the identical and deceptively similar trademark "RENALOG" with malafide intention to encash the goodwill and reputation earned by the plaintiff by putting their hard work, research in making brand over period of time and hence are infringing the registered trademark as well as passing off their goods as that of the plaintiff.

It is further submitted that very clearly and dishonestly the defendants have copied the plaintiff's trademark 'RENOLOG' by merely removing the alphabet 'O' and replacing it with 'A' for its identical pharmaceutical products in the same segment containing the same ingredient Keto Analogues and essential amino acids with the malafide intention to ride upon the goodwill and reputation of the plaintiff. It is further submitted that even as per their trademark registration application filed by the defendant no.1 (dated 05.10.2020) they are claiming to use the same since the year 2018 and upon publication of the same in the trademark plaintiff has filed its notice of opposition and defendant no.1 has stated in the user affidavit that the goods sold by the defendant no.1 under the trademark "RENALOG" are sold in India and are also being exported across the globe.

It is further submitted that the promotional expenses including advertisement for popularizing the products of the plaintiff including products sold under the trademark "RENOLOG" through different media publicity is running in crores as reproduced in Paragraph No.22 of the present application and sale figures of complete range of products sold under trademark "RENOLOG" is as reproduced in Paragraph 23 of the present application.

It is further submitted that the plaintiff is having good prima facie case in his favour as the plaintiff has coined, adopted and used the trademark "RENOLOG" for the first time, registered on 03.09.2007 and has been

used since 22.03.2009 and is using the same openly, extensively and continuously since its launch and balance of convenience also lies in favour of the plaintiff as the defendant no.1 as per their own application for registration have started using the same since the year 2018. Considering the so much similarity in the name of the registered trademark of plaintiff vis a vis the mark/name adopted by the defendants, and the ingredients both the products having there is every possibility and confusion in the minds of public at large that defendants are selling the products on behalf of plaintiff and/or are associated with plaintiff in any manner and it would adversely affect the business of plaintiff and would cause irreparable loss and injury to the plaintiff in terms of money as well as in terms of reputation and hence, the present application be granted and defendants be restrained from committing an act of infringement of trademark as well as passing off their goods as that of plaintiff till the final disposal of the present matter.

3. Though the Opponent Nos. 2 and 3 were duly served with the notice to the present application and a service affidavit in this regard has also been filed by the Ld. Advocate for the plaintiff, but, no one appeared on behalf of Opponent Nos. 2 and 3 therefore, they have been proceeded ex-parte by this court vide order dated 03.09.2022.
4. In pursuance of Service of notice the Defendant No.1 appeared through its Ld. Advocate Mr.B.D. Shukla and filed reply to the present application along with the written statement vide Exh.25 and 24 respectively. During arguments Ld. Advocate for the Defendant No.1 has vehemently opposed the present application and thereafter has shown the willingness of defendant no.1 for amicable resolution of the dispute and submitted that Defendant No.1 has no objection if the present application is granted in favour of the plaintiff.

5. As per records joint application Exh.36 has been filed by the plaintiff and defendant No.1 under Order 23, Rule 3 of the Civil Procedure Code for recording the terms of settlement agreed between the parties and passing of consent decree against defendant no.1 and in favour of plaintiff.
6. I have heard Ld. advocate for the parties and have perused the entire judicial record.
7. Upon perusal of record it appears that the plaintiff is a registered proprietor of trademark 'RENOLOG' and is using the same since 22.06.2009. It further transpires from the record that the plaintiff's product "RENOLOG" is a medicinal tablet comprising Alpha-Keto Analogues and Essential Amino Acids and is used as a nutritional supplement for treating chronic kidney disease and consumption of tablet "RENOLOG" is indicated for preventing and treating renal damages due to protein metabolism disorder in Chronic Kidney Disease. It has been further alleged that the defendants are using the identical and deceptively similar trademark "RENALOG", by merely removing the alphabet 'O' and replacing it with 'A' for its identical pharmaceutical products in the same segment containing the same ingredient Keto Analogues and essential amino acids with the malafide intention to ride upon the goodwill and reputation of the plaintiff and with an intention to en-cash the goodwill and reputation earned by the plaintiff by putting their hard work, research in making brand over period of time and hence are infringing the registered trademark as well as passing off their goods as that of the plaintiff.

It appears that the trademark "RENOLOG" has been registered on 03.09.2007 and has been used since 22.03.2009 and is being used openly, extensively and continuously since its launch and defendant no.1

as per their own application for registration have started using the same since the year 2018.

It further appears that the promotional expenses including advertisement for popularizing the products of the plaintiff including products sold under the trademark "RENOLOG" through different media publicity is running in crores as per Paragraph No.22 of the present application and plaintiff is having good sales by selling products under trademark "RENOLOG" is as mentioned in Paragraph 23 of the present application.

8. Trade-mark/device mark RENALOG applied to be registered by defendant no.1 appears to be identical and deceptively similar to the prior used, registered trade-mark/device mark of the plaintiff RENOLOG. Similar services and products (pharmaceutical services/products) are likely to be provided by the defendants under the identical/deceptively similar disputed trademark RENOLOG, and because of identical/deceptively trade-mark and identical services, there is every possibility of deception and confusion in the minds of people and public at large that the defendants are associated with the plaintiff in any manner and/or are providing services on behalf of plaintiff.
9. Similarity of so much extent in both the trade-marks/device marks cannot be a coincidence when the plaintiff is in the business of the pharmaceutical services since past more than one decade and defendants have just entered into market. There appears to be dishonest intention on the part of defendants to en-cash the goodwill and reputation earned by the plaintiff over the years and to ride upon the same for earning illegal profits by using identical/deceptive similar trademark RENALOG by merely removing the alphabet 'O' and replacing it with 'A' for its identical pharmaceutical products in the same segment containing the same ingredient.

10. In the judgment of **Midas Hygiene Industries (P) Ltd. Vs. Sudhir Bhati, 2004 0 Supreme (SC) 84**, Hon'ble Apex Court has observed in para 5 that

"5. The law on the subject is well settled. In cases of infringement either of trade mark or of copyright, normally an injunction must follow. Mere delay in bringing action is not sufficient to defeat grant of injunction in such cases. The grant of injunction also becomes necessary if it prima facie appears that the adoption of the mark was itself dishonest."

11. The Hon'ble Apex Court in the matter titled as **Laxmikant V. Patel Vs. Chetanbhai Shah, AIR 2022 SUPREME COURT 275** has observed in Para 10 as under :

"10.The law does not permit any one to carry on his business in such a way as would persuade the customers or clients in believing that the goods or services belonging to someone else are his or are associated therewith. It does not matter whether the latter person does so fraudulently or otherwise. The reasons are two. Firstly, honesty and fair play are, and ought to be, the basic policies in the world of business. Secondly, when a person adopts or intends to adopt a name in connection with his business or services which already belongs to someone else it result in confusion and has propensity of diverting the customers and clients of someone else to himself and thereby resulting in injury."

12. The Hon'ble Apex Court in the matter titled as **Wander Ltd. & Anr. Vs. Antox India Pvt. Ltd., 1991 (11) PTC 1 (SC)** has observed in Para 9 as under :

"9.The object of the interlocutory injunction, it is stated is to protect the plaintiff against injury by violation of his rights for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the "balance of convenience lies." The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima facie. The court also, in restraining a defendant from exercising what he considers his legal right but what the plaintiff would like to be prevented, puts into the scales, as a relevant consideration whether the defendant has yet to commence his enterprise or whether he has already been doing so in which latter case considerations somewhat different from those that apply to case where the defendant is yet to commence his enterprise, are attracted."

13. A person just to earn some amount of monetary benefit cannot be permitted to play with the health and trust of the consumers/public when he is doing so dishonestly, fraudulently and with malafide intention by imitation of some prior used registered trade mark.
14. Considering the overall facts & circumstances of the present matter, documents placed on record by the plaintiff, after hearing the arguments of Ld. advocate for the plaintiff and Ld. Advocate for the defendant no.1, considering the judgments relied upon by the Ld. advocate for the parties and in the light of discussions held herein above, this Court is of the view that plaintiff has established his prima-facie case as they are registered owner and prior user of the trademark RENOLOG and the balance of convenience also lies in its favor as the defendants are new entrant in the market, and plaintiff may suffer irreparable loss and injury if the temporary injunction is not granted whereas no such injury may be caused to the defendants being the new entrants in the market.
15. Hence, in the considered opinion of this court temporary injunction till the final disposal of the suit is required to be granted in favour of the plaintiff and against the defendants. Therefore, in the interest of justice, the following final order is passed:-

:-O R D E R:-

- The present interim Injunction application at **Exh.5** of the plaintiff is hereby **partly allowed**.
- The defendants, their principal officers, assignees, its Partners, Agents, dealers, distributors, stockists, retailers, servants, family members and persons are hereby **temporarily restrained** from manufacturing, using, marketing, advertising, importing, exporting, dealing, selling, promoting, offering for sale and/or directly or indirectly using the impugned mark "RENALOG" or any other trademark as may be deceptively similar to

the Registered Trademark of the plaintiff "RENOLOG" amounting to infringement of its Registered Trademark "RENOLOG" and amounting to passing off of the Defendants' goods as those of the plaintiff and are further temporarily restrained from misusing the registered mark/name and/or any of the other registered brands and names of the Plaintiff whatsoever so as to result in the violation of plaintiff's statutory and common law rights, till the pendency of the present suit.

- The present order will remain in operation till the final disposal of the suit.
- No order as to costs.

Signed & Pronounced in open court on this 24th day of November, 2022.

[S.S.P. Jain]

Special Judge, Commercial Court
6th Addl District & Sessions Judge,
Ahmedabad (Rural) at Mirzapur.
UIC No.GJ01599.

Date :24.11.2022.
Place:Ahmedabad.
A.V.Jani

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