



2025:DHC:2611



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: April 08, 2025
Pronounced on: April 16, 2025

+ **C.A.(COMM.IPD-TM) 7/2024, I.A. 1990/2024-Stay & I.A. 1991/2024-Exp**

MANKIND PRIME LABS PRIVATE LIMITEDAppellant

Through: Mr. Hemant Daswani, Ms. Saumya Bajpai, Ms. Pranjal and Mr. Kunal Prakash, Adv

versus

REGISTRAR OF TRADE MARKSRespondent

Through: Ms. Nidhi Raman, CGSC with Mr. Debasish Mishra, Adv

CORAM:
HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

Preface:

1. The appellant, by the present appeal under *Section 91* of the Trade Marks Act, 1999¹ read with *Section 151* of the Code of Civil Procedure, 1908 and read with *Section 13* of the Commercial Courts Act, 2015, seeks to assail the impugned order dated 17.10.2023 passed by the learned Examiner of Trade Marks, Trade Mark Registry, New Delhi², whereby its application no.4804262 for the registration of mark "**CROSSRELIEF**" in Class 5 of the Act has been rejected.

¹Hereinafter referred as "*the Act*"

² Hereinafter referred as "*impugned order*"



Brief Factual Matrix:

2. The appellant is a company incorporated under the Indian Companies Act, 2013 and is a subsidiary of Mankind Pharma Limited, the fifth-largest pharmaceutical company in India.

3. The appellant, on 02.01.2021, applied for registration of the mark “**CROSSRELIEF**” (word) in Class 5 of the Act on a ‘*proposed to be used*’ basis. The respondent, on 13.01.2021, issued an Examination Report raising an objection under Section 11(1) of the Act to the effect that “...*the mark is identical with or similar to earlier marks in respect of identical or similar description of goods and because of such identity or similarity there exists a likelihood of confusion on the part of the public. Hence, the above application is liable to be refused...*” and cited the following trademarks:-

APPL. NO.	CLASS	CONFLICTING MARK	JOURNAL No.	PROPRIETOR NAME	PROPRIETOR ADDRESS	STATUS	TM IMAGE
1008164	5	CROSS LINE	1316	KURISH A. CEMENTWALA	112, AEASH DASHAN, VAKOLA MARID ROAD, SANTACRUZ (E), MUMBAI - 400 055.	Opposed	
APPLICATION DATE 09/05/2003 12:19:00 GOODS/SERVICE checks for insecticides included in class 5							
2079588	5	CROSS	1028	M/S. COROMANDEL AGRICO PVT. LTD.	2ND FLOOR, 7- COMMUNITY CENTER EAST OF KAILASH NEW DELHI-65.	Registered	
APPLICATION DATE 03/01/2011 GOODS/SERVICE HERBICIDES							
3713384	5	HILLCROSS	1043	HEALTH CARE LLP.	RAM R SHARMA, PLAT NO. A-2, C/32A, P. V RD, SHREE KR. (KRISHAN APARMENT, VIDYAPEETH ROAD), VARANASI 221010, UTTAR PRADESH, INDIA.	Registered	
APPLICATION DATE 28/12/2017 13:42:37 GOODS/SERVICE MEDICINAL AND PHARMACEUTICAL PREPARATIONS.							
4295759	5	DEVICE		EROSHIEE MERCHANTISE PRIVATE LIMITED	26, RAMKRISHNA PALLY, 2ND FLOOR, MUFUNDAPUR, KOLKATA - 700099	Objected	
APPLICATION DATE 17/09/2019 GOODS/SERVICE PHARMACEUTICAL, VETERINARY AND SANITARY PREPARATIONS, DERMETIC SUBSTANCES ADAPTED FOR MEDICAL USE, FOOD FOR BABIES, PLASTERS, MATERIALS FOR DRESSINGS, MATERIALS FOR STOPPING TEETH, DENTAL WAX, DISINFECTANTS, PREPARATION FOR DESTROYING VERMIN, FUNGICIDES, HERBICIDES.							
4346390	5			EANDREQUILA BANUMANTHA RAO, PROPRIETOR, TRADING AS PLANTA PRODUCTS	D.No.25-348, Adityavari Street, R. Agastyaon, Chokur - 522 004 (A.P), India.	Objected	
APPLICATION DATE 13/11/2019 18:19:33 GOODS/SERVICE PESTICIDES.							

PRIVADA R MENON
For REGISTRAR OF TRADE MARKS



4. Thereafter, the respondent passed the impugned order dated 17.10.2023, relevant portions thereof are reproduced under:-

“...The rights conferred by registration of trademark is subject to the rights of the prior application/prior user of the marks. The mark taken in its entirety is significantly identical with and/or deceptively similar to the cited marks. Also the goods/services in respect of which the applicant is seeking registration are the goods/services of same description as those of the cited marks. Therefore the balance of convenience is clearly in favor of the cited marks. Hence the Objections:

The mark applied for registration is identical with/similar to earlier trademarks on record, as mentioned in the Examination report and by similarity of marks as well as similarity of goods and services covered under such marks, there exists a likelihood of confusion in the mind of public. As such the registration of the mark is objectionable under Section 11(1) of the Trade Marks Act 1999

After perusal of all the documents on record and submission made by the applicant/ authorised agent, it is concluded that applied mark is not registrable because of the reason stated as above. Hence application no 4804262 cannot be accepted and refused accordingly.”

5. Aggrieved thereby, the appellant has preferred the present appeal.

Position qua the Respondent:

6. The respondent, despite being duly served has neither filed a reply despite being granted repeated opportunities. As such, the right to file a reply of the respondent is closed.

7. This Court is thus, proceeding to hear the arguments of learned counsel for the appellant on merits.

Submissions of the Appellant:

8. Based on the pleadings, Mr. Hemant Daswani, learned counsel for the appellant submitted that the appellant has honestly adopted and coined mark



“**CROSSRELIEF**” in course of trade and that the same possesses several unique features rendering it highly and inherently distinctive.

9. Learned counsel submitted that the mark “**CROSSRELIEF**” of the appellant is a portmanteau of two terms: ‘**CROSS**’, a word commonly used in medical industry to signify medical aid, and ‘**RELIEF**’. Therefore, as per him, there can be no monopoly and/ or exclusivity over the term “**CROSS**”, Moreover, in cases where such term, which is not only descriptive but also *publici juris*, it is a settled principle of law that customers tend to disregard the common feature and pay more attention to uncommon features of the mark. For the aforesaid, he placed reliance upon *J.R. Kapoor v. Micronix India*³, *Indo-pharma Pharmaceuticals Works Ltd. v. Citadel Fine Pharmaceuticals Ltd.*⁴. He further submitted that when used in relation to medicinal, pharmaceuticals, and veterinary preparations including, dietary, nutritional and vitamin food supplements in *Class 5* of the Act, the mark “**CROSSRELIEF**” of the appellant is a wholly arbitrary word, bearing no reference to the character or quality of goods.

10. As per learned counsel for the appellant, the learned Examiner failed to appreciate that even if the individual components of the said mark “**CROSSRELIEF**” of the appellant are generic, their combination can result in distinctive composite mark as applied for by the appellant, as it has its own commercial identity capable of distinguishing appellant’s goods from others. Relying upon *Disposafe Health & Life Limited & Ors. v. Rajiv Nath*

³1994 Supp (3) SCC 215

⁴1998 SCC OnLine Mad 414



&Anr.⁵, and citing marks such as ‘Microsoft’ and ‘Infosys’, he submitted that such portmanteau words have previously also been protected as trademarks in India.

11. He further submitted that it is a settled principle of law that the registrability of a trademark must be assessed as a whole, in its entirety and without dissecting it. Also, as per learned counsel there exist discernible differences between the mark “**CROSSRELIEF**” of the appellant and the cited mark(s) in the Examination Report, when assessed as a whole. Therefore, the refusal to register the mark “**CROSSRELIEF**” of the appellant on the ground that it is identical or similar with the cited mark(s) in respect of identical or similar description of goods, and that it is likely to cause confusion, is misplaced and unfounded. For this, he placed reliance upon *F. Hoffmann-La Roche & Co. Ltd. v. Geoffrey Manners & Co. Pvt. Ltd.*⁶ and *Sidhant Kapur v. The Registrar of Trade Marks*⁷.

12. For all the aforesaid reasons, it is the case of the learned counsel for the appellant that the mark “**CROSSRELIEF**” of the appellant as applied for, should proceed for registration.

Submissions of the Respondent:

13. As noted hereinabove, there is no denial to the pleadings and/ or submissions made in support thereof by learned counsel for the appellant.

⁵2025 SCC OnLine Del 1271

⁶(1969) 2 SCC 716

⁷C.A. (COMM IPD-TM) 32/2021



Analysis & Findings:

14. This Court has heard Mr. Hemant Daswani, learned counsel appearing on behalf of appellant and has also gone through the relevant documents on record along with the relevant judgments cited by the appellant during the course of arguments.

15. Before proceeding to adjudicate the present matter on merits, as specified in *Section 11(1)* of the Act which is pertaining to “**Relative grounds for the refusal of registration**”, a trademark is not registrable if it is *identical* or *similar* to earlier trademarks and is used in relation to similar goods and services. The trademark applied for must not cause likelihood of confusion on the part of public.

16. Adverting to the facts herein, though the mark “**CROSSRELIEF**” of the appellant is a portmanteau of two words, ‘**CROSS**’ and ‘**RELIEF**’ but they cannot be dissected and read/ taken separately. More so, since the mark “**CROSSRELIEF**” of the appellant is admittedly a composite singular mark, it has to be taken/ read as a whole. Also, the said mark “**CROSSRELIEF**” of the appellant is not a colloquial term and does not appear in the Dictionary. The said mark “**CROSSRELIEF**” of the appellant is when read together/ as a whole, has no meaning. In fact, it is completely an arbitrary, fanciful term coined by the appellant.

17. While dealing with the same issue, the Hon’ble Supreme Court in *F. Hoffmann-La Roche & Co. Ltd. v. Geoffrey Manners & Co. Pvt. Ltd.* (*supra*) has held as under:-



“13. It is true that the word “Dropovit” is coined out of words commonly used by and known to ordinary person knowing English. But the resulting combination produces a new word, a newly coined word which does not remind an ordinary person knowing English of the original words out of which it is coined unless he is so told or unless at least he devotes some thought to it. It follows that the word “Dropovit” being an invented word was entitled to be registered as a trade mark and is not liable to be removed from the Register on which it already exists.”

[Emphasis Supplied]

18. Moreover, since the mark “**CROSSRELIEF**” of the appellant, when read/ taken as a whole, is not open to dissection. In fact, the principle of anti-dissection is now well-settled with a consistent line of judgments passed by Court(s) from time to time. Lately, a Co-ordinate Bench of this Court in **Ticona Polymers, Inc. v. Registrar of Trade Marks**⁸, while dealing with similar issue has reiterated the same principle while by holding as under:-

“12. It is well settled that a mark cannot be dissected into its individual parts while examining its entitlement to registration. Though Section 17(1) of the Trademarks Act statutory embodies this anti-dissection principle in the context of infringement proceedings, the principle would apply, mutatis mutandis, even at the stage when the mark is examined for its entitlement for registration as it is only the factum of registration which brings, in its wake, the privileges that follow, including protection against infringement.”

[Emphasis Supplied]

19. Also, the term ‘**CROSS**’, being descriptive of the medical aid in the pharmaceutical industry, is generic in nature and also *publici juris*, over which no one can claim monopoly and/ or exclusivity and its use as a prefix by others in the medicinal field is common and justified. Moreover, while

⁸2023 SCC OnLine Del 1234



comparing the marks, the consumers are likely to ignore such common element of the Mark i.e., “CROSS” and will focus on the distinctive element of the mark. While dealing with the issue of grant of injunction over the generic terms the Hon’ble Supreme Court in ***J.R. Kapoor v. Micronix India (supra)***, held as under:-

“6. There are two things which impress us. Firstly, the appellant is not manufacturing any one product such as the boosters, which has been mainly taken into consideration by the High Court. He is producing various electrical and electronic apparatus in many of which micro-chip technology is used. Even the boosters which he manufactures and sells are of two types, viz., transistorised boosters and integrated circuit boosters whereas the respondent-plaintiff manufactures aerial boosters only of the first type. Thus micro-chip technology being the base of many of the products, the word ‘micro’ has much relevance in describing the products. Further, the word ‘micro’ being descriptive of the micro technology used for production of many electronic goods which daily come to the market, no one can claim monopoly over the use of the said word. Anyone producing any product with the use of micro-chip technology would be justified in using the said word as a prefix to his trade name. What is further, those who are familiar with the use of electronic goods know fully well and are not likely to be misguided or confused merely by, the prefix ‘micro’ in the trade name....”

[Emphasis Supplied]

20. In similar vein, a Division Bench of the Madras High Court in ***Indo-pharma Pharmaceuticals Works Ltd. v. Citadel Fine Pharmaceuticals Ltd. (supra)*** has also reiterated the similar stand as follows:-

“43. The two rival marks ‘ENERJEX’ and ‘ENERJASE’ contain the common feature ‘Enerj’ which is not only descriptive but also publici juris. Therefore, a customer will tend to ignore the common feature and will pay more attention to uncommon features, i.e., ‘Jex’ and ‘Jase’. These two cannot be said to have such phonetic similarity so as to make it objectionable.”



21. Furthermore, although the mark “**CROSSRELIEF**” of the appellant incorporates the generic pharmaceutical term ‘**CROSS**’ as one of its elements, but when assessed as a whole, compositely, it possesses a distinctive commercial identity. The mark “**CROSSRELIEF**” of the appellant, when used in relation to medicinal, pharmaceuticals, and veterinary preparations, is a wholly arbitrary term, bearing no reference to the character or quality of goods.

22. Before parting, it is noteworthy that the mark “**CROSSRELIEF**” of the appellant, when viewed/ read/ assessed/ taken as a whole, is phonetically, visually and structurally different from the cited mark(s) in the Examination Report by the respondent. Thus, as per this Court, if the mark “**CROSSRELIEF**” of the appellant is allowed to proceed for registration, there is hardly any cause for it to create any confusion amongst the members of the trade, much less, the consumers/ general public at large.

Conclusion:

23. Accordingly, the appeal is allowed and the impugned order dated 17.10.2023 passed by learned Examiner of Trade Marks, Trade Mark Registry, New Delhi, is set aside,

24. In view of the above pending applications are disposed of.

25. Resultantly, the mark “**CROSSRELIEF**” applied for registration vide trademark application no. 4804262 by the appellant is liable to proceed for registration.

26. Needless to say, the registration of the composite mark



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“**CROSSRELIEF**” shall not confer any exclusive right over any individual component/ part of the mark i.e. ‘**CROSS**’ or ‘**RELIEF**’ upon the appellant.

27. A copy of this judgment be forwarded to the Registrar of Trade Marks for compliance.

SAURABH BANERJEE, J

APRIL 16, 2025/Ab