



2024:DHC:7430



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

% **Reserved on: September 12th, 2024**
Pronounced on: September 26, 2024

+ **CS(COMM) 369/2023**

SUN PHARMACEUTICAL INDUSTRIES LTD.Plaintiff

Through: Mr. Sachin Gupta, Mr. Rohit Pradhan,
Ms. Prashansa Singh, Mr. Ajay Kumar
and Ms. Archana, Advocates

Versus

**J.B. CHEMICALS AND PHARMACEUTICALS LTD.
& ANR.Defendants**

Through: Ms. Shwetashree Majumder, Mr. Prithvi
Singh and Mr. Vardaan Anand,
Advocates

**CORAM:
HON'BLE MR. JUSTICE SAURABH BANERJEE**

J U D G M E N T

I.A. 10769/2023-Stay

1. The plaintiff vide the present application seeks grant of an ad interim injunction for restraining the defendants from infringing its registered trademark RACIRRAFT along with other ancillary reliefs.

Factual narration:

2. The plaintiff commenced the business of marketing pharmaceutical products as a proprietary firm in 1978. In 1982, it became a partnership firm under the name and style of M/s. Sun Pharmaceutical Industries to manufacture, deal in and trade into pharmaceutical goods, preparation and



allied goods and services. Thereafter, on 01.03.1993, it was converted into a Joint Stock Company and was incorporated under the Companies Act, 1956 under the name and style of Sun Pharmaceutical Industries Ltd.

3. Today, the plaintiff is a duly registered company under the Companies Act, 2013 engaged in marketing drugs and formulations in more than 150 countries under its extensive range of trademarks/ brand names and has been referred in that trade circle as SUN/ SUN PHARMA.

4. The plaintiff coined, adopted and applied for registration of the mark RACIRRAFT in Class 5 on 17.01.2022 on a “*proposed to be used*” basis and thereafter, has been using it with respect to its medicine, which is a drug containing a combination of salts namely, alginic acid, calcium carbonate and sodium bicarbonate and which is used for the treatment of acidity and heartburn.

5. The trademark RACIRRAFT has acquired distinctiveness and goodwill and reputation due to its extensive and continuous use since 2022.

6. Though the defendant no.1 is a company incorporated in the year 19.04.2004, the defendants have unethically and unlawfully adopted the impugned mark RANRAFT. The defendants being in pharmaceutical business, were well aware of the plaintiff’s mark RACIRRAFT being used for medicines to treat the same ailment, thus, having seen the success of the plaintiff’s product, the defendants have adopted the impugned mark.

7. Despite thereto, the defendant no.1 applied for registration of the mark ‘RANRAFT’ under application bearing no.5479733 dated 03.06.2022 on a “*proposed to be used basis*” which has been objected by the Trade Marks



Registry under *Section 11(1)* of the Trade Marks Act, 1999¹ citing a registered mark RINIRAFT under Registration No. 5101827 dated 24.08.2021, which is belonging to a third party, as a conflicting mark.

Submissions of plaintiff:

8. The defendants are liable to be enjoined to protect the public interest at large considering that the goods in question are medicinal products and the consumers ought to be protected against confusion or deception qua source of drugs, more so, since the plaintiff has no control, access or supervision over the mode of manufacture, working conditions, technical expertise, plant and machinery, hygienic conditions and the raw material used by the defendants for manufacture, packaging and sale of the medicinal preparation under the impugned mark. Any deficiency in the efficacy of the product or any health hazard caused to the consumers, by use of the product marketed and manufactured by the defendants under the impugned mark, will directly and adversely affect and cause irreparable prejudice, damage and injury to the goodwill and reputation of the plaintiff.

9. Relying upon *Midas Hygeine Industries Pvt. Ltd. Vs. Sudhir Bhatia & Ors.*², it is submitted that now that the plaintiff has obtained a registration qua the trademark RACIRAFT and the defendants are infringing the same, injunction must follow.

¹ Hereinafter referred to as “Act”

² (2004) 2 SCC 90



10. Thereafter, relying upon *United Biotech vs Orchid Chemicals*³, it is submitted that marks have to be compared wholistically and specific elements must never be dissected while striking a comparison as that is against the Anti-Dissection Rule. Similarly, relying upon *South India Beverages vs. General Mills 2014*⁴, it is submitted that the Court should not engage in ‘*technical gymnastics*’ to find minor differences inter se the conflicting marks.

11. Then, relying upon *Corn Products vs. Shangrila Foods*⁵, it is submitted that the test of average intelligence and imperfect recollection should be applied when comparing marks, moreover, since in the present case the prefix and suffix are the same with mere replacement of 'CI' by 'N' for creating confusion in the minds of the consumers.

12. Also, relying upon *Cadila Health Care Ltd. vs. Cadila Pharmaceuticals Ltd.*⁶, it is submitted that whence the conflicting marks are qua pharmaceutical products, as in the present case, then, considering the public interest involved, the test of deceptively similar mark is more stricter.

13. Further, relying upon *Automatic Electric vs. R. K. Dhawan*⁷, it is submitted that ‘RAFT’ is not *publici juris* since the defendant no.1 has also itself applied for registration of the mark ‘RANRAFT’, moreover, the plaintiff is not claiming any right over ‘RAFT’ singularly.

³ 2012 SCC OnLine Del 2942

⁴ SCC OnLine Del 1953

⁵ AIR 1960 SC 142

⁶ 2001 SCC OnLine SC 578

⁷ (1999) 77 DLT 292



14. Lastly, relying upon *Cadila Pharmaceuticals vs. Sami Khatib*⁸, it is submitted that innocent/ honest adoption is not a defence available in a suit of infringement of trademark.

Submissions of defendant:

15. The defendant no.2 is a contract manufacturer for the products of the defendant no.1 under the mark RANRAFT as per the Purchase Agreement dated 14.03.2014 *inter se* them and it is the defendant no.1 who is solely responsible qua the said mark, the defendant no.2 has been incorrectly impleaded as party to this suit.




16. The term 'RAFT' whether used as a prefix or suffix for pharmaceutical products that comprise a sodium bicarbonate/ sodium alginate/ potassium bicarbonate salt in gastroenterology (on account of the chemical's raft forming nature in the stomach) is common to the trade since DIGERAFT, GAVIRAFT, ARORAFT, ULGERAFT, besides RACIRAFT of the plaintiff and RANRAFT of the defendant are also existing.

17. Of these, the products under the marks DIGERAFT, INSTARAFT and GAVIRAFT pre-date the mark RACIRAFT of the plaintiff as also they are the subject matter of trademark registrations. Therefore, the plaintiff has not invented the word RAFT and is also not the exclusive proprietor thereof. In fact, the plaintiff has filed a document titled "Role of Alkalizing Agent in Sodium Alginate Liquid Anti-reflux Suspension" which refers to 'RAFT' formative marks and which are used as a method of treatment in

⁸ 2011 SCC OnLine Bom 484 DB



gastrointestinal reflux disease also known as GERD. The table depicting the afore discussed marks is reproduced as under:-

S. No.	Name of product	Marketer	Date of claimed launch & proof	Trademark status
1.	 DIGERAFT	Abott Healthcare	11 th May 2020	Registered since 11 th May, 2020 under No. 4499317
2.	 GAVIRAFT	Elan Pharma	This product was revealed in the Plaintiff's own search at page 33 (Document 12) – however it was not pleaded.	Registered since 28 th July 2021 under No. 5062892
3.	 RACIRAFT	Sun Pharma	No date of actual use provided nor evidence	Registered since 17.01.2022 under No. 5288739 on the basis of a proposed use
4.		Intas Pharma	Use claimed since 9 th	Accepted & Advertised,



	 ARORAFT		September 2022	user claimed since 09.09.2022 under Application no. 5683681
5.	 ULGERAFT	Alembic Pharma	Launched on 22 nd October 2022	Application filed vide no. 5713046 claiming use of 22.10.2022
6.	 RANRAFT	JB Pharma	Launched in November 2022	Application filed on 03.06.2022 on proposed to be used basis.



	RANRAFT			
7.	 INSTARAFT	Sun Pharma Laboratories Limited	Applied for registration on 22 nd December, 2020	Registered since 22 nd December, 2020 under no. 4791807
8.	 GASORAFT	RIPCA Pharmaceutical Private Limited	Applied for registration on 25 th June, 2022	Opposed by a third-party, Application No. 5504234
9.	 EXCERAFT	Alembic Pharmaceuticals Limited	Applied for registration on 10 th September 2022	Accepted & Advertised, Application no. 5604177



18. Reliance in this regard is placed upon *Macleods Pharmaceuticals Ltd. vs. Swisskem Healthcare & Ors.*⁹, *Aviat Chemicals Pvt. Ltd. & Ors. vs Intas Pharmaceuticals Ltd.*¹⁰, *Astrazenca UK Limited & Ors vs. Orchid Chemicals & Pharmaceuticals Ltd.*¹¹.

19. Thence, relying upon *South India Beverages Pvt. Ltd. vs General Mills Marketing Inc.*¹², *Sun Pharmaceuticals Laboratories Ltd. vs. Hetero Healthcare Ltd. & Anr.*¹³, it is submitted that as per the settled position of law, while determining the similarity of two marks, if a part of a mark is found to be descriptive then the said part will be disregarded, requiring that the non-descriptive component of the two marks to be assessed.

20. Besides these, the defendant no.1 is the owner of the trademark RANTAC prescribed for GERD and related symptoms like indigestion, heartburn and acid reflux, and to prevent and treat stomach ulcers. The products of the defendants under its trademark RANTAC, which is being used since more than 35 years and the same falls under the category of blockbuster drugs along with its variants.

21. The adoption of the first part of the mark RANRAFT has its origin from the prefix 'RAN' derived from the blockbuster drug RANTAC of the defendant no.1 and is used by it for RANTAC OD, RANTAC R, RANTAC DOM, RANTAC MPS, RANTAC RD, RANTAC Infant Syrup, etc. as well.

⁹ MANU/MH/1771/2019

¹⁰ 93 (2001) DLT 247

¹¹ 2007 (34) PTC 469 (Del)

¹² 2015 (61) PTC 231 (Del)

¹³ 2022:DHC:3265-DB



22. In any event, the plaintiff filed their application for registration of the trademark RACIRRAFT on 17.01.2022 on a “*proposed to be used*” basis and the first document showing alleged use of the said trademark RACIRRAFT is an Invoice dated 11.06.2022, and that too for “pens launch” and not for pharmaceutical products, making it clear that even until then the products of the plaintiff under trademark RACIRRAFT were yet to be launched. Otherwise also, the earliest document evidencing the said trademark RACIRRAFT on pharmaceutical products is a subsequent ‘internal’ Invoice dated 27.06.2022. Thus, the product of the plaintiff under the said trademark RACIRRAFT were not ‘in the market’ even until 27.06.2022.

23. Furthermore, plaintiff has failed to file any sales figures for the financial year 2022-23 or for any duration before, after or amidst the time span between the adoption of the mark and the filing of the instant suit. The only sales invoice filed with the suit which is issued to a third party is of the total sale value of INR 5,670.

24. Also, before 27.06.2022, the defendant no.1 had already adopted the mark RANRAFT and filed an application for registration thereof on 03.06.2022, which is long prior to the issuance of the Registration Certificate of the trademark RACIRRAFT on 26.08.2022 in the name of the plaintiff. Thereafter, it is submitted that the plaintiff has not filed any opposition thereto.

25. The defendant no.1 is neither a prior user nor an honest and concurrent user of the mark RANRAFT vis-à-vis the plaintiff under *Section 12* of the Act. Reliance in this regard is placed upon *Lowenbrau AG vs. Jagpin*



Brewries Limited¹⁴, Goenka Institute of Education and Research vs. Anjani Kumar Goenka¹⁵.

26. Relying upon *Ishi Khosla vs. Anil Aggarwal¹⁶*, it is submitted that the product of the defendant no.1 under the mark RANRAFT has gained widespread recognition and prominence within a short period of time, reliance is placed upon with sales as under:-

Month	Sales (INR)
October 2022	31,15,731
November 2022	46,92,562
December 2022	48,29,331
January 2023	49,17,942
February 2023	51,55,822
March 2023	30,89,607
April 2023	55,74,516
May 2023	57,88,806
June 2023	62,65,369

27. Lastly, lacking reliance upon *Glaxo Group vs Maiden Pharmaceuticals Limited¹⁷, Astrazeneca UK Ltd. & Anr. vs. Orchid Chemicals & Pharmaceuticals Ltd.¹⁸, F. Hoffmann-La Roche & Co. Ltd. vs Geoffrey Manner & Co. (P) Ltd.¹⁹* it is submitted that the plaintiff has made out no case for grant of an ad interim injunction in its favour.

Rejoinder submissions by plaintiff:

¹⁴ 2009 (39) PTC 627 (Del)

¹⁵ 2009 (40) PTC 393 (Del)

¹⁶ (2007) 34 PTC 370 (Del)

¹⁷ 2023:DHC:2389

¹⁸ 2006 (32) PTC 733 (Del)

¹⁹ 1970 AIR 2062



28. Reiterating the opening submissions, it is submitted that since the plaintiff is a registered prior user of the trademark RACIRAFT by several months, the sales made by the defendants are not relevant. Relying upon *Jagan Nath Prem Nath vs Bhartiya Dhoop Karyalaya*²⁰, it is submitted that the parties are not at the same level as their rights are not equal.

29. Relying upon *Gujarat Bottling vs. Coca Cola*²¹ and *Wockhardt Ltd. Vs. Eden Healthcare*²², it is submitted that ‘use’ is not a necessary ingredient for institution of suit by a registered proprietor and there is a concept of deemed user from the date of registration thereof.

30. Thence, relying upon *Anshul Industries vs. Shiv Tobacco Company*²³, it is submitted that the defence of *Section 12* of the Act is not available to the defendants in an infringement suit.

Reasonings and Analysis:

31. This Court has heard the learned counsel for the parties and perused the pleadings as well as the documents on record and taken note of the written submissions filed by them.

32. The issue for consideration before this Court is whether the plaintiff, by way of the present application in a suit for infringement, who is, *admittedly*, the owner/ registered proprietor of the trademark RACIRAFT can seek to restrain the defendants from using the mark RANRAFT, which is pending registration.

²⁰ 1975 SCC Online Del 79

²¹ AIR 1995 SC 2372

²² 2014 (58) PTC 14 (Bom)

²³ ILR (2007) 1 Delhi 409



35. Before proceeding, reproduced hereinbelow is a comparative table giving the particulars of the conflicting marks of the parties involved as under:-

Particulars	Plaintiff	Defendants
Mark	RACIRRAFT	RANRAFT
Registration	17.01.2022; Registered	03.06.2022; Pending registration under objection by the Trade Mark Registry
Class	5	5
Product	Syrup	Syrup
Salt	Alginic Acid, Calcium Bicarbonate, Sodium Bicarbonate	Sodium Aligate, Calcium Carbonate, Sodium Bicarbonate
Ailment	Acidity and Heartburns	Acidity and Heartburns
Organ	Stomach	Stomach

33. *Admittedly*, the plaintiff applied for registration of its trademark RACIRRAFT before the Trade Marks Registry, albeit on a '*proposed to be used*' basis on 17.01.2022. On the other hand, the defendant No.1 also applied for registration of its mark RANRAFT before the Trade Marks Registry, on a '*proposed to be used*' basis on 03.06.2022. Though the Trade Marks Registry cited a third party registration of the mark RINIRRAFT under Registration No.5101827 dated back to 24.08.2021 as a conflicting mark to the mark RANRAFT of the defendant no.1 and not that of the trademark RACIRRAFT of the plaintiff, which may be on account of the same not yet being registered till then as it was registered only later and it was of a recent origin. In any event, the same is not of much significance.

34. Since, as per the promotional material filed by the plaintiff 'RAFT' is



“... ..optimum levels of sodium alginate, calcium carbonate and sodium bicarbonate are required to achieve suitable liquid suspension formulation possessing good acid neutralization capacity and raft strength.” and it relates to raft formation process/ function of raft formation after consumption of medicine. As such, RAFT *per-se* is *publici juris* as it is being used by other third parties and common to the trade considering the pre-existing marks like DIGERAFT, GAVIRAFT, ARORAFT, ULGERAFT, GASORAFT and EXCERAFT with the suffix RAFT.

35. That there are other similar marks i.e. DIGERAFT, GAVIRAFT, ARORAFT, ULGERAFT, GASORAFT and EXCERAFT, existing in the market, wherein two of them predate the plaintiff’s mark RACIRAFT is of little importance, since the Trademark Registry never objected to the plaintiff’s mark by citing them, moreover, the said mark of the plaintiff is valid and subsisting till date and since, the plaintiff is taking active steps to protect its mark is evidence enough to state that the said mark of the plaintiff has not been abandoned by it, reliance to substantive the same placed upon ***Pankaj Goel vs. Dabur India Ltd.***²⁴. Furthermore, the Hon’ble Supreme Court in ***Wockhardt Ltd. Vs. Eden Healthcare***²⁵, has held that ‘use’ is not a necessary ingredient for institution of suit by a registered proprietor and there is a concept of deemed user from the date of registration thereof.

36. Further, though there are other marks, however, none of them have any overall similarity in any manner whatsoever with that of the parties herein.

²⁴ 2008(38)PTC49(Del)(DB)

²⁵ 2014 (58) PTC 14 (Bom)



Also, mere existence of other similarly situated marks barring that of the defendants, can be no defence, since it is the choice of the plaintiff to institute/ initiate actions against one it chooses to do so and not be dictated by anyone, much less, the defendants herein. Therefore, merely because the plaintiff has not taken action against any of the other third parties having the mark with suffix RAFT, is of no relevance, when it comes to the present suit/ application against the defendants. Moreover, in any event, it is the choice of the effected party, the plaintiff herein, as it is dependent upon various factors like the volume, use, impact, relevance, (degree of) similarity coupled with the other facts and circumstances involved.

37. The Hon'ble Supreme Court in *Automatic Electric (supra)* has held that use of a word by others/ third parties cannot be a defence for the defendants and under circumstances whence the defendant no.1 has itself filed for registration for the mark RANRAFT, the defendants cannot seek to contend that 'RAFT' is not *publici juris*.

38. In such a scenario, this Court is to consider the similarities rather than dissimilarities applying the essential feature test as enshrined in *United Biotech* (supra), the remaining part of the mark RANRAFT of the defendant no.1 and RACIRRAFT of the plaintiff have to be compared.

39. Even whence comparing RAN of the defendant no.1 and RACI of the plaintiff, the defendant no.1's mark is too close to the plaintiff's mark, more so, as the first two syllables 'RA' and the last part thereof 'RAFT' in both RACIRRAFT of the plaintiff and RANRAFT of the defendants are same. The mere difference being the replacement by 'CI' from RACIRRAFT of the



plaintiff with an 'N' in RANNRAFT by the defendants. Moreover, admittedly though India is a country with a huge population coming from literate, semi-literate as also illiterate backgrounds and even though their dialects/ languages changes after some distance(s), however, the common thread running in all of them is that they all generally give emphasis on the first syllable/ prefix of a word or the last syllable/ suffix of the said word, as the case may be. As per the view enunciated in *South India Beverages (supra)*, this Court is not to apply its minds in hunting for minute differences in the conflicting marks and compare the mark as a whole. Therefore, the said difference being innocuous is too obscure to note for this Court.

40. Since the plaintiff has obtained registration of the trademark RACIRRAFT as per *Section 23* of the Act, the plaintiff's mark is "...
...registered as of the date of the making of the said application... ..". Additionally, also as per *Section 29* of the Act, the plaintiff further has a right to protect the said trademark RACIRRAFT from being infringed by anyone like the defendants. In such a scenario, as held in *Laxmikant V. Patel (supra)* and *Cadila Pharmaceuticals vs Sami (supra)*, an innocent and/ or honest adoption by anyone is not a defence and injunction must follow considering the factum that the comparing products are similar.

41. Considering the aforesaid, there is a very high degree of resemblance between the conflicting mark(s) involved. An average common man who is of average intelligence with imperfect recollection can hardly be expected to decipher the miniscule difference between 'CI' of the plaintiff being replaced with 'N' of the defendants. This Court can ignore to proceed with the



threadbare analysis and pick and choose them since, at this stage, what is to be seen are the broad contours for arriving at a conclusion i.e., the conflicting marks are deceptively similar to each other.

46. In view thereof, the defendants cannot claim to be an honest and concurrent user of the impugned mark as per *Section 12* of the Act since, the plaintiff's product/ mark was not in the market till June, 2022. In any event, the same is of little significance since the plaintiff is the registered proprietor of the mark 'RACIRRAFT' and present matter is a suit for infringement, especially in view of what has been held in *Goenka Institute of Education and Research vs. Anjani Kumar Goenka*²⁶. Therefore, the defendants are not entitled to take the defence of being an honest concurrent user.

42. For all practical purposes, it cannot be disputed that the plaintiff was the first to enter into the market. As such, in view of what is held in *Neon Laboratories (supra)* considering the 'first in market' test, the plaintiff is entitled to an injunction in its favour, however, that does not grant the plaintiff monopoly over the word 'RAFT', but only considering the factual matrix of the present case.

43. In view of the aforesaid and even otherwise, the sales figures or values which are said to be missing from the plaint are not relevant for the purposes of adjudicating the present application under *Order XXXIX rules 1 and 2* CPC, especially when this Court is dealing with a suit of infringement which concerns registered mark of the plaintiff.

²⁶ 2009 (40) PTC 393 (Del)



44. Lastly, reliance of the defendants upon *Sun Pharmaceuticals Lab (supra)* is misplaced since it is relating to a suit for passing off against a prior registered trademark; *South India Beverages (supra)* is misplaced since there are no dominant feature involved herein; *Schering Corp. (supra)* is misplaced since marks involved were pertaining to a salt; *Aviat Chemicals (supra)* is misplaced since the marks involved were launched in the very same month; *F. Hoffman-la Roche (supra)* is misplaced since it is based on the first syllable test.

45. This is only possible after analysing and considering the settled moot/ principles/ tests, which, according to this Court, have evolved over a period of time by virtue of various judicial pronouncements.

46. Therefore, considering the nature, similarity and degree of resemblance involved inter se the conflicting marks, the trade channels involving who deal with them and the set of targeted buyers/ customers for them, it is very likely that under these circumstances, the first impression/ thought which may come to the minds of any man of average intelligence with imperfect recollection is that both the conflicting marks are the same and/ or have some connection with each other and/ or emanating from the same house.

47. Taking the timelines involved, that the defendants chose to adopt and commence usage of the mark RANRAFT within a short span of the plaintiff's RACIRRAFT was at their own peril, negligence and gamble for



which they cannot be given any leeway, reliance is placed upon *Bal Pharma vs. Centaur Laboratories*²⁷.

48. Consequently, this Court is of the opinion that the plaintiff has indeed been able to make out a *prima facie* case, both factually and legally, in its favour since the impugned mark RANRAFT is deceptively similar to that of the registered trademark RACIRRAFT of the plaintiff. Under the existing circumstances, if the impugned mark RANRAFT is allowed to continue it shall result in immense *irreparable harm, loss and injury* to the plaintiff since it is the prior adopter, and registered proprietor of the trademark RACIRRAFT. Same is the reason for the *balance of convenience* also lies in favour of the plaintiff and against the defendants.

49. Accordingly, for the afore-noted reasoning and analysis, the defendants, their directors, their assignees in business, licensees, franchisee, distributors, dealers, stockists, retailers, chemists, servants and agents are restrained from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in medicinal & pharmaceutical preparations under the impugned mark RANRAFT or any other trade mark as may be deceptively similar to the plaintiff's registered trade mark RACIRRAFT, amounting to infringement of the plaintiff's registration under no.5288739 dated 17.01.2022, in any manner whatsoever, till the pendency of the present suit.

²⁷ 2002 (24) PTC 226(BOM)



2024:DHC:7430



50. As such, the present application is allowed with the aforesaid directions in favour of the plaintiff and against the defendants.

CS(COMM) 369/2023

51. List before the Joint Registrar for admission/ denial of documents on 19.11.2024.

SAURABH BANERJEE, J.

SEPTEMBER 26, 2024

Ab