

that prior to the cancellation date, the registration for BOTOX was infringed by the use of BOTO CREAM and BOTO LIKE MASK. Further, the use of these marks for products not containing the botulinum toxin demonstrated a will to take undue advantage of the reputation of BOTOX which constituted an act of unfair competition.

The cancellation decision is severe, at least in respect of preparations to treat muscular dystonia. While the court recognises that BOTOX has a reputation in France, this reputation is not linked to the product itself, but only to the botulinum toxin. Therefore, Allergan obtained damages on the ground of unfair competition only.

India: can LOPRIN and LOPARIN coexist for medicines?

Rachna Bakhru, Rouse & Co. International, Dubai

An Indian court has given an interim ruling in *Kalindi Medicure Pvt Ltd v Intas Pharmaceuticals Ltd* which adds to the confusion as to which criterion should be applied to a comparison of pharmaceutical trade marks. The court has applied principles of English law which give regard to dissimilarities between products, and has overlooked the ground realities in India, where there is no single common language and restricted drugs may be available over the counter. The ruling departs from earlier Indian precedents which held that special care should be taken when comparing pharmaceutical trade marks if any kind of confusion could lead to disastrous consequences, particularly when the products have different purposes.

The plaintiff owns an Indian registration for LOPRIN and has been using the mark since 1994 for analgesic anti-platelet drugs that prevent coagulation to combat and prevent cardiological problems. The word LOPRIN was claimed to have been derived from 'low dose of aspirin'. In 2005, the defendant began using LOPARIN for injections for intravascular use for prevention of coagulation from the damaged endothelium of coronary arteries. The defendant submitted that LOPARIN belongs to the life saving medicines category and is typically given to patients in critical hours of vascular complications.

The plaintiff filed proceedings for trade mark infringement and passing off and claimed that LOPARIN is visually and phonetically similar to its registered mark LOPRIN in respect of identical goods (medicines).

The court distinguished the products in question and gave consideration to the dissimilarities in the preparations and manner of use/administration. The court

acknowledged that doctors can make mistakes and that it is not uncommon for drugs to be purchased over the telephone or for handwritten prescriptions to be misread due to bad handwriting. However, it commented that the method of intake of a drug cannot be ignored. The court also gave consideration to the differences in price (LOPARIN is 52 times more expensive than LOPRIN), the methods of administration and the nature of the products (anti-platelet as opposed to anti-coagulant).

The court held that the balance of convenience was in favour of the defendant, which had good sales in LOPARIN over 10 months (approximately USD \$1.6m). The interim injunction which had been granted in favour of the plaintiff was set aside.

Indonesia: revised customs law issued

Sara Holder, Rouse & Co. International, Jakarta

Indonesia has included border control provisions for IPR violations in its Customs Law since 1995. However, the provisions have never been implemented due to a lack of the necessary implementing regulation. Seizures for IP infringements are therefore presently made on an ad hoc basis only. However, recent amendments to the Customs Law in November 2006 are positive and it is hoped that there will not be significant further delay in issuing the implementing regulation. Many of the changes have direct relevance to IPR enforcement in Indonesia:

- The Commercial Court has been given the jurisdiction to issue orders to suspend suspected counterfeit goods. Previously it was the District Court that had this authority. This amendment brings the Customs Law in line with Indonesia's IP laws generally.
- The government has indicated that it will put in place the long awaited implementing regulations for court ordered suspension of suspected counterfeit goods. The absence of these regulations has long been a stumbling block for IP rights holders seeking to prevent the import or export of counterfeit goods. The regulations are expected to be in place by the end of 2007.
- The border control provisions relating to IPR in the revised Customs Law remain limited to trade mark and copyright infringements. Design and patent infringements are not covered.
- The smuggling provisions in the Customs Law have also been