

Law Lore and Practice

India - No exclusivity in marks from chemical compounds

While hearing an Appeal from the lower court, the Gujarat High Court in *Acme Pharmaceuticals v. Torrent Pharmaceuticals* held that no one can claim a monopoly in respect of a word which is descriptive of a particular drug used in medicinal production.

The High Court overruled the lower court decision which found the mark AROXIL to be similar to DROXYL and to infringe Torrent's registered trade mark DROXYL, which had been used since 1989. Acme had used AROXIL since 1996. Both products were derived from the chemical component cefadroxil.

The High Court was of the view that Torrent's mark was nothing else but an adoption of the last letters "droxil" from the generic drug cefadroxil. DROXYL was a descriptive word of the drug cefadroxil. Acme had coined AROXIL by taking letter 'A' as the first letter of its own name and "roxil" from the last letters of cefadroxil and did not infringe Torrent's DROXYL mark. Also the use of similar marks (LYDROXIL, CODROXIL, ODOXIL, DROX-KID) by various third parties without objection by Torrent, and use of AROXIL since 1996, meant the balance of convenience was in Acme's favour.

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