
Phonetic similarity is the key - Court holds GENTAC similar to ZANTAC and ZINETAC

Glaxo Group Ltd being aggrieved with Systochem Lab's use of the brand GENTAC for gastro medicines initiated an action against them before the Delhi High Court. The case was contested by Systochem Lab and after a full trial, the final arguments were heard by the judge. The court ruled in favour of Glaxo Group restraining Systochem from using the mark GENTAC.

Glaxo Group in its final arguments emphasized the following:

- a. That it is the owner of the trade marks ZINETAC and ZANTAC which have been registered since 1985 and 1981 respectively in respect of treatment of gastric ailments.
- b. That the product bearing the mark ZINETAC is extensively sold in India whereas the medicinal products bearing the trademark ZANTAC are available in many parts of the world.
- c. As a result of extensive recognition and goodwill, the two trademarks have come to be associated exclusively with Glaxo Group.
- d. Systochem's adoption of a deceptively similar mark GENTAC amounts to infringement of the registered trademarks of Glaxo.
- e. Although Glaxo's medicinal products are predominantly sold in form of tablets, as opposed to Systochem's medicinal products which are injectables sold in the form of vials, the method of administration of medicines would not affect Glaxo Group's suit for infringement.
- f. That the mark GENTAC is phonetically similar to Glaxo's marks ZINETAC and ZANTAC and keeping in view the poor literacy rate in India with English not being the first language, the purchaser may mistakenly buy GENTAC for ZANTAC/ZINETAC.

Systochem's made the following submissions in support of its case:

- a. The trade mark ZANTAC of Glaxo Group is not associated with any medicinal products. The product is not sold in India and the registration for the ZANTAC mark is a dummy registration.
- b. That the trade mark GENTAC has been approved by the drug licensing authority to be sold to the public and therefore the action for injunction filed by Glaxo is not maintainable.

That the trademark GENTAC is not deceptively similar to Glaxo's brands ZINETAC and ZANTAC and therefore there are no chances of confusion in the minds of public at large.

Court ruling

The Court after examining the arguments was left to adjudicate upon the principle of comparison of two marks in an action of infringement of trademark and passing off on the touch stone of phonetic similarity. The court was of the view that phonetically on comparison of the sound, the mark GENTAC was deceptively similar to the brands ZINETAC and ZANTAC. The court in its ruling observed *"It is important to note that the English language is not the primary language to many in this country. There is a very large percentage of population who are unaware of the English nuances of the language. The rural population, who are yet to acquire fluency in the language, may be confused by the phonetic similarity between the two classes of the medicinal products. Though the medicines are used in the treatment of the same ailment, it does not negate the possibility of side effects from the medicines."*

The court also dismissed the argument that ZANTAC is a dummy registration as actual samples of products were placed on record.

The court thus proceeded to pass a final order permanently restraining Systochem from using the mark GENTAC.

RNA represented Glaxo Group in this matter

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