HIGH COURT OF DELHI

Date : 24 November 2023

CS(COMM) 533/2022, I.A. 12259/2022

SUN PHARMACEUTICAL INDUSTRIES LTD ..... Plaintiff

versus

PROTRITION PRODUCTS LLP & ORS. ..... Defendants

Legislation and Rules:

Trade Marks Act, 1999
Order XXXIX Rules 1 and 2 of the CPC
Nice classification, Class 5

Subject: Trademark infringement dispute concerning the similarity between the trademarks 'ABZORB' (owned by the plaintiff) and 'ABBZORB' (used by the defendants).

Headnotes:

Infringement of Trade Mark – Conflicting Trade Marks in Different Classes – Plaintiff holding registered trade marks in Class 5 for pharmaceutical and medicinal preparations, aggrieved by defendants' use of similar marks in different classes and subsequent usage in Class 5 for whey protein without valid registration – Prima facie case established against defendants for infringement of plaintiff's trade marks. [Para 1-5, 17-27]

Registration and Use of Trade Marks – Defendants' registration of similar marks in Classes 29 and 30, irrelevant to their use for whey protein in Class 5 – Plaintiff's registration in Class 5 being properly used, whereas defendants' use in Class 5 unauthorized, demonstrating prima facie infringement. [Para 5-6, 28]

Deceptive Similarity and Likelihood of Confusion – Marks "ABZORB" and "ABBZORB" phonetically identical, leading to likelihood of consumer confusion – Phonetic identity sufficient for prima facie finding of infringement, irrespective of visual or price differences between products. [Para 10, 22-24]

Defendants' Awareness of Plaintiff's Prior Mark – Defendants, after being made aware of plaintiff's similar mark in Class 5 through a First Examination Report, proceeded to use a deceptively similar mark for whey protein, indicating mala fide intent and disregard for plaintiff's registered mark. [Para 34-35]

Interim Injunction Granted – Defendants restrained from manufacturing, selling, or dealing in products under infringing marks "ABBZORB," "ABBZORB NUTRITION," or any deceptively similar mark to plaintiff's "ABZORB" in related goods, pending final disposal of suit. [Para 37]

Plea of Non-entitlement to Registration Rejected – Defendants' contention that plaintiff's mark "ABZORB" was not entitled to registration due to being a common English word held unavailing, as mark not descriptive of the goods and defendants themselves applied for similar mark registration. [Para 29-33]

Referred Cases:

- Marico Ltd. v. Agro Tech Foods Ltd. (2010) 174 DLT 279
- Kaviraj Pandit Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories AIR 1965 SC 980
- K.R. Chinna Krishna Chettiar v. Shri Ambal &Co. (1969) 2 SCC 131
- Shree Nath Heritage Liquor Pvt Ltd v. Allied Blender & Distillers Pvt Ltd 221 (2015) DLT 359
- Automatic Electric Limited v. R.K. Dhawan 11 1999 SCC OnLine Del 27
- Pernod Ricard India Pvt. Ltd. v. A.B. Sugars Ltd 2023 SCC OnLine Del 6966
- Midas Hygiene Industries P. Ltd. v. Sudhir Bhatia (2004) 3 SCC 90

Representing Advocates:

For Petitioner: Mr. Sachin Gupta, Mr. Rohit Pradhan, Mr. Manan Mondal
For Respondents: Mr. Sanjay Ghose, Sr. Adv., Mr. Akshay Goel, Mr. Paras Arora, Mr. Vinay Parashar, Ms. Namrita Tiwari, Mr. Pranav Sapna

JUDGMENT
% 24.11.2023

I.A. 12259/2022 [under Order XXXIX Rules 1 and 2 of the CPC] in CS(COMM) 533/2022

1. The plaintiff is the proprietor of the following marks, registered in its favour under the Trade Marks Act, 1999 in Class 5 of the Nice classification, for "pharmaceutical and medicinal preparations for human and veterinary use":

Trade Mark	Registration No. and Date	Date of use claimed
ABZORB	1642043	1 March 1993
	16 January 2008	
ABZORBEC	2051003 9 November 2010	Proposed to be used
ABZORB SYNDET	3282128 12 June 2016	Proposed to be used

2. Defendant 2 is also the proprietor of the following marks registered under the Trade Marks Act:

Trade Mark	Registration No. and Date	Date of use claimed	Class	Goods

ABBZORB	4029712 17 December 2018	Proposed to be used	29	Meat, fish, poultry and game, milk and milk products; edible oils and fats, etc.
ABBZORB	4029713 17 December 2018	Proposed to be used	30	Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee, vinegar, etc.
ABBZORB	4029720 17 December 2018	Proposed to be used	31	Agricultural, horticultural and forestry products and grains not included in other classes, etc.
ABBZORB	4029724 17 December 2018	Proposed to be used	32	Beers, mineral and aerated waters, and other non-alcoholic drinks, etc.
abbzorb nutrition	4064497 22 January 2019	Proposed to be used	30	Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee, vinegar, etc.
abbzorb nutrition	4064512 22 January 2019	Proposed to be used	29	Meat, fish, poultry and game, milk and milk products; edible oils

				and fats, etc.
ABBZORB NUTRITION	4065797 23 January 2019	Proposed to be used	30	Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee, vinegar, etc.
ABBZORB NUTRITION	4067021 24 January 2019	Proposed to be used	29	Meat, fish, poultry and game, milk and milk products; edible oils and fats, etc.

3. It will thus be seen that the defendants have no subsisting registration of any mark in Class 5. On this aspect, learned Counsel are ad idem.

4. Under the marks ABZORB, ABZORBEC and ABZORB SYNDET, the plaintiff is manufacturing and selling anti-fungal pharmaceutical preparations. Anti-fungal pharmaceutical preparations fall indisputably, within Class 5. As such, the plaintiff is using its registered trademark in respect of goods for which registration was granted, in the class in which the marks are registered.

5. The plaintiff is aggrieved by the use, by the defendants, of the marks ABBZORB and ABBZORB NUTRITION. From the list of Defendant 2's registered marks provided earlier, it would be seen that Defendant 2 does possess registrations in respect of the marks ABBZORB and ABBZORB NUTRITION, but in Classes 29 and 30. Class 29 covers meat, fish, poultry and game, milk and milk products, edible oils and fats, etc. Class 30 covers coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee, vinegar, etc. The defendants are, however, using ABBZORB NUTRITION for manufacturing and selling whey protein. It is not in dispute that whey protein is appropriately classifiable under Class 5 of the Nice classification. Thus, unlike the plaintiff, the registered marks of Defendant 2 are not being used in accordance with their registration, either for the Class, or the goods, in respect of which the marks are registered.

6. Defendant 1 has also ventured into Class 5, for registering the mark ABBZORB, on three occasions. None has, however, fructified in a registration.

7. Defendant 2's first application for registration of the ABBZORB word mark in Class 5 was on 17 December 2018. In the First Examination Report (FER) issued by the Trademarks Registry by way of objection to Defendant 2's application, the plaintiff's ABZORB mark was cited as a rival, and deceptively similar, mark. Defendant 2 did not respond to the said FER, as a result of which, by operation of Section 132[1] of the Trade Marks Act, the application for registration of the ABBZORB wordmark was deemed to stand abandoned. On the website of the Trademarks Registry, too, the status of Defendant 2's ABZORB wordmark was shown as "abandoned".
Defendant 2 did not appeal against the said decision.

8. Subsequently, Defendant 1 applied for registration of the device mark  and Defendant 2 applied for registration of the device mark  in Class 5. They have not, however, obtained the said registrations till date as the applications are under objection. Defendant 1's application claimed user since 22 January 2019 and Defendant 2's application was on proposed to be used basis. As such, as on date, the defendants do not have any registration for the impugned mark ABBZORB, either as a word or as a device mark, in

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[1] **132. Abandonment.—** Where, in the opinion of the Registrar, an applicant is in default in the prosecution of an application filed under this Act or any Act relating to trade marks in force prior to the commencement of this Act, the Registrar may, by notice require the applicant to remedy the default within a time specified and after giving him, if so, desired, an opportunity of being heard, treat the application as abandoned, unless the default is remedied within the time specified in the notice.

Class 5 or in any class which would cover whey protein.

9. These assertions by Mr. Sachin Gupta, learned Counsel for the plaintiff are not disputed by Mr. Sanjay Ghose, learned Senior Counsel for the defendants.

10. Mr. Gupta submits that the impugned marks of the defendants are phonetically identical, and are otherwise structurally similar, to the plaintiff's mark, as the only difference between the marks is an extra letter "B". He submits that the plaintiff's earliest registration for the mark ABZORB dates back to 2008, whereas the earliest application of Defendant 2, for registration of the ABBZORB word mark in Class 5, was on 17 December 2018.

Subsequently, two further applications were filed by Defendant 1 for registration of the ABBZORB device marks in class 5 but, as already noted, they are under objection and are yet to be registered.

11. Mr. Gupta submits that thus, in full consciousness of the fact that the plaintiff was the registered proprietor of the ABZORB mark, the defendants proceeded to apply for registration of the deceptively similar ABBZORB mark for whey protein, which falls in the very class in which the plaintiff's ABZORB mark stands registered, but without obtaining any registration under the said class. The registrations held by Defendant 2 are in entirely different classes, which do not cover whey protein. Thus, after obtaining registration for the mark ABBZORB in irrelevant classes, the defendants proceeded to use the said mark to manufacture and sell whey protein, which falls within Class 5 in which class the mark ABZORB stands registered in favour of the plaintiff. This, submits Mr. Sachin Gupta, is demonstrative of the mala fides of the defendants and a transparent attempt to imitate the plaintiff while obtaining registrations of the ABBZORB mark in classes which do not cover whey protein.

12. Mr. Sanjay Ghose, learned Senior Counsel for the defendants submits, initially, that the mark ABZORB was not a registerable mark as it was a mere variant of the common general English word ABZORB. He relies, for this purpose, on the judgment of the Division Bench of this Court in **Marico Ltd. v. Agro Tech Foods Ltd.**[1]

13. Mr. Ghose's next submission is that, any prejudice, which could possibly result to the public as a consequence of confusion between the plaintiff's and the defendants' marks, would be attributable, not to the defendants', but to the plaintiff's mark. He explains this by submitting that, if, owing to confusion, someone were to apply whey protein on a fungal infection, nothing adverse would result except that, probably, the infection would remain unaddressed. On the other hand, if someone were to consume an anti-fungal preparation treating it to be whey protein, it could result in serious adverse consequences. If anything, therefore, Mr. Ghose's submission is that it is the plaintiff's product which could cause harm to the public, assuming there was any confusion between the marks, and not the defendants'.

[1] **(2010) 174 DLT 279**

14. Mr. Ghose's third submission is that the price difference between the plaintiff's and defendants' products is so stark that there is no possibility of any confusion between the two. Besides, they cater to different customer segments. The plaintiff's product, which is priced at a maximum of ₹ 125, would be applied by a person suffering from fungal infection. The defendants' product on the other hand is used by body builders, athletes, and the like, and is far more expensive than the plaintiff's product. No one, he submits tersely, would confuse whey protein for an antifungal, or vice versa, irrespective of the marks under which they are sold.

15. As such, even on account of the price difference, Mr. Ghose's submission is that there is no chance of confusion between the plaintiff's and defendants' products.

16. Fourthly, submits Mr. Ghose, when one compares the plaintiff's and defendants' labels or their packs, Mr. Ghose submits that there is no deceptive similarity between them.

Analysis

A. Deceptive similarity and likelihood of confusion

17. Section 29 of the Trade Marks Act sets out the circumstances in which one trade mark infringes another. The infringed trade mark must be registered, though the validity of the registration is not a circumstance with which Section 29 is concerned. If the plaintiff's trade mark is registered, and infringement, within the meaning of any of the sub-sections of Section 29 is seen to exist, then Section 28(1)[3] would entitle the plaintiff to obtain relief against infringement if the registration is valid. Thus, though registration is necessary for infringement to be found to exist, the registration must also be valid, in order for the plaintiff to obtain relief thereagainst.

18. Section 29(1)[4] applies where the defendants use the plaintiff's mark as a trade mark. Even though the difference between the plaintiff's and the defendants' marks is limited to one additional 'B', they are not the same. Section 29(1) would, therefore, not apply.

19. Section 29(2)[5] contains three clauses. Clause (a) applies where the plaintiff's and defendants' marks are identical and is, therefore, not applicable here. Clause (b) applies where the marks are not identical but are similar,

and are used for identical or similar goods or services. Clause (c) applies where the marks are identical, and are used for goods or services which are also identical. In either event, if, by reason of such identity or similarity of marks, and identity or

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[3] **28. Rights conferred by registration**.— (1) Subject to the other provisions of this Act, the registration of a trade mark shall, if valid, give to the registered proprietor of the trade mark the exclusive right to the use of the trade mark in relation to the goods or services in respect of which the trade mark is registered and to obtain relief in respect of infringement of the trade mark in the manner provided by this Act. [4] **29. Infringement of registered trade marks**.—(1) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which is identical with, or deceptively similar to, the trade mark in relation to goods or services in respect of which the trade mark is registered and in such manner as to render the use of the mark likely to be taken as being used as a trade mark.

[5](2) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which because of—

(a) its identity with the registered trade mark and the similarity of the goods or services covered by such registered trade mark; or

(b) its similarity to the registered trade mark and the identity or similarity of the goods or services covered by such registered trade mark; or

(c) its identity with the registered trade mark and the identity of the goods or services covered by such registered trade mark,

is likely to cause confusion on the part of the public, or which is likely to have an association with the registered trade mark.

similarity of the goods or services covered thereby, there is likelihood of confusion, or of the consumer associating the defendants' mark with the plaintiff's, then the defendants' mark would be infringing in character. Where clause (c) applies, i.e., where the marks are identical, Section 29(3) [2] presumes the existence of likelihood of confusion.

20. Thus, the aspect of infringement has to be determined, under Section 29, on a mark-to-mark comparison. If, mark compared to mark, there is likelihood of confusion or deception, or a presumption of association, there is infringement. The marks are, however, not to be seen side by side. The possibility of likelihood of confusion has to be assessed from the point of view of a consumer of average intelligence and imperfect recollection who seeks the marks at different points of time. The test has to be applied at the initial interest stage – meaning, when the defendant's mark is initially seen by the consumer. If, on viewing it, he, having earlier seen the plaintiff's mark, is

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[2] (3) In any case falling under clause (c) of sub-section (2), the court shall presume that it is likely to cause confusion on the part of the public.

placed in a state of wonderment as to whether the two marks are the same, or associated, there is infringement. That this initial impression may subsequently, or even soon thereafter, be dispelled, is irrelevant. The Court is required to visualize the position as it would appear to such a consumer, and not depend on actual evidence to determine the point. All that is needed is likelihood of confusion, not actual confusion. Also, while thus psychoanalyzing the hapless consumer, the Court would bear in mind the feature, or

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features, of the mark, which immediately impress themselves on his psyche. Thus, even if two device marks are, visually, completely dissimilar, if their textual components are deceptively similar to each other, the visual dissimilarities between the marks, owing to "added matter", pale into insignificance, where infringement is concerned. Such added matter is, therefore, irrelevant to a plea of infringement, though it may make all the difference to a plea that, by use of its mark, the defendant is seeking to pass off its goods or services as those of the plaintiff.

21. So well entrenched are these principles in trade mark law that reference to precedents in that regard is hardly necessary. One may, however, if one so desire, refer, for this purpose, to paras 28 and 29 of **Kaviraj Pandit Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories**[3], paras 7 to 9 of **K.R. Chinna Krishna Chettiar v. Shri Ambal &Co.**[4] and paras 4 to 6 of the judgment of the Division Bench of this Court in **Shree Nath Heritage Liquor Pvt Ltd v. Allied Blender & Distillers Pvt Ltd** [5]**.**

22. Apropos deceptive similarity and likelihood of confusion, Mr. Ghose's only contention was that the labels of the plaintiff and defendants and overall appearance of the two products is different. Those aspects may be relevant while examining a plea of passing off, but are of little relevance while considering a claim of infringement.

On facts, Mr. Sachin Gupta's submission that the mark ABBZORB is confusingly and deceptively similar to the mark ABZORB is, prima facie, unexceptionable. Phonetically, both the words are identical. Even if one were to refer to the individual spellings of the two words, the only difference is one letter "B", which makes little difference to the overall appearance of the two words and makes no difference whatsoever to their individual pronunciations. The sole extra letter "B" in the defendants' ABBZORB, as compared to the plaintiff's ABZORB, is hardly likely to impress itself on the psyche of a consumer of average intelligence and imperfect recollection. There is every likelihood of the consumer confusing one product for the other, or at the very least, presuming an association between the two products as a result of the similarity between the two marks.

23. While Section 29(2)(b) is thus clearly applicable to the facts of the present case, Section 29(2)(c) may also, if only by analogy, be applied, as, at least phonetically, the rival marks are identical. Phonetic identity between two

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[3] **AIR 1965 SC 980**
[4] **(1969) 2 SCC 131**
[5] **221 (2015) DLT 359**

marks is also, even by itself, sufficient to justify a finding of likelihood of confusion. The Court may, therefore, in view of the phonetic identity of the two marks, presume a likelihood of confusion between them.

24. The distinguishing features emphasized by Mr. Ghose, in the form of the visual difference between the two labels, and the price difference between the products, are of no consequence when one considers the aspect of infringement, which has to be assessed on mark-to-mark basis. Mark to mark, there is clear likelihood of confusion between ABZORB and ABBZORB.

25. Insofar as Mr. Ghose's submission that the two labels are visually distinct and distinguishable, is concerned, the matter stands covered by the judgment of the Supreme Court in **K.R. Chinna Krishna Chettiar**. In that case, the Supreme Court was concerned with two device marks. The two device marks have specifically been noted, in para 7 of the judgment of the Supreme Court, to be totally visually different. The textual component of the two marks were, however, "Sri Ambal" in one case and "Sri Andal" in the other. The Supreme Court held that, as "Sri Ambal" and "Sri Andal" were phonetically deceptively similar, the difference in the visual appearance of the two marks was of no consequence in assessing the aspect of infringement. Owing to the deceptive similarity between the textual components of the two marks, the Supreme Court went on to hold that the marks were deceptively similar and that, therefore, the defendants' mark infringed the plaintiff's.

26. This principle applies, mutatis mutandis to the present case. Where "Sri Andal" and "Sri Ambal" were merely phonetically similar, ABZORB and ABBZORB are phonetically identical. Insofar as the aspect of infringement is concerned, any difference between the visual appearance of the two marks, when seen as labels, is therefore of no consequence.

27. Applying the above principles, it is, prima facie, beyond doubt that the mark ABBZORB is deceptively similar to the mark ABZORB, even if the mark ABBZORB is seen as a device mark, rather than a word mark. A prima facie case of infringement, therefore, exists.

B. Section 30(2)(e)

28. Section 30(2)(e)[10] provides that, where a mark is used in exercise of the right to use such mark, flowing from its registration, then such use cannot be treated as infringing in nature. That principle, however, cannot come to the

rescue of Mr. Ghose's clients, as the defendants' marks are not registered in Class 5, which cover whey protein. The right to use, envisaged by Section 30(2)(e) envisages use in terms of the registration, which, in turn, envisages use in respect of the goods and class, in respect of which the mark is registered. Amnesty, under Section 30(2)(e), cannot be claimed on the basis of use of a registered mark for goods other than those in respect of which registration has been granted. The use of the defendants' ABBZORB mark for whey protein is not envisaged or permitted by the registrations which the mark holds. The registrations held by the ABBZORB marks cannot, therefore, mitigate the aspect of infringement.

C. The plea of non-entitlement to registration

29. Mr. Ghose also sought to question the entitlement of the mark

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[10] **30. Limits on effect of registered trade mark—**
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(2) A registered trade mark is not infringed where—
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(e) the use of a registered trade mark, being one of two or more trade marks registered under this Act which are identical or nearly resemble each other, in exercise of the right to the use of that trade mark given by registration under this Act

ABZORB to registration. That argument is, prima facie, not available to the defendants, applying the principle laid down by this Court in **Automatic Electric Limited v. R.K. Dhawan**[11], which has been followed by me in **Pernod Ricard India Pvt. Ltd. v. A.B. Sugars Ltd.**[12] The defendants having themselves applied for registration of the ABBZORB mark, it is not open to Mr. Ghose to contend that the plaintiff could not have obtained registration of the ABZORB mark as it is a word of common English usage. He relies, for this purpose, on Section 9(1)[13].

30. Even otherwise, there is no absolute proscription to registration of words of common English usage. What Section 9(1)(a) proscribes is registration of marks which are not distinctive, so as to be able to distinguish the product of one person from that of another. Section 9(1)(b) disentitles marks which consists exclusively of marks or indications which may serve in trade to designate the kind, quality, quantity, intended purpose, values, geographical origin or the time of production of the goods or rendering of the service or other characteristics of goods or service from registration. It cannot be said

that the word "ABZORB" is either lacking in distinctiveness, so as to be unable to distinguish one product from that of another, or that it is descriptive of anti-fungal powder in respect of which the mark was registered.

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[11] **1999 SCC OnLine Del 27**

[12] **2023 SCC OnLine Del 6966**

[13] **9. Absolute grounds for refusal of registration.** — (1) The trademarks—

(a) which are devoid of any distinctive character, that is to say, not capable of distinguishing the goods or services of one person from those of another person;

(b) which consist exclusively of marks or indications which may serve in trade to designate the kind, quality, quantity, intended purpose, values, geographical origin or the time of production of the goods or rendering of the service or other characteristics of the goods or service;

(c) which consist exclusively of marks or indications which have become customary in the current language or in the bona fide and established practices of the trade,

shall not be registered:

Provided that a trade mark shall not be refused registration if before the date of application for registration it has acquired a distinctive character as a result of the use made of it or is a well-known trade mark.

31. The situation which obtained in **Marico** was entirely different. In that case, the plaintiff's registered trade marks were "LOSORB" and "LO-SORB". They were used for edible oil which contained an anti-foaming agent which reduced the absorption of oil by the food product in which it was used. The mark, therefore, was clearly indicative of the quality of the goods in respect of which it was registered. It is in these circumstances that the Division Bench of this Court held that the mark was descriptive of the product in respect of which its registration was sought and was not, therefore, entitled to registration.

32. As against this, ABZORB cannot be regarded as descriptive of anti-fungal preparations. No material, to justify any such finding, has been cited by Mr. Ghose.

33. The reliance by Mr. Ghose on **Marico,** is, therefore, misconceived.

D. <u>The plea of mala fide intent</u>

34. Mr. Gupta submits that, having been cautioned, by the FER issued by the Trade Marks Registry in response to Application No. 4029708 dated 17 December 2018 (which was abandoned) for registration of the word mark

ABBZORB in Class 5, that the plaintiff was already the holder of the mark ABZORB in the same class, the defendants, in proceeding nonetheless to use the mark ABBZORB for whey protein, were clearly acting mala fide, with a view to imitate the plaintiff's mark.

35. The submission of Mr. Gupta has weight. At any rate, having been made aware of the plaintiff's ABZORB mark by way of the FER issued by the Trade Marks Registry in response to its application for registration of ABBZORB as a trade mark, if Defendant 2, nonetheless, proceeded to use ABBZORB for whey protein, it engaged in an exercise in adventurism, the consequences of which the defendants cannot escape. While I am not really a votary of the proposition of the "safe distance" principle that some judgments have laid down[6], once the defendants, in the present case, were made aware of the plaintiff's mark, registered in Class 5, the defendants were clearly required to ensure that they did not use an identical, or deceptively similar, mark, for goods in Class 5 itself. They, however, proceeded to do so with impunity, and must, therefore, suffer the consequences.

36. Where a prima facie case of infringement exists, the Supreme Court has, in **Midas Hygiene Industries P. Ltd. v. Sudhir Bhatia**[15], held that an injunction has necessarily to follow.

Conclusion

37. In view of the aforesaid discussion and observations, pending disposal of the suit, the defendants, as well as all others acting on their behalf, shall stand restrained from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in dietary/ health supplements, nutraceuticals, apple cider vinegar and promotional material such as t-shirt, shaker, bags, face mask or any other goods under the impugned marks ABBZORB, ABBZORB NUTRITION,

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or any other trade mark as may be deceptively similar to the Plaintiff's trade mark ABZORB, pending disposal of the present suit.

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[6] Some decisions hold that, once a defendant has been found to have infringed the plaintiff's mark, any subsequent mark that it adopts in its stead must bear a "safe distance" from the mark of the plaintiff. I do not really subscribe to the said view as, in my opinion, so long as the defendant's alternate mark does not come so close to the plaintiff's mark as to constitute infringement, the defendant would remain "safe enough". [15] **(2004) 3 SCC 90**

38. It is clarified that the views expressed in this order are only prima facie and are not intended to be regarded as binding on the Court while adjudicating on the dispute in the suit.

39. This application stands allowed accordingly.

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40. List before the learned Joint Registrar (Judicial) on 9 January 2024.