



**Ranbaxy Laboratories Ltd. – Plaintiff v. Dua Pharmaceuticals Pvt. Ltd. -
Defendant, 1988 Arb. L. R. 315 (Delhi High Court).**
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Judgment delivered by B.N. Kirpal

CASE FACTS:

Ranbaxy Laboratories, a well-known pharmaceutical company, manufactured the CNS depressant Diazepam in 5 mg tablets and sold them under the trade name of CALMPOSE. The trade mark of CALMPOSE was registered in 1970 and has been in use since then. The company made about 40 crores selling the drug under this trade name. The medicine was packaged with aluminum foil on one side and polythene film on the other in colors of silver and brown.

Dua Pharmaceuticals manufactured a similar medicine and marketed it under the name of CALMPROSE. The packaging of CALMPROSE was similar to that of CALMPOSE as also the mark used, which was visually and phonetically similar.

Ranbaxy filed a suit, at the Delhi High Court, for infringement of its registered trade mark, CALMPOSE, by Dua Pharmaceuticals, praying for a perpetual injunction and rendition of accounts.

ISSUE:

Whether the trade mark CALMPROSE used by Dua Pharmaceuticals is an infringement of the trademark CALMPOSE registered and being used by Ranbaxy Laboratories for more than 15 years?

RULE OF LAW:

When a trade mark is too identical or too similar to an already registered well-known trade mark it is an infringement of the original trade mark.

ANALYSIS:

The Delhi High court issued an interim injunction restraining Dua Pharmaceuticals from selling the drugs. Dua Pharmaceuticals contested the injunction on the ground that CALMPROSE is a prescription drug which is not available over the counter and unless

the customer specifically asked for it, it would not be sold, thus minimizing the chance of the customer getting deceived. And that the name CALMPROSE is phonetically different from CALMPOSE.

Ranbaxy Laboratories contended that it had built a reputation in the sale of CALMPOSE over the years and that Dua Pharmaceuticals had made a deliberate attempt to adopt the CALMPOSE trade mark, albeit with a minor change, to its advantage.

The court held that there was a very good possibility that both the drugs would be available at the same store and CALMPROSE would be sold to the customer and passed off as CALMPOSE. And since the packaging, color scheme et cetera were also similar, the probability that the customer would get confused was greater. In the light of these observations and after a close scrutiny of the facts of the case, the Delhi High Court made final and absolute the injunction restraining Dua Pharmaceuticals from selling CALMPROSE

The law with regard to passing off and near identical trade marks is interpreted differently in each case. For example, in a case involving the trade names 'ENTROZYME' and 'ENTOZINE', the court found that the two names were not phonetically similar. Each case has to be decided after a close scrutiny of the facts and after taking into consideration the probability of confusion which the average consumer may suffer with regard to the original and imitative trade mark.