**Glenmark Pharmaceuticals Limited vs. Curetech Skincare and Another 2018 (76) PTC 114 (Bom): Case analysis and Case Comment**

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**1 TITLE:** Glenmark Pharmaceuticals Limited vs. Curetech Skincare and Another 2018, Case analysis and Case Comment.

**PART-1**

**2 INTRODUCTION**
“The law of Torts in India never possessed great importance until the advent of British rule as it was the British who administered the concept of compensation for a person victimized by a wrong of another”[[1]](#footnote-1). The concepts of justice, fairness, and good faith can now be guaranteed in India, and Indian courts are cautiously examining if English law can be enforced in Indian society and circumstances.

Intellectual property rights give their owners exclusive ownership rights as well as the ability to sue for any misuse of the business or service by a third party. It is very common to levy charges and damages, ranging from minimal to exceptional, in instances of trademark infringement.

Defining the term trademark, “Section 2(m) only says that it includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging, or combination of colours, or any combination of such expressions”[[2]](#footnote-2). A trade mark, in general, refers to a mark that can be graphically depicted. It should be able to differentiate between one person's items & services and that of many others. It may include the form of the products, their packaging, and colour combinations.

A registered trade mark is impinged when an individual who isn't really a legal owner or a person used via way of licenced usage uses in the conduct of trade a mark that is deceivingly identical to the trade mark in reference to products or services for which the trade mark is registered, like in such a way that the use of the mark is likely to be picked up as a trade mark. To compensate the loss of the legal owner of the mark damages are awarded, they could range from the nominal to the exemplary damages.

In the caseMicrosoft v Yogesh Popat(2005)[[3]](#footnote-3), the court found trademark and copyright violations and, after assessing the plaintiff's real loss of business, granted consolidated damages of $1.97 million (i.e. 19,70,000).

In Time Incorporated v Lokesh Srivastava[[4]](#footnote-4) it was witnessed that the court has given its views on how the punitive damages should be awarded and how they should cover the overall loss of the plaintiff. This case led to a significant rise in the amount of damages awarded. The honorable court said that- “ punitive damage should really be punitive and not merely a **“flea bite”**”.

Nominal damages are paid to a plaintiff in a case where the person has sustained no significant injury or loss for which compensation is required[[5]](#footnote-5). This type of award represents a legal acknowledgment that a defendant's breach of duty or wrongful conduct has resulted in a violation of a plaintiff's rights.

Exemplary damages may be paid in a tort case if the defendant has not only performed a wrongful act but has acted in an unreasonable and degrading manner[[6]](#footnote-6). These damages are only granted under exceptional circumstances.

In most of the cases of trademark infringement where the type of damages awarded are exemplary, the limits do not exceed Rs.1,00,00,000. But in **Glenmark Pharmaceuticals vs. Curetech Skincare and Ors.[[7]](#footnote-7)**, it was held by the Bombay high court that the defendant company is an habitual offender and has imposed exemplary damages amounting to Rs.1,50,00,000. In the particular habitual offender has been described as a person who has no regards and respect towards the law and keeps on breaking it again and again.

In the proceeding of the case the cause of negligence was also added by the court. It was mentioned that the defendant company copies the mark of the companies with good market image such as Glenmark, Cipla ltd, Smithkine Beecham PLC, etc and provided the products that do not match the standards and was negligent in providing the standard quality medicines to the public.

This research conducted totally revolves around the case and the issues raised by the plaintiff in it. It consists of the brief introduction of the principles on which the case is based and a critical analysis and comment on the judgment pronounced by the Bombay High Court.

**3 RESEARCH QUESTIONS**

1. What is the factual background of the case?
2. What are the major arguments and the plaintiff’s contentions?\
3. What is the judgment pronounced?
4. What is the stand of the courts in the matter of Pharmaceutical Trademarks?
5. What are the related cases?

**4 RESEARCH OBJECTIVES**

The objectives to be fulfilled while conducting the research are as follows:

1. To study the facts related to the case.
2. To study the arguments and the plaintiff’s contentions.
3. Analysis of the judgment that is pronounced by the court.
4. To learn about the position of courts in case of pharmaceutical trademarks.
5. To study related cases and draw reference from them.

**5 LITERATURE REVIEW**

According to the researcher's preliminary investigation, at the time of research, there are no existing literature works assessing the case of Glenmark Pharmaceuticals vs. Curetech Skincare and Ors. The researcher starts from the beginning, with the facts and legal actions. In this instance, trademark infringement and exemplary damages are at issue. To have a thorough understanding of the situation, the researcher consults **Ratanlal & Dhirajlal's The Law of Torts**[[8]](#footnote-8), which is a comprehensive treatise on tort law as well as **the trademark act, 1999**, which gives a brief overview of trademark infringement.

Another article **Pharmaceutical Trademarks: Indian Perspective**[[9]](#footnote-9) has been referred to understand the perspective of Indian courts with such matters and study various judgments delivered in related case.

There are numerous cases involving the current topic of research. The researcher, on the other hand, chooses to focus on those who have significantly altered people's perceptions of that particular crime. **Win-Medicare Pvt. Ltd. Vs. Galpha Laboratories Ltd**. & Ors, this particular case was referred as the defendant was involved in the current case was involved there and was liable for similar crime. **Shalina Laboratories Pvt. Ltd. Vs . Twin Impex and Nationa Laboratories,** this case was another case referred to draw reference as it also involves the similar issues.

**PART-2**

**1 FACTUAL BACKGROUND**

The following are the circumstances of the case:

Glenmark, a generics producer based in Mumbai, is involved in the dispute, and its product Candid – B. (an anti-fungal cream). Galpha Laboratories, the main defendant, is the manufacturer of a similar medicine sold under the brand name Clodid – B.

Glenmark Pharmaceuticals Ltd. filed a lawsuit against Curetech Skincare for selling products with the trademark ‘CLODID-B,' which was confusingly similar to plaintiff's ‘CANDID-B.'

The Plaintiff claimed that Galpha Laboratories' CLODID-B mark infringed on his trademark CANDID-B. Galpha Laboratories was also accused of plagiarising the Plaintiff's trade mark, artwork, colour scheme, and trade dress.

No. 1 Defendant Curetech Skincare is a contract firm that made products for Galpha Laboratories. As a result of the Contract Manufacturing Agreement, Defendant No. 2 submitted the artwork, labels, and mark to Defendant No. 1.

Interestingly, in this case, the Defendants accepted the Plaintiff's charges and gladly agreed to the decision by not opposing the matter. It was also claimed that they did not infringe on the trademark on purpose, but rather by "mistake." Defendant No. 2's lawyer, on the other hand, admitted that they "ought to have acted diligently before adopting and utilising the trade mark."

ISSUES:

The case is upon:

* Whether the defendant is a "habitual offender" and "habitual infringer."
* Is it appropriate to impose exemplary damages on the defendant in order to deter them in the future?

**2 ARGUEMENTS & PLANTIFF’S CONTENTIONS**

When the Defendants were accused of trademark infringement, they agreed to the imposition of costs order, claiming that the trademark infringement was a "mistake" and not deliberate. They also did not raise any objections to the case.

The Plaintiff refuted the Defendant No. 2's arguments about their claim of infringement by "mistake." Defendant No.2 is also described as a "habitual infringer," according to them.

The Plaintiff claimed that they had previously given Galpha Laboratories a cease and desist notice for utilising the term ASCODIL and infringing on their registered trademark ASCORIL. In this case, the Defendant No.2 had issued a written unconditional apology and promised not to infringe on the Plaintiff's trademark in the future.

The Plaintiff also claimed that the Central Drugs Standard Control Organization determined the Defendant No.2's medical equipment or products to be "Not of Standard Quality/Spurious." The Plaintiff provided a number of public-domain papers and papers to show that Defendant No.2 had broken several FDA restrictions.

The Plaintiff requested that exemplary damages be imposed on the principal defendant since past efforts by the court to stop the principal defendant from infringing on trademarks had failed, and that exemplary damages would serve as a deterrent to the principle defendant's behaviour.

The Plaintiff referenced the case of Win-Medicare Pvt. Ltd. v Galpha Laboratories Pvt. Ltd. & Ors.[[10]](#footnote-10)2, in which the Delhi High Court declared Galpha Laboratories a "habitual infringer" in January 2016.

**3 CASE JUDGMENT AND ANALYSIS**

JUDGMENT

Because the lawsuit was not contested, the defendants agreed to pay the plaintiff's costs and pray the plaintiff's prayers. It's crucial to look at how and why charges are imposed in the first place.

The defendant's history of trademark infringement was investigated by the Court. It cited the Delhi High Court's negative findings against the defendant in Win-Medicare Pvt. Ltd. Vs. Galpha Laboratories Ltd. & Ors., in which the court stated that Galpha was a "habitual offender." The Court also looked at the defendant's history of producing substandard pharmaceuticals, which was brought up by both the Central Drugs Standard Control Organization and the Maharashtra Office of the Drug Control Administration.

Despite the fact that the dispute was finally solved in terms of the plaintiff's pleas, the Court found it appropriate to impose exemplary costs on the defendant, and imposed costs of 1.5 crores. Mr. J. Kathawalla made the following observation:

“Drugs are not sweets. Pharmaceutical companies which provide medicines for health of the consumers have a special duty of care towards them. These companies, in fact, have a greater responsibility towards the general public. However, nowadays, the corporate and financial goals of such companies cloud the decision of its executives whose decisions are incentivized by profits, more often than not, at the cost of public health. This case is a perfect example of just that.”

3.1 ANALYSIS

In this case, a learned single judge determined that the defendant's disputed product is a "systematic" and "blatant" replica of the plaintiff's product. Everything was a ruse and a copy, from the word mark to the packaging. Despite the fact that the defendants in this instance were willing to submit to the Court's decision and directions, the plaintiff called the Court's attention to the defendant's previous actions. The defendant has repeatedly infringed on plaintiff's trademarks. The plaintiff issued a cease and desist order to the defendant in 2003 after the latter copied the plaintiff's trade mark "ASCODIL." The defendant expressed his regret and offered an unqualified apology. The defendant has copied trademarks of other well-known pharmaceutical businesses, including Cipla Ltd., Smithkine Beecham PLC, Times Drugs and Pharmaceuticals, and many more, in addition to the plaintiff's. In a lawsuit against him, the Delhi High Court labelled the defendant a "habitual infringer." As a result, defendant is a serial infringer, breaching the law on a regular basis.

In this case, the defendant may have faced only modest expenses, but because the pharmaceutical business was a repeat offender, they were held accountable for substantial damages. The defendants were accused of being of poor quality, spurious, or adulterated, in addition to being habitual infringers. They were the subject of multiple FDA investigations for rule infractions. As a result, the defendant was likewise a habitual lawbreaker. Considering the importance of drugs to human life, the defendant had shown flagrant disregard for the law and ethics. Lawbreakers and repeat infringers will suffer greatly as a result of this lawsuit. People are only trained to fear violating behaviors because of the imposition of high charges.

The Bombay High Court made the correct decision. Despite the fact that the Court did not consider statutory requirements such as the Trade Marks Act of 1999, it relied on basic and broad legal principles to reach its decision.

3.2 HABITUAL OFFENDOR AS DEFINED BY COURTS

The following individuals are prone to be labelled as "habitual criminals":

1. Any person convicted of an offence punishable under Chapters XII, XVII, or XVIII of the Indian Penal Code, whose previous conviction or convictions, when considered in light of the facts of the case, show that he is a habitual robber, housebreaker, dacoit, thief, or receiver of stolen property, or that he is a habitual extortionist, cheater, or counterfeiter of coin, currency notes, or
2. Any person convicted of an offence punishable under Chapter XVI of the Indian Penal Code, whose past convictions, considered together with the facts of the case, establish that he regularly commits offences against the person.
3. Any individual detained or sent to prison by Section 123 (read with Section 109 or Section 110) of the Code of Criminal Procedure [new Code Sections 122, 109, 110].
4. Any individual guilty of any of the offences listed in I above when it emerges from the facts of the case, even if no previous conviction has been established, that he is a member of a gang of dacoits, thieves, or a slave or stolen property dealer by habit.

**2.4 POSITION OF COURT**

Due of the impact on an individual's health and life, as well as the potentially dangerous effect of confusion or deceit, trademark infringement and passing off are particularly important in the pharmaceutical sector. In a developing country like India, the risk of confusion is high, so a stricter approach and stricter rules are used when comparing pharmaceutical trademarks to other sectors, as compared to other sectors, because any confusion could harm consumers' health. The courts take into account even minor chances of confusion or deception linked with the use of identical or similar marks, relying on the principle of judging similarity from the perspective of a common man with average intelligence and poor memory, who would rather rely on his memory, or what he remembers, than split the names and analyse their individual meaning before purchasing.

The Supreme Court Cadila case is the major authority on determining the likeness or identity of pharmaceutical trademarks, and it has established the view that a lower degree of proof is preferable to prove confusion in the public interest when it comes to medicinal products. The Court stated that confusion between medicinal items can be fatal, and that stronger standards in situations concerning pharmaceutical items are necessary.

In one of the cases, the Delhi High Court held that trademark/name disputes in the pharmaceutical industry must be viewed through the prism of public interest, where the correct manufacturer is held responsible in the event of a problem with its pharmaceutical product and no innocent manufacturer is made to suffer an injury. The Court has adopted the ‘likelihood of confusion' approach in one of the cases, based on the misleading likeness of the ‘Bectodine – M' and ‘Betadine' trademarks, trade dress, and packaging, as well as the identity of colour theme, get-up, and design.

In a case involving the marks ‘PACITANE' and ‘PARKITANE'[[11]](#footnote-11) for pharmaceutical preparations for the treatment of Parkinson's disease, the Bombay High Court held that the goods were similar, the customers buying these goods as well as the trade channels are also the same, and that the test is possibility of confusion rather than probability of confusion. Furthermore, the Bombay Judicature has been harsh on ‘habitual' infringers, imposing exemplary costs of INR 1.5 crores (roughly USD 200,000) on a defendant who was ‘habitually' infringing on pharmaceutical trademarks in a recent case.

Because of the potential for injury to human life, Indian courts are taking a more stringent approach to determining likelihood of confusion in pharmaceutical trademarks.

**2.5 CASE LAWS**

1. Cadila Healthcare Ltd. Vs. Cadila Pharmaceuticals Ltd.[[12]](#footnote-12)

In terms of trademark infringement in medicines, the Supreme Court established many principles. It was decided that in medical instances, strong steps should be made to avoid confusion. If the marks are similar, the public interest supports requiring a lower standard of proof to show infringement in a pharmaceutical case.

1. Shalina Laboratories Pvt. Ltd. Vs . Twin Impex and National Laboratories[[13]](#footnote-13).

The Plaintiffs sued the Defendants for trademark infringement, copyright infringement, and passing off in relation to their pharmaceutical medication "TANZOL," which they were marketing under the almost identical trade mark/label "INASOL." The Court Receiver confiscated the pharmaceutical items of the Defendants carrying the impugned artwork / trade mark / label "INASOL" and directed the Defendants to pay the amount  of Rupees One Crore Fifty Lakhs as exemplary damages after the court issued an ex-parte order on August 29, 2018.

1. Dr. Reddy's Laboratories v. Reddy Pharmaceuticals Ltd[[14]](#footnote-14).

It was decided that owners of trademarks or copyrights are not required to pursue every infringer and, as a result, spend time in court at the expense of their business. They may overlook and disregard minor infractions until they reach frightening dimensions if the alleged infringement is too minor or insignificant to jeopardize their commercial interests.

**PART-3**

**CONCLUSION**

The learned single judge stated in the judgement that the defendant "has no concern or respect for the rule of law." Exemplary costs are the only method to deter such lawsuits in the future in such circumstances. Such unethical practises hurt not only rivals and competitors, but also the general public, who rely on pharmaceutical and other companies' treatments, drugs, and other products, which, if not of proper quality, may jeopardise their health, life, and fortune.

The court's stance in this case, combined with a proposal to amend the Drugs & Cosmetic Act to include penalties of 3-5 years in prison for producing "substandard" quality drugs and life in prison in cases where the goods are found to be spurious, could help to improve India's pharmaceutical sector's current state of affairs.

**LIST OF CASES**

* Cadila Health Care Ltd vs. Cadila Pharmaceuticals Ltd., 2001(5) SCC 73
* Bio-Chem Pharmaceutical vs. Astron Pharmaceuticals, 2003 (26) PTC 200 (Del) para 19
* Win-Medicare Pvt Ltd vs. Galpha Laboratories Limited, 2016 (65) PTC 506 (Del)
* Sun Pharma Laboratories Limited vs. Bdr Pharmaceuticals International Pvt Ltd & Anr., CS(COMM.) 757/2017
* Curewell Drugs & Pharmaceuticals Pvt Ltd vs. Ridley Life Science Private Ltd., CS (COMM) 1071/2018
* Wyeth Holdings Corp. & Anr. vs. Sun Pharmaceuticals Industries Ltd., 2004 (28) PTC 423 (Bom)
* Shalina Laboratories Pvt. Ltd. Vs . Twin Impex and National Laboratories, Sept. 2018.
* Dr. Reddy's Laboratories v. Reddy Pharmaceuticals Ltd, August, 2004

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2. Divya Joshi, “ Drugs Are Not Sweets” – Bombay HC Imposes Exemplary Costs for Pharma Trademark Infringement, Sept,2018
1. Prerna Deep, Evolution of Law of Torts in India, 2018 [↑](#footnote-ref-1)
2. Trade Mark Act,1999 Section 2(1)(m). [↑](#footnote-ref-2)
3. Microsoft vs. Yogesh Popat, 2005 [↑](#footnote-ref-3)
4. Time Incorporated v Lokesh Srivastava, January, 2005. [↑](#footnote-ref-4)
5. Law of Torts B.M Gandhi (9th Edition) Eastern Book Company. [↑](#footnote-ref-5)
6. Pankaj Agarwal & Kunal Sharma, India: Exemplary/ Punitive Damages, Feb,2020. [↑](#footnote-ref-6)
7. Glenmark Pharmaceuticals Limited vs. Curetech Skincare and Another 2018 (76) PTC 114 (Bom): Case analysis and Case Comment [↑](#footnote-ref-7)
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10. Win-Medicare Pvt. Ltd. Vs. Galpha Laboratories Ltd. & Ors., 65 PTC, 506 (Del: 2016). [↑](#footnote-ref-10)
11. Wyeth Holdings Corp. & Anr. vs. Sun Pharmaceuticals Industries Ltd., 2004 (28) PTC 423 (Bom). [↑](#footnote-ref-11)
12. Cadila Health Care Ltd vs. Cadila Pharmaceuticals Ltd., 2001(5) SCC 73. [↑](#footnote-ref-12)
13. Shalina Laboratories Pvt. Ltd. Vs . Twin Impex and National Laboratories, Sept. 2018. [↑](#footnote-ref-13)
14. Dr. Reddy's Laboratories v. Reddy Pharmaceuticals Ltd, August, 2004. [↑](#footnote-ref-14)