

## **Dr. Reddy'S Laboratories Ltd. vs Reddy Pharmaceuticals Limited on 26 August, 2004**

**Equivalent citations: [2005]128COMPCAS42(DELHI), 2004(76)DRJ616, 2004(29)PTC435(DEL)**

**Author: R.C. Chopra**

**Bench: R.C. Chopra**

### JUDGMENT

R.C. Chopra, J.

1. This order shall dispose of IA No.11847/2003 under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure and IA No.302/2004 under Order XXXIX Rule 4 read with Section 151 of the Code of Civil Procedure.

2. The facts relevant for the disposal of these two applications, briefly stated, are that the plaintiff, a Company engaged in the manufacture and sale of pharmaceutical products for the last over 19 years and having even overseas operations is marketing it as products under the trade mark "Dr. Reddy's". The plaintiff alleges that a logo representing a man with outstretched arms and word mark "Dr. Reddy's" was created in April, 2001 which was an original artistic work within the meaning of Section 2(c) of the Copyright Act. It was formally assigned to the plaintiff in December, 2002 and as such the plaintiff being the proprietor of the copyright is entitled to exclusive use thereof. The plaintiff has already applied for the registration of the trade mark in various countries including India. The registration process in Romania has already been completed. In para 6 of the plaint details of various subsidiaries owned by the plaintiff all over world starting with the name "Reddy" or "Dr. Reddy" are given and it is stated that the plaintiff exports bulk drugs as well as finished dosages of the formulations to over 100 countries including U.S.A., Russia and European Union. In the year 2002-2003, the exports of the plaintiff were to the tune of Rs.11,581 million.

3. In para 8 of the plaint, names of certain finished pharmaceutical preparations are given which have been developed on account of the research and development facilities established by the plaintiff and it is added that the plaintiff with a turnover of Rs.6803 million in the branded formulations has ranked 6th in the ORG-MARG rankings for the period ending June, 2003. It is averred that the aforesaid trading style is now synonymous with high quality pharmaceutical preparations worldwide and the trade mark which appears on the packaging of its products and logo of the plaintiff is recognised through the world as a source of origin of the plaintiff's products as well as quality.

4. According to plaintiff, the defendant's "Reddy Pharmaceuticals Limited" is a Company which was initially carrying on the business of purchase and supply of bulk drugs. The defendant has been purchasing bulk drugs from the plaintiff also since 1997 but at no stage of time the defendant was manufacturing or marketing its own pharmaceutical preparations. The activities of the defendant were in the nature of distributor/agent only to supply bulk drugs manufactured by the plaintiff to formulators without changing the packing or the label. Therefore, the activities of the defendant were in no way detrimental to the plaintiff and as such no objection was being raised to the use of the name "Reddy Pharmaceuticals Limited". On April 1, 2003, the defendant was even appointed a commercial Delcredere agent for a period of one year for marketing the products of the plaintiff in the Northern region. However, in September, 2003, the plaintiff was astonished to learn that the defendant had gone beyond its initial. A perusal of the packing material of the products marketed by the defendant also demonstrated the dishonest intentions of the defendant inasmuch as the defendant had deliberately adopted the packing style in such a way so as to make a consumer believe that the products originated from the plaintiff.

5. In para 15 of the plaint details were given as to how the defendant was passing off its products as if those were the products of the plaintiff. It was stated that the defendant was prominently displaying the trade name "Reddy". It was pleaded that the (sic). It was also averred that the defendant had commenced the marketing of a drug "Omeprazole" under the brand name "OMRE" in a strip with similar design to that of the plaintiff's product "OMEZ". The name, the packing and the get-up of the strip were substantially similar so as to create a confusion that the same was manufactured by the plaintiff Company. In respect of a product "MUCOLITE" of the plaintiff, the defendant had started marketing a brand "RECOLITE" which was also a deceptively similar product. The plaintiff alleged that the defendant's acts clearly demonstrate that it is deliberately adopting the trade mark, trading style as well as similar names of the products of plaintiff with a view to pass off its goods as those of the plaintiff.

6. In paras 17 and 18 of the plaint, details were given in regard to the meetings between the Officers of the plaintiff and the defendant to resolve the controversies but there was no result. It became obvious that the defendant had no intention to discontinue the use of infringing trading style, trade mark and copyrights. The plaintiff's websites, details of which were given in para 22 of the plaint, were also sought to be protected by restraining the defendant from using the domain name for the marketing and sale of its pharmaceutical preparations. It was pleaded that a permanent injunction restraining the defendant, its Directors, servants, agents and anyone acting on its behalf from using the plaintiff's trade mark "Dr. Reddy's" and from using the trading style "Reddy Pharmaceuticals Limited" in relation to pharmaceutical products and from copying the layout and get-up of plaintiff's product "OMEZ" and from reproducing the logo or any other act amounting to passing off be issued. An order of deliverad interim injunction was prayed till the disposal of the suit.

7. By filing a written statement and application under Order XXXIX Rule 4 read with Section 151 Code of Civil Procedure, the defendant has opposed the prayer for grant of ad interim injunctions as prayed. According to defendant, the plaintiff cannot claim any monopolist and proprietary right in a common surname such as "Reddy" and the defendant has a bona fide statutory right to use the same as it is the surname as of its Managing Director. It is pleaded that the plaintiff does not have a

registered trade mark in "Dr. Reddy's" and as such not entitled to claim any monopoly in a common surname. The plaintiff's claim of passing off is also controverted pleading that the plaintiff's proprietary right is in the mark "Dr. Reddy's" and not "Reddy" which was never used by the plaintiff in relation to its pharmaceutical preparations. It is pleaded that the drugs in question are scheduled drugs which are dispensed by trained and qualified pharmacists, chemists on medical prescriptions, given by qualified physicians and as such these are not goods which are purchased or picked up off the shelf by consumers exercising their own discretion. It is pleaded that defendant's packagings have nothing similar in terms of colour combination, get-up or layout and as such there is no likelihood of any confusion by the use of the trade mark "Reddy". It is averred that as per trade practice, the defendant is using the name "Reddy" as a house mark and as such no interim injunction ought to be granted against such use. The defendant pleads that the suit is mala fide and has been instituted to deliberately cause injury and damage to the defendant. It is also alleged that on 1st April, 2003, an Agreement was entered into between the parties for supply of bulk drugs but the plaintiff terminated the said Agreement raising a claim of about 1.65 crores. This suit is stated to have been filed to pressurise the defendant to pay the said amount. The suit is stated to be an abuse of process of law and an arm twisting tactic.

8. On merits, the defendant pleads that it has been carrying on the business of marketing pharmaceutical preparations since 1996 under the name "Reddy Pharmaceutical Limited". A copy of the Memorandum and Articles of Association of the defendant is placed on record. It is pleaded that the plaintiff is aware of the adoption and use of the said trade name by the defendant since 1997 and is doing business with the defendant without any objection. The defendant was earlier a Private Limited Company but was converted into a Public Limited Company. The plaintiff has been supplying pharmaceutical preparations to the defendant for onward sale since 1997.

9. I have heard learned counsel for the plaintiff and learned counsel for the defendant and have also gone through the records.

10. Coming to the question as to whether the plaintiff has succeeded or not in establishing a prima facie case in its favor for grant of ad interim injunction, this Court finds that the pleadings of the parties as well as documents placed on record prima facie show that since 1984 or so the plaintiff company is engaged in the manufacture and sale of bulk drugs as well as finished pharmaceutical preparations. The plaintiff has huge sales of its products not only in India but in other countries also. Its turn, the logo representing a man with outstretched arms and word mark " Dr. Reddy's" which was created in April, 2001 is an original artistic work within the meaning of Section 2(c) of the Copyright Act. In December, 2002 it was formally assigned to the plaintiff. The plaintiff has applied for the registration of the said logo as well as trade mark in various countries including India. The registration process in Romania is already complete. It is, therefore, prima facie shown on record that the plaintiff is a leading manufacturer of bulk drugs as well as pharmaceutical preparations and its trade mark " Dr. Reddy's" and a logo comprised of a man with outstretched arms has acquired substantial recognition not only in India but abroad also. The drugs and pharmaceutical preparations manufactured by the plaintiff have earned enormous trade reputation and goodwill and plaintiff is distinctively identified and associated with trade mark/name "Dr. Reddy" as well as logo.

11. The pleadings and the material on record prima facie show that the defendant also has been functioning under the trade name "Reddy Pharmaceutical Limited" since 1996 but its sphere of business was never manufacturing drugs or pharmaceutical preparations.

12. It is shown on record that the defendant was only a trader in bulk drugs and was acting as an agent of the plaintiff even for the sale of bulk drugs. The defendant was purchasing bulk drugs since 1997 not only from the plaintiff but from other manufacturers also and was supplying the same to various pharmaceutical companies and as such was an agent only for the sale of bulk drugs. The copies of invoices placed on record prima facie establish this fact. The defendant was appointed a Delcredere Agent by plaintiff on 1.4.2003 and an agreement was entered between them in this behalf. Till April, 2003, therefore, there was no problem between the plaintiff and defendant but in August, 2003 the defendant suddenly launched about 33 pharmaceutical preparation under various brand names and started using the name "Reddy" which gave the plaintiff a rude jolt in as much as in the field of manufacturing of bulk drugs and pharmaceutical preparations the trade mark "Dr. Reddy's" was distinctly associated and identified with the plaintiff company. There is nothing on record to show that prior to August, 2003 the defendant was engaged in the manufacturing or sale of the pharmaceutical preparations under the trade name "Reddy". The Articles of Association of the defendant which say that one of the objects of the defendant company was to carry on business of manufacture and trading of all kinds of pharmaceutical preparations and drugs does not advance the defendant's case in any manner as it is shown on record that prior to August, 2003 the defendant was not at all engaged in the manufacturing, marketing or sale of pharmaceutical preparations. It was only dealing in bulk drugs manufactured by others including the plaintiff company.

13. It is also shown on record that even in August, 2003 the defendant had no manufacturing facilities for pharmaceutical preparations and it only started marketing pharmaceutical preparations manufactured by others by putting the trade mark "Reddy" thereon.

14. The mala fides of the defendant are writ large as it is found that not only it started using a similar trade mark/name but it also started using a Hyderabad address in spite of the fact that its registered office was at Delhi and on its bills it was clearly mentioned that the customers were required to make payments at Delhi and the disputes between the defendant and its customers were subject to jurisdiction of Delhi Courts. The defendant has raised a plea that it has a marketing office at Hyderabad but it was only a ploy to mislead the customers as the plaintiff company is based at Hyderabad. The adoption of trade name/trade mark "Reddy", address of Hyderabad and use of similar names of pharmaceutical preparations indicates fraudulent intentions of the defendant to encash upon the trade reputation and good will of the plaintiff company.

15. Thus, it prima facie stands established on record that the defendant is endeavoring to pass off its products under the trade mark "Reddy" with a view to confuse and mislead the customers by making them believe that the products are manufactured by the plaintiff company. Even now, the defendant appears to be having no manufacturing unit for manufacturing pharmaceutical preparations and it is only putting the name "Reddy" on the pharmaceutical preparations manufactured by others. The absence of the registration of the trade mark in favor of the plaintiff

and the pendency of the application in this regard is of no consequence for the reason that the defendant's impugned action is squarely covered within the definition of "passing off". The Apex Court connection with the plaintiff's group of Companies and it was held that such user may affect the plaintiff prejudicially in the business and trading activities. The plaintiff's plea for ad interim injunction was found justified.

16. The plea raised by the defendant that it has a bona fide statutory right to use the trade name "Reddy" as its Managing Director is Mr. Reddy is also liable to be rejected for the reason that the trade mark "Dr. Reddy" in spite of not being registered has acquired considerable trade reputation and goodwill in the community dealing with drugs and pharmaceutical not only in India but abroad also. This trade mark is now distinctively associated with the plaintiff's company. Its long and continuous user by the plaintiff is prima facie established. The use of trade name/mark "Reddy" by the defendant is capable of causing confusion and deception resulting in injury to the goodwill and reputation of the plaintiff company. No other "Reddy" has a right to start a rival business by using the same trade name on the plea that it is his surname. This would encourage deception. If such a plea is allowed, rivals in trade would be encouraged to associate in their business ventures persons having similar surnames. It was held to be an act of passing off the goods and it was observed that the use of such family name as a trade mark was not permissible. The plea of the defendant that the surname of the partners of its firm could be used to carry on trade in their own name was rejected. It was held that prima facie the defendant was intentionally and dishonestly trying to pass off their goods by use of name "Bajaj" and as such the plaintiff had made out a case for grant of injunction.

17. In the case of Kirloskar Diesel Recon Pvt. Ltd. and another v. Kirloskar Proprietary Ltd. and others, it was held that the use of surname was not saved by Section 34 of the Trade and Merchandise Marks Act, 1958 for an artificial person like incorporated Company. It was also held that the mark 'Kirloskar' used by the plaintiffs had acquired a secondary meaning and had become a household word and as such Section 34 of the Act could not come to the rescue of the defendants.

18. Learned counsel for the defendant has vehemently argued that the plaintiff is not entitled to this discretionary relief on account of its acquiescence and laches in objecting to the use of trade mark "Reddy" by the defendant company. It is submitted that since 1997 the plaintiff knew that the defendant is trading and functioning under the trade name "Reddy" but it never objected and to the contrary it kept on having business dealings with the defendant and appointed him a Del credere Agent in April, 2003.

19. This plea of the defendant is also prima facie untenable for the reason that till August, 2003 there was no clash of interests between the plaintiff and defendant company and in fact the defendant was engaged in advancing and promoting the business of the plaintiff company by acting as its agent for the sale of bulk drugs. The threat came in August, 2003 when the defendant introduced in the market its pharmaceutical preparations and thereby threatened the business interests of the plaintiff company. This move of the defendant was mala fide on the face of it as it was not manufacturing pharmaceutical preparations earlier but now it was trying to market the pharmaceutical preparations manufactured by others under the trade mark "Reddy". The plaintiff

immediately raised objections, meetings were held and when nothing came out the plaintiff rushed to the Court. As such there was neither any acquiescence nor any laches on the part of the plaintiff to object to the impugned action of the defendant. It cannot be said that the plaintiff has allowed the defendant to build a reputation or goodwill in trade name "Reddy" for use on pharmaceutical preparations. Moreover, the owners of trade marks or copy rights are not expected to run after every infringer and thereby remain involved in litigation at the cost of their business time. If the impugned infringement is too trivial or insignificant and is not capable of harming their business interests, they may overlook and ignore petty violations till they assume alarming proportions. If a road side Dhaba puts up a board of "Taj Hotel", the owners of Taj Group are not expected to swing into action and raise objections forthwith. They can wait till the time the user of their name starts harming their business interests and starts misleading and confusing their customers.

20. It is also argued that the pharmaceutical preparations being marketed and sold by the defendant do not give rise to any passing off action for the reason that only Doctors, Chemists and qualified professionals purchase the same and the ultimate consumer also get the same under prescriptions of the medical practitioners only and every preparation has a distinctive name of its own. This plea also is devoid of merit in as much as even well-educated and qualified professionals are not expected to put searching questions to the sales representatives approaching them for the purchase or recommendation of products, in regard to the identity of the manufacturing company if the name of the company is well-known. Pharmaceutical preparations are purchased and recommended by Doctors not on the basis of the name of the product but most of the time on its ingredients and reputation of the manufacturer. The preparations of reputed and leading manufacturer have much more acceptability. In the present case the defendant had not only started using the trade mark "Reddy", which is deceptively similar to the plaintiff's trade mark, but had also started using a Hyderabad address which was capable of misleading the persons in trade. The matter did not end here as the defendant started marketing some preparations with deceptively similar names and packagings also so as to create confusion. The plaintiff's product "OMEZ" was copied by the defendant by introducing the same drug under the brand name "OMRE" with a similar strip, design and wrapper. The defendant introduced "RECOLITE" also in place of plaintiff's product "MUCOLITE". All these actions of the defendant leave no room for doubt that the intention of the defendant was to deceive and encash upon the reputation and goodwill of plaintiff in the trade mark "Dr. Reddy's" by using the trade mark "Reddy" and thereby induce the purchasers/consumers to purchase its products under an impression that the products have been manufactured and produced by the plaintiff company. This is nothing but fraud which has to be nipped in the bud.

21. Section 35 of the TMM Act is also of no help to the defendant as the use of name "Reddy" on pharmaceutical preparations by the defendant is not shown to be bona fide. The drugs and pharmaceutical preparations being manufactured by the plaintiff may be having different names but that does not dis-entitle the plaintiff to claim protection in regard to its trade mark "Dr. Reddy" which has earned substantial trade reputation and goodwill. This trade mark has acquired a distinctive reputation. Use of an identical or deceptively similar trade mark may mislead the customers on account of similarity. "Dr. Reddy" and "Reddy" are similar trade marks phonetically and are capable of creating confusion. There is identity of goods, identity of trade mark and identity of consumers. The defendant is not at all an honest and concurrent user of the trade mark "Reddy"

and it is apparent on record that it has started using the trade mark "Reddy" on its pharmaceutical preparations in bad faith knowing fully well that the plaintiff company has enormous trade reputation and goodwill in the trade mark "Dr. Reddy" which is completely associated with plaintiff and has acquired a secondary meaning in business circles.

22. In the leading case of *Laxmikant V. Patel v Chetanbhai Shah and another*; , the Apex Court while considering a plea of passing off and grant of ad interim injunction held in no uncertain terms that a person may sell his goods or deliver his services under a trading name or style which, with the passage of time, may acquire a reputation or goodwill and may become a property to be protected by the Courts. It was held that a competitor initiating sale of goods or services in the same name or by imitating that name causes injury to the business of one who has the property in that name. It was held that honesty and fair play are and ought to be the basic policy in the world of business and when a person adopts or intends to adopt a name which already belongs to someone else, it results in confusion, has the propensity of diverting the customers and clients of someone else to himself and thereby resulting in injury. It was held that the principles which apply to trade mark are applicable to trade name also.

23. In *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.*; reported in 2001 PTC 541 (SC), the Supreme Court clearly held that the Courts need to be particularly vigilant where the drugs passing off is alleged. It was held that even in case of Schedule 'H' and Schedule 'L' drugs, which are not sold across the counter but are sold only to the hospitals and clinics, it is not uncommon that because of lack of competence or otherwise mistakes can arise, specially, when the trade marks are deceptively similar.

24. Learned counsel for the defendant has relied upon the judgments in "*Uniply Industries Ltd. Vs. Unicorn Plywood Pvt. Ltd. & Ors.*" reported in 2001 PTC 417 (SC), "*Power Control Appliances & Ors. Vs. Sumeet Machines Pvt. Ltd.*" reported in 53(1994) Delhi Law Times 723 (SC) and "*M/s. Victory Transport Co. Pvt. Ltd., Ghaziabad Vs. The District Judge, Ghaziabad*" to contend that the plaintiff is not entitled to an ad interim injunction as prayed. The judgments relied upon by learned counsel for the defendant are of no help to him and are not attracted to the facts and issues involved in this suit.

25. The documents relied upon by the plaintiff were found to be dubious and as such, the ad interim injunction was refused.

26. In the case of "*Power Control Appliances & Ors. Vs. Sumeet Machines Pvt. Ltd.*" (supra) the principle laid down by the Apex Court was that a trade mark can be only one and it could not have two proprietors. It was held that even the joint proprietors must use the trade mark jointly and for the benefit of all and could not use it in rivalry or in competition with each other. It was observed that the High Court had failed to note that the plea of honest and concurrent user as stated in Section 12(3) of the 1958 Act was not a valid defense to the defendant. Deputation and use has come to acquire a secondary meaning indicating distinctiveness and reputation. As already discussed in the present case, the plaintiff has prima facie shown on record that its trade mark "Dr. Reddy" has acquired distinctiveness and Deputation in the pharmaceutical business circles and the goods

bearing the said trade mark are directly related to the plaintiff Company.

27. It has also been shown by the plaintiff that its websites are [www.drreddys.com](http://www.drreddys.com), [www.mydrreddys.com](http://www.mydrreddys.com), [www.reddyus.com](http://www.reddyus.com) and [www.drreddys.ru](http://www.drreddys.ru) and the defendant has also adopted a domain name [www.ReddyLimited.com](http://www.ReddyLimited.com). It is stated that the defendant has adopted deceptively similar domain name with a view to promote its pharmaceutical products by use of a domain name similar to that of the plaintiff. It is pleaded that the defendant is not entitled to adopt a domain name which is deceptively similar to that of the plaintiff.

28. This Court is of the considered view that the pleadings of the parties and the documents placed on record prima facie establish that the plaintiff has acquired substantial trade reputation and goodwill in the trade mark "Dr. Reddy" and the defendant by adopting the trade mark "Reddy" on its pharmaceutical preparations is trying to encash upon the trade reputation and goodwill of the plaintiff Company. The use of Trade Mark/name "Reddy" by defendant on its pharmaceutical preparations is neither concurrent nor honest user. This Trade Mark has been adopted by defendant with a view to mislead the customers. Intention to practice deceit is writ large. In case no ad interim injunction is granted, the plaintiff is likely to suffer irreparable loss/injury not only in terms of money but in terms of its reputation and goodwill also as the defendant may pass off inferior products to the consumers who may purchase the same under a belief that the same have been manufactured by the plaintiff-Company. This is lie with the plaintiff-Company if its products are of equally good or better quality.

29. me "Reddy" on their pharmaceutical preparations. They are also restrained from copying the layout and get-up of plaintiff's products and from using the plaintiff's logo or any similar logo which is capable of passing off the defendant's products as those of the plaintiff. The defendant is also restrained from using any domain name which contains the word "Reddy" for marketing and sale of its pharmaceutical preparations.

30. The defendant's application (IA No.302/2004) under Order XXXIX Rule 4 read with Section 151 CPC stands dismissed.

31. Nothing started herein shall be taken as an expression of opinion on the merits of the suit inasmuch as the observations made herein are tentative only.