

(1995) 12 BOM CK 0011
In the Bombay High Court
Case No : Suit No. 4080 of 1993

American Home Products Corporation and another	APPELLANT
Vs	
Lupin Laboratories Ltd.	RESPONDENT

Date of Decision : 05-12-1995

Acts Referred:

Citation : (1995) 12 BOM CK 0011

Hon'ble Judges : S.H. Kapadia, J

Bench : Single Bench

Advocate : Mr. T.N. Daruwalla and Mr. C. Misra, for the Appellant; Mr. H.K. Kane, for the Respondent

Judgement

S.H. Kapadia, J.—The short point which has been raised in the above infringement action by the plaintiff is whether the defendants' trade mark "TOROLAC" is deceptively similar or is a colored imitation or nearly resembling the plaintiffs' registered trade mark "ROLAC". Plaintiffs, in this case, seek an interlocutory injunction, restraining the defendants from manufacturing, selling or dealing in any manner in any medicinal or pharmaceutical preparation in any form whatsoever, bearing the trade mark "TOROLAC" or using the said trade mark "TOROLAC" complained of or any other trade mark which is an infringement of or deceptively similar to the registered trade mark "ROLAC" bearing No. 465264 of the plaintiff No. 1 in Class 5.

2. The facts giving rise to the dispute, briefly, are as follows :

First plaintiffs are a Company, incorporated under the laws of the State of Delaware in the United States of America and carry on business as manufacturers of, inter alia, medicinal and pharmaceutical preparations. Second plaintiffs are a company, incorporated in India under the Companies Act, 1956 and are manufacturers of and carry on business in medicinal and pharmaceutical proportions. The first, plaintiffs hold forty per cent of the feed-up capital of the second plaintiff-Company.

3. Defendants are the manufacturers in, inter alia, medicinal and pharmaceutical preparations and carry on business at Kalina, Santacruz, Bombay.

4. On 30th December 1986, the first plaintiffs applied for registration of the trade mark "ROLAC" under No. 465264 for medicinal and pharmaceutical preparations included in Class 5. The said trade mark was advertised in the Trade Marks Journal No. 954 which is published by the Government of India, Trade Marks Registry and is a public document. No one filed any opposition proceedings against registration of the said trade mark "ROLAC". The trade mark "ROLAC" came to be registered in Part A of the Register as December 30, 1986. Subsequently, the trade mark "ROLAC" of the first plaintiffs has been advertised at page 1290 of Trade Marks Journals No. 953 dated 16th February 1989.

5. On October, 15, 1991 a Registered User Agreement was entered into between the first plaintiffs who are the Registered Proprietors of the trade mark "ROLAC" with the second plaintiffs for the use of the trade mark "ROLAC" for the territory of India and other countries mentioned in the Agreement. The Registered User Agreement was filed in the office of the Registrar of Trade Marks, Trade Marks Registry, Bombay for obtaining permission from the Registrar of Trade Marks and the Government of India for recordal of the second plaintiffs as Registered Users of the said trade mark "ROLAC". Prior to the introduction of "ROLAC" in the market, the second plaintiffs had obtained Loan Licence from the Director, Drugs Control Administration, Hyderabad for manufacture of "ROLAC" and "ROLAC" Plus tablets. The second plaintiffs have manufactured and sold two formulations under the trade mark "ROLAC". The first formulation is sold as "ROLAC" Plus which is Magaldrate and Simethicone preparation which is an antacid plus anti-gas chewable tablet. The second formulation sold as "ROLAC" is also a Magaldrate preparation which is an antacid chewable tablet. The second plaintiffs have also marketed ROLAC Suspension and ROLAC Plus Suspension. Plus indicates only higher potency as compared to ROLAC. At this stage it is clarified that ROLAC. Both are chewable tablets. ROLAC Suspension is meant to be administered to children. It is a sort of diluted syrup which is administered to babies because it is difficult for the babies to chew or swallow the tablets as the powder granules are big.

6. Second plaintiffs have sold medicinal preparations under the registered trade mark "ROLAC PLUS" and "ROLAC" from January 1992 onwards (See Exhibit E to the Plaint which is a statement showing details of sales of medicinal preparations under the above registered trade marks). The total sales effected of medicinal preparations under the above two trade marks from January 1992 upto July, 1993 comes to total amount of Rs. 25.58 lakhs. Plaintiffs have incurred promotional expenses of Rs. 2.40 lakhs during the said period.

7. On coming to know that the defendants were selling analgesic tablets (pain killers) under the trade mark "TOROLAC" and on coming to know that they were likely to introduce injections having analgesic effect also under the trade mark "TOROLAC" (hereinafter referred to, for the sake of brevity, as "infringing trade

mark"), the plaintiffs served Cease & Desist Notice dated 8th July, 1993 drawing the attention of the defendants to the fact that the first plaintiffs were Registered Proprietors of the trade mark "ROLAC" bearing No. 465264 dated 30th December, 1986 in respect of medicinal and pharmaceutical preparations included in Class 5 and that the said trade mark was advertised in the Trade Marks Journal No. 953 dated 16th February 1989 and that registration of the trade mark was valid and subsisting and that the second plaintiffs were the Licensed Users in India of the registered trade mark "ROLAC". By the said notice it was also pointed out to the defendants that medicinal and pharmaceutical preparations bearing the trade mark "ROLAC" had been sold on a large and extensive scale in India, that large sums of money had been spent towards promotional expenses in relation to the said preparations sold under the trade mark "ROLAC" that it has come to the notice of the plaintiffs that LUPIN Laboratories Limited (defendants herein) had started manufacturing Ketorolac Tromethamine tablets under the trade mark "TOROLAC" and that the said preparation bearing the infringing trade mark "TOROLAC" had been put in the market. By the said notice, the plaintiffs alleged that the defendants had committed infringement of their registered trade mark "ROLAC" and that they should desist from using the trade mark "TOROLAC". The said notice was replied to by the defendants' attorneys vide letter dated July 28, 1993 requesting for information about the particulars of the registered trade mark. The defendants denied that they were aware of the plaintiffs' registered trade mark. They also denied the knowledge that the plaintiffs were the Registered proprietors of the trade mark "ROLAC". The defendants contended that "TOROLAC" was not an infringement of the plaintiffs registered trade mark "ROLAC" and there was no possibility of passing off. The defendants also contended that the preparations bearing rival marks could only be dispensed on the prescription of a Registered Medical Practitioner because both the preparations were scheduled preparations under the Drugs Act.

8. Ultimately, the dispute resulted in the filing of the Suit in October 1993. As stated hereinabove, the short point which is required to be considered in the present Notice of Motion is whether the registered trade mark of the plaintiffs "ROLAC" has been infringed. The meanings of the expressions "deceptively similar", "colored imitation" or "near resembling" mean the same thing. These expressions have undergone changes from time to time. However, the underlying meaning of the said expression have remained the same. At this stage it may also be mentioned that we are at an interlocutory stage. At this stage, I am required to consider whether the contentions raised by the plaintiffs involve serious issue to be tried in the suit. At the interlocutory stage, I am also required to consider whether balance of convenience lies in favour of the plaintiffs or the defendants. With the above introductory remarks, the defendants. With the above introductory remarks, it would be relevant to notice the rival contentions.

9. Mr. Daruwalla, the learned counsel for the plaintiff contended that there is a difference between passing of an action and infringement action. Re-contended

that plaintiffs are the proprietors of registered trade mark "ROLAC". He contended that in an infringement action, unlike passing off action, right of property is involved. Mr. Daruwalla contended that in the present case, the defendants have filched the first plaintiffs entire registered trade mark by merely adding the letters "TO" as prefix to the infringing trade mark. He contended that use of the trade mark "TOROLAC" would lead to passing off or likely to lead to passing off and/or enable others to pass off the preparation of the defendants under the trade mark "TOROLAC" as plaintiffs preparation under the trade mark "ROLAC". He contended that the infringing trade mark "TOROLAC" was phonetically, visually and structurally deceptively similar to the registered trade mark "ROLAC" and the defendants have committed infringement of the registered trade mark "ROLAC". Mr. Daruwalla contended that, in any event, the defendants have played a fraud and it is not possible to believe that the defendants were not aware that first plaintiffs were the Registered Proprietors of the trade mark "ROLAC" from 1986 and that they had not come across the tablets of the plaintiffs bearing the trade mark "ROLAC". Mr. Daruwalla contended that it is highly inconceivable that the defendants were not aware that the first plaintiffs had applied for registered of the trade mark "ROLAC" under registered No. 465264 on 30th December, 1983, particularly because the said trade mark was advertised in the Trade Mark Journal on 16th February 1983, and also in view of the fact that the said registered trade mark "ROLAC" has been used in India on an extensive scale with effect from January 1992. In the circumstances, Mr. Daruwalla contended that the use of the trade mark "TOROLAC" by the defendants was dishonest and the subsequent use thereof was also dishonest. Mr. Daruwalla contended that the doctrine of wonderment would apply to the facts of the present case. He contended that although the above preparations were required to be prescribed by the doctors, there was every reasonable probability of confusion, not only in the mind of the consumers who may not be knowing or who may not recollect the existence of both the tablets ROLAC and TOROLAC and which may lead to disastrous consequences, particularly because one is a tablet having therapeutic value and the other is having analgesic effect, he further contended that merely because both the above tablets could be sold across the counter only on prescription does not mean that confusion will not result. He further contended that judicial notice can also be taken of the fact that doctors prescribed the medicines in their own handwriting and if the handwriting is not legible, it will lead to a person buying a wrong medicine from the Chemist because the two word-marks are deceptively similar. He further contended that the word "TOROLAC" is likely to be read as "2-ROLAC" in which event, it may lead to certain serious consequences. Mr. Daruwalla contended that pain killers, if taken in wrong dosage, would have a harmful effect. He contended that in such cases, merely because the medicine is sold or bought on doctor's prescription, it does not mean that the two are not deceptively similar. It also does not mean that probable confusion would not result, particularly because when a patient goes to buy the medicine, he does not always carry the prescription of two different medicines and he does not recollect that there are two different

preparations like ROLAC and TOROLAC. Such patents or even Chemists may sometime be confused, Mr. Daruwalla further contends that merely because the drugs are sold on doctor's prescription, it does not mean that confusion is not likely to arise, Mr. Daruwalla contended that in the matters of this type, the court has to consider various factors in totality. There is no single test applicable to such cases. It will depend on facts of each case. Mr. Daruwalla further contended that each case, relied upon on either side, would show that a different test could be applied, depending on the facts of each case. Mr. Daruwalla further contended that ultimately it is the first impression to the eyes of the judicial mind which is important in such cases. Mr. Daruwalla, therefore, contended that in the present case, it is clear that the defendants herein have borrowed the entire registered trade mark "ROLAC" and they have prefixed the word "ROLAC" with two letters "TO". He, therefore, contended that in the present case, the two marks are deceptively similar and there is no doubt that the plaintiffs' trade mark has been infringed by the trade mark "TOROLAC".

10. Mr. Kane, learned counsel appearing for the defendants on the other hand contended that the prefix "TO" plays a very important role in judging the visual, phonetic or structural dissimilarity between the two marks. He contended on behalf of the defendants' mark is a tri-syllabic word whereas the registered trade mark is bi-syllabic word. He contended that the prefix was not "TO", but the prefix was "TORO" in the defendants' mark "TOROLAC". He contended that the prefix "TORO" is emphatic and catchy and it easily distinguishes the defendants' trade mark "TOROLAC" from the registered trade mark "ROLAC". He further contended that the get-up, design and colour scheme of the defendants' tablets and injections are entirely different from the get-up design and colour scheme of the registered trade mark plaintiffs' preparations. He contended that both the preparations are scheduled drugs and they are available only on doctor's prescriptions which carry a warning that they are to be sold by a retailer only on the prescription of Medical Practitioners. He contended that plaintiffs' tablets are antacid, anti-gas whereas the defendants' tablets are analgesic. He contended that plaintiffs' tablets are chewable whereas defendants tablets are to be swallowed. He also contended that defendants have already introduced injunctions which clearly brings out the difference. He further contends that the defendants' preparations bear its house mark "LUPIK" which removes any possibility of confusion or deception or rival marks. He further contended that "TOROLAC" tablets are sold @ Rs. 19/- per ten tablets whereas TOROLAC injunction cartons are sold at Rs. 80/- per is ampules whereas ROLAC plus tablets of the plaintiffs are sold @ Rs. 6/- per 10 tablets and, therefore, there is a vast price difference in respect of the two medicinal preparations and, therefore, the consuming public will easily distinguish the two preparations. He further contended that from July 1992, no one has complained of any confusion or deception between the two preparations. He further contended on behalf of the defendants that prior to June, 1992, the defendants conceived and adopted the trade mark "TOROLAC" whereas the registered trade mark is in use from

January 1992. He further contended that the word "TOROLAC" is an invented word like "ROLAC". He contended that it is customer in the pharmaceutical trade that the Company invents the trade mark from the drug name which, in the present case, is Ketorolac Tromethamine. He further contended that during the period August 1992 upto August 1993, the defendants have sold preparations worth Rs. 73.69 lakhs. He further contended that the plaintiffs have therefore, acquiesced in the use of the trade mark "TOROLAC" by the defendants and at the belated stage the plaintiffs cannot raise an objection to the use of the trade mark "TOROLAC" by the defendants. He further contended that the defendants have been doing the business for last 25 years, making different type of pharmaceutical and medicinal preparations. He contended that the defendant is a Market Leader in anti-T.B. and anti-Leprosy drugs. He contended that the defendant's reputation is reflected by its annual turnover which exceeds Rs. 300 crores and in the circumstances, it is contended that even if ultimately the plaintiffs succeed then in that event, the defendant-Company can make good the loss of the plaintiffs because they are in a position to make good that loss. Mr. Kane further contended that the defendants have been using its house mark "LUPIN" as also a distinctive green and white colour scheme upon and in respect of each and every pharmaceutical and medicinal preparation and they have already spent large amounts on sale-promotional expenses. In the circumstances, it is contended that no interim relief should be granted in favour of the plaintiffs. Mr. Kane further contended on behalf of the defendants that in Suit No. 1416 of 1993, consent terms were filed in the Appeal preferred by the plaintiff. That Suit was filed by the plaintiffs against Cadilla Chemicals Limited and Cadilla Laboratories Limited. That was also an infringement action. Cadilla Chemicals were manufacturing and selling Ketorolac Tromethamine preparation under the trade mark "DOLAC" which was objected to by the plaintiffs. At the ad interim stage, the learned Single Judge refused to grant injunction in favour of the present plaintiffs. Therefore, an Appeal was preferred. In the Appeal, consent terms were filed and the plaintiffs conceded to the defendants using the trade mark "TODOLAC". Mr. Kane, therefore, contended that having consented to Cadilla Chemicals changing the name from DOLAC to TODOLAC, it is no open to the plaintiffs to object to the use of the word TOROLAC in the present case. At this stage, it may be mentioned that regarding the last contention advanced by Mr. Kane the learned counsel for the defendants, Mr. Daruwalla pointed out that although Cadilla Chemicals agreed to change the name from TOROLAC to TODOLAC in the above proceedings, the said defendants Cadilla Chemicals have started marketing Ketorolac Tromethamine preparation under the trade mark "CADOLAC" which is different from ROLAC and, therefore, it is not open to the defendants herein to contend that TOROLAC is similar to TOROLAC. However, both the learned counsels appearing on either side have conceded that the word ROLAC is an invented word.

11. Large Number of authorities were cited on both sides. Both the learned counsels conceded that in matter of this type, every case depends on its own

particular facts and the value of the authorities lie not so much in the actual decision as in the tests applied for determining what is likely to deceive or cause confusion. To my mind, this is the most important test which can be culled out from the various decisions cited. In the case of *Amritdhara Pharmacy Vs. Satyadeo Gupta*, the above test has been laid down in the following words :

"The Act does not lay down any criteria for determining what is likely to deceive or cause confusion within meaning of Section 8(a) and Section 10(1). Therefore, every case must depend on its own particular facts, and the value of authorities lies not so much in the actual decision as in the tests applied for determining what is likely to deceive or cause confusion. On an application to register by reason of Clause (a) of Section 8, or Sub-section (1) of Section 10. In such a case, the onus is on the applicant to satisfy the Registrar that the trade mark applied for is not likely to deceive or cause confusion. In cases in which the tribunal considers that there is doubt as to whether deception is likely, the application should be refused. A trade mark is likely to deceive or cause confusion by its resemblance to another already on the Register if it is likely to do so in the course of its legitimate use in a market where the two marks are assumed to be in use by traders in that market. In considering the matter, all the circumstances of the case must be considered.

What degree of resemblances is necessary to deceive or cause confusion must in the nature of thing, be incapable of definition a priori (1906) 23 RPC 774, Relied on, (Paras 7, 11). For deceptive resemblance two important questions are : (1) who are the persons whom the resemblance must be likely to deceive or confuse, and (2) what rules of comparison are to be adopted in judging whether such resemblance exists. As to confusion it is perhaps an appropriate description of the state of mind of a customer who on seeing a mark thinks that it differs from the mark on goods which he has previously bought, but is doubtful whether that impression is not due to imperfect recollection. Application for the registration of trade name "Lakshmandhara" in respect of a medicinal preparation for the alleviation of various ailments was opposed by the proprietors of the trade name "Amritdhara" which was already registered as trade name in respect of similar medicinal preparation of the opponents. On the question whether the trade name "Lakshmandhara" was likely to deceive the public or cause confusion to trade;

Held that the question had to be approached from the point of view of a man of average intelligence and imperfect recollection. To such a man the overall structural and phonetic similarity of the two names "Amritdhara" and "Lakshmandhara" was likely to receive or cause confusion. The overall similarity of the two composite words "Amritdhara" and "Lakshmandhara" had to be considered. It could not be said that no Indian would mistake one for the other. An unwary purchaser of average intelligence and imperfect recollection would not split the name into its component parts and consider the etymological meaning thereof or even consider the meaning of the composite words as "current of nectar" or "current of Lakshman". Where the trade relates to goods largely sold

to illiterate or badly educated persons, it is no answer to say that a person educated in the Hindi language would go by the etymological or ideological meaning and see the difference between "current of nectar" and "current of Lakshman". The use of the word "dhare" was not by itself decisive of the matter. What had to be considered here was the overall similarity of the composite words having regard to the circumstance that the goods bearing the two names were medicinal preparations of the same description, though a critical comparison of the two names might disclose some points of difference. The trade mark is the whole thing - the whole word has to be considered, on a consideration of all the circumstances, the overall similarity between the two names in respect of the same description of goods was likely to cause deception or confusion within the meaning of Section 10(1) of the Act."

12. Applying the tests laid down by the Supreme Court to the facts of the present case, I find considerable merit in the contentions advanced on behalf of the plaintiffs on the question of applying the test to ascertain deceptive similarity between the two marks. In the present case, I am at an interim stage. At this stage, the question is whether use of the mark "TOROLAC" infringes the registered trade mark "ROLAC". Firstly, it may be noted that the trade mark "ROLAC" has been registered in the year 1986. The said registration as given adequate publicity. It was advertised in the Trade Marks Journal No. 953 dated 16th February, 1989. Secondly, the word ROLAC is an invented word which is very important in the matters of deciding whether infringement has resulted or not. It is not an ordinary word or a general word like "COLA" which can be used with "COCA-COLA" or "PEPSI-COLA" which is known to the trade. Thirdly, we are dealing with medicinal and pharmaceutical preparations. The preparation of the plaintiffs has a therapeutic value whereas preparation of the defendants has an analgesic effect. Plaintiffs have filed a detailed Affidavit to indicate the disastrous consequences which may flow if there is a mix-up in the matter of consumption of the two preparations. It is pointed out in paragraph 17 of the Plaint that TOROLAC being an analgesic will not be of any therapeutic use for patients of acidity who will not get symptomatic relief. On the contrary, the patients condition could worsen because TOROLAC contains toxic potentials and side effects. It is pointed out that the patients who continue to take TOROLAC thinking that it is ROLAC would take, on an average, eight tablets per day against recommendation of oral dosage of 10 mg. every 6 hours which could lead to disastrous consequences and damage the health of the patients suffering from peptic ulcer. It is also pointed out that even in patients with less severe symptoms of acidity, there is every chance of the symptoms getting aggravated and, therefore, the consequences would be disastrous. Fourthly, it is pointed out that the entire registered trade mark "TOROLAC" has been borrowed and adopted by merely prefixing it with the two letters "TO" which clearly indicates that even on first impression, the essential features of both the marks are deceptively similar and it constitutes colored imitation or nearling resemblance. In the circumstances, probable confusion cannot be ruled out. It is well settled

that when considering the infringement of registered trade mark, it is important to bear in mind the difference between the test for infringement and the test in passing off action. In a passing off action, the Courts look to see whether there is misrepresentation whereas in infringement matters. It is important to note that the Trade marks Act gives to the Proprietor, an exclusive right to the use of the mark which will be infringed in the case of identical marks and, in the case of similar marks, even though there is no misrepresentation, infringement can still take place. The statute law relating to infringement of trade marks is based on certain fundamental ideas which may be common to the law relating to passing off, but it differs in two particular aspects, namely, the use of trade mark is one of the methods of passing-off and secondly, the statutory protection in the cause of on a registered trade mark is absolute in the sense that once a mark is shown to offend, the user of it cannot escapes by showing something outside the actual mark itself. Therefore, infringement takes place, not merely by exact imitation, but by the use of the mark nearly resembling the registered mark as to be likely deceptive (See 1941 (58) RPC 147 . The above test is also laid down in several judgments of the Supreme Court, in the present case, there is resemblance between ROLAC and TOROLAC. The said resemblance is structural as well as visual and phonetic. The sound of one word resembles the sound of another, on first impression. Fifthly, it is also important to bear in mind that a patient who knows only one word and if he has imperfect recollection of the said word, he is likely to be deceived or confused when he purchases the medicine. No patient goes to the Chemist for both the medicines ROLAC and TOROLAC. He will go for one of them and he may not recollect the other, in which event, he is likely to be deceived or confused which may lead to disastrous consequences. In the above circumstances, the doctrine of wonderment is also applicable to the facts of the present case. In the present case, I do not find any merit in the contention of the defendants that the word TORO will make a difference. There is also no merit in the contention of the defendants that the word TORO is emphatic because in such cases meticulous comparison of the two words, letter by letter and syllable by syllable pronounced with the clarity to be expected from a teacher of ill iteration is not possible. In such cases, the Courts have laid down a very important test which, to my mind, applied in this case viz., to make allowance for imperfect recollection and the effect of careless pronunciation and speech on the part of the patient and also on the part of the Chemist. Therefore, it is the judicial ear that is decisive and the conclusion must be based on the surrounding circumstances, Applying the above test, in the present case, I am satisfied that the plaintiffs have raised a serious contention which requires consideration. It is not possible for the defendants to contend that serious consideration of the facts is not involved at the trial of the suit, particularly when the two marks are confusingly similar. They are close in sound and sight. A person who only knows ROLAC and who has an imperfect recollection will be deceived and confused if the Chemist asked him for TOROLAC and vice-versa. In the circumstances, I find merit in the contention advanced on behalf of the plaintiffs with regard to deceptive similarity between the two medical preparations which may lead to

disastrous consequences, as stated hereinabove.

13. Lastly, it may be mentioned that in such matters, balance of convenience plays a very important role. Large number of authorities cited indicate that at the interim stage the court will consider whether serious issues have been raised by the plaintiff. If the defendant does not establish on evidence that there was no serious issue to be tried and if the courts find that there is ample evidence required to be examined at the trial and that a serious issue of deception is involved which requires to be tried, then the court will grant injunction in favour of the plaintiff. In the present case on facts I do not believe that damages would be adequate remedy for the plaintiffs. The facts indicate that the market in Ketorolac Tromethamine is at a very sensitive stage and competition has come from the defendants and is likely to come from others and, therefore, the exclusive right to use the trade mark by the plaintiffs would play an important element in the matter of achieving sales. What the plaintiff will loose from infringement cannot be quantified at the final hearing of the matter and, therefore, damages would not be adequate remedy. On the other hand, I am conscious of the fact that grant of injunction would also cause losses to the defendants. However, in the present case, looking to the nature of the evidence on which the defendants have relied, since the plaintiffs have made a very strong case which requires consideration at the final trial refusal to grant injunction in favour of the plaintiffs would cause irreparable damage to the plaintiffs, who are registered Proprietors of the trade mark. In the end, I am left to look to the strength of the parties' cases. In the circumstances, I find that the plaintiffs have made out a very strong case, raising serious issue to be tried. This is a very important test which is laid down by the English Courts See 1994 F S R 745- Fisons Plc. v. Norton Health Care Ltd.. I am satisfied that damages would not be a satisfactory compensation in such a case.

14. In the present case, I am at a prima facie stage I am satisfied that the marks are deceptively similar. Therefore, other circumstances referred to in the arguments of Mr. Kane were not that relevant, but as stated hereinabove, I have also considered each and every circumstances in totality only to point out that the matter requires trial and a prima facie case on evidence has been made out by the plaintiffs. Weightage required to be given to the doctor's prescription, the legibility of the handwriting of the doctors writing the prescription, the likelihood of the possibility of wrong reading of the said prescription by a letter here or there which may lead to serious consequence have all been taken into account by this court because to my mind each case depends on the peculiar facts of that case and no strait jacket formula can be laid down to decide such matters.

15. Before concluding, I may point out that at an ad-interim stage, parties agreed to maintain the accounts. At the ad-interim stage, both the parties agreed that the matter must be decided at the Motion stage and, therefore, the plaintiffs did not, at that time, press for injunction. Today, this matter is being decided at the Motion stage. In such matters, I am conscious of the fact that the

trial will take several years. It is for this reason that the matter has been heard at length and decided, giving exhaustive reasons. I am satisfied that if injunction is not granted at this stage when the matter comes for trial after several years, the plaintiffs would be suffering irreparable loss which cannot be compensated in terms of damages, particularly when they are proprietors of a registered trade mark.

16. In the above circumstances, Notice of Motion taken out by the plaintiffs is made absolute in terms of prayers (a) and (b) with costs in the cause.

17. Since the defendants are carrying on business from 1992 and as is the usual practice in such matters. I suspend the injunction upto 15th January, 1996 in order to enable the defendants to dispose of their medicinal/pharmaceutical preparations which they might have manufactured under the infringing trade mark "TOROLAC".