

GALPHA LABORATORIES LIMITED Vs Caplin Point Laboratories Ltd

GALPHA LABORATORIES LIMITED Vs Caplin Point Laboratories Ltd

SooperKanoon Citation : sooperkanoon.com/1437661

Court : Chennai

Decided On : Apr-01-2026

Judge : Honourable Mr Justice Senthilkumar Ramamoorthy

Appeal No. : (T)OP(TM)/225/2023

Appellant : Galpha Laboratories Limited

Respondent : Caplin Point Laboratories Ltd

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2026

CORAM

THE HON'BLE MR JUSTICE SENTHILKUMAR RAMAMOORTHY
Galpha Laboratories Limited E-221, Kanakia Zillion, Junction of LBS and
CST Road, BKC Annex , Kurla West, Mumbai - 400070. (Amendment
carried out as per order dated 30.01.2024 in (TM) A No. 7 of 2024 in T (OP)

(TM) No.225 of 2023) ..Petitioner Vs

1. Caplin Point Laboratories Ltd Narbavi No3, Lakshmanan Street, T.Nagar, Chennai 600 017.

2. The Registrar of Trade Marks

Trade Marks Registry, Chennai. ..Respondents Petition to remove/expunge/cancel the entry relating to trademark BECLOLIN under Registration No.1915103 in class 5 of the first respondent. For Petitioner: Mr. Arun C.Mohan For Respondents: Mr. Ramesh Ganapathy for R1 Mr.M. Karthikeyan, Senior Panel Counsel for R2

ORDER

The petitioner is the registered proprietor of the word mark B- COLEN, which is used in relation to pharmaceutical and medicinal preparations. In the legal use certificate, the user claim is from Page1 of 6

25.09.1975. As evidence of use, the petitioner has submitted invoices. The earliest invoice is dated 23.02.1987. The last invoice is dated 31.03.2014. The petitioner has also placed on record certificate dated 12.05.2016 from Rajeev & Rajesh, Chartered Accountants, stating that the turn over from use of the mark B-COLEN was Rs.1,788.69 lakhs in financial year 2015-2016. After noticing the use of the mark BECLOLIN, the petitioner issued a cease and desist notice dated 07.10.2015 and thereafter lodged the rectification petition before the erstwhile Intellectual Property Appellate Board in 2016.

2. Adverting to the above documents, learned counsel for the

petitioner contended that the petitioner is the prior user of the mark B-COLEN. He points out that the impugned registration was granted with effect from 01.02.2010, and that the user claim made before the Trade Marks Office is from 11.08.2006. Because the first respondent is the later user of deceptively similar mark, learned counsel contends that the entry

relating thereto was made without sufficient cause. Therefore, he submits that the mark is liable to be removed.

3. In response, learned counsel for the first respondent submits that

the petitioners mark is a prohibited mark under Section 13 of the Trade Marks Act, 1999 (The TM Act). According to him, the petitioners mark consists of the name of a chemical compound. The second contention of learned counsel is that the rival marks are not deceptively similar. Relying on the judgment of the Honble Supreme Court in F.Hoffman-La Roche & Page2 of 6

Co. Ltd. Vs. Geoffrey Manners & Co. Pvt. Ltd., [(1969) 2 SCC 716), learned counsel submits that the element B, which stands for B complex, is liable to be dis-regarded and, if a comparison were to be made on such basis, it would be clear that the marks are not deceptively similar. He adds that the petitioners mark consists of two syllables whereas the first respondents mark consists of three syllables.

4. Upon taking into consideration the rival contentions, the first

question that falls for determination is whether the petitioners mark is a prohibited mark under Section 13 of the TM Act. On this issue, it should be noticed that the petitioners mark is not under challenge in this proceeding. Even otherwise, prohibition under Section 13 applies to the following cases:

- (i) Commonly used and accepted name of any single chemical element;
- (ii) Commonly used and accepted name of any single chemical compound;
- (iii) international non proprietary name declared by the World Health Organization and notified in the prescribed manner by the Registrar, or the name deceptively similar to such name. Page3 of 6

5. The mark B-COLEN is neither the name of a single chemical

element nor the name of single chemical compound. It is not an international non-proprietary name as declared by the World Health Organization. Therefore, the contention based on Section 13 of the TM Act is rejected.

6. Learned counsel for the first respondent also contended that the

rival marks are not deceptively similar. This contention warrants close consideration. Any comparison between the rival marks should be made by looking at the marks as a whole from the perspective of a consumer of average intelligence and imperfect recollection. Similarity could be tested visually, phonetically or structurally. The petitioner has placed on evidence use since 23.02.1987 and the registration asserts use since 25.09.1975. Based on the materials on record, there is no doubt that the petitioner is the prior user.

7. The registration of the petitioner is subject to the limitation that

the petitioner is not entitled to exclusive use of the letter B. While such express limitations were incorporated under the Trade and Merchandise Marks Act, 1958, under the TM Act, Section 17 prescribes that the proprietor of a composite mark cannot assert exclusive rights in respect of elements thereof unless such elements are separately registered.

8. Therefore, the comparison has to be made between the two marks as a whole. Both marks are applied in relation to nearly identical Page4 of 6

goods. Depending on the manner of pronunciation, there is phonetic similarity between the marks. The marks are applied in relation to goods that are sold without prescription. Considering these factors, I conclude that the entry relating to the impugned mark was made without sufficient cause. Existence of the two marks on the register in relation to nearly identical products is likely to cause confusion or deception among the relevant section of the public.

9. For reasons aforesaid, this petition is allowed by directing the

Registrar of Trade Marks to remove the entry relating to Trade Mark No. 1915103 from the Register of Trade Marks. This exercise shall be carried out within six weeks from the date of receipt of a copy of this order. 01.04.2026 Index: Yes/No Neutral Citation: Yes/No mmi To The Registrar of Trade Marks Trade Marks Registry, Chennai. Page5 of 6

SENTHILKUMAR RAMAMOORTHY, J.

mmi 01.04.2026 Page6 of 6

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com