



2025:DHC:837



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Date of decision: 3<sup>rd</sup> February, 2025*

+ CS(COMM) 426/2024 with I.A. 2878/2025

ASTELLAS PHARMA INC

.....Plaintiff

Through: Ms. Sejal Tayal and Mr. Naqeeb  
Nawab, Mr. Ashutosh Ranga and  
Mr. Apurva Bhutani, Advocates

versus

ASTELLAZ PHARMACEUTICALS

.....Defendant

Through: None

**CORAM:**

**HON'BLE MR. JUSTICE AMIT BANSAL**





**AMIT BANSAL, J. (Oral)**

1. The present suit has been filed seeking relief of permanent injunction restraining the defendant from infringing the trademark and passing off their goods and services as that of the plaintiff and other ancillary reliefs.

**PLEADINGS IN THE PLAINT**


2. The plaintiff *i.e.*, 'ASTELLAS PHARMA INC.' is a multinational corporation organised and existing under the laws of Japan, engaged in the business of pharmaceutical products since the year 2004.
3. The plaintiff is the registered proprietor of the mark 'ASTELLAS' bearing registration no. 1319069 in class 5. Furthermore, the plaintiff has several registrations, few of which are asserted in the present suit and are enlisted below:



S. No.	Trademark	Registration Number	Class	Application Date
1.	ASTELLAS	1319069	05	04/11/2004
2.		1325874	05	15/12/2004
3.		IRDI-2682784	99	06/09/2013
4.	ASTELLAS	IRDI-2941023	44	08/08/2014
5.		IRDI-2941027	05, 44	08/08/2014
6.		IRDI-4475711	05	31/10/2019
7.	CHANGING TOMMOROW	2152662	99	31/05/2011

4. The plaintiff has an exclusive presence in India, through its subsidiary Astellas Pharma India Private Limited, incorporated as early as 2008, engaged in developing sales and marketing of in-house products.

5. The plaintiff adopted the mark 'ASTELLAS'/'

applied for the registration for the mark 'ASTELLAS'/' in Class 5 bearing no.1319069 for goods being 'Pharmaceutical preparations,



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veterinary and sanitary preparations, oiled paper for medical purposes, sanitary masks, pharmaceutical wafer, gauze for dressings, empty capsules for pharmaceuticals, eye patches, ear bandages, menstruation bandages, menstruation tampons, sanitary napkins, sanitary panties, absorbent cotton, adhesive plasters, bandages for dressings, collodion, breast-nursing pads, dental materials, bracelets for medical purposes, incontinence diapers, fly catching paper, mothproofing paper, lactose (milk sugar), powder milk for babies, semen for artificial insemination’..

6. The plaintiff’s Mark ‘ASTELLAS’ was entered into the Trade Marks Register on 31<sup>st</sup> May, 2017 with effect from 4<sup>th</sup> November, 2004. The said mark is valid and subsisting.

7. The plaintiff has amassed immense goodwill and reputation which can be validated by their global sales revenue in the fiscal year 2022-23 amounting to 1,518.6 billion Japanese Yen [paragraph 12 of the plaint]. Furthermore, the plaintiff has also provided their annual consolidated turnover figures from the years 2009-2023 in relation to the products and services of the plaintiff in India. The consolidated turnover figures in relation to the products and services of the plaintiff in India have been provided in paragraph 29 of the plaint. It is noted that in the year 2022-23, the plaintiff’s turnover in India was Rs. 29,50,74,144/-.

8. In and around December, 2022, it came to the knowledge of the plaintiff that a nearly identical trademark application in the name of ‘Astellaz Pharmaceuticals’ in Class 35 was advertised in the Trade Mark Journal No. 2066 for “trading of medicine” (hereinafter ‘impugned application’). The defendant has applied for an identical / deceptively similar mark in respect of the identical/highly similar goods and services.



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Furthermore, the defendant had also adopted the impugned device of a star with similar inscriptions making it a slavish imitation of the plaintiff's device.

9. The plaintiff filed their Notice of Opposition on 6<sup>th</sup> December 2022 against the defendant's impugned application for the impugned device mark



10. Subsequently, the plaintiff also sent a cease-and-desist letter dated 6<sup>th</sup> December, 2022 for infringement and passing off the plaintiff's Marks and the same was delivered. As there was no response to the said legal notice, the plaintiff issued a reminder notice dated 20<sup>th</sup> August, 2021 to the defendant and the same was also delivered.

11. Without issuing a reply to the plaintiff's cease-and-desist letter, the defendant filed its counter statement on 4<sup>th</sup> January, 2023 wherein the defendant had raised false and frivolous grounds without any cogent evidence.

12. Furthermore, in the midst of the ongoing opposition proceeding between the competing parties, in March 2023, the plaintiff was shocked to come across the following domain name of the defendant - [www.astellaz.com](http://www.astellaz.com). Upon conducting an internet search, it was discovered that the subject domain name was registered on 3rd January, 2023 which is after the Notice of Opposition was filed by the plaintiff.

13. The defendant in the proceedings has not filed their evidence in support of their application letter till date. Accordingly, the impugned application should be considered abandoned on the grounds of lack of



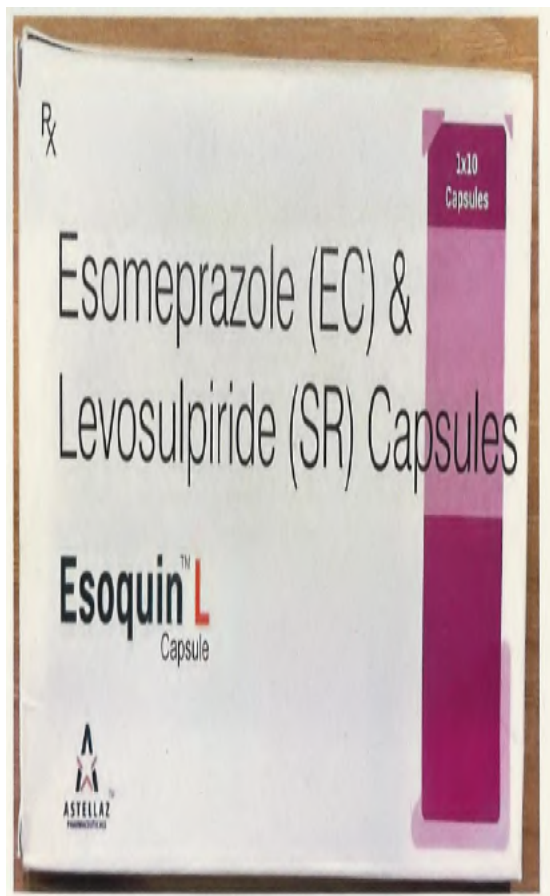
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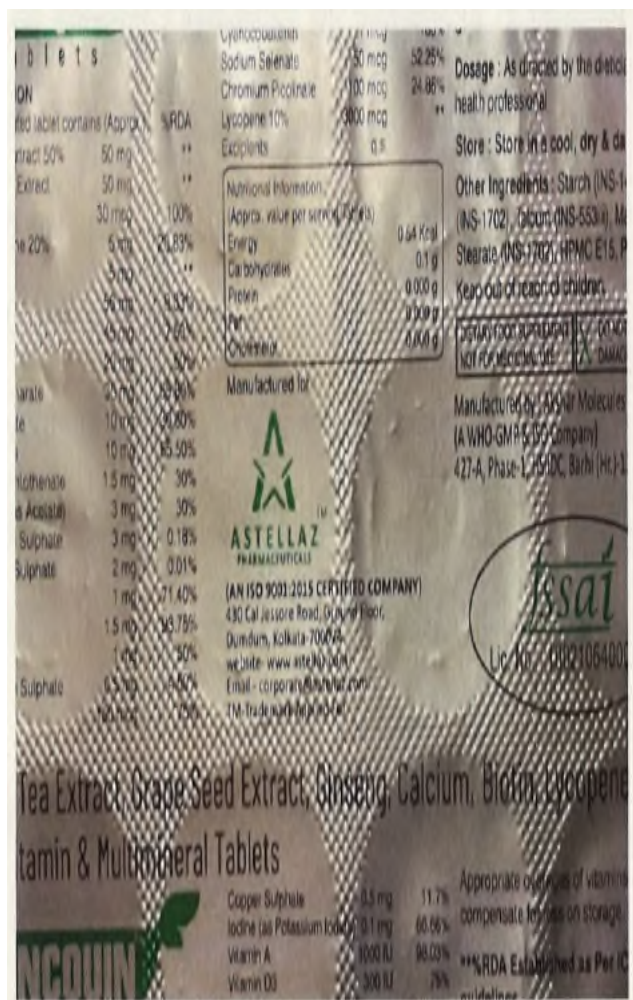


prosecution.

14. To the utter shock of the plaintiff, the plaintiff came across the defendant's listings on the e-commerce portal 'IndiaMart' supplying goods and services under the impugned marks as well. Additionally, the plaintiff found the impugned mark being listed on the 'JustDial' portal inviting enquiries from the public.

15. The plaintiff through its representative, was able to order and purchase defendant's offending product and invoice bearing the Impugned Marks at an address in Delhi. A few images of the offending products bearing the Impugned Marks are reproduced herein below:





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16. The plaintiff filed the present suit seeking permanent injunction restraining infringement of Trademarks and Passing Off, Delivery Up, Rendition of Accounts, Damages, etc. in relation to their Trade Mark/Trade Dress/layout of its product under the mark ‘ASTELLAS/ ASTELLAS device marks.

**PROCEEDINGS IN THE SUIT**

17. On 21<sup>st</sup> May 2024, while issuing summons, this Court granted an *ex-parte ad-interim* injunction against the defendant restraining the defendant from using the mark “ASTELLAZ” or any other identical/deceptively similar mark and the afore-noted impugned packaging/trade dress or any other mark/trade dress, which is deceptively or confusingly similar to



plaintiff's 'ASTELLAS' trademark and packaging/ trade dress of their product.

18. In the order passed by the Joint Registrar on 23<sup>rd</sup> August, 2024, it has been recorded that the defendant has been served through email.

19. Since no written statement was filed by the defendant and the maximum permissible period for filing was over, the right of the defendant to file the written statement was closed by the Joint Registrar *vide* order dated 8<sup>th</sup> October, 2024.

20. By way of the Order dated 24<sup>th</sup> October, 2024, taking note of the fact that the defendant had not entered appearance despite service, the defendant was proceeded against *ex parte*.

21. The plaintiff now seeks a decree in terms of Order VIII Rule 10 of the Code of Civil Procedure, 1908 (CPC).

### ANALYSIS AND FINDINGS

22. I have heard the counsel for the plaintiff and perused the material on record.

23. In *Satya Infrastructure Ltd. & Ors. v. Satya Infra & Estates Pvt. Ltd.*, 2013 (54) PTC 419 (Del) [CS(OS) 1213/2011, decided on 07.02.2013], a Co-ordinate Bench of this Court held as follows:

*“4. The next question which arises is whether this Court should consider the application for interim relief and direct the plaintiffs to lead ex parte evidence. The counsel for the plaintiffs states that the plaintiffs are willing to give up the reliefs of delivery, of rendition of accounts and of recovery of damages, if the suit for the relief of injunction alone were to be heard today.*

*5. I am of the opinion that no purpose will be served in such cases*



*by directing the plaintiffs to lead ex parte evidence in the form of affidavit by way of examination-in chief and which invariably is a repetition of the contents of the plaint. The plaint otherwise, as per the amended CPC, besides being verified, is also supported by affidavits of the plaintiffs. I fail to fathom any reason for according any additional sanctity to the affidavit by way of examination-in-chief than to the affidavit in support of the plaint or to any exhibit marks being put on the documents which have been filed by the plaintiffs and are already on record. I have therefore heard the counsel for the plaintiffs on merits qua the relief of injunction.”*

24. The plaint has been duly verified and is also supported by the affidavit of the plaintiff. In view of the fact that no written statement has been filed on behalf of the defendant, all the averments made in the plaint have to be taken to be admitted. Further, since no affidavit of admission/denial has been filed on behalf of the defendant in respect of the documents filed with the plaint, in terms of Rule 3 of the Delhi High Court (Original Side) Rules 2018, the same are deemed to have been admitted. Therefore, in my opinion this suit does not merit trial and the suit is capable of being decreed in terms of Order VIII Rule 10 of CPC.

25. From the averments made in the plaint and the evidence on record, the plaintiff have been able to prove that they are the registered proprietors of the trademarks “ASTELLAS”.

26. The plaintiff have placed on record the products of the defendant to show that the defendant are indulging in infringement and passing off the plaintiff’s registered mark, ‘ASTELLAS’. The comparison of the products/marks used by the plaintiff and the defendant is illustrated below:



Particulars	Plaintiff's Trademarks	Defendant's Impugned Marks
Word	ASTELLAS	ASTELLAZ
Trade Name	Astellas Pharma Inc.	Astellaz Pharmaceuticals
Logo		
Device of a Star		
Domain Name	<a href="http://www.astellas.com">www.astellas.com</a>	<a href="http://www.astellaz.com">www.astellaz.com</a> <i>(Transferred to the Plaintiff vide decision dated 20<sup>th</sup> October 2023)</i>

27. On a perusal of the device mark of the defendant, it is evident that the mark was nearly identical and hence, deceptively similar to 'ASTELLAS'. Furthermore, although the defendant's star device is distinct from the plaintiff, the usage of the star device along with 'ASTELLAZ' and both competing marks being used for similar goods and services, the likelihood of confusion amongst the consumers is enhanced.

28. The defendant herein has merely replaced 'S' with 'Z' while wholly copying the entire mark of the Plaintiff 'ASTELLAS' thereby making the marks structurally, visually and phonetically similar and therefore nearly identical.

29. The defendant is using a deceptively similar trade mark 'ASTELLAZ'



used for identical purposes and the same constitutes infringement of the Plaintiff's registered trade mark

'ASTELLAS' /   (hereinafter 'ASTELLAS marks').

30. The plaintiff has also filed several documents in support of its contentions including but not limited to sales invoices in support of prior user claim, CA Certificates establishing goodwill and reputation as well as several trade mark registrations for the plaintiff's 'ASTELLAS' marks, in support of prior registrations of the plaintiff.

31. The plaintiff is irrefutably the prior user and prior registrant of the mark 'ASTELLAS' as the same has been in use since 2004; *whereas* the defendant has allegedly claimed use of the impugned Mark 'ASTELLAZ' only since 3<sup>rd</sup> February 2022.

32. Based on the discussion above, a clear case of infringement of trademark and copyright is made out. The defendant has taken unfair advantage of the reputation and goodwill of the Plaintiff's trademarks and has also deceived the unwary consumers of their association with the plaintiff by dishonestly adopting the plaintiff's registered marks without any plausible explanation. Therefore, the plaintiff has established a case of passing off as well.

33. At this stage, it may be relevant to note that the defendant did not appear before the Court, despite service of summons on 30<sup>th</sup> May, 2024. Further, no communication on behalf of the defendant have been placed on record in respect of the allegations of the plaintiff in this suit.

34. Since the defendant have failed to take any requisite steps to contest



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the present suit, despite having suffered an *ad interim* injunction order, it is evident that they have no defence to put forth on merits.

**RELIEF**

A decree of permanent injunction is passed in favour of the plaintiff and against the defendant in terms of prayer clauses 78(a) to (e) and (g) of the plaint.

35. Insofar as the reliefs of costs sought in prayer clause 78(h) is concerned, for the purposes of calculation of actual costs, the plaintiffs are directed to file their bill of costs in terms of Rule 5 of Chapter XXIII of the Delhi High Court (Original Side) Rules, 2018 within four weeks.

36. For this purpose, the representatives of the plaintiff shall appear before the taxation officer on 4<sup>th</sup> March, 2025, who shall determine the actual costs incurred by the plaintiff in the present litigation.

37. Let the decree sheet be drawn up.

38. The date already fixed, i.e. 21<sup>st</sup> March, 2025, stands cancelled.

39. The pending application stands disposed of.

**AMIT BANSAL, J**

**FEBRUARY 3, 2025**

**ds**