

News

The Delhi High Court prohibits Alchem International from selling pharmaceutical items at retail under the "ALCHEM" label.



In a trademark action brought against Alchem, the Court awarded temporary relief to the pharmaceutical business Alkem. Alchem's sales of API will be exempt from the injunction as long as they are not offered for sale at retail.

Alchem International Pvt Ltd has been ordered by the Delhi High Court to refrain from producing, marketing, or selling any pharmaceutical or medicinal goods under the name "ALCHEM" or any other mark that is confusingly similar to "ALKEM," which is owned by Alkem Laboratories Ltd [Alkem Laboratories v. Alchem International].

In a trademark infringement lawsuit brought by Alkem against Alchem International, the interim order was issued on October 10.

According to the Court, Alkem was the original adopter and registered owner of the mark "Alkem," and it did not seem legitimate for Alchem to keep using a mark that was similar for goods that were comparable.

As noted by Justice Amit Bansal,

"The plaintiff's and defendant's marks, ALKEM and ALCHEM, are phonetically identical and deceptively similar in appearance and structure. The mark "ALKEM" is registered under the plaintiff's name. Additionally, the plaintiff is the previous adopter and user of the mark "ALKEM" for pharmaceutical and medical goods.

The Court emphasized that there may be public health consequences to such similarities in the pharmaceutical industry.

Founded in 1973, Alkem Laboratories is one of the biggest pharmaceutical firms in India, with more than 700 products covering important therapeutic areas. Since its formation, the mark "ALKEM" has been a part of its company identity and branding. It has trademark registrations under many classes, the oldest of which dates to October 1973.

The business said that Alchem's growing usage of "ALCHEM" for consumer-facing goods, internet marketing, and wider trade channels was likely to lead to misunderstandings and amounted to passing off and trademark infringement.

Alchem International was founded in 1982 and produces Ayurvedic extracts and active compounds obtained from plants. It claimed that the mark was created from the phrases "Alkaloids and Chemicals" when it started using "ALCHEM" in 1985.

Alchem contended before the High Court that Alkem's lawsuit was precluded by acquiescence and delay, arguing that Alkem had been aware of its operations for decades and had done nothing in response to a 2005 cease-and-desist order. Additionally, it argued that Alchem's operations, which were centered on herbal extracts and nutraceuticals, were separate from Alkem's prescription medication business.

The business also cited a 1990 Bombay High Court ruling that denied Alkem temporary relief in a previous case involving another organization that used the "Alchem" moniker, claiming that at the time, Alkem's mark lacked repute. Additionally, Alchem maintained that its use of the mark for exports and the production of Active Pharmaceutical Ingredients (API) since 1985 amounted to contemporaneous and honest usage.

These defenses were dismissed by Justice Bansal, who concluded that Alkem had continuously taken steps to safeguard its mark by submitting many oppositions to the Trade Marks Registry between 2010 and 2018 and issuing a legal notice in 2005.

According to the Court, "the plaintiff has not taken any affirmative action that in any way supports the defendant's behavior."

It further stated that Alchem's entry into the Indian retail market following receipt of the legal notice could not be regarded as legitimate.

Alchem's argument that the parties served distinct markets was also dismissed by the Court, which pointed out that both businesses were involved in the same market segments—pharmaceuticals, nutraceuticals, and health supplements—and that they were distributed through comparable channels like pharmacists and online pharmacies.

Citing the Supreme Court's decision in *Cadila Health Care v. Cadila Pharmaceuticals*, Justice Bansal noted that situations involving pharmaceuticals, where misunderstanding might have negative public health effects, require a more stringent approach.

The Court determined that permitting Alchem to continue using the mark would create irreversible injury to both Alkem and customers who would be deceived by the similarities, holding that the balance of convenience favored Alkem.

The Court thus prohibited Alchem from using "ALCHEM" or any other confusingly similar mark in connection with pharmaceutical or medical goods.

Alchem's production and distribution of API in India and outside, however, would be exempt from the injunction as long as the items are not offered for sale at retail.

In addition to Advocates Sagar Chandra, Ishani Chandra, Srijan Uppal, Mehek Dua, K Natasha, Aparna Tripathy, Subhadeep Das, Naman, and Shreya, Alkem was represented by

Senior Advocates Rajiv Nayar and Sandeep Sethi.

Senior Advocate Rajshekhar Rao represented Alchem International, along with advocates Sonam Gupta, Saumay Kapoor, Shiva Pande, Meherunissa Jaitley, Ritvika Poswal, and Sandeep Malik.

Lawread