



2026:DHC:643



\* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 24<sup>th</sup> September, 2025

Date of Decision : 27<sup>th</sup> January, 2026

Uploaded on : 27<sup>th</sup> January, 2026

+ C.O. (COMM.IPD-TM) 111/2023 & I.A. 4946/2023

REXCIN PHARMACEUTICALS P LTD .....Petitioner

Through: Mr. Sachin Gupta, Mr. Rohit Pradhan,  
Ms. Prashansa Singh, Mr. Ajay Kumar  
and Mr. Adarsh Agarwal, Advocates.

versus

REKIN PHARMA P LTD & ANR. .....Respondents

Through: Mr. Manoj Kumar and Mr. Amit  
Kumar, Advocates.

+ CS(COMM) 142/2023 & I.A. 4878/2023

REXCIN PHARMACEUTICALS PVT. LTD. .....Plaintiff

Through: Mr. Sachin Gupta, Mr. Rohit Pradhan,  
Ms. Prashansa Singh, Mr. Ajay Kumar  
and Mr. Adarsh Agarwal, Advocates.

versus

REKIN PHARMA PVT LTD .....Defendant

Through: Mr. Manoj Kumar and Mr. Amit  
Kumar, Advocates.

**CORAM:**

**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

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**JUDGMENT**

**MANMEET PRITAM SINGH ARORA, J:**

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1. CS(COMM) 142/2023 has been filed seeking permanent injunction restraining infringement of trademark, tradename, domain name, passing off, and other ancillary reliefs. The corporate name of the Plaintiff in CS(COMM) 142/2023 begins with the word/term 'REXCIN', and the Defendant's corporate name in CS(COMM) 142/2023 begins with 'REKIN'. The Plaintiff has certain registrations for the trademark 'REXCIN' in Classes 16, 44, and 45, with user claim dating 16.12.2003. The Plaintiff has also applied for registration of the said mark in Class 5 and 35, which is pending registration. However, the Plaintiff, as of now, is not using mark 'REXCIN' for any of its products.

2. The Defendant, on the other hand, has registration for the mark 'REKIN-SP' in Class 5, against which the rectification petition [C.O.(COMM.IPD-TM) 111/2023] has been filed by the Plaintiff. The



Defendant's application for registration of 'REKIN-SP' in Class 35 has also been opposed by the Plaintiff before the Trademarks Registry.

3. Both the connected matters have been argued together by the learned counsels for the parties. This Court shall first decide the rectification petition [C.O.(COMM.IPD-TM) 111/2023] deciding the rights of the parties in their respective marks, and subsequently this Court shall adjudicate the application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 [I.A. 4878/2023].

### **C.O.(COMM.IPD-TM) 111/2023**

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4. This is a petition filed under Section 57 of the Trade Marks Act, 1999 ['Act of 1999'] seeking cancellation of the registered trademark 'REKIN-SP' under no. 3541661, which was filed on 04.05.2017 in Class 5 in the name of Rekin Pharma Pvt. Ltd., advertised on 06.01.2020, registered on 01.09.2020, and is valid till 04.05.2027, being in contravention to Section 9(1)(a), 9(2)(a), 11(1), 11(2), 11(3), 11(10), and 18(4) of the Act of 1999.

#### **Submissions by the Petitioner**

5. Case of the Petitioner has been set-up as under: -

5.1 It is stated that the Petitioner is a company incorporated in the year 2003, and has coined, adopted and continuously used the mark REXCIN since 16.12.2003 in relation to its pharmaceutical and allied businesses, and is the proprietor of several registered and pending trade mark applications for REXCIN across multiple classes, details of which is given at paragraph 12.3 of the petition.

5.2 It is stated that the Petitioner has continuously, extensively and uninterrupted used the mark REXCIN as its trading style and house mark across India, prominently displayed on all its product packaging, and has incurred substantial promotional expenditure to build and protect the said mark. It is stated that owing to long-standing use, high quality standards, wide publicity and extensive sales, the mark REXCIN has become exclusively associated with the Petitioner among the trade, medical fraternity and consumers, resulting in significant reputation and goodwill. It is stated that the Petitioner's sales figures demonstrate sustained commercial use over the years, with sales of Rs. 830.09 lakhs in the last financial year before filing the present petition [i.e., 2021–2022].



5.3 It is stated that, to protect its statutory rights, the Petitioner has filed various applications for registration of its mark REXCIN, details of which are provided below: -

Trademark Type	Application No. and date of filling	User Claim	Date of publication in TM Journal	Class and Goods	Status of registration
REXCIN (WORD)	5426986 Dt.-28.4.2022	16.12.2003	25.07.2022	Class 16	Registered on 8.12.2022
REXCIN (WORD)	5426987 Dt.- 28.4.2022	16.12.2003	25.07.2022	Class 44	Registered on 9.12.2022
REXCIN (WORD)	5426988 Dt.- 28.4.2022	16.12.2003	25.07.2022	Class 45	Registered on 7.12.2022
REXCIN (WORD)	5407419 Dt.- 13.4.2022	16.12.2003	--	Class 5	Objected by the Registry
REXCIN (WORD)	5407420 Dt.- 13.4.2022	16.12.2003	16.01.2023	Class 35	Accepted and advertised

5.4 It is stated that Respondent No. 1 applied for registration of the



device-mark ' ' under application no. 4102886 in Class 35 on 28.02.2019, which was advertised on 07.09.2020 and registered on 23.02.2021. It is stated that the Petitioner learnt about the Respondent No. 1's



existence in May 2022, only when the registration of ' ' was

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advertised by the Trade Mark Registry, pursuant to the extended limitation<sup>1</sup> during the pandemic. The Petitioner thereafter filed an opposition on 30.05.2022 (Opposition No. 1171282), resulting in the said registration being suspended and marked as 'Opposed', with the opposition proceedings pending. The opposition is based on the ground that the mark REKIN/REKIN PHARMA PVT. LTD. is deceptively and confusingly similar to the Petitioner's mark REXCIN.

5.5 It is stated that the Respondent No. 1 was granted registration of the wordmark 'REKIN-SP' ['impugned mark'] on 01.09.2020, bearing application no. 3541661 filed on 04.05.2017 on 'proposed to be used' basis.

5.6 It is stated that the Petitioner has filed the present rectification petition in anticipation that, while adjudicating the issue of infringement in the suit, Respondent No. 1 will rely upon the registration of its mark REKIN-SP to justify its use of the said mark in the market, and consequently, the validity of the impugned registration will necessarily arise for consideration and adjudication.

5.7 It is stated that the impugned mark REKIN-SP is deceptively similar to the Petitioner's prior mark REXCIN.

#### **Grounds for Seeking Cancellation**

6. Following grounds are raised by the Petitioner for seeking cancellation of the impugned mark: -

- a. The impugned mark REKIN-SP was filed on 04.05.2017 on a 'proposed to be used' basis and obtained by suppressing the Petitioner's prior, registered, and extensively used trademark REXCIN, rendering the

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<sup>1</sup> Pursuant to the order dated 21.03.2022, passed by the coordinate Bench of this Court in 'Dr. Reddy's Laboratories Ltd. v. Controller General of Patents Designs and Trademark', extending limitation during the pandemic for filing the opposition.



registration fraudulent, without sufficient cause and liable to cancellation under Section 57 of the Act of 1999.

- b. The Petitioner's mark REXCIN is inherently distinctive and had acquired substantial goodwill and reputation prior to the filing of the registration for the impugned mark; the Respondent dishonestly adopted the impugned mark by merely replacing 'XC' with a phonetically similar 'K' and adding the generic suffix 'SP', which does not impart distinctiveness, thereby violating Section 9(1)(a) of the Act of 1999.
- c. The impugned mark is deceptively similar to REXCIN, creating the same commercial impression and causing confusion and deception among the public, in violation of Section 9(2)(a) of the Act of 1999.
- d. Registration of the impugned mark for identical/similar goods in Class 5 is likely to cause confusion and association with the Petitioner's prior used mark, amounting to unfair advantage of the Petitioner's goodwill and violating Section 11(1) of the Act of 1999.
- e. The impugned mark takes unfair advantage of goodwill associated with the Petitioner's mark and is detrimental to the distinctive character and reputation of the Petitioner's registered marks in Classes 16, 44 and 45, attracting Section 11(2) of the Act of 1999.
- f. Use of the impugned mark is likely to result in passing off, causing the public to assume a nexus or association with the Petitioner, in contravention of Section 11(3)(a) of the Act of 1999.
- g. The Respondent adopted the impugned mark in bad faith to exploit the well-known status of REXCIN, violating Section 11(10) of the Act of 1999.

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- h. The Registrar/Respondent No. 2 failed to exercise judicial discretion and erroneously granted registration despite the Petitioner's prior registrations, rendering the registration arbitrary, against public interest and in violation of Section 18(4) of the Act of 1999.
- i. Its mark REXCIN is distinctive in nature and has acquired reputation due to its continuous, exclusive and long use on the date of application by the Respondent No. 1 in 2017 for the impugned mark REKIN-SP.

**Reply by the Respondent No. 1**

7. Respondent No. 1 in reply has set out the following contentions: -

- a. It has stated that Respondent No. 1 is a company which was incorporated on 06.03.2017. Respondent No. 1 positions itself as a new-age pharmaceutical company with the stated objective of providing affordable medicines. It claims to offer more than sixty (60) products across multiple formulations and therapeutic areas, including gynaecology, dermatology, cardiology and general medicine, and asserted that an indicative list of such products has been filed along with the present petition.
- b. It is further stated that Respondent No. 1 launched its products in 2017 under the brand 'REKIN' and claims use of a series of 'REKIN' formative marks for various pharmaceutical products since 2017. It also relied on its online and social-media presence, including its website [www.rekinpharma.in] and platforms such as Facebook and Instagram, to contend that information relating to its products is widely available and accessible to consumers across the country and abroad, and that its marks and products have gained visibility through third-party websites, publications and media reports.





c. It is stated that Respondent No. 1 offers its products under its mark REKIN along with suffixes/prefixes like Rekin-NP tablet, Rekin 250 Oral Suspension, Rekin-CT Tablet, Rekin-P tablet, etc. It is stated that since its inception in 2017, Respondent No. 1's business and products under the 'REKIN' marks have received wide third-party coverage across websites, online journals and publications, supported by a strong online presence and listings on e-commerce platforms, resulting from substantial investments in promotion and advertising, which, according to Respondent No. 1, has led to nationwide accessibility of its products, growth in business, and generation of significant revenues.

d. It is stated that Respondent has registration for the following marks:-

Trademark Type	Application No. and date of filling	User Claim	Date of publication in TM Journal	Class and Goods	Status of registration
 REKIN PHARMA PVT. LTD. (DEVICE)	4102886 Dt.-28.02.19	01.01.2017	07.09.2020	Class 35	Registered on 23.2.2021, subsequently opposed by the Petitioner on 30.05.2022
REKIN-SP (WORD)	3541661 Dt.- 04.05.17	Proposed to be used	06.01.2020	Class 05	Registered on 01.09.2020

e. Respondent No. 1 contended that the mark 'REKIN' is a coined and fanciful word with no meaning in the English language and is, therefore, inherently distinctive. It is further asserted that, owing to extensive use, publicity and availability of products under the impugned mark



‘REKIN-SP’ and other REKIN formative marks on various third-party websites, the mark has acquired distinctiveness, goodwill and reputation within a short span of time, such that consumers exclusively associate the mark with Respondent No. 1.

- f. It is stated that the subsistence of its registered mark REKIN-SP is not detrimental to the Petitioner, as there is no pleading or evidence of actual or imminent confusion between the Respondent No. 1’s mark ‘REKIN-SP’ and the Petitioner’s mark ‘REXCIN’.
- g. It is stated that the Respondent obtained registration of the mark



pursuant to application no. 4102886, following which it lawfully used the ® symbol, resulting in increased goodwill and recognition in trade circles. The Petitioner to tarnish the Respondent No. 1’s reputation, initiated frivolous opposition and compelled redaction of the ® symbol, causing substantial loss to the Respondent No. 1. This led to the filing of a defamation suit, which is now withdrawn with liberty to pursue the defences in these proceedings.

- h. It is stated that, notably, the Petitioner has admitted that the present proceedings were initiated only after receiving summons in the defamation suit, and not due to any actual confusion or demonstrable harm, thereby indicating that the rectification petition is retaliatory and lacks bona fide cause.
- i. Respondent No. 1 submitted that the Petitioner’s mark and the Respondent’s mark are neither identical nor similar when compared as a whole, as they differ visually, phonetically, structurally, and



conceptually; the Petitioner has made only vague allegations of similarity and has failed to produce any evidence of actual confusion, despite the marks having coexisted for over six years. It is stated that 'REXCIN' (pronounced 'Rek-seen') is clearly distinct from 'REKIN-SP' (pronounced 'Rae-kin-es-pee').

- j. It is stated that despite peaceful coexistence since 2017, the Petitioner has failed to produce any evidence of actual confusion between the marks even after more than six years of concurrent use; additionally, independent Google search results for each mark do not overlap, further negating any likelihood of confusion.
- k. It is further contended that, the Trade Marks Registry itself did not cite the Respondent No. 1's mark as a conflicting mark while examining the Petitioner's applications, reinforcing the absence of likelihood of confusion.
- l. It is stated that the Respondent No. 1 is the bona fide and prior adopter of the mark, having continuously used its house mark 'REKIN' and the impugned mark 'REKIN-SP' since 2017 in the course of trade for pharmaceutical and medicinal products sold directly to end consumers.
- m. It is stated that, the Respondent No. 1 is the registered proprietor of the impugned mark in Class 5, whereas the Petitioner has no valid or subsisting registration for use of its mark REXCIN in Class 5 for pharmaceutical products; there is no overlap in the goods, services, or consumer base of the Petitioner and Respondent No. 1, as the Respondent No.1 uses the mark REKIN and its formatives as a product



brand in a B2C<sup>2</sup> model for pharmaceutical products sold to end consumers, while the Petitioner operates solely in a B2B<sup>3</sup> capacity as a white-label manufacturer for third-party brands and does not sell any products under its own mark. The parties' function in distinct spheres of the pharmaceutical industry with entirely different trade channels and consumers, thereby eliminating any likelihood of confusion.

n. It is stated that the rectification petition is, therefore, false and frivolous, reflecting the Petitioner's mala fide intent to undermine the Respondent No. 1's statutory rights despite knowing that the parties operate in distinct spheres with no instances of confusion.

#### **ANALYSIS AND FINDINGS**

8. This Court has heard the learned counsel for the parties and perused the record.

9. The relevant facts pertaining to the Petitioner discernible from the record are as under: -

- i. Petitioner applied for registration of its trademark 'REXCIN' on 28.04.2022 for goods and services falling in Classes 16, 44 and 45 respectively, claiming use since 16.12.2003. The registration was granted in these classes on separate dates in December 2022.
- ii. Petitioner applied for registration of its trademark 'REXCIN' on 13.04.2022 for services falling in Class 35 claiming use since 16.12.2003, which has been accepted and advertised.
- iii. Petitioner has also applied for registration of its trademark 'REXCIN' on 13.04.2022 for goods falling in [relevant] Class 5 claiming use since

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<sup>2</sup>Business to Consumer

<sup>3</sup>Business to Business



16.12.2003, which has been objected to by the trademark registry under Section 11 of the Act of 1999 on the ground that a same or similar trademark is already on the record of the register for same or similar goods. The marks of the third parties have been cited in the examination report, and the Respondent No. 1's impugned mark 'REKIN-SP' is not cited in the said report.

- iv. Petitioner has placed on record a certificate of the Chartered Accountant dated 17.01.2023<sup>4</sup>, which enlists the details of the revenue earned by the Petitioner company through manufacture and sale of pharmaceutical products during the period F.Y.<sup>5</sup> 2012-13 to 2021-22. However, annexure enlisting the pharmaceutical products as referred to in the said certificate has not been filed, and it is, therefore, an incomplete document.
- v. Petitioner has placed on record sample sales invoices<sup>6</sup>, for the year 2004, 2005, 2006 and 2022, which shows that it carries on business under its tradename Rexcin Pharmaceutical Pvt. Ltd. The said invoices, however, do not show use of the mark 'REXCIN' as a trademark for the goods enlisted therein.
- vi. Class 5 is the relevant class in the present proceedings, since Respondent No. 1's impugned wordmark 'REKIN-SP' bearing TM No. 3541661 dated 04.05.2017 is registered under Class 5 for pharmaceutical and medical preparations. The goods and services details in the Respondent No. 1's certificate under Class 5 are as under:-

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<sup>4</sup>Document No. 7 filed along with the petition.

<sup>5</sup>Financial Year

<sup>6</sup>Document No. 6 filed along with the petition.



Goods & Service Details	[CLASS: 5] PHARMACEUTICAL AND MEDICAL PREPARATION INCLUDED IN CLASS- 05
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vii. It is stated that the impugned mark 'REKIN-SP' is wrongly remaining on the register and is causing confusion as well as deception being deceptively similar to the Petitioner's trademark 'REXCIN'.

viii. In these facts, the Petitioner on 06.03.2023 filed the present petition under Section 57 of the Act of 1999 for removal of the mark 'REKIN-SP' bearing TM No. 3541661 dated 04.05.2017, registered under Class 5, from the register of trademarks.

ix. The petition was first listed before Court on 14.03.2023, and notice was issued to the Respondent No. 1 vide order dated 20.09.2023.

x. Vide order dated 04.03.2024 the coordinate Bench of this Court recorded following directions: -

1. "The corporate name of Plaintiff in CS(COMM) 142/2023 begins with the word/ term "REXCIN", and the Defendant's corporate name in CS(COMM) 142/2023 with "REKIN". The Plaintiff has certain registrations for the trademark "REXCIN" in classes 16, 44, 45 and 35, with user claim dating 16th December, 2003. They have also applied for registration of the said term in class 05, which is pending registration. **However, the Plaintiff, as of now, is not using "REXCIN" for any of their products.** The Defendant, on the other hand, has registration for the mark "REKIN-SP" in class 05, against which a rectification petition [C.O.(COMM.IPD-TM) 111/2023] has been filed. Their  application for registration of "REKIN" in class 35 has also been opposed by the Plaintiff before the Trademarks Registry.
2. With that being the position, the Court has queried from Mr. Sachin Gupta, counsel for Rexcin Pharmaceuticals Pvt. Ltd., as to whether the Plaintiff would be willing to consider permitting Rekin Pharma Private Limited to use the term "REKIN" only as a part of their corporate name. The counsel for Rekin Pharma Private Limited has similarly been queried as to whether they would be willing



to restrict its use of “REKIN” only as a part of corporate name, where they could retain their trademark registrations, but not use it as a trademark or as a trade name. On the above aspect, both counsel state that they will have to consult their clients and seek instructions.

3. In case both the parties find that their clients are amenable to consider the above arrangement, they shall be free to apply to the Court for being referred to mediation.

4. List on 13th May, 2024.”

[Emphasis supplied]

10. Separately, Respondent No. 1 on 28.02.2019 applied for registration of



a device mark ‘REKIN PHARMA PVT. LTD./’ under Class 35, with the user date of 01.01.2017 and the same was duly registered on 23.02.2021. The Petitioner herein filed its opposition on 30.05.2022 before the trademark registry, which was duly registered and due to this opposition, the said registration certificate is suspended. The goods and service details in the certificate under Class 35 are as under: -

Goods & Service Details	[CLASS: 35] TRADING AND WHOLESALE BUSINESS OF PHARMACEUTICAL, MEDICINAL PREPARATION INCLUDED IN CLASS- 35
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This registration, however, is not a subject matter of challenge in the present rectification petition.

11. The relevant submissions made on behalf of the Respondent No. 1 in opposition to the present rectification petition are as under: -

i. Respondent No. 1 uses the impugned mark ‘REKIN-SP’ as a trademark on its products and also uses REKIN as part of its corporate name,



which is printed on its products and packaging. It also uses the mark REKIN with different extensions like Rekin-NP Tablet, Rekin 250 Oral Suspension, Rekin-CT Tablet and Rekin-P Tablet.

- ii. Respondent No. 1 contends that Petitioner is merely a white label manufacturer for pharma preparations such as Gel and Cream. The said products are sold to a single commercial entity Sun Pharmaceutical Industries Ltd., which sells these products under distinct registered trademarks. For instance, the white label products manufactured by the Petitioner are sold by Sun Pharmaceutical Industries Ltd. under distinct trademarks such as Volini Gel, Diprovate G, Moisturex Cream and Gentalene Plus. Earlier, Petitioner was exclusively dealing with Ranbaxy Laboratories Ltd. and presently it is dealing with Sun Pharmaceutical Industries Ltd. The Petitioner thus exclusively sells its products under distinct trademarks in the B2B segment and not to the end consumers.
- iii. In contrast, the products of the Respondent No. 1 sold under its trademark REKIN-SP and other REKIN formative marks are purchased by the end consumers, who recognise the medicines under the REKIN marks and hence there is no overlap in the consumers of the Petitioner and Respondent No. 1.
- iv. The Petitioner's mark REXCIN is used only as a part of its tradename, and no products are being manufactured by the Petitioner under the mark REXCIN.
- v. The Petitioner and Respondent No. 1 operate in two different spheres of the pharmaceutical industry and co-exist as a supplier for different goods and services.



vi. Respondent No. 1 has, therefore, bona fide adopted the mark REKIN-SP in the year 2017 with respect to pharmaceutical and medicinal products, which fall in Class 5; and the Petitioner admittedly, did not have any registration in Class 5, in the year 2017 at the time Respondent No. 1 applied for registration; and also the Petitioner does not carry on any business even today in the trade of pharmaceutical products under its mark REXCIN.

12. Before proceeding with the analysis, it would be relevant to briefly enlist the details of the trademarks visible on the products produced by the Petitioner for Court's inspection as well as the details of the Petitioner mentioned on the said products:

Product	Registered trademark appearing on the product	Manufacturer Name	Form/role in which Petitioner's name appears on the product	Details of the drug	Photograph of the product
Cream	Gentalene Plus	Sun Pharmaceutical Ind. Ltd.	Marketed by Petitioner company	Schedule H prescription drugs	
Gel	Silverex ionic	Manufactured by Virchow Biotech (P) Limited and marketed by Sun Pharmaceutical Ind. Ltd.	The packaging states 'under the trademark user ship of Rexcin'	To be sold on prescription	

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Cream	Moisturex	Sun Pharmaceutical Ind. Ltd.	Packaging states that the product has been manufactured <b>for</b> Petitioner	To be sold on prescription	
Body wash	Moisturex Wash	Sun Pharmaceutical Ind. Ltd.	Packaging states that the product has been manufactured <b>for</b> Petitioner	-----	

#### I. Registration Status of the rival marks

13. At the outset, in the aforesighted facts, it is evident that on 04.05.2017 when Respondent No. 1 applied for the registration of the word mark/impugned mark 'REKIN-SP' in Class 5, which was granted on 01.09.2020; the Petitioner's trademark 'REXCIN' was not registered in any classes with the trademark registry. It is a matter of record that the Petitioner had not even applied for registration of its trademark 'REXCIN' in any class, with the trademark registry, at any time prior to 13.04.2022.

The Petitioner's mark REXCIN is, therefore, not an *earlier trademark* as contemplated in Section 11 of the Act of 1999. The impugned mark 'REKIN-SP' is thus an *earlier registered mark* in the register of the trademark registry.

#### II. Use of the mark REXCIN as a trademark by the Petitioner for its products not established

##### i. **No proof that Petitioner carries on services for which it holds registration in Classes 16, 44 and 45**

14. Upon perusal of the petition, it is evident that the Petitioner has not pleaded that it carries on any business of manufacturing goods or rendering



the services for which the trademark REXCIN is registered in Classes 16, 44 and 45 since the year 2022. The sample invoices filed as Document No. 6 also do not reflect that the Petitioner is rendering any of its goods or services corresponding to the said classes. There is, therefore, no material on record to demonstrate use of the trademark REXCIN by the Petitioner in respect of the goods and services for which registrations have been obtained by it in Classes 16, 44 and 45.

**ii. No proof that Petitioner sells products falling in Class 5 under the mark REXCIN**

15. The Petitioner has an application pending for registration in Class 5. However, as recorded in the order dated 04.03.2024, the Petitioner admits that it does not use the mark 'REXCIN' as a trademark in relation to any pharmaceutical products. This position stands corroborated by the products produced before this Court for inspection. As discussed hereinafter, the Petitioner's assertion in the trademark application that it has been using the mark REXCIN for products falling in Class 5 since 16.12.2003 is incorrect.

16. The Petitioner has filed its sample invoices for the year 2004, 2005, 2006 and 2022 as Document No. 6 to prove user since 16.12.2003; however, a perusal of the said invoices shows that Petitioner has been trading and/or selling Gel and Creams to a single third-party pharmaceutical company. In the invoices for 2004, 2005 and 2006 the name of the purchaser is recorded as Ranbaxy Laboratories Pvt. Ltd. In addition, Petitioner has filed sample invoices for the year 2022 which is again for sale of Cream and the name of the purchaser is recorded as Sun Pharmaceuticals Industries Ltd.



The invoices bear out the submission of the Respondent that currently the Petitioner exclusively sells its products to Sun Pharmaceuticals Industries Ltd.

The products sold through these invoices do not refer to the trademark REXCIN and merely evidence trading transactions with a third-party. The sample invoices only show the use of the tradename of the Petitioner. The invoices, however, fail to show use of the word REXCIN as a trademark by the Petitioner for pharmaceutical products falling in Class 5.

The nature of business carried out by the Petitioner, as garnered from the invoices appears to be of trading in the pharmaceutical products. Such services would fall in Class 35, for which its application under Class 35 is pending.

17. The Petitioner has relied upon a Chartered Accountant certificate dated 17.01.2023 at Document No. 7, however the product-wise details annexed to the said certificate has not been placed on record. The said certificate only shows the turnover of the Petitioner and does not evidence the use of the trademark 'REXCIN' by the Petitioner for its products. Moreover, the said certificate is incomplete in the absence of annexure and for this reason as well it cannot be relied upon.

18. During the hearing, the Petitioner has produced its products for inspection by the Court, as depicted in the table above, however the said products also do not show the use of the trademark 'REXCIN' by the Petitioner. The products produced by the Petitioner bear distinctive trademarks enlisted in Column no. 2 of the table and prominently disclose the name of the manufacturer, Sun Pharmaceutical Industries Ltd., a well-reputed pharmaceutical company. The Petitioner's trade name appears



inconspicuously on the product as the marketer and/or licensor of the trademark. In the considered opinion of the Court, such affixation of the Petitioner's trade name does not constitute use as a trademark for sale of goods within the meaning of Section 29(6) of the Act of 1999.

19. The material on record unequivocally establishes that the Petitioner has not used the mark 'REXCIN' as a source identifier in relation to pharmaceutical products, nor was it selling any pharmaceutical products under the said mark the time of adoption of the impugned mark 'REKIN-SP' by Respondent No. 1 in 2017, and even thereafter. Even the product samples produced before the Court depict the word 'REXCIN' as a part of the trade name only in an ancillary and inconspicuous manner, such as in the expressions 'manufactured for' or 'trademark usership', printed on the reverse of the packaging in the smallest font, which does not serve the function of identifying the commercial source of the goods; such incidental disclosure of a corporate or trade name cannot, in law, be equated with use as a trademark.

20. A perusal of the reference to the role of the Petitioner entity on these products also shows that it markets the products manufactured by other pharmaceutical companies and these products itself are sold under distinctive trademarks enlisted in Column no. 2 of the table above. There is, therefore, no evidence on record to show that the Petitioner uses the trademark REXCIN for its pharmaceutical products as alleged in the petition.

21. In support of its averments, the Petitioner relied on the judgment of **Radheshyam Tourism v. Radheshyam Travels**<sup>7</sup>. The said judgment has no application to the present case, as it proceeded on a factual finding that the

<sup>7</sup> AIR 2017 Guj 179 (SJ), at paragraph no. 17



respondent therein had placed on record cogent and contemporaneous evidence of prior and continuous use of the trademark, including sales figures, advertisement and promotional expenses, and income tax returns spanning over several decades, thereby establishing a clear commercial nexus between the mark and the business. The subject matter of the said case was tourism services offered by the respondent/plaintiff under the mark Radheshyam; the respondent's mark Radheshyam was a registered mark, and the continuous use of the said mark by the respondent was assessed by the Court in the background of the documents produced before the Court.

In contrast, in the present case in hand, the Petitioner has failed to adduce any reliable evidence of prior use of the mark REXCIN as a trademark for its pharmaceutical products, either through sales under the mark, promotional expenditure, or consumer-facing use; the invoices relied upon merely evidence white-label trading in products and use of the corporate name, and not trademark use.

**iii. Section 29(5) of the Act of 1999 has no applicability to hold that the use of tradename by the Petitioner constitutes as a trademark**

22. The Petitioner has averred that the use of the mark REXCIN by it as a part of its trading name since 16.12.2003 constitutes use as a trademark and it relies upon Section 29(5) of the Act of 1999 to substantiate its contention.

This Court is unable to accept the submission of the Petitioner. Section 29(5) of the Act of 1999 postulates a situation where the proprietor of the registered mark is the plaintiff in a suit for infringement, and such a plaintiff is aggrieved by the adoption of the registered mark by the defendant as a part of the latter's tradename constituting infringement for the goods or services for which the plaintiff's mark is registered. The phrase tradename, in this





sub-section, is stipulated in the context of the trademark of the defendant and not the trademark of the plaintiff. In the considered opinion of the Court, Section 29(5) of the Act of 1999 does not stipulate that the trademark of the plaintiff/Petitioner constitutes use as a trademark and, therefore, this submission of the Petitioner is rejected. For reference, Section 29(5) of the Act of 1999 reads as under: -

“29 (1) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which is identical with, or deceptively similar to the trade mark in relation to goods or services in respect of which the trade mark is registered and in such manner as to render the use of the mark likely to be taken as being used as a trade mark:

.....

(5) A registered trademark is infringed by a person if he uses such registered trade mark, as his trade name or part of his trade name, or name of his business concern or part of the name of his business concern dealing in goods or services in respect of which the trade mark is registered.

.....”

The forms of use of a registered mark by a proprietor has been statutorily enlisted in Section 29(6) of the Act of 1999 and it does not include use only as a trademark, which section includes as under: -

“29 (1) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which is identical with, or deceptively similar to the trade mark in relation to goods or services in respect of which the trade mark is registered and in such manner as to render the use of the mark likely to be taken as being used as a trade mark:

.....

(6) For the purposes of this section, a person uses a registered mark, if in particular he—

(a) affixes it to goods or the packaging thereof:

(b) offers or exposes goods for sale puts them on the market, or stock them for those purposes under the registered trade mark, or offers or supplies services under the registered trade mark:

(c) imports or exports goods under the mark:

(d) or uses the registered trade mark on business papers or in advertising.

.....”



**III. Respondent No. 1's use and adoption of the impugned mark 'REKIN-SP' w.e.f. 04.05.2017 is admitted on record**

23. Respondent No. 1 has placed on record samples of its pharmaceutical products sold under the marks REKIN-NP, REKIN-S, REKIN-E, REKIN-CT, REKIN-P, and REKIN-SP, all of which are marketed as Schedule H drugs, prominently displaying Respondent No. 1's mark REKIN along with various formatives. The Respondent's trade name also separately appears on its products under the head 'Marketed By'. Relevant photographs of Respondent No. 1's REKIN products are reproduced hereinbelow: -



24. The aforesaid products show that the Respondent No. 1 uses its trademark REKIN-SP and other REKIN formative marks on pharmaceutical preparations falling within Class 5.

25. The Respondent No. 1 was incorporated on 06.03.2017 and applied for registration of the impugned mark on 04.05.2017 which was granted registration on 01.09.2020. It is thus, the bonafide adopter of the mark REKIN/REKIN-SP in the year 2017 with respect to pharmaceutical and medical products falling in Class 5. Additionally, Respondent No. 1 is also

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PRATAP SINGH  
Signing Date: 22/01/2026  
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using the mark REKIN as part of its tradename/corporate name and as a part of its domain name for its website.

The Petitioner applied for registration of the mark REXCIN in Class 5 on 13.04.2022, five years after Respondent No. 1's adoption of the impugned mark. The Petitioner has been unable to show any use of the mark REXCIN as the trademark for its pharmaceutical products prior to 13.04.2022, or even today.

26. In the considered opinion of this Court, Respondent No. 1 is a bonafide and prior adopter of the trademark REKIN-SP.

#### **IV. No deceptive similarity between the rival marks**

27. The Respondent No. 1 at paragraph nos. 28 to 30 of its reply has specifically raised a preliminary objection that the Petitioner has failed to furnish any document to show actual confusion amongst the consumers due to the impugned mark REKIN-SP despite concurrent use of the mark/tradename for 6 years (in the year 2023 when the petition was filed).

The Petitioner in its rejoinder has pleaded that the Petitioner's tradename 'Rexcin Pharmaceutical Pvt. Ltd.' is shown on the packaging and products marketed by it. It states that the consumers are therefore directly aware of the Petitioner's tradename. However, looking at the products handed over to the Court by the learned counsel for the Petitioner, the Petitioner's mark REXCIN is only appearing at the backside of the products in the smallest form and is inconspicuous, it appears either as 'manufactured for Rexcin Pharmaceuticals Pvt. Ltd.' or 'under the trademark usership of 'Rexcin' as shown above in the table [reproduced at paragraph no. '12' of the judgment]. The said products marketed by the Petitioner are sold under distinct registered brand names/trademarks.





28. As noted above, this Court finds in the facts of this case that the Petitioner does not sell any pharmaceutical products under the trademark 'REXCIN'. As held hereinabove that the Petitioner has failed to show any use of the trademark REXCIN as a source identifier for pharmaceutical products sold by it whether in 2017 or even at the present time; therefore, the question of similarity or deceptive similarity of the trademark does not arise for consideration.

The evidence further establishes that the Petitioner and Respondent No. 1 operate in distinct and non-overlapping spheres of business. While Respondent No. 1 is the prior adopter and bona fide user of the trademark 'REKIN-SP' and other 'REKIN' formative marks on pharmaceutical preparations falling within Class 5, which are sold to end consumers, the Petitioner neither manufactures nor markets any pharmaceutical products under the mark 'REXCIN' and is, at best, engaged in rendering marketing or trading services under its corporate name for goods manufactured by third parties like Sun Pharmaceuticals Industries Ltd and the said goods have prominent distinct trademarks used on them. Significantly, despite more than eight years of concurrent existence of the impugned mark, the Petitioner has failed to place on record any evidence of actual confusion or even a likelihood of confusion among consumers, as in the opinion of this Court none can arise.

29. The Petitioner has placed reliance on **Nutrica Pusti Healthcare Pvt. Ltd. v. Morepen Laboratories Ltd.**<sup>8</sup>, to aver that differences in packaging etc. is irrelevant for assessing deceptive similarity in pharma marks. However, this reliance is misconceived and distinguishable on facts, as it presupposes a situation where both rival marks are being used as trademarks

<sup>8</sup> 2021 SCC OnLine Del 2631, at paragraph no. 9.



on pharmaceutical products competing in the same market, thereby requiring an assessment of deceptive similarity from the perspective of an unwary consumer of medicines.

In the present case, however, this Court has categorically found that the Petitioner does not use the mark REXCIN as a trademark on any pharmaceutical product at all, and does not sell medicines under the said mark, either at the time of adoption of the impugned mark or thereafter. In the absence of any trademark use by the Petitioner, the threshold requirement for comparing rival pharmaceutical trademarks does not arise. Consequently, the principles relating to heightened scrutiny of deceptive similarity in pharmaceutical trademarks, as laid down in the cited judgment, have no application to the present facts where there is no competing pharmaceutical trademark of the Petitioner in the market capable of causing confusion.

30. The Petitioner has not placed on record any proof of actual instances of confusion despite the concurrent use of the mark for more than 8 years (in the year 2025), as on date. Thus, the subsistence of the registration of the impugned mark REKIN-SP in favour of Respondent No. 1, has not been proved to be detrimental to the Petitioner.

31. It is also pleaded that the impugned mark REKIN-SP is deceptively similar to the Petitioner's trademark REXCIN, already registered in India in favour of the Petitioner for different goods falling in Class 16, 44 & 45, however, the Petitioner's mark was registered for the aforesaid classes only in 2022, five years after the Respondent No. 1's products under the impugned mark were present in market. This submission of the Petitioner is therefore, misleading and incorrect. Moreover, the Respondent No.1 has registration in Class 5 which is distinct from Class 16, 44 and 45. The Petitioner has not even





placed on record any evidence of its business activities carried out by it under Class 16, 44 and 45.

**V. Absence of Goodwill in the Petitioner's mark REXCIN**

32. The Petitioner has not placed on record any details of expenses incurred on advertisement and promotion of the trademark REXCIN, as none would exist. This is relevant as the Petitioner was not using the mark REXCIN as a trademark. The Petitioner has thus failed to place on record any evidence of its reputation and goodwill in the mark REXCIN in the year 2017, when Respondent No. 1 adopted the impugned mark REKIN-SP as a trademark for its products in Class 5.

33. The Petitioner has sought to contend that its tradename Rexcin Pharmaceutical Pvt. Ltd., allegedly used since 16.12.2003, has acquired reputation and goodwill. It is contended that the Respondent No. 1's use of the impugned mark REKIN-SP on its pharmaceutical products is likely to mislead consumers into believing that the said goods originate from the Petitioner, thereby resulting in passing off. However, in the facts of the present case, the Petitioner has failed to persuade this Court that it enjoys any goodwill or reputation associated with the tradename Rexcin Pharmaceutical Pvt. Ltd. amongst the general public in relation to pharmaceutical products, which could result in confusion among the consumers.

34. The invoices placed on record demonstrate that the Petitioner's dealings are confined to one or two regular purchasers such as Sun Pharmaceutical Industries Ltd. (and earlier Ranbaxy Laboratories Ltd.), where the goods are further sold under distinct and independently registered trademarks, and not under the mark REXCIN. The Petitioner has not produced any material to show consumer-facing sales, advertisement,



promotion, or public recognition of the trademark REXCIN as a badge of origin for pharmaceutical products. In these circumstances, the Petitioner has failed to establish the existence of protectable goodwill in its trademark capable of being misappropriated.

35. In the considered opinion of this Court, the turnover and the invoices fail to show any goodwill attached with the mark REXCIN in 2017 or thereafter amongst the general public for pharmaceutical products.

36. The Petitioner has placed reliance on the judgment of **Laxmikant V. Patel v. Chetanbhai Shah and Anr.**<sup>9</sup> to aver that a trading name that gains reputation is protected as property, which is inapplicable to the present case, as its foundational premise is the existence of protectable goodwill in a trading name that functions as a source identifier and is capable of misleading consumers upon imitation. In the facts of that case, the plaintiff was providing services of a photo studio, and the Court was satisfied that the trading name had acquired goodwill for those services.

In the present facts, however, the Petitioner has failed to establish any use of the mark REXCIN as a trademark or badge of origin in relation to pharmaceutical products, either prior to or at the time of adoption of the impugned mark by the Respondent; the material on record shows that the mark REXCIN was used only as a corporate or trade name in an inconspicuous manner and not in a manner recognizable by consumers as identifying the source of goods. The Petitioner neither sold nor marketed any pharmaceutical products under the mark REXCIN, had no goodwill or reputation in the market as on 2017, and produced no evidence of actual or likely consumer confusion despite long concurrent existence.

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<sup>9</sup> (2002) 3 SCC 65, at paragraph no. 10.





## **VI. Statutory objections raised by the Petitioner under the Act of 1999**

37. Keeping in view the aforesaid findings, this Court is now proceeding to deal with the objections of the Petitioner raised in its grounds by relying upon different provisions of the Act of 1999.

### **i. Section 9(1)(a) and 9(2)(a) of the Act of 1999**

38. The Petitioner has averred that the impugned registration is violative of Section 9(1)(a) of the Act of 1999 as the impugned mark REKIN-SP is devoid of any distinctive character and is not capable of distinguishing the goods of the Respondent No. 1 from those of the Petitioner. It has also averred that the impugned mark REKIN-SP is deceptively similar to the Petitioner's mark REXCIN causing confusion and deception among the public, thus violating Section 9(2)(a) of the Act of 1999. The said provisions read as under: -

“9. (1) The trade marks-----(a) which are devoid of any distinctive character, that is to say, not capable of distinguishing the goods or services of one person from those of another person:

Shall not be registered : Provided that a trade mark shall not be refused registration if before the date of application for registration it has acquired a distinctive character as a result of the use made of it or is a well-known trade mark.

.....

(2) A mark shall not be registered as a trade mark if ---

(a) it is of such nature as to deceive the public or cause confusion:

.....”

39. The impugned mark REKIN-SP is *per se* distinctive for the goods and services offered by the Respondent No.1; and this Court having concluded that the goods marketed by Petitioner are sold under distinctive trademarks such as SILVEREX IONIC, MOISTUREX etc., and not under the mark REXCIN, this Court finds no merit in the submission of the Petitioner.

40. Moreover, as held hereinabove, the Petitioner is not using the mark REXCIN as a source identifier on its products, and therefore, it is not



associated as a trademark by the consumers. However, Respondent No. 1's mark REKIN-SP and its formative marks are prominently used on the all the pharmaceutical products of the Respondent No. 1, as a source identifier, and the consumers ordinarily would identify the products of the Respondent No. 1 with its impugned mark REKIN-SP and its formative marks.

41. Thus, there is no possibility of causing confusion amongst the public.

**ii. Section 11(1), 11(2), 11(3)(a) and 11(10) of the Act of 1999**

42. The Petitioner has averred that the impugned registration is violative of Section 11(1) of the Act of 1999, which reads as under:

“11. (1) Save as provided in section 12, a trade mark shall not be registered if, because of---

(a) its identity with an earlier trade mark and similarity of goods or services covered by the trade mark; or

(b) its similarity to an earlier trade mark and the identity or similarity of the goods or services covered by the trade mark.

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark

.....

Explanation--- For the purposes of this section, earlier trade mark means—

(a) a registered trade mark or convention application referred to in section 154 which has a date of application earlier than that of the trade mark in question taking account, where appropriate, of the priorities claimed in respect of the trade marks:

(b) a trade mark which, on the date of the application for registration of the trade mark in question, or where appropriate, of the priority claimed in respect of the application, was entitled to protection as a well-known trade mark.

.....”

43. As is apparent on a bare reading of the provision, the said provision would only apply if the Petitioner's trademark was registered prior to the Respondent No.1's registration or where the Petitioner's application seeking registration of the mark was pending prior to the date of application of the Respondent No.1.



It is a matter of record that the impugned mark was applied for by the Respondent No.1 on 04.05.2017 and registered on 01.09.2020 and as on the said date the Petitioner's mark REXCIN was neither applied for nor registered with the trademark registry and therefore the said provision has no application in the facts of this case. So also, given the finding of this Court that the Petitioner does not use the word REXCIN as a trademark for the goods it trades in, there is no question of it being considered a well-known trademark. (Re: **BPI Sports LLC v. Saurabh Gulati &Anr.**<sup>10</sup>)

44. The Petitioner has next averred that the impugned registration is violative of Section 11(2) of the Act of 1999, which reads as under:

“11. ....  
(2) A trade mark which---  
(a) is identical with or similar to an earlier trade mark and  
(b) is to be registered for goods or services which are not similar to those for which the earlier trade mark is registered in the name of a different proprietor.  
shall not be registered if or to the extent the earlier trade mark is a well-known trade mark in India and the use of the later mark without due cause would take unfair advantage of or be detrimental to the distinctive character or repute of the earlier trade mark.  
.....”

45. For the reasons recorded above, this objection of the Petitioner is also not maintainable. The Petitioner does not use the mark REXCIN for its products as a trademark even today and, therefore, there is no question of it being a well-known mark.

46. The Petitioner has averred that the impugned registration is violative of Section 11(3)(a) of the Act of 1999, which reads as under:

“11. ....  
(3) A trade mark shall not be registered if, or to the extent that, its use in India is liable to be prevented --(a) by virtue of any law in particular the law of passing off protecting an unregistered trade mark used in the course of trade: or

---

<sup>10</sup>C.O. (COMM.IPD-TM) 16/2021, Judgment (Oral) dated 27.04.2023, at paragraphnos. 22 to 26.



.....”

47. The three essential ingredients of a passing off action are goodwill, misrepresentation, and damage. To succeed in such a claim, the claimant must establish that the defendant has made a misrepresentation in the course of trade to prospective purchasers or ultimate consumers of goods or services, which is calculated to injure, or is reasonably foreseeable to injure, the claimant's business or goodwill, and which has resulted in actual damage or is likely to do so. Central to the applicability of this principle is the existence of protectable goodwill generated by the claimant through use of the mark as a source identifier in the course of business, as it is only the proprietor who has established such goodwill by prior and continuous use of the mark that can maintain an action for passing off.

In the absence of any use of the mark 'REXCIN' as a badge of origin recognizable by consumers, the foundational element of passing off action i.e., misrepresentation, is wholly absent, and consequently no issue of deceptive similarity arises for consideration. Moreover, having concluded in the earlier part of the judgment that the Petitioner does not use 'REXCIN' as a trademark in relation to its pharmaceutical products and that Respondent No. 1 is the prior adopter of the impugned mark 'REKIN-SP', the Petitioner's claim of passing off is devoid of merit. The record further discloses that the Petitioner has failed to establish any goodwill associated with the mark 'REXCIN' as a trademark, or any likelihood of consumer confusion or resultant damage, all of which are essential constituents for the act of passing off. In these circumstances, no cause of action for passing off is made out against Respondent No. 1.





48. The reliance on **Kirloskar Diesel Recon Pvt. Ltd. v. Kirloskar Proprietary Ltd.**<sup>11</sup>, by the Petitioner is misplaced in the present case. While it is undisputed that a trade name may, in a given case, constitute a ‘mark’ for the purposes of a passing off claim, the sine qua non remains the existence of a real and perceptible nexus between the name and the goods/services in the minds of consumers, such that the name functions as a badge of origin. In the present facts, the Petitioner has failed to establish any such nexus for the products sold by it, as the mark REXCIN has never been used in relation to pharmaceutical products as a source identifier, but only appears incidentally as part of the corporate or trade name in an inconspicuous manner on the reverse of packaging, while the goods themselves are sold under entirely different and distinctive registered trademarks.

49. Therefore, the objection raised by the Petitioner under Section 11(3)(a) of the Act of 1999 is unfounded on merits of this case.

50. The Petitioner has averred that the impugned registration is violative of Section 11(10) of the Act of 1999, which reads as under:

“11. ....

(10) While considering an application for registration of a trade mark and opposition filed in respect thereof, the Registrar shall—(i) protect a well-known trade mark against the identical or similar trade marks: (ii) take into consideration the bad faith involved either of the applicant or the opponent affecting the right relating to the trade mark.

.....”

51. In view of the aforesaid findings, that the Petitioner does not use the mark REXCIN for its products as a trademark, the reliance on the aforesaid provision is also not made out.

52. Accordingly, the petition is dismissed.

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<sup>11</sup> 1995 SCC OnLine Bom 312, at paragraph no. 9.



53. Pending applications stand disposed of.

**CS(COMM) 142/2023**  
**I.A. 4878/2023**

54. This is an application filed by the Plaintiff under Order XXXIX Rule 1 and 2 CPC seeking a restraint against the Defendant from using the impugned mark REKIN-SP and its formative marks.

55. While disposing of the rectification petition, this Court held that the Petitioner failed to establish any use of the mark 'REXCIN' in relation to pharmaceutical products, holding that the Petitioner neither used 'REXCIN' as a trademark nor as a source identifier for pharmaceutical goods falling in Class 5 at any relevant time. On the date when Respondent No. 1 adopted and applied for registration of the mark 'REKIN-SP' in 2017, the Petitioner had no trademark registration or even a pending application in Class 5, and its subsequent registrations in other Classes in 2022 are of no assistance. The evidence on record, including invoices and product samples, showed that the Petitioner merely acted as a marketer for third-party pharmaceutical companies, with 'REXCIN' appearing only inconspicuously as a trade name, which does not constitute trademark use under the Act of 1999. In contrast, Respondent No. 1 has been held to be the bona fide and prior adopter and user of the mark 'REKIN-SP' and other REKIN-formative marks, which were prominently used on pharmaceutical products sold to end consumers by the Respondent No. 1.

The Court has further held that the parties operate in distinct and non-overlapping spheres, there was no overlap of goods, trade channels, or consumer base, and despite several years of concurrent existence, no evidence



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of actual or likely confusion, goodwill, or reputation of the Petitioner's mark REXCIN was shown. Consequently, the essential ingredients of deceptive similarity, confusion, and passing off are found to be absent.

56. The Plaintiff has placed reliance on **Stiefel Laboratories v. Ajanta Pharma Ltd.**<sup>12</sup>, which is misplaced in the present case, as there is no case for grant of an injunction since Defendant has a registered mark. Moreso, none of essential preconditions for grant of an interim injunction are satisfied by the Plaintiff. The Plaintiff has failed to establish priority in use, failed to demonstrate commercial and continuous use of the mark REXCIN as a source identifier for its goods, and in the absence of trademark use and consumer recognition, the question of deceptive similarity between the rival marks does not arise.

57. In view of the findings returned hereinabove, the Plaintiff is not entitled to an interim injunction as prayed for in this application and the same is dismissed.

58. The Court Master is directed to send the products, handed over by the learned counsels for Plaintiff and Defendant, to the Registry.

### **CS(COMM) 142/2023**

59. List this suit before the Roster Bench on **06.02.2026**, for directions.

**MANMEET PRITAM SINGH ARORA  
(JUDGE)**

**JANUARY 27,2026/mt/AM**

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<sup>12</sup> 2014 SCC OnLine Del 3405, at paragraph no. 24.