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N THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

COMMERCIAL MISCELLANEOUS PETITION NO. 12 OF 2026

Glaxo Group Limited ...Petitioner

Versus

1. Shreya Life Sciences Pvt. Ltd.
2. Registrar of Trade Marks ...Respondents

Mr. Hiren Kamod *a/w Ms. Bhavya Shah, Mr. Jaskaran Singh, Ms. Urfee Roomi, Vanshika Bansal, Janaki Arun, Mujtaba Ambekar i/b A & P Partners, for Petitioner.*

Mr. Aniket Gautam *a/w Mr. Siddharth Kurrich, Adv. P. Amrut, for Respondent No. 1.*

CORAM: **SOMASEKHAR SUNDARESAN, J.**

RESERVED ON: **AUGUST 5, 2026**

PRONOUNCED ON: **OCTOBER 28, 2026**

JUDGEMENT :

Context and Factual Background:

1. Glaxo Group Limited ("***Glaxo***"), the Petitioner, seeks cancellation of Trade Mark Registration No. 5001470 ("***Impugned Registration***") for the

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mark 'LEFOXIN BIOX' in Class 5 ("***Impugned Mark***"). Shreya Life Sciences Pvt. Ltd. ("***Shreya***"), the Respondent No. 1, is the registered proprietor of the Impugned Mark. The captioned Rectification Petition is filed under Section 57 of the TM Act, 1999 ("***TM Act***").

2. Glaxo is a company incorporated in England and Wales. It is part of the GSK group. It owns Trade Mark Registration No. 177607 for 'LANOXIN', also in Class 5 ("***Glaxo Mark***"), which has been in place since December 17, 1956, and has been kept renewed from time to time and is valid until December 17, 2035. LANOXIN is used by Glaxo for tablets containing *digoxin*, which are prescribed for cardiac failure and supraventricular arrhythmias. Glaxo relies on use of LANOXIN in India in this manner since the 1950s. It has sought to document sales in India since 1958 and seeks to place its sales figures on record in a sealed cover.

3. Shreya is an Indian pharmaceutical company in the specialty injectables business. Its facilities are at Aurangabad and Roorkee. Shreya applied for the Impugned Mark on June 11, 2021, on a proposed-to-be-used basis, for medicinal and pharmaceutical preparations. The application was advertised in Trade Marks Journal No. 2009 dated July 19, 2021. Registration was granted on December 9, 2021. Glaxo did not file any Notice of Opposition at that stage.

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4. The Registrar of Trade Marks ("***Registrar***") is Respondent No. 2. The Registrar has not participated in these proceedings.

5. Shreya uses the Impugned Mark on *levofloxacin* tablets, which are antibiotics. Shreya says it makes the tablets at Aurangabad only for export to Russia, Ukraine, Uzbekistan, Belarus, Kazakhstan and other countries, and asserts that nothing is sold in India. Shreya claims exports since 2006-07. It relies on a turnover chart and invoices.

6. Glaxo accepts that Shreya exports the antibiotic tablets and does not sell them in India. However, Glaxo contends that the Impugned Mark is advertised in India on third-party websites, which Shreya says is aimed only at its export markets.

7. Glaxo contends that it learnt of the Impugned Registration only in June 2024 and an investigation in July 2024 found *Levofloxacin* tablets under the Impugned Mark being exported from Aurangabad. Glaxo sent a cease-and-desist notice on August 16, 2024, after which the parties traded notices with Shreya declining to stop use or to cancel the Impugned Registration. This Rectification Petition has been affirmed by Glaxo on April 5, 2025.

8. Two other proceedings between the parties should be noted. *First*, Glaxo has instituted Commercial IP Suit (L) No. 12430 of 2025 against Shreya,

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which falls outside the roster of this Bench. Neither party has urged any submission about its contents and its potential relevance for these rectification proceedings. *Second*, on April 24, 2026, another Bench of this Court allowed Glaxo's petition for removal of Shreya's PAXIL registration under Section 47 of the TM Act. That petition concerned a different mark and the ground was one of non-use. Glaxo cites it for the meaning of "person aggrieved".

Grounds for Rectification and Parties' Contentions:

9. Glaxo invokes Section 57(2) of the TM Act, read with Sections 11(1), 11(3), 11(10) and 18(1). It says the Impugned Registration was made without sufficient cause and wrongly remains on the Register of Trade Marks ("***Register***"). The grounds pleaded are:

A] The Glaxo Mark is an earlier mark. It was adopted and has been in open and continuous use since the 1950s and was registered in 1956 for pharmaceutical goods;

B] The Impugned Mark, LEFOXIN BIOX, is nearly identical to the Glaxo Mark, LANOXIN, visually and phonetically. Shreya has only replaced the letters "AN" with "EF";

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C] Shreya adopted the Impugned Mark in bad faith. It knew, or ought to have known, of the Glaxo Mark;

D] Shreya is not the bona fide proprietor of the Impugned Mark within the meaning of Section 18(1) of the TM Act;

E] The Impugned Registration is contrary to public interest and public health. Confusion between the two pharmaceutical products, with completely different applications, could have serious consequences.

10. Shreya contends that Glaxo cannot be considered a "person aggrieved". That apart, the marks are composite, to be considered as a whole, and just a part of LEFOXIN BIOX cannot be compared with LANOXIN. The underlying pharmaceutical compounds are different, their applications differ and both necessitate prescription by medical practitioners and there can be no scope for confusion. Glaxo has been late in filing this Petition since the registration took place in 2021 with no opposition at the time of advertisement of the proposed mark. Shreya is willing to undertake that it would not cater to the Indian market at all and on that basis, Glaxo's concerns may also stand addressed.

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Analysis and Findings:

11. Against this backdrop, the captioned Petition was taken up for final disposal with the consent of the parties. I have heard at length, Mr. Hiren Kamod, learned Advocate on behalf of Glaxo and Mr. Siddharth Kurrich, learned Advocate on behalf of Shreya. With their assistance, I have examined the material on record and the case law cited by them. The following points arise for determination:

A] Whether Glaxo is a "person aggrieved" within the meaning of Section 57 of the TM Act;

B] Whether the Impugned Mark is deceptively similar to LANOXIN, such that there is a likelihood of confusion for purposes of Section 11(1)(b) of the TM Act. Towards this end:

I] How are the marks to be compared, and what is the role of 'BIOX'?

II] Is OXIN common to the trade?

III] What is the effect of different APIs, indications, prescribers and prescription-only sale?

IV] What is the effect of the Impugned Mark being used only for export?

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C] Whether Sections 11(3), 11(10) and 18(1) are independently attracted, on the footing of bad faith or want of *bona fides*; and

D] Whether delay, absence of proof of actual confusion and the balance of hardship weigh against relief under Section 57.

Person aggrieved:

12. At the threshold, it may be stated that under Section 57(2) of the TM Act any person aggrieved by any entry made in the Register may apply for expunging such entry. Shreya contends that Glaxo is not a person aggrieved since it has not shown a real and substantial grievance, only raising a speculative grievance, relying upon ***Infosys***[1] and ***Hardie***[2].

13. Besides, Shreya contends that the Impugned Mark is used solely for export and there is no overlap of goods, consumers, prescribers or trade channels in India. According to Shreya, the absence of injury or confusion is borne out by Glaxo having been inactive for four years.

14. In my view, this contention is untenable. Without getting into whether Glaxo's contentions on merits necessitate rectification, for this issue, the core

[1] *Infosys Technologies Ltd. v. Jupiter Infosys Ltd. – (2011) 1 SCC 125, paragraphs 28 and 33*
[2] *Hardie Trading Ltd. v. Addisons Paint & Chemicals Ltd. – (2003) 11 SCC 92, paragraphs 30 to 32*

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question to answer is whether Glaxo can be said to be a person aggrieved. Evidently, Glaxo owns an earlier registration for LANOXIN in Class 5 for a pharmaceutical product. The mark is phonetically and visually somewhat similar and also used in the same field, although applied to a different formulation, although such formulations with the respective brand names are marketed in different markets. In view of the statutory protection available through the Impugned Registration, Glaxo would be entitled to pursue, on merits, its request for rectification. I am not satisfied that Glaxo is a complete third party with no locus for its case to be shut out at the threshold. It is settled law that the term "person aggrieved" must be liberally construed.

15. In ***Hardie***, the Supreme Court dealt with the phrase "person aggrieved" in some detail in the following words:

> *"30. **The phrase "person aggrieved" is a common enough statutory precondition for a valid complaint or appeal. The phrase has been variously construed depending on the context in which it occurs**. Three sections viz. Sections 46, 56 and 69 of the Act contain the phrase. **Section 46 deals with the removal of a registered trade mark from the Register on the ground of non-use**. This section presupposes that the registration which was validly made is liable to be taken off by subsequent non-user. **Section 56 on the other hand deals with situations where the initial registration should not have been or was incorrectly made**. The situations covered by this section include: (a) the contravention or failure to observe a condition for registration; (b) the absence of an entry; (c) an entry made without sufficient cause; (d) a wrong entry; and (e) any*

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error or defect in the entry. ***Such type of actions are commenced for the "purity of the Register" which it is in public interest to maintain****. Applications under Sections 46 and 56 may be made to the Registrar who is competent to grant the relief. "Persons aggrieved" may also apply for cancellation or varying an entry in the Register relating to a certification trade mark to the Central Government in certain circumstances. Since we are not concerned with a certification trade mark, the process for registration of which is entirely different, we may exclude the interpretation of the phrase "person aggrieved" occurring in Section 69 from consideration for the purposes of this judgment.*

31. ***In our opinion the phrase "person aggrieved" for the purposes of removal on the ground of non-use under Section 46 has a different connotation from the phrase used in Section 56 for cancelling or expunging or varying an entry wrongly made or remaining in the Register.***

32. ***In the latter case the locus standi would be ascertained liberally, since it would not only be against the interest of other persons carrying on the same trade but also in the interest of the public to have such wrongful entry removed****. It was in this sense that the House of Lords defined "person aggrieved" in the matter of Powelf's Trade Mark:*

> *"... although they were no doubt inserted ,* ***to prevent officious interference by those who had no interest at all in the register being correct, and to exclude a mere common informer, it is undoubtedly of public Interest that they should not be unduly limited, inasmuch as it is a public mischief that there should remain upon the register a mark which ought not to be there, and by which many persons may be affected, who, nevertheless, would not be willing to enter upon the risk and expense of litigation****.*

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> ***Whenever it can be shown, as here, that the applicant is in the same trade as the person who has registered the trade mark, and wherever the trade mark, if remaining on the register, would, or might, limit the legal rights of the applicant, so that by reason of the existence of the entry on the register he could not lawfully do that which, but for the existence of the mark upon the register, he could lawfully do. It appears to me he has a locus standi to be heard as a person aggrieved****."'*

[Emphasis Supplied]

16. ***Hardie*** went on to distinguish rectification applications on the ground of non-user and indicated a higher threshold to be met by a person aggrieved on the ground of non-user. That is not relevant for the instant case, but what is extracted above is squarely relevant. The principles enunciated in Hardie have been applied by the Supreme Court further in ***Kabushiki***[3] and in ***Infosys***. Applying these long-standing principles, I have no hesitation in rejecting the contention that Glaxo is not a person aggrieved as a matter of jurisdictional fact. There is an element of public interest involved in the matter, quite apart from the factual matrix involved in this case, namely Glaxo's own registration right since the 1950s, giving it locus and placing it outside the realm of a disconnected busybody third party.

[3] *Kabushiki Kaisha Toshiba v. Tosiba Appliances Co. – (2008) 10 SCC 766*

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Deceptive Similarity:

17. Whether the Impugned Mark is deceptively similar to LANOXIN, so as to attract Section 11(1)(b) of the TM Act is the question that is raised in these proceedings. Section 11(1) provides:

> *"(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."*
>
> ***[Emphasis Supplied]***

18. The Explanation to Section 11 defines an "*earlier trade mark*" as follows:

> *"Explanation.— For the purposes of this section, **earlier trade mark means**—*
>
> *(a) **a registered trade mark or an application under section 18 bearing an earlier date of filing** or an international registration referred to in section 36E 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;*

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(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."

[Emphasis Supplied]

19. Therefore, what is clear is that the jurisdictional fact necessary to attract the prohibition on registration stipulated under Section 11(1) of the TM Act is the similarity of the mark proposed to be registered with a mark already registered, because of which similarity, there is a likelihood of confusion on the part of the public. If these ingredients are met, registration of the latter mark is prohibited. A registration that takes place in the teeth of such prohibition is liable to be rectified under Section 57 of the TM Act.

20. Glaxo's grievance is that the Impugned Mark is deceptively similar to the mark Glaxo had already registered in its name. A registration in alleged breach of Section 11(1) of the TM Act would attract the rectification jurisdiction and therefore, as a party making out a *prima facie* case of similarity, Glaxo would certainly be a person aggrieved. Therefore, without prejudice to the merits of this contention, in the absence of such grievance being completely fanciful and with no basis whatsoever, Glaxo would indeed be a person aggrieved by the alleged likelihood of confusion that may arise out of the similarity.

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Likelihood of Confusion from Similarity:

21. This brings me to whether the Impugned Mark can indeed be held to be similar to the Glaxo Mark so as to have the likelihood of causing confusion in the minds of the public. To deal with this question, one has to consider how to compare the two marks, and which of the two parties is correct in canvassing how such comparison must be made – in particular, whether the use of 'BIOX' dilutes the similarity by giving the Impugned Mark an element of distinctiveness, or whether despite the use of 'BIOX' a reasonable finding of similarity such that confusion is likely, can be arrived at.

22. Each of Glaxo and Shreya would contend that it is only comparing the two marks as wholes. Therefore, the nuance that each side seeks to press into service must be noticed at the threshold of this issue. One would also need to consider the parties' contentions on the channels relevant for their respective products, and also their respective positions on Shreya using the Impugned Mark only for the export market with Glaxo using it in the domestic as well as international markets.

23. It is well settled that to test the likelihood of confusion, one has to apply the standard of a person of average intelligence and imperfect recollection.

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24. Glaxo would submit that each of LANOXIN and LEFOXIN has three syllables. BIOX is descriptive, Glaxo would contend, being an abbreviation of "bacterial oxidation" but the dominant element of the Impugned Mark is LEFOXIN. The pronunciation of the first syllables ('LA' and 'LE') and the last syllables of LANOXIN and LEFOXIN are actually identical and only the middle syllable differs. Therefore, Glaxo would contend that when one compares the whole of the Impugned Mark with the whole of the Glaxo Mark, a person of average intelligence and imperfect recollection, would not differentiate between the two. This is clearly the element of public interest envisaged in Section 11(1), Mr. Kamod would contend, to indicate that the consumer would be deceived by the similarity, necessitating the rectification.

25. Shreya would contend that one must not forget that LANOXIN is one word while LEFOXIN BIOX is two words. One cannot simply ignore BIOX when assessing deceptive similarity, since BIOX provides a pointer to "biological oxidation" and provides the distinctiveness necessary to take the Impugned Mark out of any perception of likely confusion. The "OXIN" portion is common to the pharmaceutical trade and suggests the fluoroquinolone family, Shreya would submit. No trader can monopolise it. The remainder of the marks, comprises very different prefixes "LEF" and "LAN". Glaxo would contend that it claims no exclusivity in OXIN. That

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apart, Shreya itself having registered LEFOXIN, cannot say that OXIN is common to the trade.

26. Further, Shreya would contend that the active pharmaceutical ingredient ("***API***"), indications and prescriptions of the drugs covered by the marks differ widely. Both parties use the trade mark for prescription drugs. All these factors need to be weighed when taking a view, Mr. Kurrich would submit, invoking the law declared in ***Cadila-2001***[4], ***Intas***[5], ***Sun Pharma-Hetero***[6], and ***Schering***[7].

27. This is sharply contested by Mr. Kamod who submits that a stricter test needs to be applied particularly to pharmaceutical products. Different APIs and indications would not resolve the likelihood of confusion. Where marks are similar, use of the marks on products deployed to cure completely different ailments is even more dangerous, he would submit, also relying on ***Cadila-2001*** and on a decision of a Learned Division Bench of this Court in ***Macleods Pharma***[8]. Mr. Kamod would point to a list of sixteen

[4] *Cadila Healthcare Ltd. v. Cadila Pharmaceuticals Ltd. – (2001) 5 SCC 73, paragraphs 35 and 36 (factors and weightage)*

[5] *Intas Pharmaceuticals Ltd. v. Sun Pharma Laboratories Ltd. – 2026 SCC OnLine Del 4488, paragraphs 143 to 151*

[6] *Sun Pharmaceuticals Laboratories v. Hetero Healthcare Ltd. – 2022 SCC OnLine Del 2580, paragraphs 43 and 44*

[7] *Schering Corporation v. United Biotech (P) Ltd. – 2005 SCC OnLine Bom 546*

[8] *Macleods Pharmaceuticals Ltd. v. Union of India – 2023 SCC OnLine Bom 408, paragraphs 23 to 28*

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Levofloxacin brands in the market to indicate that except for one brand called Uloxin, there is no use of OXIN to indicate that this is common to the trade.

28. The parties also have a wide divergence on the relevance of Shreya being present only in the export market. Mr. Kamod would contend that manufacturing in India for export is also deemed use in India. The question is confined to whether the entry of the Impugned Mark on the Register should stand and it is totally irrelevant whether Shreya only sells outside India, it is submitted in reliance upon ***Cadila-Sami***.[9] Mr. Kurrich would counter that by contending that while export is "use" under Sections 29(6)(c) and 56 of the TM Act, it would not presume that there can be confusion among consumers in India, where nothing is sold in India. The doctors and pharmacists who see each mark are different and separate and their paths would never converge for confusion to emerge.

29. Against this backdrop, it would be appropriate to take up the facet of exports first, particularly since Mr. Kurrich, on instructions, is willing to submit to a condition that the Impugned Mark would be utilised solely for the export market and that it would never be used for any product in India. Section 56(1) of the TM Act reads thus:

[9] *Cadila Pharmaceuticals Ltd. v. Sami Khatib of Mumbai – **2011 SCC OnLine Bom 484**, paragraphs 63 to 68.*

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> *"56. **Use of trade mark for export trade and use when form of trade connection changes.—***
>
> *(1) **The application in India of trade mark to goods to be exported from India** or in relation to services for use outside India **and any other act done in India in relation to goods to be so exported** or services so rendered outside India **which, if done in relation to goods to be sold** or services provided **or otherwise traded in within India would constitute use of a trade mark therein**, shall be deemed to constitute use of the trade mark in relation to those goods or services for any purpose for which such use is material under this Act or any other law."*
>
> ***[Emphasis Supplied]***

30. Therefore, even if the mark is used essentially for exports, under Section 56(1) of the TM Act, it would follow that the use would constitute use of the mark in India. Therefore, application of the Impugned Mark on pharmaceutical products to be exported from India is, in the eyes of law, use of the trade mark in India. This facet of the law is clearly declared by the Learned Division Bench of this Court in ***Cadila-Sami***, in a suit for infringement and passing off. The following extracts (of the submissions and their rejection) are noteworthy:

> *"**63. Mr. Dwarkadas submitted that the question of infringement or passing off cannot and does not arise as the appellant neither sells nor intends selling its products in India under the said mark "Hb TONE". The appellant only exports its products bearing the said mark**. In any event, according to him, section 56 does not apply to an action for passing off. He submitted that this is so because to establish infringement the plaintiff does not have to show user, commercial or otherwise.*

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However, in the present case of passing off "use" is necessary. ***Accordingly, he submitted that if a mark is not used in India, there is no question of protecting either the proprietor of the mark or the general public****. Therefore, a passing off action does not fall within the ambit of section 56.*

65. ***It is admitted that the appellant applies the impugned mark to the goods in India which are thereafter exported. The impugned mark has thus been applied to the appellant's goods within the meaning of section 56****. Had the mark been applied in relation to goods to be sold within India, it would undoubtedly have constituted use of the trade mark in India. By virtue of section 56, the application in India of the trade mark, although to goods to be exported from India, is deemed to constitute use of the trade mark in relation to the said goods "for any purpose for which such use is material under the Trade Marks Act, 1999, or any other law".* ***The plain language of section 56, therefore, constitutes the application in India of trade marks even to goods to be exported from India as use of the trade mark in relation to those goods for any purpose for which such use is material under the Act or any other law****.*

68. ***Thus section 56 would clearly apply to an action for infringement if the trade mark is applied in India to goods to be exported from India as the same is deemed to constitute use of a trade mark in relation to those goods for any purpose for which such use is material under the Act****."*

[Emphasis Supplied]

31. While the aforesaid observations have been made in a suit for infringement and passing off and not in rectification proceedings, the principle applied is obviously applicable to rectification proceedings as well. Any claim of infringement can only arise in relation to a registered mark. By the registration, goodwill is sought to be established from Shreya's exports

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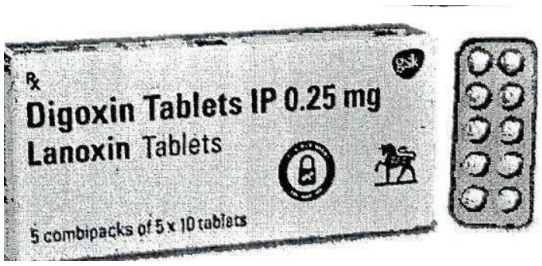
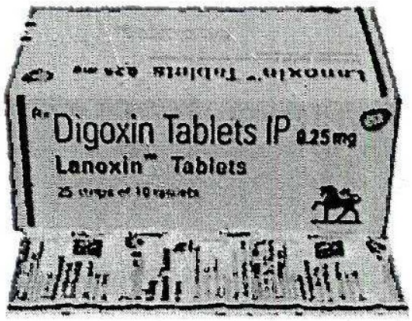
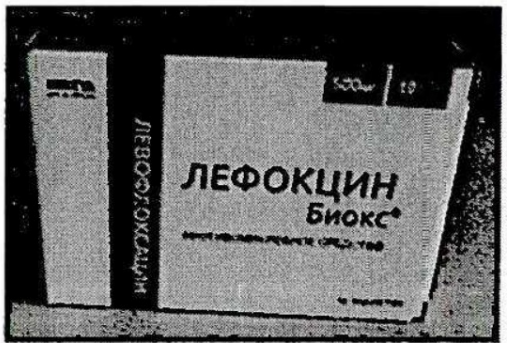
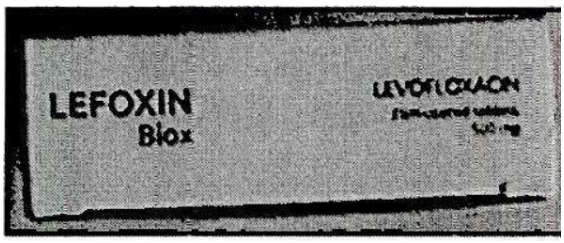
from India. The application of the Impugned Mark in India for exports from India is naturally use in India to generate goodwill in India. This is precisely why any registrant such as Shreya, who may focus on the export market would find it necessary to even contemplate registration in India.

32. That brings me to the comparison of the two marks. The Glaxo Mark and the Impugned Mark are extracted below:

Glaxo Mark	**Impugned Mark**
LAN**OXIN**	**L**EF**OXIN** BIOX
API: *Digoxin*, prescribed in treatment of abnormal heart rhythm and cardiac failure.	**API:** *Levofloxacin*, prescribed for treatment of bacterial infections.
 	 

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33. The guidance on how to compare two marks has been well stated in ***Cadila-2001*** in the following words, which Courts have regularly applied in rectification proceedings:

> *"35. Broadly stated, **in an action for passing off on the basis of unregistered trade mark generally for deciding the question of deceptive similarity the following factors are to be considered**:*
>
> *(a) **The nature of marks i.e. whether the marks are word marks or label marks or composite marks** i.e. both words and label works.*
>
> *(b) **The degree of resemblance between the marks, phonetically similar and hence similar in idea**.*
>
> *(c) **The nature of the goods** in respect of which they are used as trademarks.*
>
> *(d) **The similarity in the nature, character and performance** of the goods of the rival traders.*
>
> *(e) **The class of purchasers who are likely to buy the goods bearing the marks they require**, on their **education and intelligence and a degree of care they are likely to exercise** in purchasing and/or using the goods.*
>
> *(f) The model of purchasing the goods or placing orders for the goods.*
>
> *(g) **Any other surrounding circumstances which may be relevant in the extent of dissimilarity between the competing marks**."*
>
> *36. **Weightage to be given to each of the aforesaid factors depending upon facts of each case and the same weightage cannot be given to each factor in every case**."*
>
> ***[Emphasis Supplied]***

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34. Evidently, these guidelines give a wide play in the joints when adjudicating for likelihood of confusion. The issue to address in this case is how to compare the Impugned Mark with the Glaxo Mark.

35. Both the competing marks in the matter at hand are word marks. Both the marks are registered with an intention to use them with respect to medicinal and pharmaceutical preparations. They have a resemblance, which is dealt with later below. Going by what they are registered for, there is no obligation that they should be deployed only for one or the other type of API or formulation. That they actually are deployed for specific formulations is a subsequent fact but there is nothing to stop the mark from being used for other formulations. Both the products for which the respective marks are used are scheduled products necessitating a prescription for pharmacists and chemists to dispense them. The surrounding circumstances too may be taken into account.

36. Each party purports to contend that the marks should be read as a whole, but each in its own way has made submissions that border on dissecting the marks. The comparison has to necessarily be made of LANOXIN and LEFOXIN BIOX as composite wholes without ignoring either OXIN or BIOX. That apart, the test to apply considering the provisions of Section 11(1) of the TM Act is to examine the *likelihood* of confusion rather

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than demonstrated proof of confusion. Whether a person of average intelligence and imperfect recollection is likely to be confused is the question to ask at the time of registration. If that question is to be answered in the affirmative at the time of registration, then the registration would call for rectification.

37. Indeed, an element of a prolonged period of use during which one is able to demonstrate actual absence of confusion can arise in suits for infringement and passing off since the temporal element of assessment would be dynamic as to the time when the suit is filed. The ability to prove absence of confusion with evidence can lead to influencing the decision in the suit, in particular, on the facet of damages. However, in the case of rectification proceedings, the timing of assessment must necessarily be whether there is a likelihood of confusion at the time of registration.

38. In my opinion, the Impugned Mark is phonetically close to the long-standing and registered Glaxo Mark. Indeed, LEFOXIN is the dominant element of the Impugned Mark, which also has BIOX, virtually like a suffix. Both parties attribute BIOX to oxidation – one terms it *bacterial* oxidation and the other terms it *biological* oxidation, the former being a subset of the latter. That brings in an element of descriptiveness about the element of BIOX in the Impugned Mark, and therefore even while the two whole marks

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are to be compared, the element of differentiation introduced by BIOX is indeed diffused – virtually more akin to a suffix. In any case, the dominant feature of the Impugned Mark is LEFOXIN.

39. As regards visual comparison, the word structure of the two marks is very similar, indeed, with the BIOX suffix. The difference of 'AN' (in LANOXIN) and 'EF' (in LEFOXIN) is very subtle. There is a potential for one to assume that LEFOXIN BIOX is a variant of LANOXIN, when seen from the prism of a person of average intelligence and imperfect recollection. When Shreya filed the application for registration of the Impugned Mark, the Registrar did not flag the existence of Glaxo Mark, and Glaxo too did not initiate opposition proceedings, which led to the Impugned Mark getting registered. In these rectification proceedings, one has to examine whether a direction to remove the Impugned Mark is necessary in deference to the scheme of the statute.

40. On a careful examination of the record, I am not persuaded that OXIN should be dissected out of the marks and be held to be common to the trade. In fact, only one of the sixteen *Levofloxacin* brands placed on record (ULOXIN) carries it. In any case to treat OXIN as common to the trade and to discern the rest would militate against the anti-dissection rule without taking the marks as a whole.

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41. To my mind, when Shreya applied for registration, the Registrar ought to have flagged the existence of the Glaxo Mark, in view of the phonetic and visual resemblance of the Impugned Mark with the Glaxo Mark. To my mind, the addition of BIOX appears to indicate that the Impugned Mark is a variant of the Glaxo Mark. This, on the face of it, seems to be the core issue that stands out when one assesses these proceedings from a commonsensical perspective applying the standard of a person of average intelligence with imperfect recollection.

42. The difference in the APIs involved in the products to which the competing marks are currently applied is also an issue that arises for consideration. The Glaxo Mark is used on *Digoxin* tablets, used for treating heart conditions. The Impugned Mark is used on antibiotic *Levofloxacin* tablets used to treat bacterial infections. Each party contends that this difference cuts differently – Glaxo would contend that there would be disastrous consequences for someone who needs heart medicine consuming antibiotics instead or the other way around while Shreya would contend that the sheer divergence of the two would mean that there would be no scope for overlap – a heart specialist would not prescribe antibiotics while a physician treating antibiotics would not prescribe a heart medicine. Both the drugs are

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prescription drugs and only a qualified medical practitioner would prescribe them and qualified pharmacists would supply them.

43. The key differentiator in the approach to rectification proceedings as opposed to trial of suits is that the likelihood of confusion at the time of registration is what is up for consideration. Glaxo has evidently had a continuous use of the Glaxo Mark right since the 1950s, while Shreya has registered the Impugned Mark only 2021. Neither the Glaxo Mark nor the Impugned Mark is identified as being intended to be applied to any specific pharmaceutical formulation with specific APIs. The Impugned Mark is registered in Class 5 in respect of "*medicinal and pharmaceutical preparation*", and at the time of registration, it was applied for on a proposed-to-be-used basis. The Glaxo Mark was registered in 1956 in Class 5 in respect of "*medicinal, pharmaceutical and veterinary preparations*".

44. Evidently, for registration purposes, there having been no predefined scope of use of the mark, with registrants obviously wanting the broadest flexibility possible when getting registration, the question is whether the actual use to which the trade mark is put is restrictive of what other uses it can be put to within the same broad-spectrum range of medicinal and pharmaceutical preparations. The only difference between the two registrations is that Glaxo's registration also spoke of veterinary preparations.

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Technically, nothing in law prevents either party from launching any other product with the respective registered mark. In a commercial dispute and a suit, the facts, as they have dynamically moved after registration, would have a more significant influence on the assessment and adjudication. In rectification proceedings that are filed reasonably within time, such exercise would involve (to borrow medical terminology) more of a laboratory diagnosis and less of a clinical diagnosis.

45. From the material placed on record by Glaxo it is apparent that the Glaxo Mark, LANOXIN had been in use for *Digoxin* all around the world for over six decades. This is a prolonged use for identification of the Glaxo Mark as a brand name for that API. Whether a phonetically and visually similar trade mark could have been registered for medicinal and pharmaceutical preparations is the core issue in these proceedings. In this context, it is important to examine how the case law guides assessment of this core issue.

46. The Supreme Court in ***Cadila-2001*** (which each party has sought to highlight) has dealt with the issue of how to approach likely confusion in the context of pharmaceutical products. The Supreme Court was dealing with FALCIGO AND FALCITAB, *products dealing with the same ailment with different composition*. The Supreme Court declared that in the field of pharmaceuticals, the likelihood of confusion has to be more conservatively

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construed since confusion between two medicinal products can have disastrous consequences.

47. Relying and building on this, a Learned Division Bench of this Court, in ***Macleods***, dealt with a conflict between OFLOMAC (used for Ofloxacin tablet) and OFRAMAX (used for Ceftriaxone injection). ***Macleods*** comes closest to the facts of this case, particularly since it also dealt with completely different APIs and even different means of administration. While this judgement provides significant guidance on how to address the matter in hand, for completeness it would also be necessary to engage with the decision of a Learned Division Bench of the Delhi High Court in ***Intas***, which dealt with a conflict between BEVATAS (used on Bevacizumab) and BEVETEX (used on Paclitaxel), both anti-cancer drugs, to set aside a permanent injunction granted post-trial after appreciation of evidence.

48. Both Glaxo and Shreya point to ***Cadila-2001*** on how to read it while Glaxo leans on ***Macleods***, particularly as a binding declaration of law by the Learned Division Bench while Shreya would lean on ***Intas*** to indicate how it fits the facts of this case. It is noteworthy that ***Cadila-2001*** was rendered in a suit for passing off and sets a stricter approach for medicines to indicate that when compositions vary, the test becomes even stricter and not more lax. ***Macleods*** is indeed rendered in the context of rectification proceedings,

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where the rectification order was challenged in a Writ Petition. ***Intas*** deals with an appeal against a final decree where it was found that the original plaintiff admittedly had no interest left in the cause of action and purported to pursue the suit in public interest.

49. In ***Cadila-2001***, after the extraction and citing with approval, of various American judgements on the point, the Supreme Court held that even in prescription drugs likelihood of errors can have serious consequences, a less liberal standard has to be applied when assessing likelihood of confusion. The following extracts are noteworthy:

> *"22. **It may here be noticed that Schedule 'H' drugs are those which [can] be sold by the chemist only on the prescription of the doctor but Schedule 'L' drugs are not sold across the counter but are sold only to the hospitals and clinics. Nevertheless, it is not uncommon that because of lack of competence or otherwise, mistakes can arise specially where the trade marks are deceptively similar**. In Blansett Pharmaceuticals Co. v. Carmick Laboratories Inc. it was held as under: "**Confusion and mistake is likely, even for prescription drugs prescribed by doctors and dispensed by pharmacists, where these similar goods are marketed under marks which look alike and sound alike**."*
>
> *25. **The drugs have a marked difference in the compositions with completely different side effects, the test should be applied strictly as the possibility of harm resulting from any kind of confusion by the consumer can have unpleasant if not disastrous result**. The courts need to be particularly vigilant where the defendant's drug, of which passing-off is alleged, is meant for curing the same ailment as the plaintiff's medicine but the compositions are different. **The confusion is more likely in***

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such cases and the incorrect intake of medicine may even result in loss of life or other serious health problems. […]

27. As far as the present case is concerned, although both the drugs are sold under prescription but this fact alone is not sufficient to prevent confusion which is otherwise likely to occur. In view of the varying infrastructure for supervision of physicians and pharmacists of medical profession in our country due to linguistic, urban, semi-urban and rural divide across the country and with high degree of possibility of even accidental negligence, strict measures to prevent any confusion arising from similarity of marks among medicines are required to be taken.

29. In the book titled as McCarthy on Trade Marks, it is observed in the footnote at page 23-70 as under: "Physicians and Pharmacists are knowledgeable in their fields does not mean they are equally knowledgeable as to marks and immune from mistaking one mark from another. (Schering Corp v. Alza Corp)

32. Public interest would support lesser degree of proof showing confusing similarity in the case of trade mark in respect of medicinal products as against other non-medicinal products. Drugs are poisons, not sweets. Confusion between medicinal products may, therefore, be life threatening, nor merely inconvenient. Noting the frailty of human nature and the pressures placed by society on doctors, there should be as many clear indicators as possible to distinguish two medicinal products from each other. It is not uncommon that in hospitals, drugs can be requested verbally and/or under critical/pressure situations. Many patients may be elderly, infirm or illiterate. They may not be in a position to differentiate between the medicine prescribed and bought which is ultimately handed over to them. This view finds support from McCarthy on Trade Marks, 3rd Edn., para 23.12 of which reads as under: "The tests of confusing similarity are modified when the goods involved are medicinal products. Confusion of source or product between medicinal products may produce physically harmful results to purchasers and greater protection is required than in the ordinary case. If the goods involved are medicinal products each with

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different effects and designed for even subtly different uses, confusion among the products caused by similar marks could have disastrous effects. For these reasons, it is proper to require a lesser quantum of proof of confusing similarity for drugs and medicinal preparations. The same standard has been applied to medical products such as surgical sutures and clavicle splints.

33. The decisions of English courts would be relevant in a country where literacy is high and the marks used are in the language which the purchaser can understand. While English cases may be relevant in understanding the essential features of trade mark law but when we are dealing with the sale of consumer items in India, you have to see and bear in mind the difference in situation between England and India. Can English principles apply in their entirety in India with no regard to Indian conditions? We think not. In a country like India where there is no single common language, a large percentage of population is illiterate and a small fraction of people know English, then to apply the principles of English law regarding dissimilarity of the marks or the customer knowing about the distinguishing characteristics of the plaintiff's goods seems to overlook the ground realities in India. While examining such cases in India, what has to be kept in mind is the purchaser of such goods in India who may have absolutely no knowledge of English language or of the language in which the trade mark is written and to whom different words with slight difference in spellings may sound phonetically the same. [.....] What is likely to cause confusion would vary from case to case. However, the appellants are right in contending that where medicinal products are involved, the test to be applied for adjudging the violation of trade mark law may not be on a par with cases involving non-medicinal products. A stricter approach should be adopted while applying the test to judge the possibility of confusion of one medicinal product for another by the consumer. While confusion in the case of non-medicinal products may only cause economic loss to the plaintiff, confusion between the two medicinal products may have disastrous effects on health and in some cases life itself. Stringent measures should be adopted specially where medicines are the medicines of last resort as any confusion in such

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medicines may be fatal or could have disastrous effects. The confusion as to the identity of the product itself could have dire effects on the public health."

[Emphasis Supplied]

50. What becomes clear is that in the case of medicinal products, the scrutiny of similarity and likelihood of confusion is meant to be heightened. Indeed, ***Cadila-2001*** was rendered in the context of an interim injunction but in ***Macleods***, the Learned Division Bench of this Court refused to interfere with a rectification effected by the Intellectual Property Appellate Board, applying the law declared in ***Cadila-2001***. Not only is ***Macleods*** binding on any Single Bench of this Court, it deals with a factual matrix that is quite similar to the matter in hand. That case involved two different APIs administered in two different forms (tablet and injection). The Learned Division Bench summarised the applicable test in the following words:

"25. The principles which are emerging from the decisions set out hereinabove are summarised in the following manner:

(a) When a particular medicinal or a pharmaceutical product is involved as the impugned trade mark which may deceive the public or cause a confusion with respect to another trademark, it is the Court's primary duty to take utmost care to prevent any such possibility of confusion in the use of trademarks.

(b) Confusion in case of a non-medicinal or a nonpharmaceutical product may only cause economic loss to the person, but on the other hand, a confusion in terms of medicinal or a pharmaceutical product may have disastrous effect on the health.

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Hence, it is proper to require a lesser quantum of proof of confusing similarity for such products.

(c) ***The Court may not speculate as to whether there is a probability of confusion between the marks****. Mere* ***existence of the slightest probability of confusion*** *in case of medicinal product marks,* ***requires that the use of such mark be restrained****.*

(d) ***While arriving at a conclusion with respect to the similarity and confusion between medicinal products, the same should be examined from the point of view of an ordinary common man of average intelligence instead of that of a specialised medicinal practitioner****. Courts must decide the same from the view point of man with average intelligence considering multiple factors such as the first impression of the mark, salient features of both the products, nature of the commodity, overall similarity and the possibility of the same creating a confusion amongst the public at large.*

(e) ***The primary duty of the Court is towards the public and the purity of the register****. Duty of the* ***Court must always be to protect the public irrespective of what hardship or inconvenience it may cause to a particular party whose trade mark is likely to deceive or cause confusion****.*

(f) The following rules of comparison can be culled out from various pronouncement of Court from time to time.

(i) Meticulous comparison is not the correct way.

(ii) Mark must be compared as whole.

(iii) First impression.

(iv) Prima facie view is not conclusive.

(v) Structural resemblance.

(vi) Similarity in idea to be considered.

(g) The main object of maintaining trade mark register is that the public should know whose goods they are buying. It is therefore essential that the register should

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not contain the trade mark which is identical by which purchaser may likely to be deceived by thinking that they are buying the goods of a particular company/industry whereas he is buying the goods of another company/industry. It is necessary to consider the factual aspects of this case in the light of the above principles."

[Emphasis Supplied]

51. The aforesaid detailed articulation would support my impression that the Impugned Mark registered in 2021 was clearly likely to cause confusion between the Impugned Mark and the Glaxo Mark. Therefore, the Impugned Mark ought not to have been registered and warrants rectification of the Register.

52. It would be appropriate to deal with ***Intas***, which is presented as a deviation from the trend flowing from ***Cadila-2001*** and adopted in ***Macleods***, namely, of extreme conservatism to be exercised in the case of pharmaceuticals. Indeed, ***Intas*** dealt with non-interchangeable drugs as dissimilar goods and holds that evidence of actual confusion would be necessary. This is the basis on which Mr. Kurrich fashions his submissions in this matter too. However, clearly that judgement was in the case of an appeal against a final decree disposing of a suit. In that context, the Learned Division Bench appreciated the evidence and found that there was a complete absence of any confusion despite evidence having been led and the same having been

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subjected to trial. The original plaintiff also clearly purported to have pursued the suit in public interest having admittedly given up its claim for damages. This was observed as being a pointer to vexatious proceedings, which should have led to the suit being disposed of without expending energy on adjudicating issues. The Supreme Court has since set aside the finding on vexatious proceedings and the consequential directions on costs, and has otherwise declined to interfere with the judgement.

53. In ***Intas***, it was held that in a final decree, infringement and likelihood of confusion on the part of the public ought not to be determined solely on a bare structural and phonetic comparison of the rival marks undertaken by the Court itself. Since evidence had been led, it had to be appreciated to arrive at a view. On facts, BEVETEX was registered in 1990 but put to use only in 2015, and BEVATAS was launched within a year thereafter, in October 2016. It is a finding of an absence of evidence-based assessment of the allegation of deceptive similarity and likelihood of confusion, applying the factors set out in ***Cadila-2001*** that led to the outcome in ***Intas***. On facts, it was found that the packing was distinctive, the class of purchasers were different, the price points were different, and each drug was to be administered only in a closed oncology clinic under the supervision of an oncologist. That apart it was found

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that the 'BEV' and 'BEVA' in the rival marks 'BEVATAS' and 'BEVETEX' were *publici juris* for anti-cancer drugs containing the molecule 'Bevacizumab'.

54. Arguably, ***Intas*** may appear to be a deviation from ***Cadila-2001*** but it is essentially a decision that turned on the appellate view that the tests laid down in Paragraph 35 of ***Cadila-2001*** had not been applied during the trial of the evidence that led to the judgement. The Learned Division Bench also held that ***Cadila-2001*** was rendered in the context of passing off by an unregistered mark while in ***Intas***, a registered and statutorily protected trade mark was assailed claiming infringement. It was found that the original plaintiff led no evidence whatsoever from any oncologist, chemist, or trained nurse to show even "the slightest possibility of confusion" for the standard set in ***Cadila-2001*** to be met. The two competing drugs being administered in controlled oncology settings under supervision of an oncologist, it was held that there was no possibility of substitution, intentional or accidental. This is why Shreya would contend that more cogent evidence of actual confusion ought to have been brought to bear in these proceedings as well.

55. In my view, ***Intas*** turns on its own facts. To begin with it was a suit and not the rectification jurisdiction, a distinction even the Learned Division Bench made in that very judgement. For example, distinguishing ***United***

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Biotech[10], which had directed rectification dealing with competing marks FORZID and ORZID, it was held in ***Intas*** that rectification directed in that case was distinguishable because the Court had concluded that on a visual and phonetic comparison the FORZID was deceptively similar to the earlier registered mark ORZID. Both marks were used for the same drug molecule (Ceftazidime), both were administered intravenously, where the risk arose from direct substitutability of identical therapeutic agents with differing dosages. It was found that the Court's concern was precisely such interchangeability of drugs leading to dosage errors, while on evidence, in ***Intas***, the two drugs were fundamentally different and not substitutable.

56. The guidelines stipulated in ***Cadila-2001*** that were found to have not been followed, necessitating the ruling in ***Intas***, provide a range of factors to be applied. I have applied those to the fact of the case. That apart, noticing these guidelines, the Learned Division Bench of this Court, by which I am bound, has directed in ***Macleods***, how the rectification court must approach the matter. I have applied those factors as well. I have compared the marks as a whole and gone by the first impression bearing in mind the likelihood of confusion.

[10] *United Biotech Pvt. Ltd. v. Orchid Chemicals & Pharmaceuticals Ltd.* – ***2012 SCC OnLine Del 2942***

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57. To my mind in a passing off action, the competing marks being substitutable is a classic ingredient for deception of one competitor by another. In rectification proceedings, the Registrar has to examine the likelihood of confusion, and therefore, whether the competing marks are meant to operate for the same formulation is not really in issue. Going by the purpose for registration, both the marks are registered in respect of medicinal and pharmaceutical preparations. That should suffice to answer the test laid out in ***Cadila-2001***. Phonetically, visually and structurally, the Impugned Mark, in my view, is reasonably similar to the Glaxo Mark such that confusion is likely. At the risk of repetition, there is no real barrier to deploy the marks for other formulations, and it is purely a matter of effective communications. When the Impugned Mark was registered the Glaxo Mark had been in use for over six decades. This clearly indicated the likelihood of confusion but in the absence of opposition from Glaxo, the registration went through without the Registrar noticing the similarity.

58. Therefore, for the aforesaid reasons, in my view, the ruling in ***Intas*** does not turn the needle in Shreya's favour in this case, despite the seemingly logical means of attempting to fit the factual matrix of this case into the framework of reasoning found in ***Intas***. The products for which these marks are currently being used are not administered in such controlled

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circumstances as found in ***Intas*** (only clinically administered under oncologist supervision). In contrast, the risk of doctors, chemists and pharmacists making an error and ending up dispensing an antibiotic to a heart patient or a heart medicine to a person with a bacterial infection is precisely the kind of risk highlighted by ***Cadila-2001*** and further elaborated in ***Macleods***.

59. In these circumstances in my view, a case has been made out for rectification and the directions that would follow later in this judgement.

Bad faith and want of bona fides:

60. Glaxo also relies on Sections 11(3), 11(10) and 18 of the TM Act to contend bad faith and dishonest intention in the very adoption of the Impugned Mark. At the heart of this contention is the submission that Shreya, being a sizeable pharmaceutical company, knew or ought to have known of the Glaxo Mark, which has been sold in India since the 1950s and is on the Register. It lacked diligence when applying. Honest adoption is no defence if the mark has a likelihood of causing confusion. The Registry's failure to cite LANOXIN confers no right on Shreya, whose subsequent use cannot cure a dishonest adoption.

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61. Shreya would counter that with the contention that the Impugned was conceived by it independently for its Levofloxacin products. The Registry examined and advertised the Impugned Mark without citing LANOXIN. Glaxo too did not file any opposition. Shreya accepts that this is not conclusive, but says it is a relevant circumstance, considering that the rectification jurisdiction is rooted in equity. Nothing having been brought to bear an intent to imitate LANOXIN or to trade on Glaxo's goodwill, no case for dishonesty is made out.

62. I have expressed my views on the likelihood of confusion in the earlier segment of this judgement. To my mind, to indicate dishonesty in adoption, one strong pointer would be the similarity of the products for which the mark is used. In the instant case, Shreya has used the Impugned Mark for an antibiotic and chosen mark LEFOXIN is somewhat linked to *Levofloxacin*. Had Shreya had a dishonest intention in its adoption, it would have been engaged in products in the field of heart ailments.

63. It appears to me that the other submission by Glaxo, namely, lack of diligence when applying for registration is more probably the cause. It is likely that the two pharmaceutical companies were unaware of each other's actions. Glaxo, too by its own showing, claims to have come to know about it about two and a half years later, in June 2024, but filed these proceedings only in 2025.

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64. Dishonest adoption would necessitate having knowledge and consciously seeking to steal a march while negligence would mean remaining unaware and not carrying out the application with the diligence that is due. Negligence and positive dishonest intent cannot coexist.

65. In the peculiar factual matrix involved, I am satisfied that this appears to be a case of negligence rather than of a positive dishonest act to register the Impugned Mark. Mr. Kamod points to the history of attempts to register where an application filed in 2011 stood abandoned and was followed by a fresh application filed on June 11, 2021. There is nothing to indicate positive knowledge and one cannot lightly infer dishonesty without adequate evidence to even create a reasonable preponderance of probability in favour of such finding.

66. Having held that the Impugned Mark is liable to be rectified on account of likelihood of confusion, in my opinion, it is not necessary to positively hold that Shreya has been dishonest in its adoption, for which evidence does not stand up. Mr. Kamod's other proposition that honest adoption is no defence to rectification of a demonstrably confusing mark seems far more plausible a view than to summarily conclude that the adoption was *per se* dishonest.

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Delay and equities:

67. Equally, there is nothing to positively indicate that Glaxo was aware of the registration of the Impugned Mark in 2021. Indeed, a public register can be said to give constructive notice of the registration but equally, the same public register would have given Shreya constructive notice of the Glaxo Mark. Each party has traded the same accusation that it has to defend too.

68. There is nothing to indicate that Shreya knew about the Glaxo Mark as there is nothing to indicate that Glaxo knew in 2021, contrary to its contention, about the Impugned Mark. The former is a bit more possible because of the sheer length of time for which the Glaxo Mark has been registered, and that too worldwide, with Shreya primarily being an exporter. Be that as it may, I am not satisfied that Shreya too has made out a case for inferring unreasonable delay on the part of Glaxo in filing these proceedings and that too such that it has lost its right to pursue rectification. The temporal standard for acquiescence under Section 33 of the TM Act is five years and awareness of such use. Even going by the filing of these proceedings, it is apparent that it has been filed within four years of the registration. I am not persuaded that the date of filing of these proceedings is fatal to Glaxo's entitlement to relief.

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69. Shreya has also applied to register LEFOXIN (Application No. 5285447, filed on January 14, 2022) in Class 5. This was advertised in Trade Marks Journal No. 2146-0 dated March 4, 2024. Glaxo has initiated opposition proceedings against that application (Opposition No. 1331233) on July 4, 2024. This timeline is not inconsistent with the inferences made above. Glaxo opposed within the four-month period from advertisement, which accords with its case that it learnt of Shreya's use in June 2024. This is noted only for completeness and this judgement does not deal with the merits of that case, although it appears that in that case, the element of BIOX is absent.

70. In the result, just as I do not hold against Shreya on the facet of dishonesty in adoption, I do not hold against Glaxo on the facet of alleged delay and loss of equity.

Summary of Conclusions:

71. To summarise my conclusions:

A] Glaxo is a person aggrieved. It is the proprietor of the earlier registration for LANOXIN that has been in place since 1956, and the Impugned Registration stands in the way of the rights it claims. The

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grievance is real and not speculative. This is so under Section 57(2) read with ***Hardie***, ***Kabushiki*** and ***Infosys***;

B] The Impugned Mark, LEFOXIN BIOX is similar to LANOXIN. The test is the likelihood of confusion at the time of registration in 2021, from the standpoint of a person of average intelligence and imperfect recollection, and with the stricter approach that applies to medicinal products under ***Cadila-2001*** and ***Macleods***. In particular:

I] The marks are compared as wholes. LEFOXIN is the dominant element of the Impugned Mark. BIOX is descriptive and diffuses the difference only marginally. Visually and phonetically, the Impugned Mark reads as a variant of LANOXIN;

II] The record does not persuade me that OXIN is common to the trade. Only one of the sixteen *Levofloxacin* brands placed on record (ULOXIN) carries it. In any case, to treat OXIN as common to the trade and to discern the rest would militate against the anti-dissection rule without taking the marks as a whole;

III] Different APIs, indications, prescribers and the prescription-only status of both products do not dispel the

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likelihood of confusion. Both marks are registered for medicinal and pharmaceutical preparations at large, and ***Cadila-2001*** and ***Macleods*** call for greater caution where medicines are concerned;

IV] Use of the Impugned Mark only for export makes no difference. Under Section 56(1), applying the mark in India to goods meant for export is use in India;

C] A case of evidently dishonest adoption is not made out. The record points more towards lack of diligence on the part of Shreya, and not to a positive intent to imitate. Honest adoption is no answer to a plea for rectification of a confusing mark. The Impugned Mark is therefore rectified on the basis of Section 11(1)(b), and no separate finding under Sections 11(3), 11(10) and 18(1) is considered necessary;

D] The alleged delay does not defeat relief on the ground of equities. The Petition was filed within four years of registration and well within the five-year period stipulated in Section 33 of the TM Act. Nothing shows that Glaxo knew of the Impugned Registration before June 2024. The absence of proof of actual confusion is not fatal, since the test in rectification is the likelihood of confusion at registration

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notwithstanding prior use. Hardship to Shreya is mitigated by deferring the removal date as set out below;

E] The offer by Shreya to restrict actual usage to exports too does not assist since in the legal sense of "use", whether one produces for exports or for the domestic market is not relevant. Moreover, with the changing nature of commerce with e-commerce platforms breaking territorial boundaries, the conventional manner of trade in denomination of territory would not be much relevant.

72. In the result, the Registrar is directed to remove the Impugned Mark from the Register for the reason that when it was registered in 2021 on a proposed-to-be-used basis, it carried with it a reasonable likelihood of confusion with the Glaxo Mark. Considering that the competing marks have coexisted, and considering that time for rebranding would be necessary, the direction to remove the Impugned Mark shall be implemented with effect from December 31, 2026. The time until then shall be used by Shreya to implement a communications, marketing and public relations campaign to widely disseminate that the Impugned Mark, LEFOXIN BIOX, would change to such new mark as may be adopted by Shreya with effect from January 1, 2027. This time period shall also be utilised to apply for and process changes in any

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regulatory approvals that may be necessary, and all authorities shall act on the basis of this judgement when processing such applications.

73. In the peculiar circumstances of the case, I am persuaded not to impose costs.

74. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN J.]

Chaitanya

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