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

% Judgment reserved on: 19.02.2026
Judgment delivered on: 26.02.2026

\+ **C.O.(COMM.IPD-TM) 163/2025 & I.A.16868/2025**

ABBOTT PRODUCTS OPERATIONS AG .....Petitioner

versus

MS. APRAJITA SUSHMA PROPRIETOR OF ALROM PHARMACEUTICALS PVT. LTD. & ANR. .....Respondents

Advocates who appeared in this case:

For the Appellant : Mr. Anirudh Bakra, Mr. Naqeeb Nawab, Ms. Nipuun Sharma & Mr. Abhigyan Pandey, Advocates.

For the Respondents : Mr. S. P. Gairola, Advocate for R-1.
Ms. Nidhi Raman, CGSC alongwith Mr. Om Ram and Ms. Nikita Singh, Advocates for R-2/Registrar of Trademarks

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

TUSHAR RAO GEDELA, J.

1. Present petition has been filed under Section 57 of the Trade Marks Act, 1999, (hereinafter referred to as *"Act"*) to rectify, cancel and remove the entry relating to the registered trademark "KREOFLAT" bearing no.4694743 in Class 05 made in the name of the respondent no.1/Registry of Trade Marks.

BRIEF FACTS:-

2. The history of the petitioner is stated to date back to the year 1888 when its founder Dr. Wallace Calvin Abbott began manufacturing alkaloid medicine granules. Sometime in the year 1894, the petitioner was incorporated through its parent company, "Abbott Alkaloidal Company", a medical publisher and

manufacturer. It claims to have established itself in India in the year 1910 and is one of the oldest, leading healthcare companies devoted to the discovery, development, manufacture and sale of healthcare products and services. Abbott India Limited i.e., the Indian subsidiary, was incorporated in the year 1944.

3. The predecessors in interest and title of the petitioner sincerely and *bonafidely* coined the unique mark "PANKREOFLAT" for the purpose of using the mark to identify, promote and distinguish their goods in the marketplace. On 16.03.1964, the petitioner obtained registration of the mark "PANKREOFLAT" bearing Registration No.221220, which is valid and subsisting till date. The petitioner claims to have undertaken numerous efforts to promote, publicize and popularize the said mark including conducting advertising campaigns.

4. The said "PANKREOFLAT" mark is specifically used for a medicinal formulation designed to treat digestive issues and bloating, containing Pancreatin and Dimethicone. Petitioner states that the said mark has been used continuously since the 1970s. On account of the extensive, continuous and uninterrupted use of "PANKREOFLAT" mark over six decades in connection with the medicinal products, the said mark has garnered immense goodwill and reputation across India. As a result thereof, the public, including the medical community, trade professionals and more importantly, the consumers exclusively associate "PANKREOFLAT" with the petitioner's goods.

5. The sales figures in relation to the goods marketed under "PANKREOFLAT" mark in India, which were Rs.21.1 crores in 2017, have risen substantially to Rs.34.7 crores in the year 2024. The petitioner claims to have invested an immense amount of resources, time and money in the promotion of the "PANKREOFLAT" product across India *via* print media, online platforms and various social media platforms. The promotional expenses under the said mark in India amounted to over Rs.1.43 crores for the year 2024.

On account of the aforesaid, the petitioner claims: (a) that the "PANKREOFLAT" mark is a well-known mark; (b) that the documents on record establish adoption and prior use of the said mark since the year 1963 and (c) that the petitioner has established uniqueness and distinctiveness to its marks and earned goodwill and reputation to the extent that the mark "PANKREOFLAT" is exclusively associated with the petitioner and its predecessors.

6. Petitioner claims that sometime in the first week of October, 2024, it came across a trademark bearing registration no.4694743, dated 15.04.2021, for the mark "KREOFLAT" registered in the name of respondent no.1 in respect of Class 5, which are identical goods to those manufactured by the petitioner. Respondent no.1's products serve the same primary function as those of the petitioner, namely, treatment of digestive issues and bloating. Both the products are stated to contain the same molecular composition, are marketed and used to address gastrointestinal concerns and have an absolutely common consumer base.

7. Petitioner claims that there was absolute negligence exhibited by respondent no.2 while examining the application seeking registration of the mark "KREOFLAT" submitted by respondent no.1, by failing to cite the prior registered mark of the petitioner as an objection. Petitioner states that the failure of respondent no.2 to comply with the mandate of the Act has resulted in the impugned registration of the trademark "KREOFLAT" in favour of respondent no.1 overlooking the fact that both marks are almost identical and clearly the mark of the respondent no.1 is deceptively similar, which is likely to cause confusion among consumers.

8. Petitioner claims to have issued a cease and desist notice dated 04.10.2024 and a reminder was also sent on 23.10.2024 to respondent no.1.

Vide the response dated 25.11.2024, the respondent no.1 categorically refused to comply with the requisitions mentioned in the cease and desist notice on the ground that there is no similarity between the two marks.

9. Aggrieved by the aforesaid, the petitioner has filed the present petition seeking rectification.

CONTENTIONS OF THE PETITIONER:-

10. Mr. Anirudh Bakhru, learned counsel appearing for the petitioner, at the outset, invited attention of this Court to the registration of the mark "PANKREOFLAT" in the name of the petitioner *vide* registration certificate dated 16.03.1964, which is at page 385 of the petition. Drawing attention thereto, learned counsel submits that though the registration is in respect of the device mark, except for the name "PANKREOFLAT", there is no other distinctive feature in the said device. He would contend that though in the year 1964 the application was filed on proposed to be used basis, however, from the year 1970 onwards the said mark has been in use by the petitioner. For the purposes of the present petition, he submitted that the petitioner has placed on record, invoices evidencing the manufacture and sale of products under the mark "PANKREOFLAT" at least from the year 2005 and onwards. In particular, he drew attention of this Court to an invoice dated 29.08.2005 wherein the PANKREOFLAT tablets were sold over the counter, amongst others.

11. That apart, in order to sustain the contention that the petitioner has been continuously manufacturing and offering for sale products carrying the mark "PANKREOFLAT", he relied upon the certificate issued by the Chartered Accountant dated 28.04.2025, wherein the sales turnover of the product "PANKREOFLAT" during the calendar years from 2017 to 2024 is annexed to the petition. He also relied upon the certificate issued by the Chartered

Accountant dated 30.04.2025, which evidences the expenses incurred by the petitioner on account of advertisement and promotion of the "PANKREOFLAT" brand from the year 2017 till 2024.

12. Predicated on the above, learned counsel strenuously argued that not only is the petitioner a prior adopter and registrant of the mark "PANKREOFLAT", but also is a prior user of the said mark, which is evident from the aforesaid documentary evidence placed on record by the petitioner. He further contended that the substantial expenses incurred by the petitioner, as a test case, from the year 2017 to the year 2024 clearly indicate the interest of the petitioner in projecting its brand "PANKREOFLAT" by all means. The sales figures for the period 2017 to 2024, yet again as a test case, would also clearly evidence the growth in reputation and goodwill over the years in respect of the mark "PANKREOFLAT".

13. Learned counsel would also contend that the mark "KREOFLAT" of respondent no.1 is phonetically, visually and structurally deceptively similar to the petitioner's registered and well-known mark "PANKREOFLAT". He would further contend that the impugned mark falls in the same class and that the consumers would be common to both. In these circumstances, he submitted that there is bound to be confusion between the marks. Additionally, he would contend that the reputation and goodwill of the petitioner's mark "PANKREOFLAT" is most likely to get diluted in case the mark "KREOFLAT" of respondent no.1 is permitted to be continued in the Register of Trade Marks.

14. Learned counsel also contended that as per settled law, an entity having prior use of a trademark holds superior rights over one having prior registration. He would contend that the registration of a trademark does not create any right other than what already existed. He would further contend that the respondent

filed its application seeking registration of mark "KREOFLAT" on 09.10.2020 in Class 5 on a proposed to be used basis. He would further submit that the registration was granted on 15.04.2021 despite the existence of the petitioner's trade mark "PANKREOFLAT", to which the mark of the respondent no.1 is almost identical and deceptively similar.

15. Inviting attention to the reply of the respondent no.1 dated 25.11.2024 to the cease and desist notice dated 04.10.2024 issued by the petitioner, he submitted that except for a bald assertion that the mark "KREOFLAT" is totally distinguishable from "PANKREOFLAT", no other substantial defence or clarification has been issued as to how and under what circumstances the mark "KREOFLAT" was *bonafidely* adopted by respondent no.1. He would submit that though respondent no.1 has asserted goodwill and reputation of the mark due to continuous use since 09.10.2020, no documentary or oral evidence has been placed on record in support thereof. On that basis, he contended that the adoption by respondent no.1 of the mark "KREOFLAT" is neither *bonafide* nor is it in *bonafide* use. He stoutly contended that there is no product found in the market by the name "KREOFLAT" till date.

16. Mr. Bakhru, would submit that it is trite that in the field of pharmaceuticals and medicines, the test of deceptive similarity is very stringent, in that even the slightest degree of deceptive similarity would entail removal of the infringing mark from the Register of Trade Marks. He relied on the following judgements of the Supreme Court and various High Courts:-

a. ***Cadila Health Care Ltd. vs. Cadila Pharmaceuticals Ltd: (2001) 5 SCC 73***.
b. ***Glenmark Pharmaceuticals Ltd vs. Sun Pharma Laboratories Ltd: 2024 SCC OnLine Del 2707***.
c. ***Hindustan Pencils (P) Ltd. v. India Stationary Products Co.: 1989 SCC OnLine Del 34***.
d. ***Slazenger & Sons v. Feltham & Co., (1989) 6 RPC 53***.

17. He would also contend that in so far as pharmaceutical and medicinal preparations are concerned, the Court ought to consider the public interest element inasmuch as substandard preparations of medicines and pharmaceutical products or counterfeit products would drastically affect the public at large. Predicated on the above, he would submit that the petition be allowed.

CONTENTIONS OF THE RESPONDENT NO.1:-

18. *Per contra*, Mr. S.P.Gairalo, appearing for the respondent no.1, submitted that Respondent no.1 is a well established business company conducting commercial activities which include, but are not limited to, pharmaceuticals, medical and veterinary preparations, sanitary preparations, dietetic food and substances adapted for medical or veterinary use, food for babies etc., falling within Class 5.

19. Respondent no.2 had *bonafidely* coined and adopted the trademark/device "KREOFLAT". It claims to have huge goodwill and reputation under the said mark due to continuous use since 09.10.2020 and was registered on 15.04.2021 by respondent no.1.

20. The mark "KREOFLAT" is clearly distinguishable from "PANKREOFLAT". Respondent no.1 submitted that the names are totally different, having different pronunciations and that there is no possibility of any confusion between them.

21. Respondent no.1 has also claimed that it has undertaken tremendous efforts to popularize the said trademark and has spent a sizable amount of money for promotional activities. Respondent no.1 also claims to have promoted the mark "KREOFLAT" through print and electronic media having wide reach, visibility and circulation.

22. Respondent no.1 further claimed to have built up valuable trade and goodwill under the said mark, which has already become distinctive and is associated with its goods and services on account of its long, continuous extensive and exclusive use. It claimed that its goods are highly in demand in the market on account of maintenance of high standards in quality.

23. Respondent no.1 also claims that at pre-advertisement stage, the Registrar of Trade Marks was fully satisfied with the proprietary rights of respondent no.1's mark "KREOFLAT". Respondent no.1 further claimed that "KREOFLAT" is not a copy of "PANKREOFLAT" and both marks may co-exist without any conflict or infringement.

ANALYSIS & CONCLUSIONS:-

24. This Court has heard the arguments of Mr. Bakhru, learned counsel for the petitioner and Mr. S.P.Gairola for respondent no.1 and perused the records of the case.

25. At the outset, it may be noted that respondent no.1 did not file its reply to the petition. No documents worth its name, have been filed by respondent no.1, except for the written submissions placed on record. There is no other pleading or document on basis whereof this Court could ascertain the facts and other contentions raised in the written submissions.

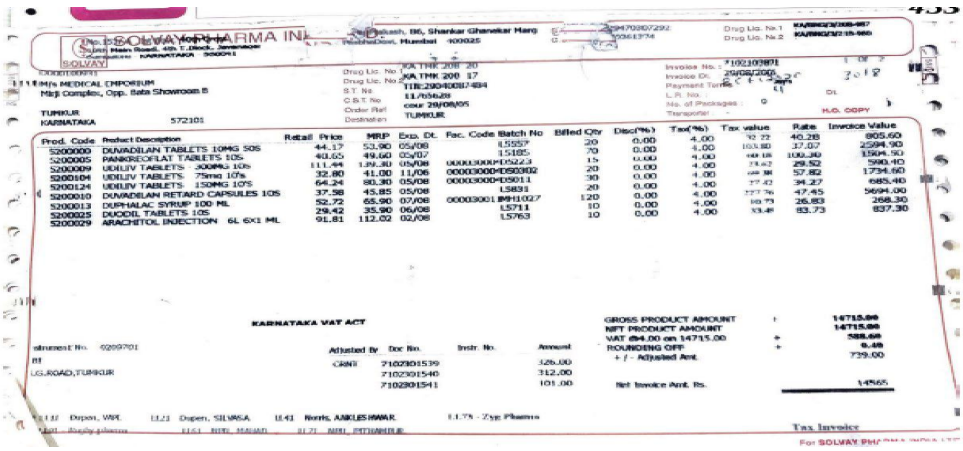
26. Be that as it may, the Court proceeds to dispose of the petition on the basis of the records available.

27. Respondent no.1 has not denied the factual foundation laid by the petitioner in so far as the history of the petitioner commencing from the year 1888 till the year 1961, when petitioner claimed to have coined and adopted the unique trademark "PANKREOFLAT" for pharmaceutical preparations. It has not denied the registration of the trademark "PANKREOFLAT" dated 16.03.1964 in Class 5, which is valid and subsisting.

28. The petitioner has placed on record the registration certificate dated 16.03.1964 in respect of the mark "PANKREOFLAT", issued in its favour by the respondent no.2, which is in respect of a device mark. Though the registration concerns a device mark, however, since the device mark essentially comprises only the name "PANKREOFLAT", registration can be construed as that of the word "PANKREOFLAT".

29. There is no denial to the assertion of the petitioner that since its adoption in the 1970s, the trademark "PANKREOFLAT" has been specifically used for a medicinal formulation to treat digestive issues and bloating. There is also no dispute to the assertion that "PANKREOFLAT" contains Pancreatin and Dimethicone. Petitioner has placed on record sufficient documents to show not only its incorporation in the year 1944 but also international registrations for its trademark.

30. The invoices placed on record, and as an example, the invoice dated 29.08.2005 clearly establishes that not only the petitioner was manufacturing Pankreoflat tablets but also using the trademark "PANKREOFLAT" under which such medicinal preparations were being sold, apart from other invoices for the relevant period of time. The invoices dated 29.08.2005 and 26.03.2025 are extracted hereunder:-



SOLVAY PHARMA INDIA

Mrs MEDICAL EMPORIUM
Mirji Complex, Opp. Bata Showroom B
TUMKUR
KARNATAKA 572101

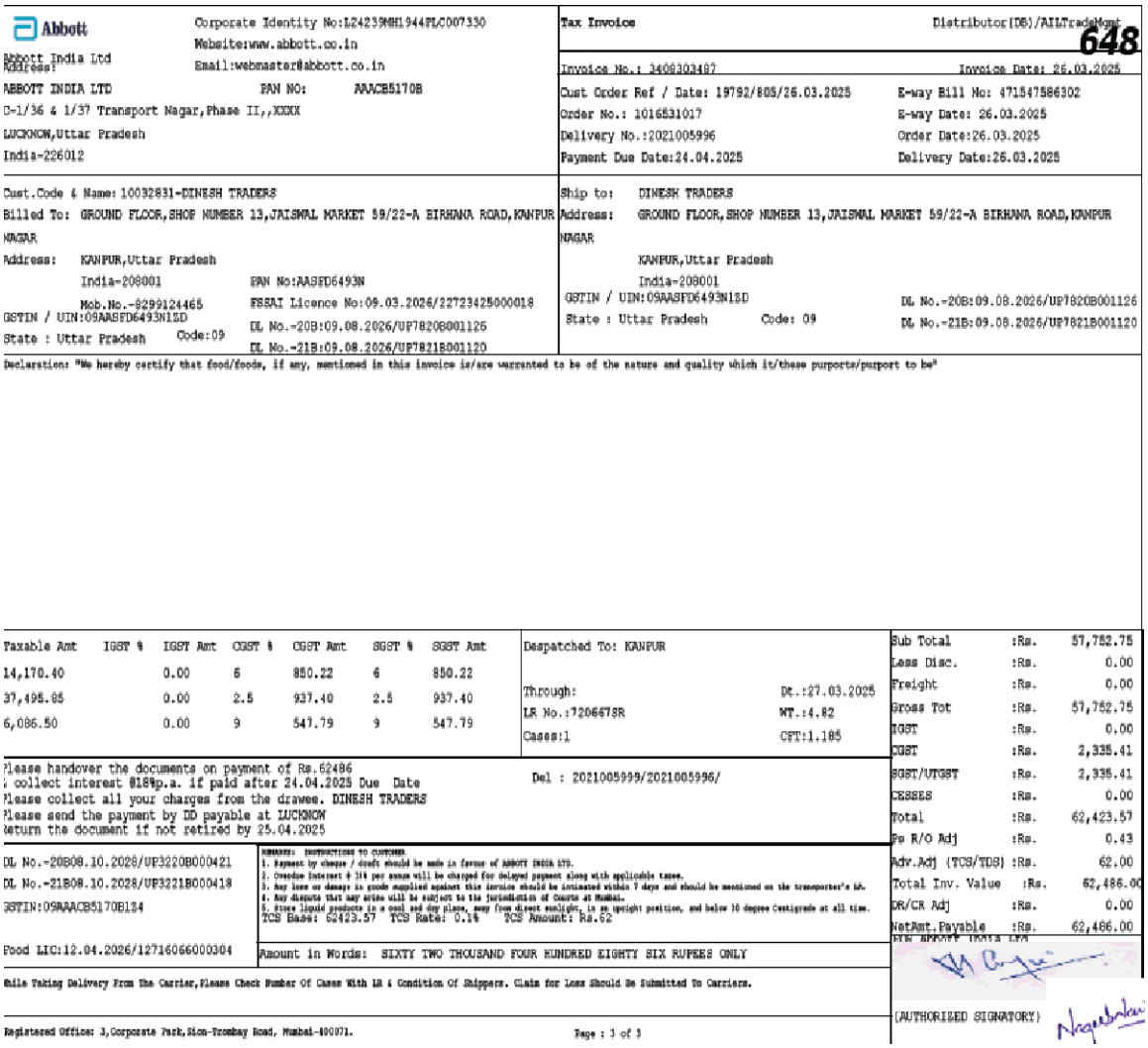
Prod. Code	Product Description	Retail Price	MRP	Exp. Dt.	Pac. Code Batch No	Billed Qty	Disc(%)	Tax(%)	Tax value	Rate	Invoice Value
52000000	DUVADILAN TABLETS 10MG SOS	44.17	53.90	05/08	L5557	20	0.00	4.00	70.22	40.28	805.60
52000005	PANKREOFLAT TABLETS 10S	40.65	49.60	05/07	L5185	70	0.00	4.00	103.80	17.07	2594.90
52000009	UDILIV TABLETS 300MG 10S	111.44	136.30	05/08	000003000ED522J	15	0.00	4.00	59.42	29.52	590.40
52001004	UDILIV TABLETS 75mg 10s	32.80	41.00	11/06	000003000ED502302	20	0.00	4.00	68.38	57.82	1734.60
52001124	UDILIV TABLETS 150MG 10S	64.24	80.30	05/08	000003000ED50311	30	0.00	4.00	77.42	34.27	685.40
52000010	DUVADILAN RETARD CAPSULES 10S	37.58	45.85	05/08	L5839	20	0.00	4.00	727.76	47.45	5694.00
52000013	DUPHALAC SYRUP 100 ML	52.72	65.90	07/08	000003001 BH11027	120	0.00	4.00	60.79	26.83	268.30
52000025	DUCOLL TABLETS 10S	29.42	35.90	06/08	L5711	10	0.00	4.00	53.48	83.73	837.30
52000029	ARACHITOL INJECTION 6L 6X1 ML	91.81	112.02	02/08	L5763	10	0.00	4.00			

KARNATAKA VAT ACT

Adjusted By	Doc No.	Instr. No.	Amount
CASH	7102301539		326.00
	7102301540		312.00
	7102301541		101.00

GROSS PRODUCT AMOUNT : 14715.00
NET PRODUCT AMOUNT : 14715.00
VAT @4.00 on 14715.00 : 588.60
ROUNDING OFF + : 0.40
+ / - Adjusted Amt. : 739.00
Net Invoice Amt. Rs. : 14565

Tax Invoice



Abbott

Corporate Identity No:L24239MH1944PLC007330
Website:www.abbott.co.in
Email:webmaster@abbott.co.in

Abbott India Ltd
Address:
ABBOTT INDIA LTD PAN NO: AAACB5170B
D-1/36 & 1/37 Transport Nagar,Phase II,,XXXX
LUCKNOW,Uttar Pradesh
India-226012

Tax Invoice — Distributor(DB)/AILTrade/Dmt — 648

Invoice No.: 3406303487 — Invoice Date: 26.03.2025
Cust Order Ref / Date: 19792/805/26.03.2025 — E-way Bill No: 471547586302
Order No.: 1016531017 — E-way Date: 26.03.2025
Delivery No.:2021005996 — Order Date:26.03.2025
Payment Due Date:24.04.2025 — Delivery Date:26.03.2025

Cust.Code & Name: 10032831-DINESH TRADERS
Billed To: GROUND FLOOR,SHOP NUMBER 13,JAISWAL MARKET 59/22-A BIRHANA ROAD,KANPUR NAGAR
Address: KANPUR,Uttar Pradesh
India-208001
Mob.No.-8299124465
GSTIN / UIN:09AASFD6493N1SD
State : Uttar Pradesh Code:09
PAN No:AASFD6493N
FSSAI Licence No:09.03.2026/22723425000018
DL No.-20B:09.08.2026/UP7820B001126
DL No.-21B:09.08.2026/UP7821B001120

Ship to: DINESH TRADERS
Address: GROUND FLOOR,SHOP NUMBER 13,JAISWAL MARKET 59/22-A BIRHANA ROAD,KANPUR NAGAR
KANPUR,Uttar Pradesh
India-208001
GSTIN / UIN:09AASFD6493N1SD
State : Uttar Pradesh Code: 09
DL No.-20B:09.08.2026/UP7820B001126
DL No.-21B:09.08.2026/UP7821B001120

Declaration: "We hereby certify that food/foods, if any, mentioned in this invoice is/are warranted to be of the nature and quality which it/these purports/purport to be"

Taxable Amt	IGST %	IGST Amt	CGST %	CGST Amt	SGST %	SGST Amt
14,170.40		0.00	6	850.22	6	850.22
37,495.85		0.00	2.5	937.40	2.5	937.40
6,086.50		0.00	9	547.79	9	547.79

Despatched To: KANPUR
Through: Dt.:27.03.2025
LR No.:7206678R WT.:4.82
Cases:1 CFT:1.185

Sub Total	:Rs.	57,752.75
Less Disc.	:Rs.	0.00
Freight	:Rs.	0.00
Gross Tot	:Rs.	57,752.75
IGST	:Rs.	0.00
CGST	:Rs.	2,335.41
SGST/UTGST	:Rs.	2,335.41
CESSES	:Rs.	0.00
Total	:Rs.	62,423.57
Fe R/O Adj	:Rs.	0.43
Adv.Adj (TCS/TDS)	:Rs.	62.00
Total Inv. Value	:Rs.	62,486.00
DR/CR Adj	:Rs.	0.00
NetAmt.Payable	:Rs.	62,486.00

Please handover the documents on payment of Rs.62486
I collect interest @18%p.a. if paid after 24.04.2025 Due Date
Please collect all your charges from the drawee. DINESH TRADERS
Please send the payment by DD payable at LUCKNOW
Return the document if not retired by 25.04.2025

Del : 2021005999/2021005996/

DL No.-20B08.10.2028/UP3220B000421
DL No.-21B08.10.2028/UP3221B000418
GSTIN:09AAACB5170B1Z4
Food LIC:12.04.2026/12716066000304

REMARKS: INSTRUCTIONS TO CUSTOMER
1. Payment by cheque / draft should be made in favour of ABBOTT INDIA LTD.
2. Overdue Interest @ 21% per annum will be charged for delayed payment along with applicable taxes.
3. Any loss or damage in goods supplied against this invoice should be intimated within 7 days and should be mentioned on the transporter's LR.
4. Any dispute that may arise will be subject to the jurisdiction of Courts at Mumbai.
5. Store liquid products in a cool and dry place, away from direct sunlight, in an upright position, and below 30 degree Centigrade at all time.
TCS Base: 62423.57 TCS Rate: 0.1% TCS Amount: Rs.62

Amount in Words: SIXTY TWO THOUSAND FOUR HUNDRED EIGHTY SIX RUPEES ONLY

For ABBOTT INDIA LTD
(AUTHORISED SIGNATORY)

While Taking Delivery From The Carrier,Please Check Number Of Cases With LR & Condition Of Shippers. Claim for Loss Should Be Submitted To Carriers.

Registered Office: 3,Corporate Park,Sion-Trombay Road, Mumbai-400071.

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31. The petitioner has shown its significant growth in respect of the products marketed under the mark "PANKREOFLAT" in India, particularly from the year 2017, when its sales figures touched Rs.21.1 crores to Rs.34.7 crores in the year 2024. The said growth establishes maintenance of high standards of quality and acceptability in the market. Additionally, it also reflects growth in goodwill and reputation too. The sales figure as per the Chartered Accountant is extracted hereunder:-

Annexure-L

Sanjay Rane & Associates LLP

CHARTERED ACCOUNTANTS

Phone : +91 (22) 4919 8585
Email : admin@ssrane.net
Website : www.ssraneandco.com
LLP IN : ABZ-0863

To,
Delhi High Court

We have examined the books and records maintained by Abbott India Limited and we hereby certify that the sales turnover of the product Pankreoflat of Abbott India Limited during the calendar years between 2017 to 2024 is as follow:

Calendar year/Financial year	Amount (Rs in crores)
2017	21.1
2018	23.2
2019	24.7
2020	24.9
2021	28.9
2022	32.8
2023	33.3
2024	34.7

Date: 28th April 2025
Certificate no: 06625
UDIN: 25146521BMIDCN8877

For Sanjay Rane and Associates LLP
Chartered Accountant
FRN: 121089W/W100878

SANJAY RANE AND ASSOCIATES LLP Chartered Accountants MUMBAI

[CA Vishal Bane)
Partner
Mem no: 146521

32. Another significant milestone achieved by the petitioner is in respect of the extensive promotion and advertisement carried out by it from the last many years, particularly from 2017 till 2024. In support thereof, the petitioner has placed on record documents supporting the said assertion as also the CA Certificate dated 30.04.2025, which establishes that the petitioner has been consistent in promoting the trade mark "PANKREOFLAT", by way of every possible means in the market. The same is extracted hereunder:-

Sanjay Rane & Associates LLP

CHARTERED ACCOUNTANTS

Phone : +91 (22) 4919 85
Email : admin@ssrane.n
Website : www.ssraneando
LLP IN : ABZ-0883

To,
Delhi High Court

This is to certify that promotional expenses incurred for **Pankreoflat Brand** of **M/s Abbott India Limited** having its registered office at 3, Corporate Park, Sion Trombay Road, Mumbai-400071 for the calendar years 2017 to 2024 is as follows:

Details of Promotional Expenses of Pankreoflat Brand for the following calendar years:

Calendar Year	Amount (Rs. in Crores)
2017	1.87
2018	2.48
2019	1.75
2020	1.86
2021	2.91
2022	1.78
2023	1.05
2024	1.43

We have verified the above information from the relevant books and records produced before us and found the same to be true and correct.

Certificate No: 06725
Date: 30th April 2025
UDIN: 25146521BMIDDH2673

For Sanjay Rane & Associates LLP
Chartered Accountants
FRN: 121089W/W100878

CA Vishal M Bane
Mem No: 146521
Partner

SANJAY RANE AND ASSOCIATES LLP Chartered Accountants MUMBAI

Regd. Office : C-403, Marathon Next Gen. Innova, Opp. Peninsula Corporate Park, Off. Ganpatrao Kadam Marg, Lower Parel, Mumbai - 400 013

33. The cumulative assessment of the aforesaid facts lead to the conclusion that, the mark "PANKREOFLAT" was adopted prior in time; the mark "PANKREOFLAT" was used prior in time to that of respondent no.1, at least since 1970s; the mark "PANKREOFLAT" was registered in the year 1964, while respondent no.1's registration of "KREOFLAT" was on 15.04.2021; respondent no.1's registration was on proposed to be used basis, while the petitioner had already gained substantial goodwill and reputation in the market by that time, lead to the credible inference that the petitioner is not only a *bonafide* adopter and prior user of the mark "PANKREOFLAT", but also its registered proprietor much before respondent no.1.

34. It is also pertinent to note that the mark "PANKREOFLAT" has no dictionary meaning and is an invented and coined term. The said mark was originally conceived and adopted by the petitioner. Respondent No. 1 has merely copied the essential and distinctive part of the petitioner's mark by removing the prefix "PAN" and adopting the mark "KREOFLAT," which is deceptively similar to the petitioner's trademark. The respondent no.1's adoption is neither honest nor independent, but clearly an attempt to ride upon the goodwill and reputation acquired by the petitioner in respect of the mark "PANKREOFLAT." Such conduct amounts to infringement and is likely to cause confusion and deception among the trade and the general public.

35. Since there is no document or other evidence to indicate that respondent no.1 had adopted the mark "KREOFLAT" *bonafidely*, the only inference that can be drawn is that the said adoption is unauthorized and dishonest. That apart, having regard to the fact that the mark "KREOFLAT" was applied on a proposed to be used basis, coupled with the fact that no evidence, documentary or otherwise has been placed by respondent no.1 to support its contentions that it has sold its products in the market or that it has incurred expenses on

promotion or that it has achieved substantial sales or turnover, it can be safely inferred that apart from mere registration of the mark "KREOFLAT" on 15.04.2021 in Class 5 respondent no.1 has never come into the market at all. In fact, respondent no.1 appears to be having no *bonafide* use of the said mark "KREOFLAT" at all.

36. In so far as the similarity in the mark of the petitioner in comparison with that of respondent no.1 is concerned, this Court finds that between "PANKREOFLAT" and "KREOFLAT", there is not only visual similarity, but the mark of respondent no.1 is phonetically and structurally deceptively similar to the mark "PANKREOFLAT" of the petitioner. This Court has also kept in mind the fact that respondent no.1 has admitted in its written submissions, as also the reply to the cease and desist notice, that it claims to be manufacturing similar products to those of the petitioner and that the class of goods fall within Class 5. Bearing in mind the said reply to the cease and desist notice and the written submissions of respondent no.1, it is evident that the consumer base too would be common.

37. In that view of the matter, it is clear that an unwary consumer of average intelligence would undoubtedly be confused or deceived when confronted with the products "PANKREOFLAT" of the petitioner with "KREOFLAT" of respondent no.1. This would be impermissible in view of the substantial and long catena of judgments in this regard.

38. It is trite that in case of medicinal and pharmaceutical preparations, the threshold laid down for deciding deceptive similarity is very low. In that, in case there is even slight similarity which is bound to deceive or confuse the general public, such infringing mark ought to be directed to be removed from the Register of Trade Marks. It would be worthwhile to reproduce hereunder the

relevant law laid down by the Supreme Court and by this Court, which is as under:

Cadila Health Care *(supra)*:-

> ***"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 results. 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 such cases and the incorrect intake of medicine may even result in loss of life or other serious health problems. In this regard, reference may usefully be made to the case of Glenwood Laboratories, Inc. v. American Home Products Corpn. [173 USPQ 19 (1972)455 F Reports 2d, 1384 (1972)] where it was held as under:*
>
> > *"The products of the parties are medicinal and the applicant's product is contraindicated for the disease for which opposer's product is indicated. It is apparent that confusion or mistake in filling a prescription for either product could produce harmful effects. Under such circumstances it is necessary for obvious reasons, to avoid confusion or mistake in the dispensing of the pharmaceuticals."*
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> *xxx xxx xxx*
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> ***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.*
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> *xxx xxx xxx*
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> ***28.*** *Here it will be useful to refer to the decision of Morgenstern Chemical Co. case where it has been held as under:*
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> > *"(5) In the field of medical products, it is particularly important that great care be taken to prevent any possibility of confusion in the use of trade marks. The test as to whether or not there is confusing similarity in these products even if prescribed and dispensed only by professionally trained individuals does not hinge on whether or not the medicines are designed for similar ailments. The rule enunciated by Judge Helen in Cole Chemical Co. v. Cole Laboratories [DC Mo 1954, 118 F Supp 612, 616, 617, 101, USPQ 44, 47, 48] is applicable here:*

'The plaintiff and the defendant are engaged in the sale of medical preparations. They are for ultimate human consumption or use. ... They are particularly all for ailments of the human body. Confusion in such products can have serious consequences for the patient. Confusion in medicines must be avoided.

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Prevention of confusion and mistakes in medicines is too vital to be trifled with.'

The observations made by Assistant Commissioner Leeds of the Patent Office in R.J. Strasenburgh Co. v. Kenwood Laboratories, Inc. [106 USPQ 379 (1955)] USPQ 380 are particularly apt, that:

'Physicians are not immune from confusion or mistake. Furthermore it is common knowledge that many prescriptions are telephoned to the pharmacists and others are handwritten, and frequently handwriting is not unmistakably legible. These facts enhance the chances of confusion or mistake by the pharmacists in filling the prescription if the marks appear too much alike when handwritten or sound too much alike when pronounced.'

The defendant concedes that physicians and pharmacists are not infallible but urges that the members of these professions are carefully trained to detect difference in the characteristics of pharmaceutical products. While this is doubtless true to dos (sic) not open the door to the adoption by manufacturers of medicines of trade marks or names which would be confusingly similar to anyone not exercising such great care. For physicians and pharmacists are human and in common with the rest of mankind are subject to human frailties. In the field of medicinal remedies the courts may not speculate as to whether there is a probability of confusion between similar names. If there is any possibility of such confusion in the case of medicines public policy requires that the use of the confusingly similar name be enjoined (see Lambert Pharmacol Ltd. v. Bolton Chemical Corpn. [DCNY 1915, 219 F 325.326]).''

31. *Trade mark is essentially adopted to advertise one's product and to make it known to the purchaser. It attempts to portray the nature and, if possible, the quality of the product and over a period of time the mark may become popular. It is usually at that stage that other people are tempted to pass off their products as that of the original owner of the mark. That is why it is said that in a passing-off action, the plaintiff's right is*

"against the conduct of the defendant which leads to or is intended or calculated to lead to deception. Passing-off is said to be a species of unfair trade competition or of actionable unfair trading by which one person, through deception, attempts to obtain an economic benefit of

the reputation which another has established for himself in a particular trade or business. The action is regarded as an action for deceit". [See Wander Ltd. v. Antox India (P) Ltd. [1990 Supp SCC 727] , SCC p. 734, para 16.]

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***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 the 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 resembleness between the marks, phonetically similar and hence similar in idea.

(c) The nature of the goods in respect of which they are used as trade marks.

(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 mode 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."

***Glen Pharma** (supra)*:-

***55.** However, Cadila Healthcare assumes significance insofar as medicines and drugs are concerned in light of the following observations which were rendered:*

***"21.** It will be useful to refer to some decisions of American courts relating to medicinal products. In the case of American Cynamid Corpn. v. Connaught Laboratories Inc. [231 USPQ 128 (2nd Cir 1986)] it was held as under:*

"Exacting judicial scrutiny is required if there is a possibility of confusion over marks on medicinal products because the potential harm may be far more dire than that in confusion over ordinary consumer products."

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. [25 USPQ 2, 1473 (TTAB 1993)] 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."

23. In the case of Glenwood Laboratories, Inc. v. American Home Products Corpn. [173 USPQ 19 (1972) 455 F Reports 2d, 1384 (1972)] the Court of the United States had held that:

"The fact that confusion as to prescription drugs could produce harm in contrast to confusion with respect to non-medicinal products is an additional consideration for the Board as is evident from that portion of the opinion in which the Board stated:'The products of the parties are medicinal and the applicant's product is contraindicated for the disease for which the opposer's product is indicated. It is apparent that confusion or mistake in filling a prescription for either product could produce harmful effects. Under such circumstances, it is necessary for obvious reasons, to avoid confusion or mistake in the dispensing of the pharmaceuticals.'

The board's view that a higher standard be applied to medicinal products finds support in previous decisions of this Court, Clifton v. Plough [341, F 2d 934, 936, 52, CCPA 1045, 1047 (1965)] ('it is necessary for obvious reasons, to avoid confusion in the dispensing of pharmaceuticals'), Campbell Products, Inc. v. John Wyeth & Bro. Inc. [143, F 2d 977, 979, 31 CCPA 1217 (1944)] ('it seems to us that where ethical goods are sold and careless use is dangerous, greater care should be taken in the use of registration of trade marks to assure that no harmful confusion results')."

24. In the case of R.J. Strasenburgh Co. v. Kenwood Laboratories, Inc. [106 USPQ 379 (1955)] as noted in the decision of Morgenstern Chemical Co. case, it had been held that:"Physicians are not immune from confusion or mistake. Furthermore it is common knowledge that many prescriptions are telephoned to the pharmacists and others are handwritten, and frequently handwriting is not unmistakably legible. These facts enhance the chances of confusion or mistake by the pharmacists in filling the prescription if the marks appear too much alike when handwritten or sound too much alike when pronounced."

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 results. 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 such cases and the incorrect intake of medicine may even result in loss of life or other serious health problems. In this regard, reference may usefully be made to the case of Glenwood Laboratories, Inc. v. American Home Products Corpn. [173 USPQ 19 (1972) 455 F Reports 2d, 1384 (1972)] where it was held as under:

"The products of the parties are medicinal and the applicant's product is contraindicated for the disease for which opposer's product is indicated. It is apparent that confusion or mistake in filling a prescription for either product could produce harmful effects. Under such circumstances it is necessary for obvious reasons, to avoid confusion or mistake in the dispensing of the pharmaceuticals.""

56. *The aforesaid principles as propounded clearly point towards a more exacting and stringent test being adopted when an action of infringement or passing-off comes to be laid in respect of drugs. As was pertinently observed by the Supreme Court in Cadila Healthcare, in the case of drugs, the tests to be adopted is that of "exacting judicial scrutiny". It was further held that the mere fact that the drug was being sold on the basis of a prescription or dispensed by pharmacists would also not constitute a reliable determinant which would dilute the strict view test as articulated by it while attempting to answer the question of possibility of confusion. This the Supreme Court so held bearing in mind the injurious or detrimental possibilities attendant to an inadvertent purchase, sale and consequential consumption of a drug. It also took into consideration the harmful effect that a usage of a drug may have even though the competing products may be meant for curing an identical ailment. Not stopping at this, the Court also found that notwithstanding the pharmaceutical market being regulated by prescriptions and the dispensation of products being overseen and supervised by trained physicians, those factors would not allay the fears and apprehensions attendant to an incorrect or inappropriate drug being accidentally dispensed. This is evident from the following observations appearing in Paras 27 and 28 of the report:*

"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.

28. Here it will be useful to refer to the decision of Morgenstern Chemical Co. case where it has been held as under:

"(5) In the field of medical products, it is particularly important that great care be taken to prevent any possibility of confusion in the use of trade marks. The test as to whether or not there is confusing similarity in these products even if prescribed and dispensed only by professionally trained individuals does not hinge on whether or not the medicines are designed for similar ailments. The rule enunciated by Judge Helen in Cole Chemical Co. v. Cole Laboratories [DC Mo 1954, 118 F Supp 612, 616, 617, 101, USPQ 44, 47, 48] is applicable here:

'The plaintiff and the defendant are engaged in the sale of medical preparations. They are for ultimate human consumption or use. ... They are particularly all for ailments of the human body. Confusion in such products can have serious consequences for the patient. Confusion in medicines must be avoided.

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Prevention of confusion and mistakes in medicines is too vital to be trifled with.'

The observations made by Assistant Commissioner Leeds of the Patent Office in R.J. Strasenburgh Co. v. Kenwood Laboratories, Inc. [106 USPQ 379 (1955)] USPQ 380 are particularly apt, that:'Physicians are not immune from confusion or mistake. Furthermore it is common knowledge that many prescriptions are telephoned to the pharmacists and others are handwritten, and frequently handwriting is not unmistakably legible. These facts enhance the chances of confusion or mistake by the pharmacists in filling the prescription if the marks appear too much alike when handwritten or sound too much alike when pronounced.'

The defendant concedes that physicians and pharmacists are not infallible but urges that the members of these professions are carefully trained to detect difference in the characteristics of pharmaceutical products. While this is doubtless true to dos (sic) not open the door to the adoption by manufacturers of medicines of trade marks or names which would be confusingly similar to anyone not exercising such great care. For physicians and pharmacists are human and in common with the rest of mankind are subject to human frailties. In the field of medicinal remedies the courts may not speculate as to whether there is a probability of confusion between similar names. If there is any possibility of such confusion in the case of medicines public policy requires that the use of the confusingly similar name be enjoined (see Lambert Pharmacol Ltd. v. Bolton Chemical Corpn. [DCNY 1915, 219 F 325, 326]).''

58. *Equally instructive are the following principles which came to be identified by our Court in Novartis AG:*

21. I do not accept the submission of the learned counsel for the defendant as I feel that it is more dangerous if the pharmaceuticals products bearing the same mark is used for different purposes for the same ailment or even otherwise. I also do not accept the contention of the defendant's counsel that there would be no confusion if the product contain different ingredients/different salt. In my opinion, it is more dangerous and harmful in the trade if the same trade mark is used for different ailments. The Apex court has already dealt with this proposition of law in the case of Cadila Healthcare Ltd. v. Cadila Pharmaceuticals, (2001) 5 SCC 73 : (2001) 21 PTC 300 (SC) and held as under:

"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 results. 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 plaintiffs medicine but the compositions are different. The confusion is more likely in such cases and the incorrect intake of medicine may even result in loss of life or other serious health problems. In this regard, reference may usefully be made to

the case of Glenwood Laboratories, Inc. v. American Home Products Corp, 173 USPQ 19 (1972) 455 F. Reports 2d, 1384 (1972), where it was held as under:

"The products of the parties are medicinal and applicant's product is contraindicated for the disease for which opposer's product is indicated. It is apparent that confusion or mistake in filling a prescription for either product could produce harmful effects. Under such circumstances, it is necessary for obvious reasons, to avoid confusion or mistake in the dispensing of the pharmaceuticals."

22. The other argument of the counsel for the defendant that the plaintiffs product is available in tablets and oral suspension form and the defendant's product is available in injection form has also no force as it has been seen from experience of the pharmaceuticals products available in all over the world that most of the companies are making pharmaceuticals products in both the forms i.e. tablets as well as in injection form under the same trade mark. As per well settled law, the actual confusion and deception is not required in order to prove the case of passing, off even if the defendant has adopted the mark innocently and the court comes to the conclusion that the two trade marks are deceptively similar, injunction under the said circumstances has to be granted. Actual deception is not required in an action of passing off. Century Traders v. Roshan Lal Duggar & Co., AIR 1978 Del 250 : 1 Supp PTC 720 (Del) (DB). Therefore there is no chance of confusion and deception.

***59.** As is evident from the aforesaid extracts, our Court found that a difference in ingredients or salts which make up competing pharmaceutical products, would not be aspects which could be said to be germane when it come to the question of likelihood of confusion. It also negated the mode and method of ingestion as well as the form of the competing products. This is evident from para 22 of the report and where the Court held that the fact that the competing products were dispensed either in the form of a tablet or an oral suspension would be wholly irrelevant."*

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***63.** On an overall consideration of the aforesaid, we are of the considered opinion that the finding of deceptive similarity and likelihood of confusion as ultimately rendered by the learned Judge clearly merits no interference. The learned Judge has on a prima facie evaluation come to conclude that a comparison of the marks "ISTAMET" and "INDAMET" meets the test of structural and phonetic similarity. That conclusion cannot, by any stretch of imagination, be said to be either manifestly erroneous or perverse. We are inclined to accept the principles as lucidly culled out in Macleods Pharmaceuticals and where their Lordships propounded the test in respect of drugs to be the "mere existence of the slightest possibility" of confusion. The aforesaid enunciation of the legal position is clearly in accord with the tests laid down by the Supreme Court in Cadilla*

Healthcare. In our considered opinion, the question of likelihood of confusion in case of competing drugs would have to be answered on a basis distinct from those that we may employ for ordinary consumer products. We would be erring if we were to fail to adopt strict principles of proof when it comes to drugs bearing in mind the need to completely obviate the possibility of an error or mistake. The test of confusing similarity, as McCarthy in his seminal work explains, stands "modified" and spoke of a "lesser quantum of proof" being required when the subject be drugs and medicinal preparations.

64. *The appellant, however, questioned the exclusion of the words "XR CP" while returning the aforenoted findings. This argument was addressed in the backdrop of Sun Pharma's registration itself being for a composite mark and the registration itself mandating that the mark was liable to be viewed as a whole. However, and in our considered opinion, the learned Single Judge was clearly justified in identifying the dominant feature of the mark. While it is true and well-settled that the principle of anti-dissection applies, we note that in South India Beverages itself the Court had accorded judicial sanction to a process of identification of the dominant feature of a trademark. As is manifest from a reading of paragraph 19 of the report, the Court had held that notwithstanding the first principle being of viewing two competing marks in their entirety, it would be open to acknowledge a dominant element of the mark for the purposes of examining questions of infringement and passing-off. We consequently note that the acknowledgement of a dominant element of a mark would not fall foul of the anti-dissection rule. This since even when a trademark is viewed as a whole and in its entirety, there may be situations where the question would have to be answered on the basis of what emerges to be the prominent feature of the mark. Undisputedly, "XR" and "CP" are publici juris in the pharmaceutical industry and are easily recognizable as referring to "extended release" and "combipack". It is in the aforesaid backdrop that the learned Judge appears to have identified the prominent features of the two competing marks to be "ISTAMET" and "INDAMET"."*

39. In view of the ratio laid down by the aforesaid judgments, this Court is of the opinion that the mark "KREOFLAT" of respondent no.1 would not surpass the tests laid down therein and is liable to be removed from the Register of Trade Marks. In para 57, the learned Division Bench of this Court in ***Glen Pharma*** *(supra)* also took into consideration the "public interest" involved and held as under:-

*"**57.** More significantly, the Supreme Court proceeded to hold and spoke of a lesser degree of proof being applicable in the case of medicinal products while answering the question of confusing similarity and the same being warranted in order to subserve large public interest. These observations are found in para 32 of the report, which is extracted hereinbelow:*

> ***"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, not 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 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.""*

40. As noted above, respondent no.1 has not placed on record any proof or evidence, documentary or otherwise, to substantiate or support the contentions raised in the written submissions filed on its behalf. This Court finds no merit in the resistance raised on behalf of respondent no.1.

41. Another important aspect is that the impugned mark has been wrongly registered and is wrongly remaining on the Register of Trade Marks. Respondent No. 2 registered the mark "KREOFLAT" under Class 5 despite the prior existence of the registered mark "PANKREOFLAT" in the same class. The registration was granted without properly considering the earlier mark and

is contrary to the provisions of the Act. Therefore, the impugned mark is liable to be removed from the Register.

42. In view of the foregoing analysis, this Court finds merit in the case/ submissions of the petitioner and is satisfied that the petitioner has been able to make out a case for cancellation of the trademark 'KREOFLAT' registered in favour of the respondent no.1 *vide* trademark application no.815236 in Class 05.

43. Accordingly, and in view of the aforesaid analysis, the petition is allowed. Resultantly, respondent no.2 is directed to rectify the Register of Trade Marks by removing the registered trademark "KREOFLAT" bearing no.4694743 in Class 05 from the Registry of Trade Marks.

44. In view of the above, the present petition is disposed of with no order as to costs. The aforesaid exercise shall be completed by respondent no.2 within four weeks from the date of receipt of this order.

45. A copy of this judgment be forwarded to the Registrar of Trademarks for compliance.

TUSHAR RAO GEDELA
(JUDGE)

FEBRUARY 26, 2026
sumit/rl