Tuijin Jishu/Journal of Propulsion Technology
ISSN: 1001-4055
Vol. 45 No. 2 (2024)

Countering Likelihood of Confusion: The Dynamics between Generic Names and Brand Names of Medicines

Ms. Baishali Jain
Research assistant, DPIIT-IPR Chair, Chanakya National Law University, Patna (Bihar) India

Abstract- Inspite of expressed provision in the trademark act, 1999 that restricts the registration of names similar to chemical compound/generic names, there still exist brands that have names akin to generic names of the drugs. Similarly, there also exist pharmaceutical brands having orthographic or phonological similarity in the Indian market. This ground reality shows that the standard to test the deceptive similarity with respect to pharmaceutical products need to be revisited by the adjudication authority and the lawmakers. This paper delves into the perspective of patients in India regarding the challenges posed by confusing pharmaceutical brand names. In a country marked by diverse languages, cultural nuances, and varying levels of health literacy, patients face unique obstacles when navigating the complexities of medication. This study aims to contribute to the advancement of medication safety and patient empowerment in the Indian healthcare context.

Keywords- Pharmaceutical, Trademark, International Nonproprietary Names (INNs), Generic Names, Look Alike Sound Alike.

1. Introduction

The use of medication is ubiquitous. Drugs with similar names tend to confuse health professionals and patients thus, endangering the life. In order to reap the benefits and avoid the hazards of drug therapy, however, the right patient must receive the right drug in the right dose at the right time via right route of administration. Too often, this doesn't occur. As a result, the wrong drug is received by the patient due to orthographic and phonological similarity (e.g. AZIWAKE and AZIWOKE, ZECUF and ZEKUF, RAZO and RAZOFAST, PANTOCID and PANTOPACID etc.)

The real world task the study aims to focus is that of health consumers who sees a medication name on advertisement, package, printout, label, or computer screen, commits the name to memory, and then goes to retrieve the named medication, s/he is engaged in a recognition memory task, attempting to select the name from the shelf that matches the sane stored in memory. When a false recognition occurs, i.e. when a familiar name is selected rather than the target one, a medication error results.

In any given week, more than four out of ten Indians consume atleast one medication either prescription or Over the Counter drug, vitamin/minerals or herbal supplements. Errors occur with any of these products at any point in the medication-use process and in any care setting.

With tens of thousands of drugs currently on the market, the potential for error due to confusing drug names is significant. This includes nonproprietary names and proprietary (brand or trademarked) names. Many drug names look or sound like other drug names. Contributing to this confusion are illegible handwriting, incomplete knowledge of drug names, newly available products, similar packaging or labeling, similar clinical use, similar strengths, dosage forms, frequency of administration, and the failure of manufacturers and regulatory authorities to recognize the potential for error and to conduct rigorous risk assessments, both for nonproprietary and brand names, prior to approving new product names.

A pharmacy student recently reported a mix-up that occurred between the seasonal allergy drug cetirizine and the antidepressant sertraline. A nurse left a telephone prescription on the pharmacy's voice mail system for cetirizine 10 mg. The pharmacist interpreted the order as sertraline, however, due to the way the nurse pronounced the drug name. The prescription was processed as sertraline 100 mg and dispensed to the patient.

The patient caught the error when she read the antidepressant medication guide in the bag with her prescription bottle. Although the patient did not take the medication, she was very upset about the mix-up.
Errors have involved physicians prescribing the wrong drug, as well as nurses and pharmacists who confused the drugs while transcribing and dispensing them or misinterpreted the drug name due to poor handwriting.

Brand Names Deriving from Generic Names

The World Health Organization's (WHO) International Nonproprietary Names (INNs) Expert Group works to develop international nonproprietary names for pharmaceutical medicinal substances for acceptance worldwide. However, brand names are developed by the product's sponsor and often differ significantly between countries. The INN system as it exists today was initiated in 1950 by a World Health Assembly resolution (WHA3.11) and began operating in 1953, when the first list of International Nonproprietary Names for pharmaceutical substances was published. The cumulative list of INNs now stands at some 9300 names designated since that time, and this number is growing every year by some 160 new INNs.
The purpose of the INN system is to identify pharmaceutical substances or active pharmaceutical ingredients. The system aims to provide a unique and universally available designated name to identify each pharmaceutical sub stance. Clear identification on the basis of INN helps in ensuring safe prescription and dispensing of medicines to patients. INNs also facilitate communication and exchange of information among health professionals, scientists and other interested people throughout the world. Because INNs are unique names, they should be distinctive and not liable to confusion with other names in common use. As the word ''nonproprietary'' suggests, the WHO has formally placed these names in the public domain (WHO, 1997). Hence, an INN is open to being used by all manufacturers of the pharmaceutical substance to which it relates. While such names can also be used for commercial purposes, no private proprietary interest may be acquired over these names. In other words, nobody can claim exclusive rights to an INN or any part thereof through intellectual property protection.
On the basis of the recommendations of the Committee in 1991, the WHA unanimously adopted Resolution 46.19 on "Nonproprietary Names for Pharmaceutical Substances" in 1993. The Resolution contains a preamble and two operative paragraphs. In its preamble, the Resolution noted the current trend of marketing products with the same active ingredient as a product currently on the market, under trademarks or brand names derived from stems or other parts of INNs. It pointed out that such a practice, particularly in respect of single-ingredient prescription drugs, may compromise the safety of patients by creating confusion in prescribing or dispensing medicines and by interfering with the development of nomenclature for INNs.
Below is the list of Pharmaceutical Brand names derived from INNs.

Generic name	Brand Names	Brand Names
Abacavir	Abacavir (Taj Pharmaceuticals Ltd.)	Abavir (Genix pharma Pvt. Ltd)
Acitretin	Aceret (Glenmark Pharmaceuticals ltd.)	Acetic (Dr. Reddy's Laboratories)
Baclofen	Bacfen (Icon Life sciences)	Baclof (Intas Pharmaceutical)
Carbimazole	Thyrocab (Abott Healthcare Pvt. Ltd.)	Thryosim (Ankyl arth Pharmaceuticals Ltd.)
Diacerein	Dycerin (Glenmark Pharmaceuticals ltd.)	Icerin (Intra Labs Pvt. Ltd.)
Ergometrine	Ergagin (Mercury Laboratories ltd.)	Ergogin (Cipla ltd.)
Famciclovir	Virovir (Fdc Ltd.)	Microvir (Micro labs Ltd.)
Glucagon	Glucagon (Novo Nordisk Pharma India Ltd.)	Glucagen

Haloperidol	Epidol (Elite Pharma Pvt. Ltd.)	Depidol (Torrent Laboratories)
Ibuprofen	Brufen (Abott Healthcare Ltd.)	Bufferin (Ar-Ex Laboratories Pvt. Ltd.)
Ketorolac	Cadolac (Cadila Pharmaceuticals Ltd.)	Ketolac (Intas Pharmaceutical Ltd.)
Lactulose	Laxaid (Shreya Halthcare Ltd.)	Laxil (Mapra Laboratories Pvt. Ltd.)
Metformin	G-Met (East West Pharmaceuticals Pvt. Ltd.)	Q-Met (Q-check Speciality Care)
Niclosamide	Niclesone (Western Remedies)	Niclosan (Glaxo Smithkline Pharmaceuticals Ltd.)
Olopatadine	Winolap (Sun Pharmaceuticals Ltd.)	Neolap (Alembic Pharmaceuticals Ltd.)

Table 1: List of Brand Names with manufacturer derived from INNs (Source: IP India: Public Search)

2. Objectives

The article aims to comprehensively analyze the likelihood of confusion amongst the consumers due to Look Alike Sound Alike drugs prevailing in the market. In particular; to study the drug nomenclature practice in India; to understand the dynamics between branding a drug and its generic name; the study of perception among patients, family physicians and pharmacists aims to evaluate drug identification factors and the risk of errors of confusion for patients.

3. Methods

The methodology was review and analysis of legal provisions, case studies, government reports, policy documents. A cross-sectional study was conducted on the registered drug proprietary names in India. Using the official website of Intellectual Property India, Public Search portal to identify the brand names registered in India, that is similar to Generic name of the drugs. Moreover, the LASA drugs were also identified from through the Public search portal of IP India official website.

4. Results

The existence of confusing drug names is one of the most common causes of medication error and is of concern worldwide.

Section 13 (b) of the Trade Marks Act, 1999 states that no word that is declared as an INN by WHO and is notified by the Registrar of Trade Marks, or which is deceptively similar to such names, can be registered as trademarks. There is also no requirement under the Trade Marks Rules for conducting a search of INNs while examining new trademark applications in class 5 (pharmaceutical substances come under class 5. Moreover, there is no mandatory requirement of registering a trademark in India. Even without a registration a mark may be protected as an unregistered trademark. Hence, the scrutiny of Section 13 (b) may be bypassed by not registering a mark as a trademark.

In spite of the provision in Section 13 (b), there are instances in India of drugs bearing names that have been derived from INNs and registered as trademarks. WHO has issued INN protection letters to the Drugs Controller General of India (DCGI) requesting the DCGI to take an appropriate action to discourage the trademark registration of such names.

Drug Names	Drug Names
CITRAZAN (Mac Laboratories Private Ltd.)	CATERGEN (Zyma S.A)
ACAPRIN (Bayer Aktiengesellschaft)	ASPERVEN (Sun Pharmaceutical Industries Ltd.)
BONITRAM (Borachem Industries Pvt. Ltd.)	BINITRIM. (Bini Laboratories Pvt. Ltd.)
FLORAQUIN (G.D. Searle & Co.)	FLORACIN (T.D. Gupta)
FLURAZ (Micro Labs Ltd.)	FLORAC (M/S. Cadila Pharmaceuticals Ltd.)
ASPIRAL (Wallace Pharmaceuticals Pvt. Ltd.)	ASPAR (Prabhudas Kishordas Tobacco Products Pvt. Ltd.)
AZIWAKE (Smarth Pharma)	AZIWOK (Dr. Reddy's Laboratories Ltd.)
ZECUF (J.B. Chemicals and Pharmaceuticals)	ZEKUF
RAZO (Dr. Reddy's Laboratories Ltd)	RAZOFAST (Fast cure Pharma)
PANTOCID (Sun Pharmaceutical Industries Ltd.)	PANTOPACID (Finecure Pharmaceuticals)
RAZOFAST Fast cure Pharma	RACOFAST Shreya Life Sciences Pvt. Ltd

Table 2: Examples of Confused Drug Names Registered In India (Source: IP India: Public Search)

5. Discussion

- In cases related to pharmaceuticals, it is important to consider how a buyer -who must be assumed to be an ordinary man of average intelligence - would respond to a particular trademark, what associations he would make upon first seeing it, and how he would relate it to the goods he would be purchasing.
- In a nation with a high literacy rate and marks that the buyer can understand, the rulings of English courts would be applicable. 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, one should see and bear in mind the difference in situation between England and India.
- Can English laws be fully applied in India without taking into account the local circumstances? No! applying English legal principles regarding the dissimilarity of the marks or the customer knowing about the distinctive qualities of the plaintiff's goods seems to ignore the local realities in a country like India where there is no single common language, a large percentage of the population is illiterate, and only a small portion of people know English.
- When examining such cases in India, it is important to keep in mind that the buyer of such goods may have no knowledge of either the English language or the language used to write the trademark, and that different words with slight spelling variations may sound phonetically similar to them.
- The standard to be used for determining whether trade mark legislation has been violated in cases involving medicinal items may not be equal to that used in circumstances involving non-medicinal products. When using the test to determine whether a consumer might mistake one medicinal product for another, a tighter approach should be taken. When it comes to non-medical products, uncertainty may merely result in financial loss for the plaintiff, but when it comes to medicinal products, misunderstanding could have catastrophic implications on health and, in rare situations, even life itself.

- Strict procedures should be taken, especially when using drugs as a last resort because any mistake with these medications has the potential to be lethal or have severe repercussions. The public's health could suffer greatly as a result of the confusion about the product's identity.
- Public interest would support lesser degree of proof showing confusing similarity in the case of trademark 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.
- J. Desai ruled that first impression plays a role in determining whether or not the two marks are likely to cause confusion in Corn Products Refining Company vs. Shangrila Food Products Limited. In our country, cases involving the pronunciation of English words by Englishmen—which, it should be noted, is not necessarily the same—might not be very helpful in settling disputes over phonetic similarities. It cannot be denied that the word is English, which is a foreign language to the majority of Indians.
- It is widely accepted that when determining if two marks are comparable, the marks as a whole must be taken into account.
- In another instance involving the comparison of two terms, Parker, J. in Re Pianotist Co. Application. The two words must be evaluated, based on both their appearance and their voice. You must take into account the products to which they will be applied. You must take into account the kind and type of customer who is likely to purchase those things. Actually, you should take into account all of the surrounding factors, as well as what is anticipated to occur if each of those trademarks is used ordinarily as a trade mark for the goods of the respective owners of the marks.
- Who must the likeness be likely to mislead or deceive, and what standards of comparison should be used to determine whether such a resemblance exists, are two crucial considerations for deceptive similarity. As for bewilderment, it may be a fitting description of the mindset of a buyer who, upon seeing a mark, believes that it differs from the mark on goods that he has previously purchased, but is unsure as to whether or not that impression is not the result of a faulty memory.
- F. Hoffmann-La Roche & Co. Ltd. Vs. Geoffrey Manner & Co. Pvt. Ltd., take the two words, evaluate them based on both their appearance and their voice. You must take into account the products to which they will be applied. You must take into account the kind and type of customer who is likely to purchase those things. You actually need to take into account all of the surrounding factors, as well as what is anticipated to occur if each of those trademarks is used ordinarily as a trade mark for the goods of the respective proprietors of the marks.
  If, after taking into account all of these factors, you determine that there will be confusion—not necessarily that one man will suffer harm and the other will profit illegally, but rather that there will be confusion in the public's mind that will cause confusion in the goods—you may refuse the registration, or more precisely, you must refuse the registration in that situation.
- In Blansett Pharmaceuticals Co. Vs. Carmick Laboratories Inc., it was decided as follows: Where these similar goods are marketed under marks that look alike and sound alike, confusion and mistake are likely, even for prescription drugs prescribed by doctors and dispensed by chemists.
- R.J. Strasenburgh Co. vs. Kenwood Laboratories, Inc. reported that physicians are not exempt from misunderstanding or error. Additionally, it is a known fact that some prescriptions are faxed to the chemists while others is written by hand, and that handwriting is usually difficult to read. These details increase the possibility of confusion or error on the part of the chemists filling the prescription if the marks are too similar when written by hand or when spoken. The medications' distinct compositional differences and wholly diverse side effects necessitate meticulous application of the test because any mistake on the part of the customer could have unfavourable, if not disastrous consequences.
- When the defendant's drug, for which passing off is alleged, is intended to treat the same condition as the plaintiff's treatment but differs in composition, the courts must exercise extra caution. In these situations,

misunderstanding is more likely, and taking the wrong medication could possibly result in death or other severe health issues.

- 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.
- Because they are people just like the rest of us, doctors and chemists are susceptible to human weaknesses. The courts are not permitted to make assumptions about whether there is a likelihood of name confusion in the context of medical remedies. Public policy demands that the use of the confusingly similar name be prohibited if there is even the slightest chance of such confusion in the case of medications.
- 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.
- Syntex Laboratories Inc. Vs. Norwich Pharmacal Co., it is observed that stricter standard in order to prevent likelihood of confusion is desirable where involved trademarks are applied to different prescription pharmaceutical products and where confusion result in physical harm to consuming public.
- 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. Confusion among the items created by identical marks could have disastrous repercussions if the commodities in question are pharmaceutical products, each of which has various effects and is intended for even slightly different uses. Due to these factors, it is appropriate to demand less evidence of confusing similarity in the case of medications and therapeutic preparations. Medical devices like clavicle splints and surgical sutures have been held to the same standard.
- In Lavroma Case, Tokalon Ltd. v Davidson and Co., *Lord Johnson* said “we are not bound to scan the words as we would in a question of comparative literary. It is not a matter of microscopic inspection, but to be taken from the general and even casual point of view of a customer walking into a shop.”

5. Conclusion

In conclusion, the interplay between generic names and brand names of medicines presents a multifaceted landscape with significant implications for patient safety, healthcare professionals, and pharmaceutical companies. Throughout this exploration, we have identified the potential risks associated with the likelihood of confusion between generic and brand names, ranging from medication errors to compromised patient outcomes.

Efforts to mitigate these risks must be multifaceted, involving collaboration among healthcare stakeholders, regulatory bodies, and pharmaceutical manufacturers. Enhanced education and training for healthcare professionals on the importance of clear communication regarding medication names, as well as the implementation of technological solutions such as electronic prescribing systems, can help reduce errors stemming from name confusion.

Furthermore, pharmaceutical companies should prioritize the development of brand names that are distinct from their generic counterparts and comply with regulatory guidelines to minimize the potential for confusion. Regulatory agencies play a crucial role in enforcing standards for medication naming and ensuring patient safety.

Ultimately, addressing the dynamics between generic and brand names of medicines requires a comprehensive approach that considers the complexities of healthcare delivery systems, the needs of patients, and advancements in technology and regulation. By implementing proactive measures and fostering collaboration across stakeholders, we can strive to minimize the likelihood of confusion and enhance medication safety for all.

References

[1] Cohen, M. (Ed.), “Medication errors, American Pharmaceutical Association”, Washington, DC

[2] McCoy LK., “Look-Alike, Sound-Alike Drugs Review: Include Look-Alike Packaging As An Additional Safety Check”, Joint Commission Journal on Quality and Patient Safety, (2005), 31(1):47–53

[3] Hoffman JM, Proulx SM., "Medication Errors Caused By Drug Name Confusion", Drug Safety (2003) 26:445–452
[4] Gaunt is a medication safety analyst and the editor of ISMP Medication Safety Alert (December 13, 2010)
[5] Look Alike Sound Alike Medication Names, The Joint Commission, The Joint Commission International and WHO, Patient Safety Solutions (Vol. I, Solution I; May 2007) https://cdn.who.int/media/docs/default-source/patient-safety/patient-safety-solutions/ps-solution1-look-alike-sound-alike-medication-names.pdf?sfvrsn=d4fb860b_8
[6] WHO, "Guidance on The Use of International Non-Proprietary Names (INNs) for Pharmaceutical Substances" (2017) https://cdn.who.int/media/docs/default-source/international-nonproprietary-names-(inn)/who-pharm-s-nom-1570.pdf?sfvrsn=8358367e_4&download=true
[7] Lambert BL et al., "Similarity As A Risk Factor In Drug-Name Confusion Errors", Medical Care (1999) 37(12):1214–1225
[8] Kappoori M. Gopakumar and Nirmalya Syam, "International Nonproprietary Names and Trademarks: A Public Health Perspective", The Journal of World Intellectual Property (2008) Vol. 11, no. 2, pp. 63–104
[9] Cadila Healthcare vs. Cadila Pharmaceutical, (2001) 5 SCC 73
[10] Corn Products Refining Company vs. Shangrila Food Products Limited , AIR 1960 SC 142
[11] Parker, J. in Re Pianotist Co. Application, (1906) 23 RPC 774
[12] SIR DUNCAN MACKENZIE KERLY, KERLY'S LAW OF TRADE MARKS AND TRADE NAMES 400 (Sweet & Maxwell, London, 8th edn., 1960)
[13] F. Hoffmann-La Roche & Co. Ltd. Vs. Geoffrey Manner & Co. Pvt. Ltd., (1969) 2 SCC 716
[14] Blansett Pharmaceuticals Co. Vs. Carmick Laboratories In., 25 USPQ 2nd, 1473 (TTAB 1993) [15] R.J. Strasenburgh Co. Vs. Kenwood Laboratories, Inc , 106 USPQ 379
[15] Lambert Pharmacol Ltd. Vs. Bolton Chemical Corporation, DCNY 1915, 219 F. 325.326.
[16] Schering Corp Vs. Alza Corp., 207 USPQ 504 (TTAB 1980)
[17] Syntex Laboratories Inc. Vs. Norwich Pharmacal Co , 169 USPQ 1(2nd Cr. 1971
[18] J. THOMAS MCCARTHY, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION ¶23.12 (Clark Boardman Callaghan, Deerfield, 3rd edn., 1992)
[19] Lavroma Case, Tokalon Ltd. v Davidson and Co., 32 Rpc 133 at p. 136