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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 16th August, 2023.

+ **C.O. (COMM.IPD-TM) 79/2022**
 M/S VEST PHARMA PVT LTD Petitioner
 Through: Mr. Umesh Mishra, Advocate.
 (M. 9868401295)

versus

M/S VETS FARMA LTD & ANR Respondents
 Through: Mr. Amit Jain, Mr. Nakul Mehta and
 Ms. Ishita Suri, Advocates.
 (M. 9818558690)

9 **AND**

+ **C.O. (COMM.IPD-TM) 554/2022**
 VETS FARMA LTD. Petitioner
 Through: Mr. Amit Jain, Mr. Nakul Mehta and
 Ms. Ishita Suri, Advocates. (M.
 9818558690)

versus

VEST PHARMA PVT. LTD. AND ANR. Respondents
 Through: Mr. Umesh Mishra, Advocate for R-1
 (M. 9868401295)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh (Oral)

1. This hearing has been done through hybrid mode.
2. The present two cancellation petitions seeking cancellation of the following two trademarks:

Petition No.	Mark	Application No.	Class
C.O. (COMM.IPD-TM) 79/2022	CALPHO – Registered in favour of Respondent M/s Vets Farma Ltd	1212278	31
C.O. (COMM.IPD-TM) 554/2022	CALFOS AD3 PLUS - Regd. in favour of Petitioner M/s.Vest Pharma Pvt Ltd	1399331	05



3. These two petitions before the Court, *C.O. (COMM.IPD-TM) 79/2022* and *C.O. (COMM.IPD-TM) 554/2022* were initially filed before the IPAB in 2013 and 2012 respectively. They have been transferred to this Court upon the enactment of Tribunal Reforms Act, 2021. A tabular representation of the Petitioner and Respondent in both the Petitions is set out below:

Petition No.	Petitioner	Respondent
C.O. (COMM.IPD-TM) 79/2022	M/s Vest Pharma Pvt Ltd	M/s Vets Farma Ltd
C.O. (COMM.IPD-TM) 554/2022	M/s Vets Farma Ltd	M/s Vest Pharma Pvt Ltd

For the sake of clarity and consistency, M/s. Vest Pharma Pvt Ltd is referred to as 'Petitioner' and M/s. Vets Farma Ltd is referred to as 'Respondent'.

4. From the above table, it is clear that the two petitions are cross petitions which were filed by the parties. Disputes had arisen between the parties resulting in filing of civil and criminal proceedings. The promoters of the Respondent were convicted by the Court of the Chief Judicial Magistrate, Jalandhar vide order dated 4th December, 2010 and the said conviction was upheld by the Additional Sessions Judge, Jalandhar vide order dated 12th September, 2012 in *Criminal Appeal No. CRA/020000/2011* titled *Vets Farma Private. Limited & Ors. v. State of Punjab & Ors.*

5. Civil litigation also ensued between the parties and in *CS 17/2010* titled *Vest Pharma Pvt Limited v. M/S Vets Farm Ltd*, final judgement was passed by the Additional District Judge, Jalandhar, dated 23rd March, 2011.



By the said order, the Respondent has been enjoined in the following terms:

“34. In view of my above said findings on the issues, the suit of the plaintiff for Permanent Injunction is decreed with costs, to the effect that the defendant is restrained from infringing the aforesaid three Trade Marks CALFOS AD3, GALFOS AD3 PLUS and ANIMIN of the plaintiff either themselves or through any of their agents and also passing off goods under such Trade Marks in any manner and further to destroy all the materials such as advertisements etc. claiming the aforesaid trade mark to be its own. Preliminary decree for rendition of account is also passed in favour of the plaintiff. Decree sheet be drawn accordingly and the file be consigned to the Record Room.”

6. The said decree/order was upheld by the Punjab & Haryana High Court vide decision dated 17th August, 2022 passed in ***RFA 4412/2011*** titled ***M/ s Vets Farma Ltd. v. Vest Pharma Pvt. Ltd.*** The Punjab & Haryana High Court has also upheld the assignment of the trade marks in favour of the Petitioner and observed as under:

“23. It may be noted here that although, the alleged deed of cancellation of assignment has not been brought on record, however, even if it is assumed that there is cancellation, the same shall be hit by Section 202 of the Indian Contract Act, 1872, which debars the principal from terminating the agency where the agent has an interest in the subject matter. On a careful reading of memorandum of understanding dated 07.02.1998, and various other documents placed on file, it is evident that the deed of assignment was signed after receipt of certain amount. It was agreed that the total consideration for assignment of trademarks shall be Rs. 1,60,000/- Apart therefrom, Rs. 25,000/- was agreed to be paid to sign and transfer the copyrights of the products CALFOS AD3 PLUS and GALFOS AD3 PLUS, in favour of the plaintiff. It



has also come in evidence that the payment has been made and memorandum of settlement was given effect to as Sh. H.R. Gupta resigned from Vets Farma Pvt. Ltd. Immediately after signing the memorandum of settlement. The memorandum of settlement dated 07.02.1998 itself recognizes that such assignment of trademarks is irrevocable and final and all the rights shall absolutely vest with the assignee company subject to Clause 8 of the memorandum of settlement.

24. Consequently, finding no merit the Regular First Appeal is dismissed. Decree on the ground that the present appeal is pending. Now, since the appeal stands decided, therefore, the revision petition is rendered infructuous.”

7. An SLP was also preferred before the Supreme Court by the Respondent bearing **SLP (C) Diary No. 41108/2022** titled **M/s Vets Farma Ltd v. M/s Vest Pharma Pvt. Ltd.** against the said order of the Punjab and Haryana High Court, which was dismissed as withdrawn on 27th February, 2023 in the following terms:

“Learned counsel for the petitioner contends that there is an apparent error on the face of the record in the impugned order as it proceeds on the basis that the Trademark Act, 1999 had come into force but the fact is that the said Act comes in force only on 15.09.2003 while the transaction in question was also not of 1999 but 2000. He further rests his case on Section 124 of the Act.

We consider appropriate to permit the petitioner to withdraw the petition and file a review application before the Learned judge of the High Court with liberty to approach this Court in case of an adverse order.

The special leave petition is dismissed as withdrawn in terms aforesaid.

Pending applications stand disposed of.”



8. In the second suit, before the Id. ADJ, Jalandhar relating to the marks ‘CALFOS AD3 PLUS’, ‘GALFOS AD3 PLUS’ and ‘ANIMIN’ in class 31 and ‘CALFOS AD3 PLUS’ in class 5, in **CS 56516/2013** titled ***Vest Pharma Pvt Limited v. M/S Vets Farma Ltd***, vide order dated 24th February, 2020 the Id. ADJ, Jalandhar has finally decreed the suit in the following terms:

“98. In view of my findings on the aforesaid issues, the suit of the plaintiff partly succeeds and the same is hereby partly decreed with proportionate costs:
For declaration to the effect that the plaintiff is the owner of the copy right design colour combination of the wrappers/labels/pouches/jars, used by the plaintiff for marketing its products under the trademark CALFOS AD3 PLUS, GALFOS AD3 PLUS and ANIMIN. The suit of the plaintiff is further decreed for declaration to the effect that the plaintiff is the proprietor of the trade mark CALFOS AD3 PLUS.

99. The suit of the plaintiff is further decreed for permanent injunction, restraining the defendant, their agents, employees, representatives, dealers, distributors and all other persons claiming through the defendant from infringing the aforesaid copy right of the plaintiff by using any wrappers/labels/ pouches, jars for making or passing off product name identical, similar or deceptively similar to the trademarks CALFOS AD3 PLUS, GALFOS AD3 PLUS and ANIMIN.

And further for permanent injunction, restraining the defendant, their agents, servants, employees, representatives, dealers, distributors and our other persons claiming through the defendant from infringing the trademarks of the plaintiff, by manufacturing, marketing or selling and passing of any product under the trademarks CALPHO, CALIPHO AD3 PLUS, CALFOS, AND CALFOS FORTE, It is further made clear that, the decree is subject to the decision of any superior court on the subject matter between the parties. Decree sheet be prepared accordingly. File be consigned



to the record room.”

9. This judgment/decreed has attained finality.

10. From the above background it is clear that the Respondent has been enjoined in two civil suits filed by the Petitioner. Even criminal proceedings have resulted in conviction of the Directors of the Respondent.

11. As captured above, the present two petitions relate to the trademarks CALFOS and CALFOS AD3 PLUS. The first petition has been filed by the Petitioner- M/s M/s Vest Pharma Pvt. Ltd. seeking cancellation of trademark number 1212278. Vide judgment dated 23rd March, 2011, insofar as the use of the trademark ‘CALPHO’ is concerned, the same has already been enjoined by the Court against the Respondent. The present cancellation is based on this decision dated 24th February, 2020 which has attained finality.

12. In view of this, the Respondent cannot continue to be the registered proprietor of the mark ‘CALPHO’ in class 31. Accordingly, the Respondent’s mark CALPHO bearing no. 1212278 is directed to be removed/cancelled from the Register of Trade Marks.

13. In the second petition, the prayer of the Respondent - M/s Vets Farma Ltd. is for cancellation of the mark 139931 in class 5 registered by the

Petitioner for the mark ‘CALFOS AD3 PLUS



The status of the said mark is set out below:



“As on Date : 14/08/2023

Status : Registered

[View TM Application](#)

<i>TM Application No.</i>	1399431
<i>Class</i>	5
<i>Date of Application</i>	16/11/2005
<i>Appropriate Office</i>	DELHI
<i>State</i>	PUNJAB
<i>Country</i>	India
<i>Filing Mode</i>	Branch Office
<i>TM Applied for</i>	CALFOS AD3 PLUS
<i>TM Category</i>	TRADE MARK
<i>Trade Mark Type</i>	DEVICE
<i>User Detail</i>	09/04/1997
<i>Certificate Detail</i>	Certificate No. 628162 Dated : 28/03/2007
<i>Valid upto/ Renewed upto</i>	16/11/2025
<i>Proprietor name</i>	(1) VEST PHARMA PVT LTD Trading As : VEST PHARMA PVT LTD Body Incorporate
<i>Proprietor Address</i>	605, PARK ROAD, MODEL TOWN, JALANDHAR- 144003 PB
<i>Email Id</i>	
<i>Agent name</i>	MAHTTA & CO. [252]
<i>Agent Address</i>	43- B/3, MAHTTA HOUSE, UDHAM SINGH NAGAR, LUDHIANA – 141 001, (PUNJAB).
<i>Goods & Service Details</i>	[CLASS : 5] MEDICINAL & PHARMACEUTICALS PREPARATIONS
<i>Publication Details</i>	Published in Journal No. : 1351-0 Dated : 01/09/2006

Trade Mark Image:





14. A perusal of the above would show that the mark is registered since 16th November, 2005. Since the Respondent itself has been enjoined from using the CALFO AD3 PLUS and the finding of the Court is in favour of the Petitioner in respect of this mark, the Respondent being an infringer against whom the injunction has been upheld till the Supreme Court, would not be entitled to maintain the present cancellation petition at this stage.

15. The above order is with one caveat. A perusal of the Supreme Court's order dated 27th February, 2023 would show that the Respondent was permitted to file a review before the Punjab & Haryana High Court and liberty was granted to the Respondent to approach the Supreme Court in case if there was any adverse order. The said order dismissing the review petition was passed by the Punjab & Haryana High Court on 26th April, 2023. Till date, the Respondent has not filed any SLP against the said order.

16. Under these circumstances, the second cancellation petition, i.e., *C.O. (COMM.IPD-TM) 554/2022* of the Respondent against the Petitioner is rejected.

17. It is made clear that the above order shall however, be subject to any order passed by the Supreme Court in the SLP, if any, which may be filed by the Respondent challenging the order dated 26th April, 2023 passed in the review petition by the Punjab & Haryana High Court.

18. Both these cancellation petitions are accordingly disposed of in the above terms. All pending applications are also disposed of.

19. The Registry is directed to supply a copy of the present order to the office of the Controller General of Patents, Designs & Trademarks of India on the e- mail- llc-ipo@gov.in for compliance of this order.

PRATHIBA M. SINGH, J.

AUGUST 16, 2023/Rahul/am