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Introduction

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJLAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

WHEN CAN A GENERIC MARK ACQUIRE DISTINCTIVENESS IN THE PHARMACEUTICAL INDUSTRY

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ABSTRACT

This article grapples with the critical doctrinal question of when trademarks may become distinctive in the context of the pharmaceutical industry, and does so through an interpretation of the intersection of trademark law and public health interests. This study examines the doctrine of acquired distinctiveness within the context of pharmaceutical nomenclature.

The research methodology makes use of doctrinal analysis of landmark judicial decisions such as Mankind Pharma Ltd. v. Novakind BioSciences Pvt. Ltd., Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd., and FDC Limited v. Nilrise Pharmaceuticals (P) Ltd., studying how the courts balance the right to appropriation (exclusivity) of trademark against the preservation of public domain[1]. The study discusses the criteria laid down by Indian courts for proof of secondary meaning such as length of use, recognition in the market, recognition by consumers and industry.

Based on the Supreme Court's "drugs are poisons, not sweets" doctrine in Cadila Healthcare, there are increased standards of protection for pharmaceutical marks, and the more stringent tests of similarity due to the potential life-threatening consequences of confusion[2]. As Mankind Pharma illustrates, the Delhi High Court's finding of the distinctiveness of the KIND suffix represents the fact that even common English words can acquire trademark protection, if used exclusively in the pharmaceutical industry for thirty years[3].

[1]Mankind Pharma Ltd v Novakind BioSciences Pvt Ltd FAO(OS)(COMM) 212/2023 (Delhi HC)
[2] Cadila Health Care Ltd v Cadila Pharmaceutical Ltd 2001 (2) PTC 541 (SC)
[3] Mankind Pharma Ltd v Novakind BioSciences Pvt Ltd FAO(OS)(COMM) 212/2023 (Delhi HC

The study finds that while generic marks are subject to serious obstacles to protection, the public health context unique to the pharmaceutical industry generates both possibilities and responsibilities for the acquisition of trademarks. Companies must have not only commercial usage, but consumer recognition that goes beyond professional intermediaries. This balance allows for the necessary medical terminology to remain in the public domain while still securing legitimate commercial investment - ultimately benefiting both innovation incentives and patients' safety needs.

Keywords: pharmaceutical trademarks, acquired distinctiveness, secondary meaning, generic marks, Trade Marks Act 1999, public health.

INTRODUCTION

One of the most complex areas in the intersection between intellectual property law and the public good is the pharmaceutical industry, where the right to a trademark has to be balanced against the need for access to medicines. Unlike with other businesses where confusion over trademarks usually results in economic loss, pharmaceutical trademark cases present life-threatening ramifications as evidenced by the historic statement of the Supreme Court that drugs are poisons and not sweets[4].

Generic marks in pharmaceutical are sometimes challenging because of peculiarities of the nomenclature system used in the pharmaceutical industry: the names of the drugs are often derived from active pharmaceutical ingredients (APIs), pharmaceutical classes or medical diseases in which the medicine is indicated. Generics like ZIPOD (meaning Cefpodoxime) or words with a descriptive purpose like KIND (to suggest gentleness) or prefixes that denote a disease (like falciparum malaria, FALCI). But sustained exclusive usage, substantial investment in the market and consumer appreciation can take the so-called generic terms beyond the description and acquire trademark rights under the proviso to s 9(1) of the Trade Marks Act 1999[5].

[4] Cadila Health Care Ltd v Cadila Pharmaceutical Ltd 2001 (2) PTC 541 (SC)
[5]Trade Marks Act 1999, s 9(1)

This conversion of generic terminology into trademark worthy terminology is a key legal principle referred to as an acquired distinctiveness or secondary meaning where marks which are not inherently worthy of protection by virtue of their descriptive nature may become eligible for trademark protection on the basis of use in the marketplace. It is specifically in the realm of pharmaceuticals where this doctrine gains particular significance, where neither the exact identification of sources, nor the prohibition of monopolization of essential medical terminology. Section 13 of the Trade Marks Act 1999 expressly prohibits the registration of International Non-proprietary Names (INNs) so that generic drug nomenclature and health care provider nomenclature remains in the unrestricted public domain[6].

Pharmaceutical trademarks, especially, have recently been the subject of controversies that have shed light on the boundaries of trademark protection, opening up possibilities for, but also limiting, brand protection. The Delhi High Court had decided in Mankind Pharma Ltd. v. Novakind BioSciences Pvt. Ltd. that the common English word "KIND" had obtained distinctiveness by use over a period of over 30 years which made it a distinctive suffix in relation to the pharmaceutical products of Mankind Pharma[7]. An example of defeating a trademark claim by past admissions of non-distinctiveness is found in Tesco plc (2007) SC (SC) 331 Worlddevcorp Technology, a case involving registered marks[8].

The law concerning the acquisition of pharmaceutical trademarks exemplifies broader conflicts between incentives to innovate and access to necessary drugs. Naturally, the knowledge of the trademarks protection would be an incentive to the pharma player for developing their brand or brand maintenance, but generic names' over-protection would stifle competition and limit the access to healthcare. The balance, however, is even more sensitive in India, which is the world's largest manufacturer of generic drugs and where the trademark policy directly affects the price of medicines not only in India, but also the price of medicine around the world.

[6]Trade Marks Act 1999, s 13
[7] Mankind Pharma Ltd v Novakind BioSciences Pvt Ltd FAO(OS)(COMM) 212/2023 (Delhi HC)
[8]Institute of Directors v Worlddevcorp Tech & Bus SCC Online Del 7841 (Delhi HC)

Based on in-depth case study analysis of successful and failed entry acquisitions, the research identifies possible strategic responses to pursue and broader policy implications for accessing healthcare and innovation.

RESEARCH QUESTIONS

1. What legal criteria determine when generic pharmaceutical terms acquire sufficient distinctiveness for trademark protection?
2. How do Indian courts balance trademark exclusivity against public domain preservation in pharmaceutical nomenclature?

Legal Framework for Acquired Distinctiveness

A. Statutory Provisions

The Trade Marks Act 1999 strikes a balance between public interest in protecting generic terms (unregistered trademarks) with rewarding commercial goodwill in its absolute and conditional registration clauses[9]. Section 9(1) creates absolute grounds for refusal which preclude inherently non-distinctive marks[10]. Under Section 9(1)(a), marks that are "not capable of distinguishing any particular goods" cannot be registered, embodying as it does the principle that a trademark must identify the source of the goods rather than describe those goods[11]. Section 9(1)(b) also excludes marks containing solely signs or indications which in trade serve to designate the nature, quality, purpose or other characteristics of goods or services - an obvious difficulties for pharmaceutical names based on active ingredient (e.g. ZIPOX from cefpodoxime) or classes of therapy[12].

However, the proviso to Section 9(1) provides an exception for acquired distinctiveness (secondary meaning) allowing registration if the mark 'had acquired distinctive character as a result of the use made of it', or if it is a well-known trade mark prior to the date of application[13]. This exception allows pharmaceutical companies to take descriptive or generic terms and turn them into protectable trademarks by using them exclusively for a period of time and by having them recognized by the consumers. This exception is very similar to US Lanham Act S2(f) requiring

[9]Trade Marks Act 1999, ss 2(zg), 29(4)–(6)
[10]Trade Marks Act 1999, s 9(1)
[11] Ibid
[12] ibid
[13] ibid

marks which have become "distinctive of the applicant's goods in commerce," usually proven by five years of primarily exclusive use, and EU Regulation Art 7(3) requiring proof that the mark "has become distinctive through use" throughout Member States.

Section 13 of that Act provides an absolute prohibition on the registration of an International Non-Proprietary Name (INN) designated by the WHO and excludes from registration any word that is, or includes a chemical element or INN or imitation thereof. This measure helps to keep certain key pharmaceutical terms in the public domain so generic manufacturers and healthcare providers can refer to products by the globally recognized names. However, some INNs have not received the notification from the Indian registry and as a result, the marks derived from the INN have been temporarily registered before the prohibition was enforced.

B. Judicial Interpretation

Supreme Court Guidance

In Cadila Health Care v. In Cadila Pharmaceuticals, the Court ruled that "drugs are poisons, not sweets", and required more rigorous similarity tests for those medicinal trademarks when the resulting confusion can be fatal[14]. The ruling reflected the realities of the Indian market - multiple languages, high illiteracy, and vulnerable patients - which warrant greater standards of protection than English law precedent. Professional intermediaries cannot, the Court recognized, "provide an absolute assurance" of preventing confusion, and any doubt must be afforded the status of genuine trademark[15].

In N.R. Dongre v. Whirlpool, the Court stated that prior use, transnational reputation and international recognition can give rise to distinctiveness irrespective of substantial local sales, opening the door for international pharmaceutical brands to get protection in India on the strength of international goodwill[16]. Dongre is far from pharmaceutical-specific but provides key principles regarding acquired distinctiveness by means of transnational reputation[17].

[14] Cadila Health Care Ltd v Cadila Pharmaceutical Ltd 2001 (2) PTC 541 (SC)
[15] Blansett Pharmaceutical Co v Carmick Labs 1473 TTAB 1993 (US)
[16] N R Dongre & Ors v Whirlpool Corp & Anr (1996) 5 SCC 714
[17] ibid

High Court Evolution

The Delhi high court decisions have given useful guidelines for pharmaceutical acquired distinctiveness. In Mankind Pharma v. Novakind BioSciences: Despite possessing a 30-year proprietary right to use the suffix "KIND", a common word became a source identifier through extensive market association and public health imperatives which justified the request for interim injunctive relief. The court highlighted the importance of product differentiation in this space by noting pharmacists' and doctors' trust in the manufacturer's reputation in street-level clinics[18].

The FDC Limited v. Nilrise Pharmaceuticals, Nilrise Pharmaceuticals extended these principles to marks derived from API, finding that ZIPOD and ZOYPOD were confusingly similar even though POD was generic - "ZIPOD" was distinctive on the basis of use, and because consumers recognized it as such. The Court disapproved of arguments that a Schedule H prescription status meant there was no risk of confusion and repeated that there is always a public injury when there is pharmaceutical confusion[19].

The Doctrine of Secondary Meaning in Pharmaceutical Context

A. Conceptual Foundation

Secondary meaning, or acquired distinctiveness, permits inherently non-distinctive marks to serve as protectable marks by proving that the relevant public had come to identify them as originating from a single source rather than from their term of description. For instance, the mark KIND gained distinctiveness for Mankind Pharma because of its use over the years, and the mark ZIPOD gained distinctiveness over the generic mark POD due to the use of the mark over the years and the association of the mark with the customer.

The continuum between inherent and acquired distinctiveness means that marks fall along a spectrum of distinctiveness. Fanciful marks (e.g., "KODAK") are inherently distinctive marks and no evidence of secondary meaning is needed. Descriptive or generic marks have to be shown to have acquired distinctiveness (that consumers associate them with the relevant goods or services). This is shown in the PernodFDC case: while "ZIPOD" was not inherently distinctive, it was found to have acquired trademark status because the trade mark had come to be associated with FDC

[18] Mankind Pharma Ltd v Novakind BioSciences Pvt Ltd FAO(OS)(COMM) 212/2023 (Delhi HC)
[19] FDC Ltd v Nilrise Pharm Pvt Ltd CS(COMM) 427/2022 (Delhi HC)

Limited's antibiotic in the minds of the purchasing public. Courts need something like a clear showing that consumers recognize the mark as a brand rather than a description of the product[20].

B. Factors to evaluate with Drugs of Particular Concern

Pharmaceutical trademarks are subject to heightened standards because of the implications for public health. In Cadila pharmaceuticals the Supreme Court stated that "drugs are poisons and not sweets" and imposed a higher burden of proof for secondary meaning and lower standard of confusion risk. The decision stressed that such pharmaceutical confusion is not an economic nuisance but a matter of life and death and that such marks therefore merit legitimate trademark protection on the grounds of true or special marks.

The risks associated with confusion are not mitigated by professional intermediaries[21]. Doctors and pharmacists, in other words - and courts have acknowledged that when hundreds of different products of similar name are available, and drug reps push them, mistakes are made. Blansett v. Georgia, 30 U.S. 56, 75 U.S. 470 (1865), 77 U.S. 293 (1869), stemmed from those. Carmick Laboratories believed confusion can even happen with prescription drugs dispensed by professionals[22]. Indian courts, citing Blansett, have adopted this reasoning, stating that street-level apothecary pharmacists may not possess trademark sophistication and may be fooled on the basis of brand resemblance[23].

In addition, special attention should be paid to the issues of consumer vulnerability and consumer literacy. Cadila Pharmaceuticals highlighted India's linguistic diversity, high illiteracy and frailty of patients necessitating predominant source identifiers to avoid harm. In the hospital, requests may be verbally presented when they are stressful, and the elderly or illiterate may not be able to discriminate between different brands subtly. Empirical studies have proven the coexistence of low health literacy and brand confusion, which emphasizes the importance of clear trademarks for pharmaceuticals.

[20] ibid
[21] Blansett Pharmaceutical Co v Carmick Labs 1473 TTAB 1993 (US)
[22] ibid
[23] ibid

Conditions to determine Acquired Distinctiveness.

A. Continuity of Use and Length of Use.

Courts insist that to prove secondary meaning the use must be long term not intermittent. Marico Limited v. Agro Tech Foods believed that to acquire distinctiveness marks would require many years, and cautioned that first comers should not seek to capture the descriptive expressions of a product to which they have no real association with consumers. The court indicated that only evidence of distinctiveness can be negative as against its own use until the date of registration and that no evidence of distinctiveness may subsequently be given to have original descriptiveness cured retroactively.

This requirement is even more extended in pharmaceuticals. As the Delhi High Court noted thirty years of exclusive use of the suffix KIND in Mankind Pharma, acquiring distinctiveness in this field takes rigor over time[24].

B. Market Awareness and Consumer Identification.

Primary evidence of consumer association includes consumer surveys, market research, sales and advertising expenditure. To show that patients and professional intermediaries associate the mark with one source, surveys should be required.

The Bennett Coleman v. The case of Arg Outlier Media showed that continuous exclusive use has been used successfully since 2006 to provide the association of NEWSHOUR with plaintiffs news program despite its generic connotation[25].

C. Recognition and Acceptance of Trade.

Objective evidence consists of listing products in a formulary, professional publications, and conference presentations that recognize products by brand name and recognition of brand quality in industry awards. This is recognition that marks are useful source identifiers on the trade.

D. Geographic Reach and Penetration.

The distinctiveness claims must take into account regional diversity of India and disparities in accessing healthcare. The courts evaluate the breadth of market penetration in states as well as

[24] Mankind Pharma Ltd v Novakind BioSciences Pvt Ltd FAO(OS)(COMM) 212/2023 (Delhi HC)
[25] Bennett Coleman & Co Ltd v Arg Outlier Media Pvt Ltd & Ors CS(COMM) 434/2017 (Delhi HC)

depth in the urban and rural markets. Cadila Pharmaceuticals had paid particular attention to considering linguistic, literacy and infrastructure disparities in market penetration evidence. Whereas N.R. Dongre permits transborder reputation to help in substantiating distinctiveness, pharmaceutical companies typically need established domestic recognition, particularly of vulnerable classes of patients, to meet public health-motivated distinctiveness provisions[26].

Case Study Analysis On Acquiring Distinctiveness

A. SFX KIND Mankind Pharma v. Novakind BioSciences[27]

Facts and Background:

Mankind Pharma, one of the leading pharmaceutical companies in India, claimed that Novakind BioSciences violated its family of KIND trademarks by using the suffix KIND in the names of its drugs. Although the suffix KIND is a common word in the English language, Mankind Pharma had shown exclusive and uninterrupted use of the suffix in more than 30 product names since the 1990s in addition to heavy marketing and professional recommendation.

Court Rationale:

Delhi High court passed interim injunction on the ground that secondary meaning had been acquired on KIND as a source identifier in the pharmaceutical market through extensive exclusive use. As the court stressed, pharmaceutical trademarks need extra protection that supports the drugs are poisons, not sweets doctrine[28]. You see, it realized that a mere misunderstanding between the doctors or dispensing chemists, who are usually pressed by a scarcity of resources and thus have to work with limited ones, could threaten patient safety.

Evidence:

All evidence was relevant to the issue, including the packaging using the KIND suffix, promotion and use in the formulary with only Mankind Pharma products listed under the KIND marks for decades. The court determined that professional intermediaries getting persuaded by the brand

[26] N R Dongre & Ors v Whirlpool Corp & Anr (1996) 5 SCC 714
[27] Mankind Pharma Ltd v Novakind BioSciences Pvt Ltd FAO(OS)(COMM) 212/2023 (Delhi HC)
[28] Cadila Health Care Ltd v Cadila Pharmaceutical Ltd 2001 (2) PTC 541 (SC)

reputation could be cheated to deliver Novakinds products as Mankind Pharma products because they shared the suffix.

Public Health Consequences: This decision was explicit that pharmaceutical confusion is not about financial loss and that it has direct health implications all of its own. Hygienic prescribing and pharmaceutical stock-outs have directed the court's attention to the importance of clear trademarks in the context of patient safety.

B. "ZIPOD" vs. "ZOYPOD"- FDC Limited v. Nilrise Pharmaceuticals[29]

Phonetic Similarity and Consumer Confusion: Since 2004 FDC Limited enjoyed exclusive market presence and professional awareness of its ZIPOD (antibiotic cefpodoxime proxetil). The high phonetic and visual similarity with Nilrise use of ZOYPOD created the risk of dispensing and prescription confusion.

Prior Use and Market Presence: Even though they were generic, the court determined that FDC had gained distinctiveness over the course of its extensive use and that prescription-only status did not eliminate the risk of confusion as Nilrise exhibited before the court.

Non-distinctive API Argument: Knowing Nilrise registered the mark ZOYPOD for the device-mark, the court denied the argument that this estoppel prevented any type of genericness.

Challenges and Obstacles

Although pharmaceutical trademarks are protected through statutory means of acquired distinctiveness, significant hurdles that the industry as a whole faces could change descriptive and/or generic terms into protected marks.

A. Inherent barriers to the Pharmaceutical Industry.

Traditionally pharmaceutical nomenclature is based either on active pharmaceutical ingredients (APIs) or therapeutic indications and makes use of descriptive names in their own right. The naming conventions based on API derivations, like suffixes ending in -cillin, -mab, or -tane, have only technical uses in as much as they do not carry out the necessary trademark functions of source

[29] FDC Ltd v Nilrise Pharm Pvt Ltd CS(COMM) 427/2022 (Delhi HC)

identification. Section 13 of Trade Marks Act does not allow for registration of INNs declared by WHO and prohibiting marks identical or deceptively similar to generic medicinal names ensures an absolute public health protection, that the essential medical language remains in the public domain[30].

B. Evidentiary Challenges

The exception to Section 9(1) puts the onus of proving acquired distinctiveness firmly on applicants, who must establish that prior to application date, the relevant public exclusively used a descriptive mark to identify just one source of supply[31].The survey-based expression of consumer perception requires a precise approach to capture brand recognition among professional intermediaries and end users, and research studies are required to demonstrate that even vulnerable patients (who are likely to be older or illiterate) recognizes the mark as a brand and not a generic term. Even the expert-patient divide complicates evidence, where perhaps a professional term is unfamiliar to a patient and thus two strands of evidence may be required. Courts take a very dim view of survey design, sample size and question wording and will tend to find evidence unconvincing if it fails to isolate the alleged mark and either commercial or family branding influence. In turn, to gather permissible evidence of the secondary meaning, the following are required: a thorough market research and report on professional recommendation, formulary and prescription data.

C. Barriers of a legal and competitive nature.

Beyond that, there are multiple other people filing for the same components of invention, the same API origin, and treatment suffix, thereby depleting the brand allure of each mark to the point of saturation on the pharmaceutical markets. Descriptiveness and likelihood of confusion are two common issues in competitor opposition proceedings under Section 9 or Section 11 that have extended registration timelines and added to legal costs. First refusals on descriptive marks are often made with registries, where applicants must compose lengthy books of evidence, and hearings must occur. Furthermore, frequent use of similar naming schemes by generic

[31] Trade Marks Act 1999, s 9(1)

manufacturers appears to increase the number of oppositions and post grant revocation cases which, in turn, also makes it harder for distinctiveness to be achieved.

D. Generic API Cases

There have been numerous unsuccessful efforts to obtain API-derived marks without evidence of compelling secondary meaning. In Sun Pharmaceutical v. Hetero Healthcare (LETERO/LETROZ), the name Hetero wanted to give to the mark letrozole was not registered despite many years of commercial association due to the fact that the name remained descriptive of the API letrozole and it had no reasonable consumer association[32]. The controller affirmed the denial of Section 9(1) (b), in that evidence of use and sales viewed as not sufficient evidence that the public identified "LETROZ" as a source identifier. In the same way, in AstraZeneca UK v. Orchid Chemicals (MEROMER/MERONEM) A similarity test applied by the Delhi High Court to protect the name of medicinal products by its strictness in such cases and deeming it life-threatening in the doctrine of drugs are poisons barred Orchid efforts to apply the name MEROMER to its products, in which it had already registered the name MERoneM (meropenem)[33]. Both cases illustrate that:

- INN marks are currently being scrutinised more closely and are presumed to be descriptive or generic marks.
- The acquired distinctiveness exception cannot be met by mere length of use or sales unless there is evidence of any change in public perception.
- As far as the registration of marks derived from APIs is concerned, without strong supporting grounds of secondary meaning, the potential for confusion on the part of professional intermediaries complicates the issue further.

Drug product industries need not, but should refrain from using an API-based nomenclature, or at least accumulate prior and extensive consumer and professional relationships that can dismantle the presumptions of descriptiveness.

[32] Sun Pharmaceutical v Hetero Healthcare (LETERO/LETROZ)
[33] AstraZeneca UK Ltd v Orchid Chemicals & Pharmaceuticals Ltd CS(COMM) 004497/2014 (Delhi HC)

Conclusion

The fine balance that exists between safeguarding the public interest in generic terms for medical purposes, and promoting the interest of the true commercial goodwill interests, is the heart of India's pharmaceutical trademark jurisprudence. The Trade Marks Act 1999 provides strict absolute grounds for refusal - non-distinctive and descriptive marks: Section 9(1) and use of international non proprietary names (INNs) declared by WHO are covered by Section 13 to protect public health by securing generic drug names to all manufacturers. At the same time, the proviso to Sec. 9(1) acknowledges that while marks may be initially descriptive or generic, with use and consumer association, this may infuse distinctiveness into the mark which created sufficient opportunity for pharma companies to obtain trademark protection.

Through judicial interpretation, much of this statutory system has been refined. In Cadila Health Care v. Citing the fact that "drugs are poisons, not sweets," the Supreme Court in Cadila Pharmaceuticals, struck a balance requiring higher similarity tests and lower confusion standards for medicated marks because of their potentially life-threatening stakes[34]. While stressing that the realities of the Indian market - high level of illiteracy, linguistic diversity and dependence on resource-scarce practitioners - justified a higher degree of protection than was necessary in the English context, the Court highlighted that this would require greater stringency in the words chosen. N.R. Dongre v. Whirlpool further developed acquired distinctiveness doctrine by allowing transborder reputation and international goodwill to be relied upon in support of domestic distinctiveness claims, to the benefit of multi-national pharmaceutical companies with designated international brands[35].

Recent judgments of the High Court have put flesh on these bones. Mankind Pharma v. To establish the trade mark's uniqueness in its identity, Novokind BioSciences argued that three decades of use of the trade mark suffix was more than sufficient to convert a general English word into an indicator of trade origin in the pharmaceuticals trade and entitled to an immediate injunctive relief order on the basis of way confusion risk for the public and patients. Likewise, FDC Limited

[34] Cadila Health Care Ltd v Cadila Pharmaceutical Ltd 2001 (2) PTC 541 (SC)
[35] N R Dongre & Ors v Whirlpool Corp & Anr (1996) 5 SCC 714

v. Nilrise Pharmaceuticals, the maker of generics and generic equivalents of zigris, asserted that marks derived from API combinations like "ZIPOD" can become distinctive if their continued exclusive use and professional promotion give rise to consumer association despite contrary arguments relating to generic "POD" use and Schedule H prescription status[36].

Secondary meaning is the doctrinal mainstay on which the protection recognised for descriptive and generic marks stands. Courts: These require clear proof that a mark, before filing, was known to the public (patients, doctors, pharmacists and institutional purchasers) as referring to one source and only one source. The level of proof required is high: to show that even vulnerable patient populations connect the mark with a specific manufacturer, applicants will need to marshal a fighting force of consumer surveys, market research, sales and marketing data, and professional honors.

Generic API cases in nature like Sun Pharma v. Hetero Healthcare B.V.k.a. LETERO/LETROZ and AstraZeneca v Orchid Chemicals[37] (MEROMER/MERONEM) - Int'l. Reg'l. App'l. No. 008305-1209 (S dengan 008306-1207) - Without an arguable connection to consumers, API-derived marks are still descriptively barred, even after many years of use, at least according to the Patents Appeals Court[38].

Looking ahead however, the growing importance of new forms of pharmaceutical distribution channels - digital medicine platforms and e-pharmacies - will increase the prominence and risks associated with pharmaceutical trademarks. For the purpose of building patient trust, marks need to be effective quality and safety indicators on a professional and consumer level. When properly applied, the acquired distinctiveness doctrine balances the need for public health with the need for innovation: words that are descriptive and generic are still available for free public use unless they are converted through exclusive use into trustworthy source identifiers.

[36] FDC Ltd v Nilrise Pharm Pvt Ltd CS(COMM) 427/2022 (Delhi HC)
[37] AstraZeneca UK Ltd v Orchid Chemicals & Pharmaceuticals Ltd CS(COMM) 004497/2014 (Delhi HC)
[38] Sun Pharmaceutical v Hetero Healthcare (LETERO/LETROZ)

While generic and descriptive marks face significant statutory and evidentiary challenges, with proper long-term, exclusive use, strategic brand development, and thorough documentation and reporting of consumers and professional recognition, they do rise to prominence as pharmaceutical trademarks. The combined influence of legislative protection (as well as robust judicature), disciplined evidentiary practices means that only marks that actually serve as source identifiers receive protection - so that competition for much-needed medicines is maintained while fostering brand integrity and patient safety.

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32. *Wyeth Holdings Corp & Anr v Sun Pharm Indus* 2004 (28) PTC 423 (Bombay HC)
33. *FDC Ltd v Nilrise Pharm Pvt Ltd* CS(COMM) 427/2022 (Delhi HC)
34. *Amazon Seller Services Pvt Ltd v Amazonbuys.In & Ors* CS(COMM) 364/2022 (Delhi HC)
35. *Blansett Pharmaceutical Co v Carmick Labs* 207 USPQ 470 (TTAB 1980)
36. *Schering Corp v Alza Corp* 207 USPQ 293 (TTAB 1980)