



TWO ROUTES TO THE SAME ANSWER – THE GENERICNESS PLEA IN NOVIETS V. NOVARTIS

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When a defendant in a trademark suit argues that a common element of its mark is generic to the trade, the response a court gives to that argument matters as much as the outcome. In ***Noviets Pharma v. Novartis AG (FAO(OS) (COMM) 143/2026***, the defendants' genericness plea over the prefix "NOV" was met first with a finding of estoppel: Noviets, having itself sought registration of "NOVIETS," was held disentitled to argue that "NOV" was common to trade. This piece asks whether that response was necessary, when an orthodox evidentiary route was available and had in fact been argued.

The dispute concerns two pharmaceutical marks: "NOVARTIS," registered since 1996, and "NOVIETS," used by a set of interconnected entities dealing in pharmaceutical and veterinary products since around 2017–18. Novartis sought and obtained an interim injunction from the Single Judge in CS(COMM) 218/2024. Noviets appealed, and the Division bench dismissed the appeal, finding no perversity in the Single Judge's exercise of discretion under the Wander standard. The underlying suit remains pending trial before the Single Judge.

The plea was that "NOV" is derived from "Nova" or "New" and is common to the pharmaceutical trade. The Single Judge held the defendants' own registration application fatal to the plea: having applied to register "NOVIETS," they could not contend that the prefix was common to trade, a party being unable to approbate and reprobate.

Analysis

The difficulty is that seeking the registration of a composite mark and arguing that one element within it is common to trade are not, on their own, inconsistent positions. Section 17(2) of the Act exists precisely because composite marks routinely contain such elements: registration of the whole confers no exclusive right over a part that is not separately registered or independently distinctive. A defendant who applied to register "NOVIETS" is not thereby representing that "NOV" alone is distinctive, only that the composite, taken as a whole, is capable of distinguishing its goods. A plea of genericness and a registration application therefore address different legal questions. Treating them as mutually destructive assumes a statutory inconsistency that does not exist.

The authorities show the difficulty runs deeper. In ***Automatic Electric v. RK Dhawan*** the estoppel plea concerned 'DIMMER' within the defendant's own "DIMMER DOT" and in ***Ishi Khosla v. Anil Aggarwal***, it concerned "Whole Foods" within the "DIET WHOLE FOODS."

Both authorities applied bar to a component and no to the whole mark. The single judge was following the settled principles of law, but so applied, the rule reaches exactly what Section 17(2) says a composite registration does not claim and leaves the defence available only to those who have filed nothing at all.

Section 17(2) sits downstream of that evidentiary question rather than in place of it: it tells us what follows if NOV is shown to be common to the trade, not whether it is. The Division Bench, for its part, did not adopt the estoppel reasoning. At paragraph 36 it rejected the plea on the facts – use since 1996, turnover of INR 3,672 million – while correctly noting that Section 17 “protects the registered mark as a whole and limits exclusivity over individual components unless separately protected.” and then sustained a finding built entirely on a shared component i.e., “NOV”. The comparison was made by comparing NOV-AR-TIS and NOV-IE-TS instead of a holistic approach.

In an intriguing analytical move, the Division Bench adroitly navigates existing pharmaceutical trademark jurisprudence by upholding a heightened, public-safety-oriented standard of confusion typically reserved for medicinal products. Specifically, paragraph 42 distinguishes landmark precedents like **Cadila** and **Intas** on the grounds that those disputes concerned drug brand names derived from active ingredients, rather than competing corporate marks. This dual approach exposes a critical doctrinal tension: to what extent should the strict health-risk threshold developed for look-alike or sound-alike medicines govern disputes exclusively involving corporate trade names operating within niche B2B channels?

Conclusion

None of this is to suggest the outcome was wrong. Given Novartis's prior and bona fide use, its established reputation and goodwill, the genuine visual and phonetic closeness between "NOVARTIS" and "NOVIETS," and the absence of any explanation for how a coined mark so close to it was arrived at, the injunction was likely the right result on the facts. The argument here is narrower, testing the plea against what composite registration concedes, rather than deflecting it through estoppel, would have made the reasoning simpler and more self-sufficient, not different in outcome. The plea failed for want of evidence, and saying so would have been enough. Estoppel answered a question narrower than the one available and left behind a proposition wider than the facts required. ot when they merely obey.