DISTINCTIVENESS AND LIKELIHOOD OF CONFUSION IN PHARMACEUTICAL TRADEMARKS: CRITICAL ANALYSIS OF SECTION 9(1) AND 11(1) OF THE TRADE MARKS ACT, 1999

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ABSTRACT

Pharmaceutical trademarks raise concerns that differ from those associated with ordinary consumer products. Where two pharmaceutical marks are too similar, the confusion may extend beyond the marketplace and result in medication errors that endanger patients. This paper examines the issue under Sections 9(1) and 11(1) of the Trade Marks Act, 1999, with attention to distinctiveness and the likelihood of confusion between competing marks. The paper sets out the separate purposes of the two provisions. Section 9(1) concerns the absolute grounds for refusal, including the absence of distinctive character, while Section 11(1) concerns the relative grounds arising from similarity to an earlier mark. It then considers how questions of distinctiveness, deceptive similarity and likelihood of confusion arise together in pharmaceutical disputes. The discussion addresses visually and phonetically similar marks, particularly Look-Alike/Sound-Alike (LASA) names, and the reasons pharmaceutical products call for closer scrutiny than other goods. *Cadila Healthcare Ltd. v. Cadila Pharmaceuticals Ltd.*, forms a significant portion of the analysis focusing on the concept of imperfect recollection when assessing confusion between pharmaceutical marks. It also evaluates the role of doctors, physicians and consumers while regulating fair competition and public interest. Even though Section 9(1) and 11(1) showcases different grounds for recusal but most of their traits appear to be closely interconnected with one other. As a result, a content specific approach would be deemed necessary to protect the rights of trademark holders without compromising consumer safety.

Keywords: Pharmaceutical Trademarks; Distinctiveness; Likelihood of Confusion; Section 9(1); Section 11(1).

INTRODUCTION

A trademark is considered to be any form of word, symbolic representation, and combination of letters that distinguishes an organisation from its competitors and thereby helps in building a recognition in the market. The foremost origin of the existence of a trademark can be traced back to the prehistoric era to that of the middle ages (guilds) and the modern era of Industrial Revolution[1]. For instance, early cave paintings which the then appeared and classified as basic identifiable symbols on property and livestock were prevalent 15000 years ago. In the middle ages and modern era, it started with marks being discovered in various houses representing a family, kin to identify a specific manufacturer[2]. Therefore, the PARIS Convention 1883 became the world's first trademark law for cross border protections followed by the Trade Mark Registration Act 1875 of UK.

However in India, trademarks which are registered by pharmacies accounts for most of the trademark registrations and pharmaceutical exports (11th globally), thereby making it one of the most technologically distinctive sectors by reassuring the availability of essential medications and utility at considerable prices for the welfare of society[3]. Most importantly, the Pharmaceutical Department of the Government of India had also implemented a scheme known as the Pradhan Mantri Bhartiya Janaushadhi Pariyojana (PMBJP)[4], with an objective to provide quality medications to the society at negotiable prices[5]. Therefore, pharmaceutical abbreviations in India are widely controlled mainly by the trade Marks Act, 1999 and the Drugs and Cosmetics Act, 1940 which lays emphasis on the registration and marketing of the trademark by imposing a penalty on the production, sale, storage, display or distribution of drugs without a valid license or in violations to conditions attached to such a license. However under Section 13 of the Trade Mark Act, 1999; such registrations should be inconsistent with that of the generic names given by the INN (International Non Proprietary Names) and published by the WHO[6]. Thereafter, trademark organisations generally prevent themselves from accepting those applications which consists of names of medications deceptively similar

[1] World Intell. Prop. Org., *A History of Trademarks: From the Ancient World to the 19th Century*, WIPOD – International Trademark System Talks, .
[2] Ibid
[3] Press Information Bureau, *India's Pharmaceuticals in Global Healthcare: "From Domestic Production to International Markets"* (Mar. 21, 2026), https://www.pib.gov.in/PressReleasePage.aspx?PRID=2243248&reg=48&lang=2
[4] Pradhan Mantri Bhartiya Janaushadhi Pariyojana, https://janaushadhi.gov.in/.
[5] Ibid
[6] Abhijeet Kumar, *Prescribing Trade Marks: Regulations Around Naming Pharmaceuticals in India*, 21 J. Intell. Prop. L. & Prac. 326 (2026), https://doi.org/10.1093/jiplp/jpag047

to those prescribed by INN in an order to prevent confusion. As a result of such circumstance, the World Health Assembly had initiated resolution 46; 19; thereby issuing regulations to WHO member states for preventing the misuse of INN along with the restrictions imposed by Section 13 of the Trade Mark Act, 1999 to do so.

However, various problems had existed between the application of Section 9(1) and 11 (1) of the Trade Marks Act, 1999 due to the existence of their inconsistent and overlapping concepts of deception, distinctiveness and likelihood of confusion, making applicant and examiners to blur or misalign themselves between the absolute and relative conditions for refusal[7]. Therefore, such a kind of deception mostly depends upon the nature of the mark obtained which is the main triggering factor to make deception or not.

LEGAL FRAMEWORK GOVERNING TRADEMARK

The first and the foremost convention which was laid for the protection of trademarks for preserving brand identity was the Paris Convention, 1883 over an international level while the term 'trademark' was first introduced in the TRIPS Agreement, 1994 which elaborated on the very concept of trademark and also stated it's use i.e. to be able to distinguish between the goods and services of one undertaking with that of the other[8]. However, the situation in India is different. In India, the foremost origin of trademarks had evolved from *Kautilya's Arthashastra* which had dealt with safeguarding innovation and to promote fair market competition before getting it compiled during the British colonial period which demanded for a comprehensive codified trademark regulation especially during the nascent stage of industrialisation[9]. Therefore, most of the cases of infringement of trademark was dealt by the application of Section 54 of the Specific Relief Act, 1877; granting perpetual injunctions whenever there is an evasion of an obligation till before the implementation of the Indian Registration Act, 1908 and the Indian Trademark Act, 1940[10].

However the registration of trademark for pharmaceutical and medications require greater care in production as mere confusion between medicinal names and compounds can lead to fatal

[7] Himanshu Sharma, Confusion Among Confusions, Mondaq (Nov. 16, 2015), https://www.mondaq.com/india/trademark/443686/confusion-among-confusions.
[8] Harshith Sai Boddu, *From Marks of Origin to Symbols of Power: The Exhaustive Evolution and Expansion of Trademark Law* (Mar. 27, 2026), https://ssrn.com/abstract=6480562.
[9] Ibid
[10] Ibid

health consequences. Though proper regulations for registration of trademarks exist such as the Drugs and Cosmetic Act and the Trade Marks Act, 1999 however their role in governing pharmaceutical trademark seem to overlap since both of the regulation don't work effectively, thereby leading to the formation of confusing brand terminologies and medicinal names such as "Dopamine / Dobutamine" or "Losex / Lasix"[11]. Therefore, the case of Cadila Healthcare Limited vs. Cadila Pharmaceuticals Limited (2001)[12] had laid a more strctuer approach in considering deceptive similarity in pharmaceutical names due to its life risky medical errors. As a result, the Supreme Court in this case had showcased that confusion in medical names cannot be equated at par with generic consumer goods names due to its dangerous consequences[13].

PHARMACEUTICAL TRADEMARK CONFUSION: THE LASA PROBLEM

Another major cause of significant concern in the pharmaceutical industry which leads to adoption of medication errors due to confusion is the prevalence of Look Alike Sound – Alike (LASA) medicines. These are medicines which have certain similar character traits such as within their chemical composition and therapeutic modifications and have remarkable similarity in their names both visual and phonetic[14]. They are primarily overlooked by professionals working in the medical sector due to India's demanding pharmaceutical supplies and numerous medicinal formations / drugs, to treat varied illnesses. Similarly, in the trademark dispute of Sun Pharmaceuticals vs. Cipla Ltd[15] involving the confusion between the marks 'TAMARIN' AND 'TAMARIT', the Delhi High Court had highlighted upon the importance of life healing drugs and also ensured that producers and trademark organisations should have proper mechanism in an order to reduce the scope for error in production of such kind of medications, since such medications often get consumed by people who are illiterate and don't have proper access to the nature and composition of drugs[16].

[11] Bhagavathi M. & Jeyamurugan S., *When Similarity Becomes Fatal: Trademark Infringement and Patient Safety in the Indian Pharmaceutical Industry*, 10 Int'l J. Novel Res. & Dev. 388 (2025).
[12] Cadila Healthcare Ltd. v. Cadila Pharmaceuticals Ltd., (2001) 5 SCC 73 (India).
[13] Ibid
[14] Bhagavathi M. & Jeyamurugan S., *When Similarity Becomes Fatal: Trademark Infringement and Patient Safety in the Indian Pharmaceutical Industry*, 10 Int'l J. Novel Res. & Dev. 388 (2025).
[15] *Sun Pharmaceuticals Industries Ltd. v. Cipla Ltd.*, 2009 (39) PTC 347 (Del.).
[16] Bhagavathi M. & Jeyamurugan S., *When Similarity Becomes Fatal: Trademark Infringement and Patient Safety in the Indian Pharmaceutical Industry*, 10 Int'l J. Novel Res. & Dev. 388 (2025).

DISTINCTIVENESS OF PHARMACEUTICAL TRADEMARKS UNDER SECTION 9(1) OF THE TRADE MARK ACT, 1999

One of the most fundamental principle which makes trademark protection special is its distinctiveness. Therefore, a trademark lacks its validity when it is not able to differentiate between any two marks or service of one brand with that of the other. The doctrine of distinctiveness in trademark protection is essentially important in trademark protection for securing the identity of one's business and building reputation in the market. Therefore, distinctiveness generally focuses on the source or origin of the registered trademark by enabling consumers to verify the quality of the mark or product before purchasing while it protects traders from facing infringement proceedings, thereby guiding them to use cautiously certain specific wordings in an order constitute their goods or service[17].

Therefore, to make their goods or services distinctive, trademark owners must ensure that their marks comply with the prescribed legal requirements and do not fall within the grounds for refusal of registration. As a result, both the grounds under Section 9(1) and 11 (1) of the Trade Mark Act, 1999 consists of different modes in which the word "confusion" can be interpreted in determining proper pharmacovigilance. In this case, the deception or confusion may arise from the inherent nature or of some kind of dilemma existing within the mark kept for registration[18]. For instance confusion may arise in one aspect, when there is some kind of substance inherent within the mark itself but it does not match or have any connection with that of any other mark. Therefore, if a mark contains of a generic description mentioned on the label as "pure ghee" but the mark is applied for "edible oil", then such a mark can be refused on the grounds of deception or confusion[19]. As a result, the Registrar of Trade Marks has the exclusive right to cancel or accept the registration of trademarks if he finds that there exists certain form of confusion (both phonetic and visual) among the purchasing public. In such a instance, the burden of proof lies on the applicant to showcase that their mark is justified and is capable of being registered without running into such a ground of refusal. Though sufficient cases are not available to test the amount of confusion, however the Supreme Court in the case of National Bell Co. vs. Metal Goods Manufacturing Co.[20], highlighted the importance of distinctiveness

[17] Harshith Sai Boddu, *From Marks of Origin to Symbols of Power: The Exhaustive Evolution and Expansion of Trademark Law* (Mar. 27, 2026), https://doi.org/10.2139/ssrn.6480562
[18] Himanshu Sharma, Confusion Among Confusions, Mondaq (Nov. 16, 2015), https://www.mondaq.com/india/trademark/443686/confusion-among-confusions.
[19] Ibid
[20] *National Bell Co. v. Metal Goods Manufacturing Co.*, (1970) 3 SCC 665 (India).

in trademark protection and also held a mark previously used in trade could not be identified as a distinctive source locator.

LIKELIHOOD OF CONFUSION IN PHARMACEUTICAL TRADEMARKS UNDER SECTION 11(1)

MEANING AND SCOPE OF LIKELIHOOD OF CONFUSION

Under the Trade Marks Act, 1999, the law protects brand identity by refusing the registration of new brand through two rules, first one is absolute grounds for refusal under Section 9 and second one is relative grounds for refusal under Section 11 of TMA Act, 1999[21]. The concept of likelihood of confusion is the main reason that prevents the registration of any new trademark under Section 11(1)[22]. This section deal with the relative grounds for refusal of registration, as it states that trade mark shall not be registered if under section 11(1)(a)[23] "its identity with an earlier trade mark and similarity of goods or services covered by the trade mark", or under section 11(1)(b)[24] "its similarity to an earlier trade mark and the identity or similarity of the goods or services covered by the trade mark, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark."

The trademark act generally decides the likelihood of confusion from the perspective of an "a man of average intelligence and imperfect recollection"[25], it means deciding the likelihood of confusion based on how a normal customer remembers the original brand. The scope of this provision is generally effective when it applies to companies that produce and sell ordinary goods or commercial goods as this provision prevent unfair trade and provide trademark safeguard to the original brand, but when it comes to the application of this provision on pharmaceutical sector the effect of likelihood of confusion between the pharmaceutical products has much more serious impact on the consumer than commercial product, the confusion by consumer on pharmaceutical product can have direct effect on public health and patient safety where the result can be sometime death or serious illness on consumers.

[21] The Trade Marks Act, 1999, §§ 9, 11, No. 47, Acts of Parliament, 1999 (India).
[22] The Trade Marks Act, 1999, § 11(1), No. 47, Acts of Parliament, 1999 (India)
[23] The Trade Marks Act, 1999, § 11(1)(a), No. 47, Acts of Parliament, 1999 (India)
[24] The Trade Marks Act, 1999, § 11(1)(b), No. 47, Acts of Parliament, 1999 (India)
[25] Amritdhara Pharmacy v. Satya Deo Gupta, A.I.R. 1963 S.C. 449, (Note: This is the landmark Supreme Court case that established the "imperfect recollection" test in India)

THE CONCEPT OF DECEPTIVE SIMILARITY IN PHARMACEUTICAL TRADEMARKS

Deceptive Similarity is defined under Section 2(1)(h) of the Trade Marks Act, 1999[26], it state that "A mark shall be deemed to be deceptively similar to another mark if it so nearly resembles that other mark as to be likely to deceive or cause confusion", the court determine the deceptive similarity between any mark from the perspective of an "a man of average intelligence and imperfect recollection", here the court does not compare the mark side by side to spot every difference but it is decided on basis of overall impression between two marks that is can confuse any ordinary consumer to believe that both mark are linked or belongs to same company. This provides a crucial protection against fraud and commercial exploiting to commercial trademark, but when it comes to in pharmaceutical sector this provision must apply in stricter manner due to its serious effect on consumer wellbeing, here the court adopts a zero-tolerance policy for pharmaceutical product and medicines.

PHONETIC, VISUAL AND STRUCTURAL SIMILARITIES BETWEEN PHARMACEUTICAL MARKS

To determine the likelihood of confusion and similarity between two marks the Supreme Court of India in the landmark case of Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.[27] established the legal standard for phonetic, visual, and structural similarities that compare two pharmaceutical marks on three levels, first is phonetic similarity which means how similar they sound, in clinical and retail medical shop the medication generally communicated orally or trough telephone during emergency, so if two medicine name sounds similar it can easily be misheard, second is Visual similarity which means how similar they look, because of doctor poor handwriting on the prescription, if two drugs name has same letter shape then it can be misread by the pharmacist which can lead to giving away wrong medicine, third is Structural similarity here when the any mark is made by just adding a short prefix or suffix to the drug name it can be easily mix up with the similar drug name as human tend to read mark as whole rather than letter by letter. Because of the risk in the pharmaceutical sector the court prevent marks if they sound, look, and have structural similarity between them.[28]

[26] The Trade Marks Act, 1999, § 2(1)(h), No. 47, Acts of Parliament, 1999 (India)
[27] Cadila Health Care Ltd. v. Cadila Pharms. Ltd., (2001) 5 S.C.C. 73
[28] *Cadila Health Care Ltd. v. Cadila Pharms. Ltd.*, Indian Kanoon, https://indiankanoon.org/doc/1114158/ (last visited Oct. 7, 2026)

FACTORS DETERMINING LIKELIHOOD OF CONFUSION IN PHARMACEUTICAL PRODUCTS

The standard for determining the likelihood of confusion in pharmaceutical marks was established by the Supreme Court in Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd., 2001[29]. Here the court highlight the serious nature of pharmaceutical products when it comes to trademark by stating that "drugs are poisons, not sweets." because the confusion between medicine can lead to serious effect on consumer life, so the court rules public safety must come before business profit and strict standard.

The Seven Cadila Factors determining likelihood of confusion between two marks are:

1. Nature of the Marks
2. Degree of Resemblance
3. Nature of the Goods
4. Similarity of the Products
5. Class of Purchasers
6. Mode of Purchasing
7. Surrounding Circumstances[30]

ROLE OF DOCTORS, PHARMACISTS AND CONSUMERS IN PHARMACEUTICAL TRADEMARK CONFUSION

Generally, the Pharma companies give defence that medicine can only be prescribe by doctor legally and sold by pharmacists who are qualified, so it removes the confusion between pharmaceutical trademark even if they are slightly similar but the Supreme Court of India in Cadila Health Care firmly rejected this argument and held that the involvement of doctors and pharmacists does not serve as a safe harbour against confusion, as they are human and human

[29] Cadila Health Care Ltd. v. Cadila Pharms. Ltd., (2001) 5 S.C.C. 73
[30] *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.*, Indian Case Law, https://indiancaselaw.in/cadila-health-care-ltd-v-cadila-pharmaceuticals-ltd/ (last visited Oct. 7, 2026)

can make errors.[31] As discussed before during emergency and due to work load the doctor cam wrote down prescription with poor handwriting if two medicine names are similar it can create confusion, and pharmacist generally conduct communication orally or through telephone so if medicine name sounds similar, they can give away the wrong medicine, and as for consumer, many patients in India face language barriers and have different literacy levels they don't always read full complex names of medicine, they often identify medicines by a memory of how the word sounds or how the box looks, so similarity can create confusion.[32]

THE IMPACT OF SIMILAR DRUG NAMES ON PATIENT SAFETY

While the impact for similarity between trademarks of general consumer can result financial loss or fraud but in pharmaceutical sector confusion between the medicines can lead to serious harm to consumer life and also clinical operations. When two medicines are confused by similar name it can lead to deprivation of patient of the correct medicine required to treat their condition, causing their illness or infection to advance if untreated. If a patient receives an unprescribed wrong medicine due to the confusion, it can expose them to severe adverse reactions or side effect, organ damage. As financial damages cannot compensate the actual harm to the health, so the courts apply strict exacting legal standard to eliminate drug name confusion.

JUDICIAL APPROACHES TO LIKELIHOOD OF CONFUSION UNDER SECTION 11(1)

Earlier in S.M. Dyechem Ltd. v. Cadbury (India) Ltd., 2000[33] here the court held stating that "dissimilarity in essential features is more important than similarity" the court here give more importance to the "whole thing" must looked different enough to prevent the normal consumer from being deceived, this generally apply to commercial goods were it allowed similar names to exist if there were small spelling differences, but the supreme court overruled this judgment when the matter came upon deceptive similarity in pharmaceutical trademarks, in Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd., 2001[34] the court held that "drugs are poisons, not

[31] *Cadila Health Care Ltd. v. Cadila Pharms. Ltd.*, Indian Kanoon, https://indiankanoon.org/doc/1114158/ (last visited Oct. 7, 2026)
[32] *Unboxing the Confusion in Marks of Pharmaceutical Products*, The Legal 500, https://www.legal500.com/intelligence/india/intellectual-property/unboxing-the-confusion-in-marks-of-pharmaceutical-products (last visited Oct. 7, 2026)
[33] S.M. Dyechem Ltd. v. Cadbury (India) Ltd., (2000) 5 S.C.C. 573
[34] Cadila Health Care Ltd. v. Cadila Pharms. Ltd., (2001) 5 S.C.C. 73, 95

sweets.", here the court emphasize that the standard for proving confusion in pharma must be more strict than ordinary consumer by establishing when two drug name found similar then the court must compare its phonetic, visual and structural similarities between them from the perspective of a normal consumer with imperfect memory.

CRITICAL ANALYSIS OF SECTIONS 9(1) AND 11(1) IN PHARMACEUTICAL TRADEMARK PROTECTION

CHALLENGES IN APPLYING GENERAL TRADEMARK PRINCIPLES TO PHARMACEUTICAL PRODUCTS

Most provision under the trademark act 1999 generally favour and effective for commercial mark to prevent frauds and unfair trade practices and protect the genuine business through trademark registration, the effect of trademark breach for commercial product is limited to financial loss and minor damages, but when the same provision is apply to the pharmaceutical products, it must adapt a more strict policy because trademark breach on pharmaceutical sector can effect public health and can even result in death or serious illness.

The major challenges faced when applying trademark provision to pharmaceutical products:

1. In Trade Mark law there is anti-dissection rule where court generally compare two marks as whole rather than identifying all minor similarity between them, but drug company generally use pharmaceutical ingredients as their mark name so it's easy for identification for example "Meropenem" and naming the brand "Meronem", but the court here strictly prohibit the use of generic chemical composition name as they are "publici juris", this make the court remove the chemical name and only compare the leftover suffixes to found similarity between marks. This creates a conflict whether to compare the mark as whole or compare them side by side with each letter of the mark to prevent monopoly over the name of chemical composition.

2. Under Section 12 of the Trade Marks Act, 1999,[35] it provides an exception that the Registrar may allow the registration of identical trademarks by different owners, provided that if both the parties have adopted the marks for honest concurrent use in good faith. If this exception is allowed for the pharmaceutical products even if both the

[35] The Trade Marks Act, 1999, § 12, No. 47, Acts of Parliament, 1999 (India)

medicine company adopted the mark with good faith this can result in serious threat to public health, health care faculties, and hospitals and may even effect patient life.

3. The court justified that the likelihood of confusion between two similar marks must be decided from the perceptive of "a man of average intelligence and imperfect recollection"[36],this is generally effective when comparing commercial product, but if this same principal is applied for pharmaceutical products this can be risky because in India the literacy level is varied from places to places and most consumer generally focus overall aspect of the product to identify them rather than reading the name letter by letter, but in case of pharmaceutical products the drug name are more complex and need certain level of knowledge to identify them, so for average consumer it actually increases the likelihood of confusion for these product, and it is nearly impossible for a general consumer to identify a medicine with average intelligence and imperfect memory like they would do for a commercial product like chips placket.

BALANCING TRADEMARK RIGHTS, MARKET COMPETITION AND PUBLIC HEALTH

As Pharma Company invest billion on their brand and there must be the existence the competition to avoid monopoly of the drug company alongside keeping the aim of the pharmaceutical sector on public health and safety, the court must balance all these three main interest of the pharmaceutical sector.

The key legal standard to maintain the balance:

- The Publici Juris Rule - Active pharmaceutical ingredient (API) prefixes, chemical roots, and WHO International Nonproprietary Name (INN) stems are legally classified as public domain (publici juris) which means they belong to public and the company cannot use and own those common name in their mark, this avoid confusion between drug name and also avoid monopoly of company over the common name.[37]

[36] *Amritdhara Pharmacy v. Satya Deo Gupta*, Indian Kanoon, https://indiankanoon.org/doc/368264/ (last visited Oct. 7, 2026)
[37] *Coexistence of Similar Pharmaceutical Names: An Analysis of Judicial Interpretation*, Selvam & Selvam, https://selvams.com/insights/coexistence-of-similar-pharmaceutical-names-an-analysis-of-judicial-interpretation/ (last visited Oct. 7, 2026)

- Strict Scrutiny Standard – This standard is established in Cadila Health Care Ltd. V. Cadila Pharmaceuticals Ltd. (2001)[38]. Here it was held even if two drug names are only slightly similar, the trademark must be rejected if there is any possibility of public confusion. The court can reject any trademark for the drug if they have slight visual, phonetic and structural similarity between, this ensure protect of public health as confusion between medical product can have serious effect on health and in some cases life itself.

- Distinctive Mark – under section 9(1)(a)[39] examine the distinctiveness of a mark or brand name, it the mark is completely unique and not a suffix with chemical composition name then the court ensure protect of that mark against competitor, even if there is a slight similarity of that unique mark between two mark the court may reject the new mark to protect the unique trademark under section 11(1)(a)[40].

CRITICAL ANALYSIS OF JUDICIAL APPROACHES TO PHARMACEUTICAL TRADEMARK DISPUTES

The Supreme Court in Cadila Health Care v. Cadila Pharma, 2001[41] established many foundational rule for pharmaceutical trademark, the court held that "drugs are poisons, not sweets.", it established that the trademark for pharmaceutical sector will fall under deceptive similarity if both the mark has phonetic, visual, and structural similarly then the court will ban that trademark, it also refuse the defendant argument that drugs are prescribed by doctor and sold by pharmacist which require qualification so it removes the chance for mistake and confusion between the drug, but the court established that "Physicians and pharmacists are also human and in common with the rest of mankind are subject to the possibility of errors".[42]

Later the court emphasizes on the mark that is unique and any identical mark related to it is strictly rejected as in United Biotech v. Orchid Chemicals (2012)[43] it the coined mark FORZID was removed for phonetic similarity to ORZID, to remove any likelihood of confusion.[44]

[38] Cadila Health Care Ltd. v. Cadila Pharms. Ltd., (2001) 5 S.C.C. 73
[39] The Trade Marks Act, 1999, § 9(1)(a), No. 47, Acts of Parliament, 1999 (India)
[40] The Trade Marks Act, 1999, § 11(1)(a), No. 47, Acts of Parliament, 1999 (India)
[41] Cadila Health Care Ltd. v. Cadila Pharms. Ltd., (2001) 5 S.C.C. 73
[42] *Cadila Health Care Ltd. v. Cadila Pharms. Ltd.*, Indian Kanoon, https://indiankanoon.org/doc/1114158/ (last visited Oct. 7, 2026)
[43] United Biotech Pvt. Ltd. v. Orchid Chems. & Pharms. Ltd., 2012 S.C.C. OnLine Del 2942
[44] *United Biotech Pvt. Ltd. v. Orchid Chems. & Pharms. Ltd.*, Indian Kanoon,

In AstraZeneca v. Orchid Chemicals (2007)[45] injunction denied for MERONEM vs. MEROMER. As the shared chemical root MERO is publici juris, and the unique suffixes that is NEM vs. MEN was allowed as they are completely different, this prevents a single company from monopolizing the chemical name.

In Intas Pharmaceuticals Ltd. V. Sun Pharma Laboratories Ltd., 2026[46] Court held different form the strict standard established in Cadila case, here the court allow both mark even when they have phonetic similarity on the grounds that both the drug name treat different types of cancer and have different biological composition, Schedule H drugs administered only in hospitals by specialized oncologists, which reduces the chance of any confusion because they are not sold in pharmacy counter.[47]

CONCLUSION

In commercial trade, Trade Mark law applies effectively in commercial trade providing trade and business from financial loss and protecting customer from fraud. Even if there is any likelihood of confusing for these commercial goods, the harm is limited to financial loss or minor damages. But when it comes to the pharmaceutical sector, here the entire situation changes because confusion between the medicine and in buying the wrong medicine is not limited to financial issue but it can be a matter of life and death and public health. Because of this the Supreme Court in Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.[48] Held that "drugs are poisons, not sweets." Therefore, under Section 11(1)[49], the courts applied "zero-tolerance" policy. It established that the trademark for pharmaceutical sector will fall under deceptive similarity if both the mark has phonetic, visual, and structural similarly then the court will reject that trademark. This strict rule was established by the court in the case so the doctor, pharmacists, and consumer do not get confused and mix up the drug name which can have serious effect on public health.

Along with the strict rules to ensure the protection of public health and safety the law also maintained the balance between trademark **r**ights of the company, and Market Competition as

https://indiankanoon.org/doc/94612663/ (last visited Oct. 7, 2026)
[45] AstraZeneca UK Ltd. v. Orchid Chems. & Pharms. Ltd., 2007 S.C.C. OnLine Del 237
[46] Intas Pharms. Ltd. v. Sun Pharma Labs. Ltd. (2026)
[47] *Intas Pharms. Ltd. v. Sun Pharma Labs. Ltd.*, Indian Kanoon, https://indiankanoon.org/doc/196113968/ (last visited Oct. 7, 2026)
[48] Cadila Health Care Ltd. v. Cadila Pharms. Ltd., (2001) 5 S.C.C. 73
[49] The Trade Marks Act, 1999, § 11(1), No. 47, Acts of Parliament, 1999 (India)

section 9(1)[50] examine the level of distinctive mark so they get protection under section 11(1)[51] which reject the trademark registration of mark which has phonetic similarity with that distinctive marks, it also prevent monopoly by making the chemicals root names as publici juris which means they belong to public domain, so no single company can own the chemical root name, even if the mark use chemical root name the companies get protection as long as their unique suffixes are different.

In pharmaceutical trademark law, it's not just about protecting the brand name and trade as the court in Cadila case[52] held that public safety is far more important than a company's profits because the likelihood of confusion between medicine and dispensing a wrong medicine can have serious effects on human health and life itself. It is also about maintaining a balance between protecting company's right and investment, keeping market competition fair so medicines remain cheap. So, in this sector of trademark the patient safety always comes first.

[50] The Trade Marks Act, 1999, § 9(1), No. 47, Acts of Parliament, 1999 (India)
[51] The Trade Marks Act, 1999, § 11(1), No. 47, Acts of Parliament, 1999 (India)
[52] Cadila Health Care Ltd. v. Cadila Pharms. Ltd., (2001) 5 S.C.C. 73 (India)