

‘Covishield & Covaxin’ are they good Trademarks?

Section 9 (1)(a) of the Trademark Act 1999¹, lays down the absolute grounds for refusal of registration of a trademark “which consist exclusively of marks or indications which may serve in trade to designate the kind, quality, quantity, intended purpose, values, geographical origin or the time of production of the goods or rendering of the service or other characteristics of the goods or service;”

Accordingly, the marks Covishield and Covaxin clearly provide indication that they are related to Covid-19 pandemic. Further, ‘Covishield’ is a blend word for ‘Covid-19’ and ‘shield’ and ‘Covaxin’ is a blend word for ‘Covid-19’ and ‘vaccine’. Thus, clearly as per the Manual of Trademarks the marks clearly suggest the intended purpose of providing a shield or vaccine for Covid-19 and hence are not a viable choice of marks for a vaccine name for Covid-19.

However, in *Cutis Biotech v Serum Institute of India* the court rejected a plea for rejection of the use of the mark ‘Covishield’ as considering that there was an emergency requirement of the vaccine to safeguard the lives of many in times of a pandemic. Further, the court also stated that “No prima facie intention seen on part of the defendant to create confusion or misrepresentation and further, there seems to be no likelihood to cause injury or divert business of the plaintiff, or harming the reputation and goodwill of the plaintiff. Hence, the defendant’s product does not cause confusion or misrepresentation.”²

Considering ‘Covishield’ and ‘Covaxin’ were earliest of the few preventive vaccines created to cater to an urgent requirement of controlling the pandemic, the names may be justified as being distinctive as the names became synonymous in the public mind through not by long, continuous and uninterrupted commercial use in the market but due to media coverage. Therefore, the media exposure created an image in the minds of the public for it to be a potential solution to the pandemic which made it distinctive and synonymous in the public mind.

Considering that prevention or control of the pandemic in India being an urgent requirement. The names Covishield and Covaxin resonates to the public as a preventive means for Covid-19. This naming strategy was necessary to reach the masses and avoid the resistance towards the preventive vaccines.

On the other hand, if we see the brand names of vaccines created by other countries such as Comirnaty, BIBP Vaccine, Spikevax, Jcovden, Novavax, Sputnik V etc. do comply with the requirement for Section 9(1).

Further, public requirement does not justify the flood of products with Covid related marks indicating prevention of Covid-19 as correct use of trademarks. In conclusion, marks or words

¹ Trademark Act, 1999

² <https://www.scconline.com/blog/post/2021/02/22/covishield-trade-mark-dispute-cutis-biotech-v-serum-institute-of-india/>

which do not provide a reference to the goods or services they represent are considered best option for registering as trademarks.