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Colour Marks in the Indian Pharmaceutical Industry: An Analysis From I and Competition Perspective


by

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ABSTRACT —*Trademark decides the origin of goods and services. It aids the consumer in identifying the goods and services from the goods and services of others, wherefore, the Trade Marks Act, 1999 restricts a person from using the marks of other or for using a mark which creates confusion. However, a question arises when we ponder upon the relevance of colour marks in pharmaceutical products: Is there any necessity to protect colour marks when medicines are brought based on prescription? In addition to this, a question arises with respect to the effect on the generic industry: Do colour marks have any effect on competition curtailing the growth of generic medicine? These issues have been dealt with by authors in detail in this research paper. The researchers through this paper are trying to address the questions pertaining to relevancy of colour marks in identification of pharmaceutical products and the impact that grant of such colour marks has on competition.*

INTRODUCTION

Colours and colour combinations play a noteworthy role in differentiating goods in the market and are predominantly beneficial where customers do not simply understand conventional marks.¹ Colour has been thought to be registerable as a feature of a mark over time. Today, various countries have started registration of a single colour mark. Regrettably, there is no single standard in different jurisdictions regarding whether a single colour or a combination of colours, can be a trademark. The TRIPS Agreement lays down "Combinations of colours...shall be eligible for registration as trademarks although members may make register-ability depend on distinctiveness acquired through use and

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members may require, as a condition of registration, that signs be visually perceptible."² Nevertheless, the agreement is mute on the matter of single colour marks.

The present United States trademark law does not exactly bar the registration or protection of colours. Traditionally though, United States courts were unwilling to recognise marks encompassed exclusively of colours or colour combinations. In a judgment, the plaintiffs were deprived of relief from the deceptive use of red and white stickers on food packages.³ These courts of law believed that a colour by itself could not work as a mark, albeit colour might be a vital attribute of a unique design or word mark, and they dreaded that the colours accessible to merchants within a specific arena would be drained if they allowed protection of colours as trademarks, according to the 'colour depletion' rule.⁴ However, until recently, courts of the United States were still separated regarding the question of solo colour marks. Finally, in 1995, the United States Supreme Court resolved unanimously that, "sometimes, a colour will meet ordinary legal trademark requirements. And, when it does so, no

special rule prevents colour alone from serving as a trademark.”⁵ However, the Court held indirectly that a single colour may not be intrinsically distinctive and may only be protected when they have developed a secondary meaning through use analogous to descriptive marks or words. It also held that the green-gold colour in question served no function other than as an identifier and the Court rejected the ‘colour depletion’ problem raised by the plaintiffs.⁶ The petitioner, Qualitex, used “a distinctive shade of green-gold colour” on the pads made and retailed to dry cleaning businesses. The respondent, Jacobson, started selling the same product and it coloured the dry cleaning pads in a like manner. Consequently, Qualitex registered the green-gold colour on press pads as a trademark. Qualitex then attached a trademark infringement count to a suit it had previously filed against Jacobson. Qualitex succeeded in the lower court. However, the Ninth Circuit ruled against Qualitex on the basis that the Lanham Act did not allow registering of ‘colour alone’ as a trademark. However, the judgement was reversed by the Supreme Court. Even though numerous registrations in the United States include colour as a feature, very few registrations exist for an independent colour *per se*.⁷

Numerous countries, such as Germany, Norway, Sweden and United Kingdom (hereinafter UK), need “display of secondary meaning or acquired distinctiveness before registering a colour *per se*” since they do not think




of one colour to be inherently distinctive.⁸ OHIM, which manages the Community Trademark also has this rule.⁹ France, on the other hand, does not need a display of secondary meaning. Few countries, like Argentina, Spain, Mexico and Canada do not think of colour qualified for trademark protection.¹⁰ The Benelux Trademarks Office controls the combined trademark regimes of Belgium, Netherlands and Luxembourg. It formerly registered marks that were colour *per se* upon a demonstration of secondary meaning. However, in recent decisions, courts of Belgium and Netherlands have shifted from this practice.¹¹ The Mexican IPR Law forbids registration of “isolated colours, except if joint or complemented by elements such as signs, designs or designations that make them distinctive”.¹²

Even though the European Community trademark harmonisation directive wanted to synchronize the meaning of a trademark, it continued to be quiet on the question of colour trademarks. Therefore, each country can decide whether or not a colour or a combination of colours fall under this criteria. For instance, in France, the trademark law, founded on the harmonisation directive describes a trademark as containing “arrangements, combinations or shades of colours” and allows recording of a colour and combinations. Nonetheless, because the trademark office does not follow firm standards in its examination, the decision to apply registered rights stays with the court of law.¹³

The UK has also acknowledged and registered colours as trademarks, for instance, silver for ‘anthracite briquettes’, red for the ‘pin of a shackle’, ‘three red bands on the handle of rackets’, and the colour green for ‘the exterior of a building’.¹⁴ Nonetheless, proprietors may be needed to show that the colours had *acquired distinctiveness* through prior use or if the colour is the colour of the goods itself, evidence or declaration that the colour has no purpose other than as a mark. Unregistered colour trademarks, in the past, have also been safeguarded in UK under the principle of passing off, in various cases. Nevertheless, there is no uniformity and it has also not been granted in few cases. Green and black coloured tablets were held to be sufficiently distinctive to forbid the use of the same colour scheme by a different

trader.¹⁵ In a different decision, a producer failed in stopping usage of its yellow and white colour

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pills of different.¹⁶ Success in passing off suits hinges on the particular facts of the case and the degree up to which the colours are distinctive.


The German Marks Act, 1994 precisely comprises colours and combinations of colours as registerable marks but the lately enacted internal guidelines of the Patent Office of Germany have excluded registration for such trademarks, except when joined with other distinctive characteristics.¹⁷ In Australia, The Trademarks Act comprises “any colour” as a registrable mark.¹⁸ Latest decisions in Australia and New Zealand have secured colours under passing off.¹⁹ The situation is quite less steady in other countries where colours may or may not be registerable as trademarks or protected as one.

COLOUR TRADEMARKS IN PHARMACEUTICALS: EMERGING TRENDS IN INDIA

Protection by way of trademark can be a meaningful IPR right to remain in the marketplace for an extended duration. The trademark for pharmaceutical goods can be classified into two kinds, i.e. word marks and trade dress. Word marks consist of drug names such as Viagra, Nexium, Prilosec etc. The trade dress could be of two types: first, packaging of drugs like containers, blisters, flasks, vials etc., and second, appearance of the product consisting design, colour and shape, of dosage formulas, for example, the “blue diamond shape of the purple Viagra tablet.”²⁰

The primary variance amongst the pharmaceuticals and other goods is that the choice of buying is not with the final consumers i.e. the patients. It is decided by the doctor. The decision of doctors is based on various parameters, rather than just the colour or trade dress of the medicine. Thus, the most puzzling issue for the protection of pharmaceutical trademarks is to show distinctiveness. The effectively registered mark with acquired distinctiveness may stop the generic companies from manufacturing identical looking products. The consumers might adhere to the registered drugs as the generic versions will look, unlike the original ones. In this manner, the customer loyalty for brand-named medicines can be built for sustained trade in the marketplace and to uphold the share in the market.

The United States based pharmaceutical company AstraZeneca, in 2015 filed a case before a Delaware court against the purple colour of the generic

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form of AstraZeneca's antacid medicine, Nexium, retailed by Dr. Reddy's in the United States.²¹ It contended that this was a substantial breach of an agreement between the two enterprises that would free Dr. Reddy's from any onus in association with the generic version's sale.²² AstraZeneca argued that the shade of purple used was parallel to the shade of the original medicine, successfully infringing on their trademark registration for their purple medicines. The Court allowed a temporary injunction in favour of AstraZeneca. However, thereafter, Dr. Reddy's sued AstraZeneca in New Jersey,²³ claiming that its actions were impeccably according to earlier agreement in 2011, where their intent to use the colour purple had supposedly been made known. The overall tendency in foreign regimes is to prohibit the registration of a single colour mark. In the United Kingdom for example, even though the House of Lords in the

Smith Kline decision²⁴ recognised the external appearance of the capsule as a colour mark. Pharmaceutical trade dresses have repeatedly failed to fulfil the requirements of the two tests.

In India also, colour marks are not easy to register, especially singular colour marks. Although the Trade Mark Act does not explicitly forbid the registration of solo colour mark,²⁵ showing distinctiveness in a colour is difficult unless the colour, due to long association with a specific mark, has come to characterize the source/origin of the product, enabling easy differentiation of the product from others in the same class. With the coming of the new Trademark Rules, 2017 which provide for registration of a mark as 'Well-Known Mark'²⁶, it can be one of the ways for pharmaceutical companies seeking registration of colour marks. However, even then, the colour mark would have to be so distinctive that the general public can relate to it instantly upon a single glance.

Courts are also hesitant in permitting colour mark registration since they fear the depletion of the relatively restricted set of colours currently documented. Although Cadbury for instance got a positive result in *Société des Produits Nestlé SA v. Cadbury UK Ltd.* that permitted registration of the royal purple colour well identified with 'Dairy Milk' as a colour mark,²⁷ an application for its registration before the Indian Trademark Registry was rejected.²⁸



In *Colgate Palmolive Co. v. Anchor Health and Beauty Care (P) Ltd.*,²⁹ the Delhi High Court held that even a single colour can be registered as a mark. However, in *Cipla Ltd. v. MK Pharmaceuticals*,³⁰ the court held that "monopoly over colours cannot be claimed".³¹ On inquiry of colour marks for pharmaceuticals, the Court opined that the distinctiveness of the drugs is in the name and not in the colour and shape since tablets are known by name and prescribed.


It is also important to examine whether the colour of a medicine affects the patient's choice of medication. This is relevant specifically for over-the-counter (hereinafter OTC) medicines since, in prescription medicines, the patient has no choice but to buy the prescribed medicine. In OTC and wellness medicines, where the person makes his own decision is where colour is more important. Glaxo Smith Kline and Bayer, before deciding the colour of the pill that would be the Pfizer manufactured Viagra's biggest competitor had carried out some research. It was found that Viagra's blue colour didn't appeal to customers that much since they associated the colour with illness.³² This encouraged them to come up with a bright orange in their pill.

It is also argued that an ordinary looking round and white medicine will not endure in such a ferociously competitive market. A survey to determine the degree of impact the colour of a medicine has on the consumer's preference to take the drug reinforces this argument, showing that that consumers may refrain from taking medicine of a particular colour where such colours are related to specific 'tastes', since the consumer's opinion of the medicine can impact the efficacy of the pill itself.³³ The newly evolving colour marketing strategy embraced by pharmaceutical companies, besides holding medical relevance, looks like a very intelligent way in an progressively competitive market to make sure that the medicine's therapeutic value is not the only reason for it to survive.


COMPETITION AND PHARMACEUTICALS

US Perspective

Knowing that the colour of medication can influence people's perception about a medication and treatment even before they start taking it,³⁴ the

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question arises as to whether there exists the element of unfair competition if the generic medicines are restricted from using the colour of capsule or medicines. A study conducted by the Ph.D cell of SIES College of Management Studies, reveals that colour of medicines influenced patient's perception of treatment.³⁵ This means that if a depressed patient is given anti-depressant of a maroon colour, he will not like it and medicine will not be effective.³⁶ Can we now say that the colour of medicines show functional aspect and hence, a trademark on functional aspect does not exist? A question of such a nature arose in *In re Owens-Corning Fiberglas Corp*³⁷ wherein the Court of Appeals observed that colour pink has no utilitarian purpose and did not deprive competitors of any reasonable right or competitive need and thus, not barred from registration as a trademark on the basis of functionality.³⁸ For arriving at this decision, the court looked into various aspects pertaining to colour marks and competition law. The Courts have also looked beyond section 2 of Lanham Act and stated that colour marks have been protected under section 43(a) of the act and under the laws of unfair competition.³⁹ While applying the principles, the court has further stated that where there is no competitive need for colours to remain available to all competitors, the colour depletion is an unreasonable restriction on the acquisition of trademark rights.⁴⁰ This principle is very well applicable in case of medicines. In *Ciba-Geigy Corp v. Bolar Pharmaceutical Co Inc.*,⁴¹ the court was of opinion that the courts in various cases have protected colour marks in case of capsule or medicines until and unless the colour serves functional aspect and had acquired secondary meaning,⁴² therefore, restricting the use of colour marks and preventing unfair competition. The relation between the beneficial aspect of using the same colour in capsule and unfair competition was recognised in *Inwood Laboratories Inc. v. Ives Laboratories Inc.*⁴³ According to it, even under the doctrine of unfair competition, there may be a legitimate purpose to consumers which is served by using the same colour of the product.⁴⁴ Therefore, the fair competition may be affected in cases of legitimate purpose of generic manufacturer to use the colour. We must, however, not forget that the current matter here, pertaining to the colour of capsule is not restricted to IP rights but extends to health law and the basic right to life. We cannot question the fact that a patient deserves the best treatment. Therefore, a look from that angle at the unfair competition is much invited.

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Another landmark judgement covering the issue of unfair competition is *Ives Laboratories Inc. v. Darby Drug Co Inc.*⁴⁵ where the drug of manufacturer was covered by trademark and patent for the same drug was expired. The company sued another manufacturing company claiming that the drugs having the same dosage and colour violated the trademark rights under the Lanham Act. The Court acceded to the fact that the trademark violation could only happen in case the generic drugs are falsely labelled as the manufacturer's drug. It is also the responsibility of the trial judge to look into the non-functional or functional aspects of the colour applied on the capsules

or medicines or whether the colour of capsules has acquired secondary meaning with regard to identification. The Court was examining the aforementioned, in light of the provisions pertaining to competition law and New York generic drug laws. The Court, in favour of the plaintiff, held that colours should not be denied protection under the Lanham Act since other colour combinations were available to the defendant who marketed the generic drug in capsules of same colour and case for functionality depended upon the evidence that copying the colour of drug serves the utilitarian purpose essential to effective competition apart from looking at the secondary meaning.⁴⁶

The next arises as to whether the colour combinations or a single colour clears the functionality test. Generally, with regard to functionality test, the generic manufacturers have argued that change in colour in pharmaceutical sector plays a great role in patient's reaction to the drug. Apart from this, the colour is important to identify the drug. Many generic companies have produced surveys pertaining to the patients believe in the relationship between the colour of drug and therapeutic value. Although there might be certain patients, who relate to identifying drugs with their colours, however, such patients may agree to such changes with anxiety and confusion. On the other side, pharmaceutical industry owning trademark over the drugs argue that the similar colours may create confusion among patients. To back up their arguments, the trademark owners try to put before the judge various cases decided in favour on the ground of non-functionality of colour.

Canadian Perspective

The Canadian courts hold the similar view as that of the United States. In *Parke, Davis & Co. v. Empire Laboratories Ltd.*,⁴⁷ plaintiff claimed that the defendant has infringed its trademark which consists of differently coloured band encircling a capsule in respect of pharmaceutical preparation containing "chloramphenicol" with a grey and green band and the plaintiff sought an injunction with respect to the plaintiff's ten trademarks consisting in different colour band.⁴⁸ Defendant responded to the contention by stating that the



capsule, is nothing more than a package for pharmaceutical preparations and adoption by the plaintiff of such colour package cannot satisfy grant of rights under trademark.⁴⁹ The court held that the manufacturer by registering under trademark is trying to perpetuate its patent. Therefore, the right of the plaintiff with regard to colour bands exist relating to the use (functional character). While arriving at this decision, the Court dealt with the provisions of unfair competition. However, we can silently conclude that the requirement of 'use' of the colour with regard to protection under trademark in itself means that the Court has considered the restriction of market access that may prejudice the generic drug companies.

UK Perspective

In *Smith Kline and French Laboratories Ltd. v. Sterling-Winthrop Group Ltd.*,⁵⁰ the plaintiff had registered ten colour trademarks for drugs sold in pellet form in capsules. The House of Lords clarified that the colour which gave distinctive appearance can be registered as a trademark.⁵¹ Another question that arose in the above-mentioned case was that whether the particular colouration of pellets in time release drug must be necessarily copied for the effective competition.⁵² Generally, replies given in such cases by the generic drug manufactures for proving why colour must not be given protection for effective competition is:—

- I The colour is a natural colour of the product;
- II Necessary to market the generic versions in the same colour as of the original product so to avoid patient anxiety;⁵³
- III The Colourisation of the drug may aid in emergency identification.⁵⁴

Indian Perspective

Colour marks are not easily registrable in India especially in the field of pharmaceutical sectors. This is evident from the case of *Cipla Ltd. v. MK Pharmaceuticals* wherein the Court held that drug companies cannot acquire a monopoly over colours and stated that:

"medicines are not brought by customers on the basis of colour. No one goes to chemist and asks for red, blue, green



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*or red pill. The medicines are brought on the advice of the doctor"*⁵⁵

Competition Act of India is comparatively a new act and therefore, there are very few cases pertaining to IP and Competition Law and India. However, even if a drug manufacturer acquires a trademark over the colour of medicines or drugs in future, generic companies are free to approach authorities established under competition law. Section 4 of the Competition Act, 2002, defines what amounts to a dominant position. According to the act, dominant position means a position of strength, enjoyed by an enterprise in the market and which enables them to operate independently of competitive forces prevailing in the relevant market. Here, the trademark owner enjoys the dominant position with regard to the colour of medicines. Further, the act defines abuse of dominant position that includes restriction of production of goods or restrictions pertaining to market access. As we have seen earlier, colour marks essentially clear functional test as the colour of pill taken affects the therapeutic effect. Not only that it reduces the anxiety of patients in case of a shift from original drug to the generic version. Therefore, the question arises with regard to validly exercising right under trademark act from restricting a generic company from manufacturing the same colour pill. Can it be said that restricting a pharmaceutical company from distributing or producing a pill having same colour amounts to anti-competitive practice when the same increases the efficiency? Section 54 of the Competition Act, 2002 lays down provision for granting an exemption. It states that Central Government may, by notification, exempt from the application of this act or any provision for such period as it may notify in the notification:

- I. Any class of enterprise if such exemption is necessary in the interest of the security of the States or public interest.

As prohibiting a generic company may essentially not advance the public interest, in the sense that, it may cause hardship to patients, therefore, an exemption notification can be issued by the Central Government. It must be further noticed that granting trademark to a patented drug, extends the patent over that drug. When a particular drug is being taken by patient regularly, that drug becomes more acceptable for patients. Therefore, breaking their market is difficult especially when the inventor of drug reduces price. This results in strengthening the position of the pharmaceutical company that held the patent. Extending trademark over colour of pill, will only result in furthering the interest of the owner of the trademark. Can we say that granting trademark over the colour of pills is like creating perpetual dominance?

Nothing in the Competition Act, 2002 focuses on abuse of dominance in legitimate ways, i.e. through the provisions of law. One of the biggest problems in the pharmaceutical sector is how to tackle such situations.

CONCLUSION

It is essential for researchers to lay down suggestions for policy makers with regard to the colour marks in the pharmaceutical sector. Before laying down solutions, we want to remind our readers that according to the current study by various organizations, we have found that colour of drugs does affect efficacy, therefore, the colour of drugs plays an essential role in treatment. We wish to further highlight that in particular fact relates to the health of individuals then that must not be ignored and taken seriously. Therefore, we suggest:—

- I A study must be done by the existing authorities as to effects of the colour of drugs on the therapeutic efficacy. The government must further identify as to what drugs fall under such category.
- II The legislature may draw guidelines pertaining to the colour marks in pharmaceutical sector. This may lay down the provisions establishing a relationship between competition law and trademark pertaining to colour marks.
- III It is further expected out of the government to lay down guidelines or law for the generic companies so to prevent any disputes relating to above in future.
- IV In the case of colour marks of medicines and trademark, the government may consider bringing licensing provisions under the trademark act.
- V. Although the argument on efficiency may be a relevant argument, the Legislature may amend the Act to add provisions pertaining to public interest. This may empower the Competition Commission of India to pass orders that are in the interest of the public.

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² Agreement on Trade-Related Aspects of Intellectual Property Rights 1995 art 15.

³ *Campbell Soup Co. v. Armour & Co.*, 175 F 2d 795, 798 (3rd Cir 1949).

⁴ J. Christopher Carraway, 'Color as a Trademark under the Lanham Act: Confusion in the Circuits and the Need for Uniformity' (1994) 57(4) *Law and Contemporary Problems* 247.

⁵ *Qualitex Co. v. Jacobson Products Co., Inc.*, 1995 SCC OnLine US SC 28 : 131 L Ed 2d 248 : 115 S Ct 1300 : 514 US 159 (1995).

⁶ *Ibid.*

⁷ *Christian Louboutin SA v. Yves Saint Laurent America Holding Inc.*, 696 F 3d 206 (2nd Cir 2012).

⁸ Trade Marks Act, 1994, s. 3(1)(UK).

⁹ European Legislation Analysis Subcommittee, 'Non-Traditional Trademarks in Europe - Shape and Colour Trademarks - Common Issues with Obtaining, Exploiting and Enforcing Rights' (*International Trademark Association*, March 2005) <<http://www.inta.org/Advocacy/Documents/INTAShapeColorEurope2005.pdf>> accessed 3 November 2017.

¹⁰ Industrial Property Law 1991, art 90(V).

¹¹ 'Registration of Non-Traditional Marks: Different Issues Arise in the United States Than in Other Jurisdictions' (Coudert) <<http://coudert.com.au/publications/?action=displayarticle&id=180>> accessed 3

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¹² Industrial Property Law 1991, art 90(V).

¹³ *Ibid.*

¹⁴ Daniel Zendel and Dennis Prahll 'Making Sense of Trademarks: Colors, Sounds, & Scents' (*Ladas & Parry*, 16 February 1996) <<https://ladas.com/education-center/making-sense-trademarks-colors-sounds-scents/>> accessed 3 November 2017.

¹⁵ *Hoffman-La Roche & Co AG v. DDSA Pharmaceuticals Ltd.*, 1972 RPC 1.

¹⁶ *Roche Products Ltd. v. Berk Pharmaceuticals*, 1973 RPC 473; *Boots Co Ltd. v. Approved Prescription Services Ltd.*, 1988 FSR 44; *John Wyeth & Brother Ltd. v. M&A Pharmachem Ltd.*, 1988 FSR 26.

¹⁷ Industrial Property Law 1991, art 90(V).

¹⁸ *Shanahan's Australian Law of Trademarks and Passing Off* (2nd edn, The Law Book Company Ltd Australia 1990) 412.

¹⁹ *Ibid.*

²⁰ B Brett Heavner, 'Judging a Pill by its Cover' (*Pharmaceutical Executive*, 1 March 2012) <<http://www.pharmexec.com/judging-pill-its-cover>> accessed 3 November 2017.

²¹ Divya Rajagopal, 'The Colour Purple That Has Left Drug Makers Like Dr. Reddy's Laboratories Pale' (*Healthworld*, 15 November 2015) <<https://health.economictimes.indiatimes.com/news/pharma/the-colour-purple-that-has-left-drug-makers-like-dr-reddys-laboratories-pale/49787782>> accessed 3 November 2017.

²² *Ibid.*

²³ Vikas Dandekar, 'Dr. Reddy's Sues AstraZeneca over Purple Colour of Nexium Generic' *The Economic Times* (20 November 2015) <<https://economictimes.indiatimes.com/industry/healthcare/biotech/pharmaceuticals/dr-reddys-sues-astrazeneca-over-purple-colour-of-nexium-generic/articleshow/49852333.cms?intenttarget=no>> accessed 3 November 2017.

²⁴ *Smithkline Corp v. Sterling Drug Inc.*, 406 F Supp 52 (D Del 1975).

²⁵ Trade Marks Act, 1999, s. 2(m).

²⁶ Trade Marks Rules, 2017, r 124.

²⁷ *Société des Produits Nestlé SA v. Cadbury UK Ltd.*, 2017 EWCA Civ 358.

²⁸ Swaraj Paul Barooah, 'Colours as Non-Conventional Marks' (*SpicyIP*, 4 January 2013) <<https://spicyip.com/2013/01/guest-post-colours-as-non-conventional.html>> accessed 4 November 2017.

²⁹ *Colgate Palmolive Co. v. Anchor Health and Beauty Care (P) Ltd.*, 2003 SCC OnLine Del 1005 : (2003) 27 PTC 478.

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³¹ *Ibid.*

³² Jill Morton, 'The Color of Medications' (*Color Matters*) <www.colormatters.com/color-symbolism/the-color-of-medications> accessed 5 November 2017.

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³⁵ *Ibid.*

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³⁷ *In Re Owens-Corning Fiberglas Corp*, 774 F 2d 1116 (1985).

³⁸ *Ibid.*

³⁹ *Artus Corp v. Nordic Co Inc.*, 512 F Supp 1184 (WD Pa 1981).

⁴⁰ *Ibid* 4.

⁴¹ *Ciba-Geigy Corp v. Bolar Pharmaceutical Co Inc.*, 547 F Supp 1095 (DNJ 1982).

⁴² *Ibid.*

⁴³ *Inwood Laboratories Inc. v. Ives Laboratories Inc.*, 1982 SCC OnLine US SC 102 : 72 L Ed 2d 606 : 456 US 844, 858 (1982).

⁴⁴ *Ibid.*

⁴⁵ *Ives Laboratories Inc. v. Darby Drug Co Inc.*, 601 F 2d 631 (2nd Cir 1979).

⁴⁶ *Ibid.*

⁴⁷ *Parke, Davis & Co. v. Empire Laboratories Ltd.*, 1964 SCC OnLine Can SC 19 : 1964 SCR 351.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ *Smith Kline and French Laboratories Ltd. v. Sterling-Winthrop Group Ltd.*, 1976 RPC 511.

⁵¹ Audrey A. Horton, 'Designs, Shapes and Colours: A Comparison of Trademark Law in the United Kingdom and the United States' (1989) EIPR 11(9) 311-318.

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ Kiran George, 'AstraZeneca v. Dr. Reddy's - Colour as a Pharmaceutical Trade Dress' (*SpicyIP*, 22 December 2015) <<https://spicyip.com/2015/12/astrazeneca-v-dr-reddys-colour-as-a-pharmaceutical-trade-dress.html>> accessed 1 November 2017.

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