

## MOOT PROPOSITION

A global pandemic, Zovid-09 has ceased the world for the last two years and all operations have come to a halt. All of a sudden, the lives worldwide took a rapid change due to it and the entire population experienced a hideously destructive virus. Zovid-09 playing a central and critical role is killing thousands of people.

Zovid-09, a virus developed in a small state of a well-known country Zina, very frequently it spread its wings in all parts of the world. The health authorities reported that a large number of cases of a respiratory condition resembling pneumonia had been identified. Symptoms included uncontrollable coughing, difficulty in breathing, severe fever, body ache, and tastelessness.

The sudden burst of the pandemic made the Health Organizations of the world and institutions to activate their research arms. They encourage pharmaceutical companies for finding out the solution for the unknown and unwanted guest, the Zovid-09 virus. Every country across the globe prepared a protocol for monitoring and adopted best practices to control the pandemic. It also activated its administrative wings and build up a special force consisting of police, health workers and sanitation employees to fight the virus spreading.

World Health organizations and research institutes found that the transmission of Zovid-09 is contagious and passing through person-to-person contact. WHO advised to take precautions such as Use of face shields and face masks, using hand sanitizers, and standing apart by maintaining a safe distance in between person(s).

Pharmaceutical companies started working on finding medical solutions including vaccination. During this period many pharmaceutical companies changed their R&D activity priorities and stopped many existing projects and initiated research to invent suitable drug & vaccine to control and treat the disease. They redirected the research

funds to find out a solution for this pandemic and also Government of various nations including the Government of Widia encouraged this activity and facilitated research and innovation of new medicine to control and mitigate the disease resulting from the Zovid-09 virus. Within a short time of one year, many companies announced their new drug and vaccine inventions which were capable of controlling and mitigating the pandemic disease being caused by the Zovid-09 virus.

The Union of Widia (hereinafter referred to as Widia) is a country having a very high density of population and many people have become the victim of the Zovid-09 virus. The death toll crossed a few lakhs. The Government of Widia urged all the pharmaceutical companies to undertake the research seriously on a priority basis and develop a medicine to treat the virus impact. The reputed pharmaceutical companies have developed the medicine in the model of a vaccine. The government has permitted pharmaceutical companies to undergo clinical trials. The three-stage clinical trials were successfully completed.

**Futis Biotech** is the sole proprietorship of Mr. Naitik Oberoy. Futis Biotech commenced its business of selling pharmaceutical products in the year 2011 at Jupur, Rajapur(State in Union of Widia). **Verum Institute** is a company incorporated under the Corporation Act, 1956 at Yune (City in Rajapur). It started its business in the year 1969 as a registered partnership firm. Verum Institute is a manufacturer of Vaccines & immuno-biologicals and has won various awards in this field. Verum Institute supplies vaccines to various international organizations for the immunization programme worldwide.

Futis Biotech had filed a trademark application of VERUMGAURD in March 2016 under Trademark Class 5 pertaining to pharmaceutical and veterinary preparations; sanitary preparations for medical purposes; dietetic food and substances adapted for medical or veterinary use, food for babies; dietary supplements for humans and animals; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides and the same

was granted to them on 01/01/2018, the Futis Biotech had no drug in the market being sold under this name however the trademark stands in the name of the Futis Biotech.

The Verum Institute already had a drug in market since 2015 which was used for cold like symptoms and anti-allergy related problems; applied for a Trademark registration of VERUMGAURD under Trademark Class 5 pertaining to pharmaceutical and veterinary preparations; sanitary preparations for medical purposes; dietetic food and substances adapted for medical or veterinary use, food for babies; dietary supplements for humans and animals; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides, on 01/07/2020 and started using the name on their drugs which are being sold under the same name without Trademark since 2015, the name is associated by consumers with Verum Institute. This medicine is now used to fight Zovid-09 as it is somewhat effective on mild symptoms of Zovid-09.

That the Objections were filed by the Futis Biotech against granting the said registered Trademark to Verum Institute and the matter is still sub-judice with The Office of the Controller General of Patents, Designs and Trade Marks.

That the Futis Biotech filed a suit against violation of the trademark in Commercial Court of Jupur District against the Verum Institute for using the VERUMGUARD and the following Decision was passed:

*“The Verum Institute is infringing the Trademark and is directed to give compensation to the Petitioner for usage & infringement of its registered Trademark and profits made from it until today, and prohibit further use of Trademark. The prior user has no right against the registered trademark holder and the violation of trademark by anyone including prior user will attract consequences.”*

The decision was appealed by Verum Institute in the High Court of Rajapur and it was held:

*“The VERUM Institute has prior user right and it seems a plausible story that the Futis Biotech must have obtained the Trademark because of the reputation enjoyed by the Drug of Verum Institute and held that the compensation of using drug name by Verum institute in form of profit until today is not awarded to the Futis Biotech”*

Aggrieved by the order of the High Court the Futis Biotech appealed before the Hon’ble Supreme Court and now the matter is sub judice before the Hon’ble apex court and the arguments and issues need to be framed.

**NOTE: -**

- The Laws of Union of Widia are in *pari materia* to the laws of India.
- Participants are free to frame the issues on their own, Minimum 2 issues are mandatory.