

* **HIGH COURT OF DELHI : NEW DELHI**

Decided on : 13.07.2011

+ **CS (OS) No. 1371/2009**

THE HIMALAYA DRUG COMPANY & ORS ... Plaintiffs

Through: Mr Praveen Anand, Adv. with
Mr Tanvi Misra, Adv.

Versus

SURJIT SINGH SIAL & ANR. ... Defendants

Through: Mr Fazal Ahmad. Adv.

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

1. Whether the Reporters of local papers may
be allowed to see the judgment?
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported
in the Digest? Yes

MANMOHAN SINGH, J. (ORAL)

1. The plaintiffs in this case are engaged in the manufacture and sale of ayurvedic products preparations. Plaintiff No.1 is a partnership firm which is constituted by two partners i.e. plaintiff Nos. 2 & 3. Their website www.himalayahealthcare.com is accessed globally.

2. As per the plaintiffs, they provide their entire business depends upon their intellectual property in one form or the other and

they have made heavy financial investment in continuously developing and marketing their portfolio of ayurvedic herbal remedies. The plaintiffs provide high quality products at a reasonable price, as a result of which, they have earned immeasurable goodwill in their brand. The goodwill of the plaintiff is their most valuable asset and it depends upon the protection of their intellectual property.

3. It is stated by the plaintiffs, to ensure that their products are easily identifiable in the market, they have registered trademarks pertaining to their products, both Indian and foreign and apart from Himalaya brand which has a distinct design and logo, they have also registered trademarks for their individual products. The plaintiffs have developed a unique and distinctive trade dress, including layout, colour scheme and getup for their containers, labels and cartons of their products. The elements of the said trade dress are the original artistic works of the plaintiffs in which they also own the copyright registration No.A-63897/2003 for its logo.

4. In March 2009, the plaintiff came to know about the website www.herbalsureindia.com of which defendant No.1 is the registrant. The said website is being used for selling herbal and other healthcare products and along with other brands, it also advertises and offers for sale the products of the plaintiffs. It is stated by the plaintiff, that the manner and presentation of plaintiff's products on the defendant's

website is calculated to create unrealistic expectations and the plaintiffs themselves have never represented themselves to be the suppliers of such hypothetical remedies/products. Further, the defendants are offering for sale the products of the plaintiffs at absurd and exorbitant prices which are likely to damage the reputation of the plaintiff in the market.

5. The plaintiffs submits that the defendants are engaged in unauthorized dealings and sales under the trademark Himalaya brought from India and either commercially resold back into different parts of India or other places abroad without obtaining license, permission and authorization of the plaintiffs. The acts of the defendants amount to substantial change and impairment as contemplated by sub-section (4) of section 30 of the Trade Marks Act, 1999. Further, the defendant No.1 by passing off itself as an authorized dealer of the plaintiffs is putting the plaintiffs in grave danger of being held liable by the consumers of Himalaya products which are being advertised and sold without the knowledge of the plaintiffs and their condition could be tampered with by defendant No.1.

6. The defendants have adopted a similar getup and layout in green orange and white as used by the plaintiffs to identify the source of their origin in their logo “Herbalecureindia”. Thus the plaintiffs have filed the present suit for permanent injunction restraining passing off,

trade mark infringement and copy right infringement, delivery up , damages and rendition of accounts.

7. As per the defendants, they are not selling any product of the plaintiffs as that of their own or using the trademark of the plaintiffs for any drugs other than those manufactured by the plaintiffs. They have never interfered with the package, labeling, design or the contents of the products of the plaintiffs. The defendants No.2 website entertains health related queries and prescribes home remedies as well as ayurvedic and herbal medicines. The cost of the medicines prescribed on the site includes the cost of consultancy and other charges for the expert advice along with the cost of the medicine. Defendant No.2 site is accessed throughout the world but, does not entertain any order from any patient in India and therefore, the prices on the medicines are quoted in dollars and not in rupees and all the payments are also accepted only in dollars.

8. It is stated by the defendants that the goods sold by them are not likely to cause any deception that those products are those of the defendants or are approved or licensed by the plaintiffs.

9. While selling plaintiffs' products, it provides a photograph of the said product along with the HIMALAYA logo on the web page with details regarding the product, quantity and price in USD only. Apart from the said details, they also provide other additional information as such action, dosage, side effects, indications and

compositions. The products sold by them states “For Sale in India and Nepal Only”. Defendant No.1 on this website also sells many such products of the plaintiffs which are not meant for sale online.

10. The defendants are engaged in unauthorized dealings and sale of products under the trade mark HIMALAYA bought from India and either commercially resold back into different parts of India or other places abroad without obtaining the license, permission or authorization of the plaintiffs to conduct such sales. The plaintiffs have legitimate reasons for not permitting such dealings as they destroy the plaintiffs’ entire business model, which is designed to safeguard the plaintiffs’ valuable goodwill. The defendants’ acts amount to substantial change and impairment as contemplated by sub-section (4) of Section 30 of the Trade Marks Act, 1999.

11. The goods sold by the defendant No.1 under the trade mark of the plaintiffs are also likely to cause confusion or deception in the trade and amongst consumers because there is an in-built misrepresentation in the sale of the said goods under the trade mark HIMALAYA by defendant No.1, inasmuch as a false impression is given that the products are approved of or licensed by the plaintiffs. By passing itself off as an authorized dealer of the plaintiffs, the defendants are also putting plaintiffs in grave danger of being held liable by consumers for HIMALAYA products which are sold without

the knowledge of the plaintiffs and the condition of which could have been altered or tampered by defendant No.1 and not maintained in a proper condition as authorized retailers are obligated to. The defendants on their website have boldly claimed that they ship the products to any country free of any charge and also offer free consultation.

12. After passing the ad-interim order on 31.07.2009, the plaintiffs filed two contempt petitions against the defendants as the defendants violated the interim order.

13. On the other hand, the learned counsel for the defendants, during the course of hearing of the contempt petitions, states that all the objectionable material has been deleted from the website of the defendants. He also undertakes that in future the defendants shall not indulge in such activities as mentioned in the plaintiff.

14. The learned counsel for the plaintiffs that as the defendants have discontinued the said activities, the plaintiffs have no objection if the decree is passed in terms of para 35(a), (b) and (c) of the plaint. As far as reliefs claimed by the plaintiffs for damages and cost is concerned, after obtaining the instructions from the defendants, the counsel for the defendants submits that the defendants shall pay a sum of Rs.30,000/- as full and final settlement.

15. In view of the above, the suit of the plaintiffs is decreed in terms of para 35(a), (b) and (c). As far as other reliefs are concerned,

the defendants shall pay a sum of Rs.30,000/- to the plaintiffs within a period of eight weeks from today. Decree be drawn accordingly. All pending applications stand disposed of.

MANMOHAN SINGH, J.

JULY 13, 2011
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