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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(COMM) 98/2016

**E.I. DU PONT DE NEMOURS
AND COMPANY & ANR**

..... Plaintiffs

Through: Ms. Kripa Pandit, Advocate
with Mr. Dhruv Nayar and
Ms. Shreya Sethi, Advocates.

versus

JEETENDER KUMAR KAUSHIK & ORS Defendants
Through: None.

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Date of Decision: 16th January, 2018

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. The present suit has been filled for injunction damages, trademark infringement, copyright infringement and for declaration. The prayer clause in the present suit is reproduced hereinbelow:-

A. A decree of permanent injunction be passed restraining the Defendants, their partners, agents, distributors, franchisees, representatives and assigns from:

(i) Using the trade marks CORAGEN[®] and/or DuPont[™], COGENT or any trade mark which is deceptively or confusingly similar to the Plaintiffs' registered trade marks CORAGEN[®] and/or DuPont[™] in respect of any goods whatsoever and/or manufacturing or authorizing

the manufacture, selling or offering for sale, marketing, exporting, advertising, promoting, displaying or in any other manner whatsoever using the Plaintiffs' trade marks without any permission, consent, license and/or in any other manner whatsoever using the Plaintiffs' trade marks CORAGEN[®] and/or DuPont[™] thereby infringing their rights thereto;

(ii) Using the Plaintiffs' CORAGEN[®] packaging/label, a representation of which can be found in paragraph No. 5 or any other packaging/label which is substantial reproduction of the artistic work in and to the packaging/label of the Plaintiffs or any other manner infringing the copyright in the artistic work which vests with the Plaintiffs;

(iii) Manufacturing or authorizing the manufacture, selling or offering for sale, marketing, exporting, advertising or, promoting the products under the names CURONE, COGENT and KALIA containing the Plaintiffs' insecticide "Chlorantraniliprole" (CTPR) and/or any other product containing the Plaintiffs' insecticide "Chlorantraniliprole" (CTPR) .

B. A decree of a mandatory injunction be passed thereby directing that the Defendants, their partners, employees, agents, distributors, franchisees, representatives and assigns to:

i) hand over to the Plaintiffs or their nominated representative all goods, packaging and promotional materials, catalogues, stationery and any other material whatsoever bearing the Plaintiffs' trade mark CORAGEN[®], COGENT, CORAGEN[®] Packaging and/or the trade mark DuPont[™] and/or any other trade marks deceptively or confusingly similar to the Plaintiffs' trade marks and the wrongly labeled bio products under the names CURONE, COGENT and KALIA containing the Plaintiffs' insecticide "Chlorantraniliprole" (CTPR)

and/or any other product containing the Plaintiffs' insecticide "Chlorantraniliprole" (CTPR);

ii) recall all the products, marketing, promotional and advertising materials bearing the Plaintiffs' trade marks CORAGEN and/or any other trade marks deceptively or confusingly similar to the Plaintiffs' trade marks and the wrongly labeled bio products under the names CURONE, COGENT and KALIA containing the Plaintiffs' insecticide "Chlorantraniliprole" (CTPR) and/or any other product containing the Plaintiffs' insecticide "Chlorantraniliprole" (CTPR) which has been manufactured, distributed, sold by them and hand over to the representatives of the Plaintiffs;

iii) deliver to the Plaintiffs' attorneys or representatives for destruction all products, labels, signs, prints, packages, moulds, plates, dies, wrappers, receptacles and advertisements in its possession or under their control bearing the Plaintiffs' trade marks and/or copyrights and/or any other packaging/label/ marks deceptively or confusingly similar to the Plaintiffs' trade marks and copyrights or which contain the Plaintiffs' insecticide "Chlorantraniliprole"

iv) to disclose on oath the exact constitution and details of all such distributors/manufacturers/retailers involved in the manufacturing/distribution/marketing etc. of counterfeit products manufactured or sold under the name CORAGEN[®] and the wrongly labeled bio products under the names CURONE, COGENT and KALIA containing the Plaintiffs' insecticide "Chlorantraniliprole" (CTPR), as the case maybe;

C. The defendants be required to render an account of all transaction concerning the offending activities set out in the plaint and the plaintiff be then given the option of choosing either award of damages (including penal damages) or accounts of profits.

D. Costs of the suit be awarded to the Plaintiffs;

E. And other relief which the Hon'ble court deems and proper in the facts and circumstances of the case be allowed in favour of the Plaintiffs and against the defendants.

2. At the outset, learned counsel for plaintiffs gives up prayers (B), (C), (D) and (E) of the prayer clause to the suit. The statement made by learned counsel for plaintiffs is accepted by this Court and plaintiffs are held bound by the same.

3. On April 08, 2013 the Court was pleased to grant an *ex-parte* injunction in favour of the plaintiffs and against the defendants. The relevant portion of the said order is reproduced hereinbelow:-

“Having heard the learned counsel for the plaintiffs and on going through the averments and the material on record, till further order, the defendants are restrained from manufacturing, selling, marketing and packaging the products/goods under the names CORAGEN & DuPont, COGENT or any other trademark, which is deceptively similar to that of the plaintiffs, without obtaining their licenses, .”

4. In the plaint, it is stated that plaintiff No.1 is a world renowned global company that employs more than 60,000 people world-wide having a diverse array of products offerings. It is further stated that, the plaintiffs' business was ranked as 66th in the Fortune 500 with nearly US\$ 28 billion in revenues and US\$ 1.8 billion in profits.

5. In the plaint, it is stated that plaintiff no.1 entered India in the year 1974 and after its success set up its wholly owned subsidiary in India, i.e plaintiff No. 2. It is further stated that the sales and promotion expenses in India for all products/brands bearing the mark CORAGEN[®] since 2008 has been approx. US\$ 3-4 million.

6. It is averred in the plaint that the plaintiff no.1 is the registered proprietor of its well-known brands CORAGEN® and DUPONT™. Details of such registrations are tabulated herein below:

<u>Trade Mark</u>	<u>Number</u>	<u>Date</u>	<u>Class</u>	<u>Goods</u>
CORAGEN	1487406	14/09/2006	5	Insecticides
DUPONT 	419014	12/03/1984	5	Insecticides, fungicides and herbicides.

7. The plaint further states that the above-mentioned registrations have been renewed from time to time and are valid and subsisting as of date. It is also stated that the packaging of the plaintiffs' brand CORAGEN® bears a unique and distinctive man device/image which is pending registration, which is represented herein below:



8. It is further stated that the plaintiff No.1 is the owner of the copyright which vests in the artistic work of the CORAGEN packaging

as reproduced herein below, as per the provisions of the Copyright Act 1957, particularly Section 2(e):-



9. Learned counsel for the plaintiffs states that, upon receiving information of the large scale counterfeiting of CORAGEN[®] products being sold without the Principal Certificates and the manufacture and sale of wrongly labeled bio products/insecticides containing CTPR, the plaintiffs deployed their representatives to visit certain areas/districts. She states that the survey revealed that there are several counterfeiters of CORAGEN[®], unauthorized distributors of CORAGEN[®], as well as manufacturers and sellers of products wrongly claiming to be bio-products but, in fact, containing the Plaintiffs' patented product and registered insecticide CTPR.

10. Learned counsel for the plaintiffs states that vide order dated 8th April, 2013, in IA 5560/2013, local commissioners were appointed to

visit the premises of the defendants and verify the stock of products/insecticides being manufactured and stored by them. The Local Commissioners during the visit to the premises of Defendants No. 2 and 3 found them to be dealing/trading in infringing products/insecticides bearing the plaintiffs' trademark CORAGEN and DUPONT and seized the following from their premises:

- a) 60 ml bottles of CORAGEN/DUPONT- 27
- b) 30 ml bottles of CORAGEN/DUPONT- 59
- c) 10 ml bottles of CORAGEN/DUPONT- 39

11. The Defendants No.2 and 3 were duly served and entered appearance before Court on 23rd May, 2013. Defendant nos. 2 and 3 filed their joint Written statement and the same was taken on record. The defendants No.2 and 3 stopped appearing in the suit thereafter, and vide order dated 08th August, 2017 were proceeded *ex-parte* in the suit.

12. Learned counsel for the plaintiffs' states that in view of the judgment of this Court in **Satya Infrastructure Ltd. & Ors. Vs. Satya Infra & Estates Pvt. Ltd., 2013 SCC OnLine Del 508** the present suit should be decreed *qua* the relief of injunction against the defendants' No.2 and 3. The relevant portion of the judgment in **Satya Infrastructure Ltd. & Ors.** (Supra) relied upon by learned counsel for the plaintiffs is reproduced hereinbelow:-

"I am of the opinion that no purpose will be served in such cases by directing the plaintiffs to lead ex parte evidence in the form of affidavit by way of examination-in-chief and which invariably is a repetition of the contents of the plaint. The plaint otherwise, as per the amended CPC, besides being verified, is also supported by affidavits of the plaintiffs. I fail

to fathom any reason for according any additional sanctity to the affidavit by way of examination-in-chief than to the affidavit in support of the plaint or to any exhibit marks being put on the documents which have been filed by the plaintiffs and are already on record. I have therefore heard the counsel for the plaintiffs on merits qua the relief of injunction.”

13. Considering the aforesaid mandate of law and the fact that the plaintiffs are the prior and registered user, this Court is of the opinion that the defendants have no justification for the adoption and use of virtually identical trade mark/dress and label as that of the plaintiff.

14. Accordingly, the present suit is decreed against the defendants in accordance with prayer clause (A) of the plaint along with the actual costs. Registry is directed to prepare a decree sheet accordingly.

15. Consequently the present suit stands disposed of.

JANUARY 16, 2018
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MANMOHAN, J

