

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Decided on: 13th December 2019

+ **CS(COMM) 97/2019**

ALKEM LABORATORIES LTD. Plaintiff
Represented by: Mr. Sagar Chandra, Ms. Srijan
Uppal and Ms. Jyotsna Arora,
Advocates.

versus

DECCAN HEALTHCARE LTD. Defendant
Represented by: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Summons in the present suit were issued vide order dated 20th February 2019. None appeared on behalf of the defendants. The right of the defendant to file written statement was closed and the defendants were proceeded ex-parte vide order dated 14th August 2019.

2. By the present suit the plaintiff, inter alia, prays for a decree of permanent injunction restraining the Defendant, their directors, executives, partners, proprietors, as the case may be, their officers, servants and agents or any other persons acting for and on their behalf from manufacturing, selling, offering for sale, exporting, advertising, marketing and/or in any manner using directly or indirectly in relation to any health supplement, pharmaceutical and/or medical preparation and/or such allied and cognate goods under the Impugned Mark 'A to Z DECC' or any other identical and/or deceptively similar mark to that of the Plaintiff's mark A TO Z, A TO Z NS and A TO Z Family of Marks or any other Logo identical/ deceptively similar to the Plaintiff's 'A TO Z Logo', 'A TO Z NS Carton', 'A TO Z NS BLISTER STRIP', 'A TO

Z NS NEW Carton’ and ‘ATO Z NS NEW Blister Strip’ which will lead to passing off of defendant’s goods as those of plaintiff’s or dilution of plaintiff’s trademarks, logo and trade dress or unfair competition besides a decree for delivery up of goods bearing the impugned mark, rendition of accounts and decree of damages to the tune of ₹2,00,05,000.

3. Case of the plaintiff is that it is a leading pharmaceutical company, involved in manufacturing and sale of pharmaceutical and nutraceutical products. It has been ranked amongst the top 10 pharmaceutical companies in India and has a world-wide presence. Plaintiff has generated revenue to the tune of ₹64,312 million for the financial year 2018 compared to ₹58,525 million the previous year, recording the growth of 9.9%.

4. Further, the plaintiff has a wide-ranging existence across acute and chronic therapeutic segments and holds a considerable market share in Gastro-intestinal, Anti-osteoporosis, Nutraceutical, pain management and Anti-infective segments with 14 of the brands featuring amongst the top 300 brands in India. Plaintiff has also spent a huge sum on the research and development of its products and has more than 13,000 Alkemites working across globe along with 8,000 medical representatives, more than 7000 stockists, more than 40 sales depots and warehouses in India. The plaintiff is also the registered proprietor of various ‘A TO Z’ Family of Marks in classes 29, 30 and 5.



5. Plaintiffs mark ‘A TO Z’ as designed by Mr. P. V. Damondaran is unique and distinctive logo wherein the letters A and Z are written in a stylized manner and trade-dress. It is continuously in use

from the year 1998 till date for its tablets, capsules, syrups and drops. It is submitted that the same is an 'Artistic Work' within the ambit of Section 2(c) of the Copyrights Act, 1957 and plaintiff is the owner of it by virtue of Section 17(c) of the Copyrights Act, 1957.

6. The 'A TO Z NS' mark was adopted by the plaintiff in the year 2008 and was in use till the year 2017. Further, plaintiff launched products bearing the trademark 'A TO Z NS Carton' in the year 2008 and used it till the year 2017. The said mark as designed by Mr. Prasanna Kotianand, bears a yellow background with the 'A TO Z NS Logo' in the center consisting of the 3D 'A TO Z' Logo in red colour and 'TO' decorated in the middle on a yellow rectangular device with 'NS' written on the bottom right corner of the Logo. Plaintiff has mentioned the composition of the tablets on the top of the logo while quantity of the capsules is mentioned on the top-right corner and 'A TO Z NS' is written in Hindi on the bottom left corner. Multiple red horizontal lines as shown in the image below surrounds the logo with 'HEALTH SUPPLEMENT' written in the bottom center.



7. Plaintiff's product 'A TO Z NS NEW' known as 'A TO Z NS Blister Strip' is sold in a red colored rectangular blister strip as shown below.



8. Further, plaintiff discontinued 'A TO Z NS' and launched 'A TO Z NS NEW' in an identical packaging and trade-dress in the year 2017. It continued to use the same trade-dress with minor variations in 'A TO Z NS NEW Carton' as shown below:



9. Plaintiff's product 'A TO Z NS NEW BLISTER STRIP' was sold in a red colored rectangular blister strip as shown below.



10. The 'A TO Z Logo', 'A TO Z NS Logo', 'A TO Z NS Carton and Blister Strip', 'A TO Z NS New Carton and Blister Strip' are an 'Artistic Work' within the meaning of Section 2(c) of the Copyright Act, 1957. The said artistic works were conceived and designed by the Plaintiff in-house and therefore the Plaintiff is the absolute owner of Copyright in the said Artistic Work by virtue of Section 17(c) of the Copyright Act, 1957. The Plaintiff is the registered proprietor of the copyright in the A TO Z Carton bearing No. A-89428/2010 shown below:



11. Plaintiff is also the registered proprietor of the copyright in A TO Z artistic work bearing No. A-89426/2010 along with A TO Z DROPS bearing no. A-90376/2011 and A TO Z GOLD NS bearing no. A-108732/2014.

12. Several efforts and huge amount of money has been invested by the plaintiff in the promotion of the products bearing the said marks. Due to the continuous and interrupted use, the said marks are generally associated with the plaintiff in respect of medicinal, pharmaceutical preparations and substances.

13. A suit titled *Alkem Laboratories Ltd. v. Le Meridian Health Care & Anr.* bearing CS (OS) No. 952 of 2014 was instituted by the plaintiff for the use of the mark 'ALL VIT Z', wherein this Hon'ble Court vide Order dated 1st April 2014 granted an *ex-parte interim injunction* restraining defendants from selling or in any manner dealing in products bearing the said mark. The suit was thereafter decreed in terms of the Settlement Agreement entered into between the parties vide order dated 16th September 2015.

14. Grievance of the plaintiff is that the defendant is involved in marketing and manufacturing of an identical product bearing the mark 'A TO Z DECC' being deceptively similar to the plaintiff's mark. The impugned product bears a nearly identical logo, trade-dress, ingredients and plaintiff's artistic work as on the packaging of A TO Z NS and A TO Z NS NEW. On 29th November 2018, the plaintiff got to know about the Defendants product "A TO Z DECC". On perusal of defendants products it is evident that it has used a nearly identical logo, trade-dress and have substantially reproduced Plaintiffs artistic work of products A TO Z NS and A TO Z NS NEW on the impugned product that is "A TO

Z DECC”. Even the ingredients of the plaintiff product “A TO Z NS/A TO Z NS NEW” and defendants’ product “A TO Z DECC” are identical that is multivitamin, multimineral, antioxidants and methyl cobalamin tablets.

15. Plaintiff had previously also instituted a suit against the same defendant titled *Alkem Laboratories Ltd. v. Deccan Healthcare Pvt. Ltd. bearing no. 1142 of 2018* for the use of the mark GEMCAL DEC which is nearly identical to plaintiff’s registered trademark GEMCAL. An *ex-parte interim injunction* was granted by this Court restraining the defendant from using the impugned mark ‘GEM-CAL-DEC’, ‘GEM-CAL-DEC Carton’ , ‘GEM-CAL-DEC Blister Strip’ or any other mark identical or deceptively similar to plaintiff’s marks ‘GEMCAL’, ‘GEMCAL Carton’, ‘GEMCAL Blister Strip’.

16. The tabular comparison of products of Plaintiffs and Defendants which are subject matter of dispute in the present suit is depicted below:

S.No.	PLAINTIFF	DEFENDANT	COMMON FEATURES
1.	 “A TO Z NS Carton”	 “DEFENDANT'S A TO Z DECC Carton”	- Both the logos are reproduced in the center wherein the letters A and Z are in red colour in 3D shape and TO is written in black colour circumscribed in a yellow Colored Rectangular Box in between 'A' and 'Z'. The word 'DECC is written in a small font on the right side of 'Z' identical to where 'NS' is placed in the Plaintiffs Carton. - Multiple Red colored horizontal lines running on the left and right side of both the
2.	 “A TO Z NS Carton”	 “DEFENDANT'S A TO Z DECC Carton”	Multiple Red colored horizontal lines running on the left and right side of both the

			Logos in the center of the Carton. • The word 'NEW' is circumscribed in white colour in a unique shaped red coloured device identical to the Plaintiffs. • On top of both the Logos, the Defendant mentions the composition being Multivitamin, Multi mineral, Antioxidants and Methyl cobalamin Tablets similar to that of Plaintiff. • Quantity of capsules is written on the top-right corner. • Both the marks are written in Red Colour in Hindi on the bottom left corner.
3.	 “A TO Z NS BLISTER STRIP[FRONT]”	 “DEFENDANT'S A TO Z DECC[FRONT]”	• The Impugned A TO Z DECC Blister Strip has an identical Red and Silver Blister Strip wherein 3D A TO Z DECC Logo is reproduced in the center in Silver Colour. The unique features and arrangements of the Plaintiff including the multiple horizontal lines running on the left and right side of the A TO Z DECC Logo are reflected on the Blister Strip in Silver Colour and the
4.	 “A TO Z NS BLISTER STRIP [BACK]”	 “DEFENDANT'S A TO Z DECC [BACK]”	

5.	 “A TO Z NSNEWBLISTER STRIP [FRONT]”	 “DEFENDANT'S A TO Z DECC[FRONT]”	composition of product is written above and below the same which is identical to the Plaintiffs.
6.	 “PLAINTIFF'S A TO Z NS NEWBLISTER STRIP [BACK]”	 “DEFENDANT'S A TO Z DECC[BACK]”	
7.	₹79.45/- for a strip of 15tablets	₹77.50/- for a carton of 15tablets	

17. In compliance of order dated 20th February 2019, the Local Commissioner carried out an investigation at Plot No. 13-3, SID-CUL, Integrated Industrial Area, Pant Nagar, Udham Singh Nagar-263153, Uttarakhand and submitted a report. In his report he has submitted that he along with his team proceeded to the production unit of the Defendant company where they met Mr. Ajay Maheshwari and Mr. Tara Singh who took them to the unit where the Impugned product “A TO Z DECC” were being manufactured and packed. They found several cartons of the impugned product and packaging material used for the same. Thereafter an inventory of the same was prepared and a total of 51 cartons were sealed. On making an enquiry about the books of accounts from Mr. Ajay Maheshwari and Mr. Mohak Gupta they replied that the same is maintained at the company’s head office in Hyderabad but, during the search a document titled “Customer Sale Order” was found

and same was handed over to the local commissioner under the seal of Defendants company.

18. Evidence by way of an affidavit on behalf of the plaintiffs was tendered by Mr. Deepak Kumar vide Ex. PW-1/X, wherein the contents of the plaint were reiterated in the said affidavit. Copy of Letter of Authorization dated 13th April 2012 issued by Plaintiff in favour of Mr. Deepak Kumar, authorized by Board Resolution was proved as Ex. PW-1/1. Photographs of various products of the Plaintiff bearing the A TO Z Family of Marks were proved as Ex. PW-1/2. Original certificates for use in legal proceedings of the Plaintiffs registered 'A TO Z' Family of Marks were proved as Ex. PW-1/3 (Colly). Printouts of online status, trademark application and registration certificates of Plaintiffs A TO Z Family of Marks in Classes 29, 30 and 5 were proved as Ex. PW-1/4 (Colly). Affidavit under Section 65-B of the Indian Evidence Act of Mr. Nikhil Sharma dated 19th February 2019 was proved as Ex. PW-1/5. Original Authority letter from the Plaintiff company in favour of Mr. Nikhil Sharma was proved as Ex. PW-1/6. Printouts of plaintiff's digital office copies of Invoices from the year 1999 till 2018 for product A TO Z Family of Marks were proved as Ex. PW-1/7 (Colly). Counter Foil/Office Copy of the Extension Letter of Mr. P.V. Damodaran dated 2nd November 2018 was proved as Ex. PW-1/8. Affidavit under 65B of the Indian Evidence Act of Mr. Nikhil Sharma dated 4th December 2019 was proved as Ex. PW-1/9. Counter Foil/Office Copy of the Letter of Appointment of Mr. Prasanna Kotian dated 19th June 2006 was proved as Ex. PW-1/10. Digital photographs of carton and blister strips of plaintiff's product bearing the mark 'A TO Z NS NEW' were proved as Ex. PW-1/11. Copy of copyright registration certificate bearing No. A-

89428/2010 was proved as Ex. PW-1/12. Copy of copyright registration certificate bearing Nos. A-89426/2010, A-90376/2011 and A-108732/2014 were proved as Ex. PW-1/13(Colly). Original CA certificate certifying sales figures of the Plaintiff under the mark A TO Z NS was proved as Ex. PW-1/15. Original CA certificate certifying sales promotional expenses of the Plaintiff under the mark A TO Z Family of Marks was proved as Ex. PW-1/16. Printout of various third-party websites where plaintiffs 'A TO Z NS' is being sold were proved as Ex. PW-1/17. Printout of relevant extracts from the Annual Reports of the plaintiff's company of the year 2015-2016, 2016-2017 and 2017-2018 were proved as Ex. PW-1/18. Copy of certified copies of order dated 1st April 2014 and 16th September 2017 passed by his Court in CS(OS) 952/2014 titled '*Alkem Laboratories Ltd. v. Le Meridian Healthcare and Anr.*' were proved as Ex. PW-1/9 (Colly). Original sale invoice dated 29th November 2018 of the Defendants product A TO Z DECC was proved as Ex. PW-1/20. Photographs of carton and blister strips of the defendant's product bearing mark 'A TO Z DECC' were proved as Ex. PW-1/21. Printout of official website of defendant was proved as Ex. PW-1/22. Printout of company details of Defendants available on Ministry of Corporate Affairs website was proved as Ex. PW-1/23. Printout of order dated 26th September 2018 and 18th December 2018 passed in CS(Comm) 1142/2018 by this Hon'ble Court were proved as Ex. PW-1/24 and Ex. PW-1/25 respectively. Affidavit under Section 65-B of the Indian Evidence Act of Mr. Nikhil Sharma dated 26th March 2019 was proved as Ex. PW-1/26. Copy of decree in suit bearing No. CS(Comm) 1142/2018 was proved as Ex. PW-1/27. Local

Commissioner Report dated 14th March 2019 was proved as Ex. PW-1/28.

19. From the pleadings of the plaintiff in the plaint as also the documents exhibited along with the necessary certificates, the plaintiffs have clearly made out a case for grant of injunction in terms of prayer (i), (ii), (iii), (iv) and (v) as the Defendant is violating the rights of the plaintiff in its trademark as well as copyright. Plaintiff does not press the prayers (vi) and (viii). Hence no decree in terms of prayer (vi) and (viii) can be passed.

20. As regards cost in terms of prayer (ix), the plaintiff has filed a bill indicating the cost incurred by the plaintiff including Court fees, fees of local commissioner, miscellaneous expenses and legal cost which amounts to total sum of ₹5,73,152/-.

21. Suit is accordingly decreed in terms of prayer (i), (ii), (iii), (iv) and (v) of para 38 of the plaint in favour of the plaintiff and against the defendant. Cost of ₹5,73,152/- is awarded in favour of the plaintiffs and against the Defendant.

(MUKTA GUPTA)
JUDGE

DECEMBER 13, 2019
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