

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16-12-2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

CIVIL SUIT No.403 of 2014

and

ORIGINAL APPLICATION No.485 of 2014 and

APPLICATION No.3923 of 2014

Sun Pharma Laboratories Ltd.,
187, St. Mary's Road
Alwarpet, Chennai 600 018
rep. By its Authorized Signatory
Chandra Nahata .. Plaintiff

vs

Psychotropics India Ltd.,
A-32, Sector - 11,
Opposite G.E. Motors
Faridabad, Haryana 121 007 ... Defendant

Civil Suit filed under Order IV Rule 1 of O.S.

Rules and Order VII Rule 1 of Code of Civil Procedure read with Sections 27, 28, 29, 134 and 135 of the Trade Marks Act, 1999, praying for a judgment and decree granting (a) permanent injunction restraining the defendant, their manufacturers, distributors, stockists, servants, agents, wholesalers, retailers, legal representatives or any other person claiming under it from in any manner manufacturing, selling, offering for sale, stocking, advertising directly or indirectly dealing in medicinal and pharmaceutical

<https://hcservices.ecourts.gov.in/hcservices/> preparations infringing the plaintiff's registered

trademark SIZOPIN by use of deceptively similar trademark ZOPIN or any mark identical or similar to plaintiff's registered trademark SIZOPIN or in any other manner whatsoever and (b) permanent injunction restraining the defendant, their manufacturers, distributors, stockists, servants, agents, wholesalers, retailers, legal representatives or any other person claiming under it from in any manner manufacturing, selling, offering for sale, stocking, advertising directly or indirectly dealing in medicinal and pharmaceutical preparations under the trademark ZOPIN or any other trademark that is identical and/or deceptively similar as that of the plaintiff's registered trademark SIZOPIN and/or use similar packaging as that of the plaintiff's products under the mark SIZOPIN so as to pass off the defendant's medicinal preparations as and for the medicinal preparations of the plaintiff and/or in any other manner whatsoever connected with the plaintiff, directing the defendant to pay to the plaintiff a sum of Rs.1,00,000/- as liquidated damages for committing acts of infringement against the plaintiff's registered trademark so as to pass off it's products as and for the plaintiff's products, directing the defendant to deliver up for destruction to the plaintiff all the preparations, dies, blocks, labels, packaging either filled or empty, brochures, leaflets, pamphlets, handbills, hoardings, wall posters, calendars, carry bags, stationery items and such

other sales promotional materials bearing and/or containing the impugned trademark ZOPIN, granting a preliminary decree directing the defendant to render accounts of profits made by it by use of the trademark ZOPIN which is identical and/or deceptively similar and a final decree be passed for the amount of profits found to have been made by the defendant after the latter has rendered accounts, and for costs.

For Plaintiff : Mr.Arun C.Mohan

For Defendant : Set ex-parte on 30.6.2015

JUDGMENT

The plaintiff would aver that it is carrying on the business as manufacturers of medicinal preparation for human consumption and it is wholly owned subsidiary of "Sun Pharmaceutical Industries Ltd.", which, according to the plaintiff, is one of the top five companies in India involved in making active pharmaceutical ingredients, and in branded markets, many of the plaintiff's products are prescribed in areas like cardiology, psychiatry, neurology, gastroenterology, diabetology, respiratory, neuropsychiatric, orthopedics and ophthalmology, etc.

2.It is further averred by the plaintiff that it markets drugs and formulations to various countries across the world, under it's various other distinctive trademark

and it is having manufacturing plants in four continents and five world class research centres with a total work force of over 14,000 employees and it is also granted approval by the United States Food and Drug Administration (USFDA), and the products of the plaintiff enjoy a very high reputation for the medicinal preparations and enjoy a great reputation among the medical practitioners, trade and consuming public and it's medicinal preparations are sold openly and extensively all over the country as well as other countries on a large scale.

3.It is further stated by the plaintiff that it is the registered proprietor of the mark "SIZOPIN" and it was adopted by M/s.Sun Pharmaceutical Industries Ltd., which was its predecessor, in the year 1995, for the treatment of depression and schizophrenia and the said mark is unique, inventive and distinctive and the predecessor of the plaintiff has applied for and obtained registration for the trademark SIZOPIN under No.663317 dated 24.4.1995, in respect of medicinal and pharmaceutical preparations and substances included in Class 5, and also obtained certified copy of the registration certificate to that effect.

4.The plaintiff would further aver that as per the Scheme of Arrangement in the nature of Spin off and Transfer of Domestic Formulation Undertaking, the Indian business of the predecessor of the plaintiff along with the Intellectual Property were transferred to the plaintiff

with all rights, title, interests and goodwill thereof and it was also duly approved by the High Court of Gujarat as well as by the High Court of Bombay and the orders have also been filed along with the plaint and in view of the transfer, the plaintiff became exclusive proprietor of the registered trademark SIZOPIN along with the goodwill and also filed a copy of Form TM 24 before the Trademark Registry to record the change of proprietorship.

5.The plaintiff also places reliance upon the original invoices, which show gradual increase in the annual sales, and from 2003 to 2004, the annual sales was Rs.395.92 lakhs and till the year 2012, it was 698.52 lakhs.

6.It is the claim of the plaintiff that it's predecessor had spent huge sum for popularizing the said preparations and it is also reflected in the regional medical journals and the said medical preparation has been well received in the pharmaceutical trade.

7.It is the specific case of the plaintiff that it came across the defendant's medical preparation bearing the mark "ZOPIN", which is almost identical with the plaintiff's registered trademark SIZOPIN and the product of the defendant is also prescribed for treatment of the same ailment and the mark of the defendant is also phonetically, structurally and ocularly almost identical to that of the plaintiff's trademark SIZOPIN and it has also filed notice of opposition and the same is pending.

8.It is the specific case of the plaintiff that the adoption of mark ZOPIN by the defendant, is prima facie dishonest and malafide with a deliberate intention to infringe the plaintiff's trademark and an ordinary man with an average memory and imperfect recollection by looking into both the products of the defendant as well as that of the plaintiff, would not be in a position to differentiate between two almost identical marks and there is every likelihood that the defendant's mark being mis-spelt and misread as the plaintiff's well renowned mark by pharmacists/chemists and therefore, it came forward to file the suit for the above said reliefs.

9.Though the defendant was served, it did not enter appearance and file it's written statement and hence, the defendant was called absent and set ex-parte on 30.6.2015.

10.This Court upon perusal of the pleadings, is framing the following issues for trial and adjudication:-

(i) Whether the predecessor of the plaintiff was the registered proprietor of the trademark "SIZOPIN"?

(ii) Whether under the Scheme of Arrangement approved by the High Court of Gujarat and High Court of Bombay, the plaintiff became the exclusive proprietor of the registered trademark

SIZOPIN along with goodwill and reputation?

(iii) Whether the adoption of the trademark SIZOPIN by the defendant, is dishonest and malafide?

(iv) Whether the marks of the plaintiff and the defendant are phonetically, visually and structurally similar?

(v) Whether the plaintiff has suffered loss on account of the adoption of the similar trademark viz. ZOPIN, by the defendant?

(vi) Whether the plaintiff is entitled to get a judgment and decree as prayed for?

(vii) To what other relief, the plaintiff is entitled to?

11.The plaintiff has examined it's authorized representative as P.W.1 and marked Exs.P1 to P12.

12.The learned Counsel appearing for the plaintiff, has drawn the attention of this Court to the proof affidavit of the authorised representative of the plaintiff as well as her deposition as P.W.1 and would submit that the plaintiff by overwhelming documentary evidence, has substantiated the fact that it became the

registered owner of the trademark "SIZOPIN" and is also one of the topmost pharmaceutical companies in India and it is having manufacturing plants in four continents and also granted approval by USFDA and the defendant with a dishonest and malafide motive, has adopted almost an identical mark viz. ZOPIN, with a view to practice fraud and the trademark of the defendant is also phonetically, visually and ocularly similar and on account of the dishonest motive and deceptive practice played by the defendant, the plaintiff has suffered loss and prays for judgment and decree.

13. This Court has carefully considered the submissions of the learned Counsel appearing for the plaintiff, and also perused the pleadings as well as oral and documentary evidence.

14. **ISSUE No. (i) :-** The predecessor of the plaintiff was issued with the Certificate of Registration of the trademark SIZOPIN under Ex.P2, and the product permission was also granted by the Food and Drugs Control, Gujarat State, as evidenced by Ex.P3. The plaintiff became the successor as per the Scheme of Arrangement approved by the High Court of Bombay and High Court of Gujarat, which were marked as Exs.P4 and P5 respectively, and the plaintiff has also filed Form TM24 before the Trademark Registry as per Ex.P6. Under Ex.P12, the plaintiff has marked the defendant's original products with the trademark

ZOPIN. A comparison of the documents relating to the plaintiff's trademark SIZOPIN as well as the defendant's trademark ZOPIN, would clearly exhibit that the products of the defendant were also intended for the treatment of similar ailment and the defendant's trademark is also visually, phonetically and ocularly similar. The plaintiff's predecessor has also moved the Trademark Registry by filing an application opposing the registration of the mark by the defendant. Exs.P7 and P8 would disclose that the plaintiff has got a large annual sales value by marketing the tablets SIZOPIN and on account of the infringement of it's trademark by the defendant, it suffered a huge loss also. This Court, on a careful scrutiny of the oral and documentary evidence, is of the view that the plaintiff has probablised it's case and therefore, issue No.(i) is answered in favour of the plaintiff.

15. **ISSUE No.(ii):-** As already pointed out, this Court, while dealing with Issue No.(i), has given a finding that as per Exs.P5 and P6, the Scheme of Arrangement has been approved by the High Court of Bombay and High Court of Gujarat and thereby, the plaintiff became the successor and it has been transferred with all rights in respect of the trademark SIZOPIN as well as the goodwill. Therefore, issue No.(ii) is answered in affirmative and in favour of the plaintiff.

16. **ISSUE No. (iii):-** The oral and documentary evidence adduced on behalf of the plaintiff, would clearly disclose that it has become the registered owner of the trademark SIZOPIN and the adoption of almost identical trademark viz. ZOPIN, by the defendant is dishonest and malafide. Therefore, issue No.(iii) is answered in favour of the plaintiff.

17. **ISSUE No. (iv):-** A comparison of the trademark of the plaintiff and the defendant would disclose that the trademark of the defendant viz. ZOPIN, is phonetically, visually and ocularly similar to that of the plaintiff's trademark SIZOPIN. Therefore, this issue is also answered in favour of the plaintiff.

18. **ISSUE No. (v):-** It is the specific stand of the plaintiff by placing reliance upon Exs.P7 and P8, that on account of the dishonest adoption of it's trademark by the defendant, it's trade and customers would be diverted to the defendant, thereby causing irreparable loss of business and also loss of reputation, and as a consequence, it is entitled to claim damages. This Court is of the view that such a stand of the plaintiff is tenable and therefore, issue No.(v) is answered in favour of the plaintiff.

19. **ISSUE No. (vi):-** The plaintiff by adducing oral and documentary evidence, has substantiated and probablised it's case and therefore, it is entitled to the

judgment and decree as prayed for.

20. **ISSUE No. (vii):-** In the result, the suit is decreed with costs, and the defendant, their manufacturers, distributors, stockists, servants, agents, wholesalers, retailers, legal representatives or any other person claiming under it, are restrained by way of permanent injunction, from in any manner manufacturing, selling, offering for sale, stocking, advertising directly or indirectly dealing in medicinal and pharmaceutical preparations infringing the plaintiff's registered trademark SIZOPIN by use of deceptively similar trademark ZOPIN or any mark identical or similar to plaintiff's registered trademark SIZOPIN or in any other manner whatsoever. The defendant, their manufacturers, distributors, stockists, servants, agents, wholesalers, retailers, legal representatives or any other person claiming under it, are further restrained by way of permanent injunction, from in any manner manufacturing, selling, offering for sale, stocking, advertising directly or indirectly dealing in medicinal and pharmaceutical preparations under the trademark ZOPIN or any other trademark that is identical and/or deceptively similar as that of the plaintiff's registered trademark SIZOPIN and/or use similar packaging as that of the plaintiff's products under the mark SIZOPIN so as to pass off the defendant's medicinal preparations as and for the medicinal

preparations of the plaintiff and/or in any other manner whatsoever connected with the plaintiff. The defendant is directed to pay a sum of Rs.1,00,000/- (Rupees one lakh) to the plaintiff as liquidated damages, for committing acts of infringement against the plaintiff's registered trademark so as to pass off it's products as and for the plaintiff's products and is further directed to deliver up for destruction to the plaintiff all the preparations, dies, blocks, labels, packaging either filled or empty, brochures, leaflets, pamphlets, handbills, hoardings, wall posters, calendars, carry bags, stationery items and such other sales promotional materials bearing and/or containing the impugned trademark ZOPIN. A preliminary decree is passed in favour of the plaintiff directing the defendant to render accounts of profits made by it by use of the trademark ZOPIN, which is identical and/or deceptively similar. Consequently, connected original application and application are closed.

List of Witnesses:

P.W.1 Samruddhi Sameer Deshpande

List of Exhibits:

- P1 The power of attorney which is valid and subsisting the notarised copy of power of attorney given in favour of PW1
- P2 24.4.1995 The notary attested copy of certificate of registration of trademark SIZOPIN

- P4 3.5.2015 The notary attested copy of the order passed by the Hon'ble High Court of Bombay
- P5 3.5.2013 The notary attested copy of the order passed by the Hon'ble High Court of Gujarat
- P6 The notary attested copy of Form TM24 filed before the trademark registry
- P7 (series) The notary attested copies of invoices for sale of plaintiff's SIZOPIN tablets
- P8 16.5.2013 Original certificate issued by the Chartered Accountant
- P9 (series) Notary attested copies of extracts of medical journals listing plaintiff's SIZOPIN tablets
- P10 Original produce brochure for plaintiff's product
- P11 (series) Plaintiff's original products packages along with product
- P12 (series) Defendant's original products along with packages

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16.12.2015

//Certified to be a true copy//

Dated this the day of 2016

R.s/17.02.2016

COURT OFFICER

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