

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED: 15..11..2016****CORAM****THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA****C.S.No.481 of 2011**

Cadila Healthcare Limited
 a company registered under the
 provisions of the Companies Act, 1956
 and having its registered office at
 Zydus Tower, Satellite Cross Road
 Ahmedabad 380 015
 and having branch office at
 No.2, II Floor, Pioneer Sudarshan Plaza
 Building, Mohan Kumaramangalam Street
 Nungambakkam High Road
 Chennai 600 034
 rep.by Deputy General Manager (Legal)
 Mr.Mehul A.Pathak

.. Plaintiff

Versus

P.Ramu
 Trading as
 Skylane Pharmaceuticals
 D.No.6-3-932, II Floor
 Rajbhavan Road, Somajigida
 Hyderabad, Andhra Pradesh
 India.

.. Defendant

PRAYER: Complaint filed under Order VII Rule 1 of the Code of Civil Procedure r/w Order IV Rule 1 of the Original Side Rules and Sections 27, 134 and 135 of the Trade Marks Act, 1999 praying for a judgment and decree as against the defendant for the reliefs, stated therein.

For Plaintiff : Ms.Gladys Daniel
For Defendant : Set exparte - No appearance

J U D G M E N T

The plaintiff, is a well known pharmaceutical company in India, registered under the provisions of the Companies Act, 1956, which is engaged in the business of manufacturing and marketing various pharmaceutical, medicinal and health related products. The plaintiff, at present, is ranked as fifth largest company, according to Retail Market Survey Report of the Organizational Research Group. The plaintiff, had applied for the registration of the Trade Mark PANTODAC in Application No.723200 on 30.10.1996 and also advertised in the Trade Mark Journal No.9999 Mega 3, dated 14.10.2003. According to the plaintiff, their gross sales turnover for the year ended 31.03.2010 was in excess of Rs.3,600 crores.

2. It is the further case of the plaintiff that it has got a very modern Research and Development Center at Moraiya, where more than 650 research scientists are working and more than 100 patent applications of the plaintiff have been accepted and patents were also granted in various countries, including USA, Japan, European Union,

etc.

3. The plaintiff would further state that it has developed a formulation of drug for sustained control of Gastro Esophageal Reflux Disease (GERD), which is also used for the treatment of Acid-related disorders, under the trademark PANTODAC. The drug Pantoprazole was developed by Byk Gulden (Germany) (later Altana Pharma AG and now Nycomed GmbH). The plaintiff and the said Byk Gulden had entered into a joint venture strategic alliance and formed a joint venture company known as Zydus Byk Health Care Ltd., and the said company had sub-licensed the distribution right of the product Pantoprazole to the plaintiff and the right to manufacture the Bulk Drug Pantoprazole. The plaintiff, also received permission from the Drugs Controller General (India) for import of the said tablets on 09.12.1998 and also permission to manufacture the Active Drug Pantoprazole. While that being so, the defendant had infringed the trade mark PANTODAC of the plaintiff, as PANTOSKY and had applied for its registration, which is deceptively similar to that of the plaintiff. Hence, the present Civil Suit has been filed seeking the following reliefs:

a) Permanent injunction, restraining by an order of perpetual injunction, the defendant, its partner, proprietors, their employees, agents, stockists, dealers or others directly or indirectly involved, from in any manner

infringing or using in relation to any medicinal or pharmaceutical preparation, in manufacturing or marketing the pharmaceutical product bearing the trademark PANTOSKY or any other trademark, which is deceptively or confusingly similar to the plaintiff's registered Trade Mark No.723200 in Class 05.

b) permanent injunction, restraining the defendant, by themselves, their servants, agents, men or anyone claiming through them from manufacturing, marketing, distributing, offering or advertising for sale any pharmaceutical preparation using the Trade Mark PANTOSKY or any other name, which is in any way phonetically or deceptively similar to the plaintiffs trademark PANTODAC and pass off their pharmaceutical preparation as the pharmaceutical preparation of the plaintiffs or enable others to pass off in any manner.

c) direct and decree the defendant to deliver to the plaintiff all the goods, dies, labels, wrappers, packages, cartons, boxes, articles, literature and all other materials bearing reference whatsoever with respect to the offending trademark PANTOSKY for destruction without compensation;-

d) The defendant be ordered and directed to render true and faithful accounts of the profits illegally earned by the defendant by using the deceptively similar and

confusing trade name PANTOSKY and a decree for the said amount be passed in favour of the plaintiff against the defendant.

e) directing the defendant to pay to the plaintiff's the costs to the suit."

4. The learned counsel for the plaintiff would submit that the defendant had applied for registration of the trademark PANTOSKY on 13.08.2009 under Application No.1850608 and the same was published in the Trade Marks Journal No.1446 dated 16.08.2010. On coming to know of the same, the plaintiff had filed TM-05 opposing the registration of the said trademark and the same is pending before the Trademarks Registry. It is further contended that the defendant have no right, title, authority or license to introduce, manufacture and sell medicinal preparation under the Trademark PANTOSKY, which is *prima facie* a dishonest act of imitation and /or deceptively similar to that of the plaintiff's trademark PANTODAC. The adoption of the trademark PANTOSKY by the defendant is neither accidental nor coincidental but a deliberate, dishonest and fraudulent act to trade upon the goodwill of the plaintiff's well known product PANTODAC to make illegal gains. The learned counsel for the plaintiff would further contend that the defendant's mark is phonetically, visually and structurally identical to

that of the plaintiff's trademark. If the defendant is allowed to continue with infringing the trade mark of the plaintiff, it would lead to assumption that the plaintiff and the defendant have some trade connection and would lead the consuming public to think that the products manufactured and sold by the defendant are the products of the plaintiff. Hence, the suit.

5. Notice was effected on the defendant via paper publication, despite which there was no representation on behalf of the defendant either in person or through the counsel. It is also seen from the records that even though the matter was listed under the caption "Undefended Board", the defendant did not appear. No written statement was also filed. Hence, the defendant was set ex parte. The learned Master has also recorded the ex-parte evidence of PW1, who is the Deputy Manager(Legal) of the plaintiff company and through him Exs.P1 to P10 were marked.

6. The only question that has to be considered in the suit is whether the defendant has infringed the trade mark of the plaintiff, viz., PANTODAC and whether the plaintiff is entitled to the decree as prayed for?

7. Heard the learned counsel for the plaintiff and perused the records.

8. From the perusal of the pleadings, it is seen that the plaintiff was engaged in the pharmaceutical business and are using the trademark PANTODAC for their drug Pantoprazole tablets. It is also seen that the defendant company has applied for registration of the trademark PANTOSKY, which is deceptively similar to that of the plaintiff's trademark. In order to prove the same, the Deputy Manager of the plaintiff's company has examined himself as PW1 and marked the documents, Exs.P1 to P10. Further, this Court, vide order dated 12.07.2011 has also granted an interim order of injunction restraining the defendant from using their trademark PANTOSKY and also passing off the same. The injunction also was extended from time to time and the same was also made absolute vide order dated 27.11.2015. Further, since there was no representation on behalf of the defendant even after effecting paper publication, the defendant was set exparte and an ex parte evidence was also recorded.

9. It is further seen that the plaintiff has also opposed the

registration of the defendant's trademark PANTOSKY by filing an application in TM-05 as soon as the same was published by the defendant in the Trade Marks Journal No.1446 on 16.08.2010.

10. After careful consideration of the submissions made by the learned counsel for the plaintiff and considering the facts and circumstances of the case in consonance with Exs.P1 to P10 and the evidence of PW1, this Court is of the view that the plaintiff has *prima facie* established its case for the grant of the reliefs sought for in the suit. Hence, the suit has to be decreed as prayed for in favour of the plaintiff.

11. Accordingly, the suit is decreed as prayed for with costs.

15..11.2016

vj2

Index : Yes/No

Internet : Yes/No

LIST OF WITNESSES EXAMINED ON THE SIDE OF THE PLAINTIFF

P.W.1 – Mr.Hiren Trivedi

LIST OF EXHIBITS MARKED ON THE SIDE OF THE PLAINTIFF

<i>Sl.No</i> <i>.</i>	<i>Exhibi</i> <i>ts</i>	<i>Description of documents</i>	<i>Date</i>
1	P-1	The original Board Resolution	07.08.2013
2	P-2	The Google print out reflecting the plaintiff address at Chennai	27.06.2011
3	P-3	The original plaintiff's product	-
4	P-4 Series	The copy of the manufacturing license of the plaintiff dated 09.12.1998, 30.03.1999, 01.02.2000, 27.12.2000, 28.02.2002, 26.07.2010, 10.06.2010, 21.06.2007 and 14.02.2008	-
5	P-5	The photocopy of the plaintiff's literature with respect to the Trademark PANTODAC	
6	P-6 series	The photocopies of sample invoices of the product PANTODAC	
7	P-7	The photocopy of legal use certificate of the Trademark PANTODAC	
8	P-8	The photocopy of the Chartered Accountant certificate reflecting the sale of the plaintiff's product	
9	P-9	The photocopy of the report of the Company Secretary	
10	P-10	The journal advertisement of the defendant's product PANTOSKY	

PUSHPA SATHYANARAYANA, J.

vj2

C.S.NO.481 of 2011

15..11..2016

<http://www.judis.nic.in>