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

+ **CS(COMM) 369/2016**

ABBOTT HEALTHCARE PVT LTD Plaintiff

Through: Mr. Deb Jyoti Ghosh, Adv.

versus

MARK BIO-GENICS(INDIA) & ORS Defendants

Through: Mr. Abhishek Garg, Advd. for D-4
& D-5.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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27.09.2016

IA 11989/2016 in CS(OS) No.3942/2014 re-registered as CS(COMM)
369/2016

1. The suit at hand was preferred on 17.12.2014 impleading five defendants including J.B. Remedies Pvt. Ltd., 11th Milestone Roorkee Road, Khasra no.298, Village Kurdi, Manglaur, District Haridwar, Uttarakhand-247667 and Mr. Rajvee Kumar Goel, Director J.B. Remedies Pvt. Ltd. shown in the array as defendant no.4 and 5 respectively, the other defendants being Mark Bio-Genics (India), Address 1 – Plot No.49/14/2, Khasra No.80, Samaipur, Delhi-110042, 35, Ground Floor, Gali No.15, Samaipur, Delhi-110042; Address 2 – Netaji Subhash Chandra Bose Road, Jaigoan, Distt. Jalpaiguir, West Bengal, Amark Bio-Genics Pvt. Ltd., Address 1 – Plot No.49/14/2, Khasra No.80, Samaipur, Delhi-110042, 35, Ground Floor, Gali No.15, Samaipur, Delhi-110042; Mr. Deepak Mittal, Director/Principal mark Biogenics Pvt. Ltd./Mark Bio-Genics (India) Address 1 – 35, Ground Floor, Gali no.15, Samaipur, Delhi-110042, Address 2 – Plot No.49/14/2, Khasra No.80, Samaipur, Delhi-110042, *i.e.*, defendants no.1,2 and 3 respectively.

The suit prays for the following reliefs:

“(a) An order for permanent injunction restraining the defendants, its directors/partners or proprietors, as the case may be, their officers, servants, agents and representatives from manufacturing, selling and offering for sale advertising, directly or indirectly medicinal and pharmaceutical preparations under the trademark EZIPYRINE and/or any other mark deceptively similar and/or in any manner whatsoever doing any other thing as may be likely to cause infringement of the plaintiffs’ trade mark registration no.293710 in class 5 for the mark ESGIPYRIN.

(b) An order for permanent injunction restraining the defendants, its directors/partners or proprietors, as the case may be, their officers, servants, agents and representatives from manufacturing, selling and offering for sale advertising, directly or indirectly medicinal and pharmaceutical preparations under the trademark EZIPYRINE and/or any other mark deceptively similar and/or in any manner whatsoever doing any other thing as may be likely to cause confusion or deception amounting to passing off their goods and business as and for those of the plaintiffs and/or any other mark deceptively similar to the plaintiffs’ ESGIPYRIN mark.

(c) An order restraining the defendant, its directors/partners or proprietors, as the case may be, their officers, servants, agents and representatives from manufacturing, selling and offering for sale advertising, directly or indirectly medicinal and pharmaceutical preparations under the blister strip bearing the mark EZIPYRINE as filed along with the plaint which is a colourable imitation or substantial reproduction of the plaintiffs’ ESGIPYRIN packaging/strip as filed along with the plaint described above, amounting to infringement of copyright thereto;

(d) An order for delivery up of all the goods, dies, blocks, labels and any other printed matter bearing the impugned mark, and/or the impugned packaging to the authorised representative of the plaintiffs for the purpose of destruction/erasure;

(e) A decree for damages of Rs.20,00,000/- be passed in favour of the plaintiffs and against the defendant. ”

2. After initial contest, an application came to be moved jointly by the plaintiff and defendants no.1 to 3, it being IA 351/2016 under Order 23 Rule 1 CPC read with Section 151 CPC praying for a decree to be passed in terms of a settlement amicably arrived by them. The said application was considered and allowed by order dated 18.01.2016 and a decree was passed qua defendants no.1 to 3 in terms of the said settlement. By the said order it was directed that the suit would continue against defendants no.4 and 5.

3. By the application at hand, now jointly moved by the plaintiffs and defendants no.4 and 5, it has been submitted that they have also arrived at an amicable settlement on the following terms and conditions:-

“(a) That the defendant no.4 & 5 admit, confirm and agree that the plaintiff is the registered proprietor of the trademark no.293710 “ESGIPYRIN” in class 5 with respect to medicinal and pharmaceutical preparations as of 22nd January 1974.

(b) The defendant no.4 & 5 agree, confirm and admit that the plaintiff is the owner of the unique yellow blister packaging and its yellow tablets under the mark “ESGIPYRIN” wherein the said trademark “ESGIPYRIN” is prominently displayed in silver font within a black box on the blister foil, and similar representation of trademark “ESGIPYRIN” in prominent white font within black box on the outer carton and orange and white colour combination of carton and design which contains the said blister strips.

(c) The defendant no.4 & 5 undertake with immediate effect not to manufacture, sell or offer for sale, advertise, directly or indirectly, medicinal and pharmaceutical preparations under the trademarks “ESGIPYRIN” or any other mark deceptively

similar to the plaintiff's registered trademark "ESGIPYRIN" and/or in any manner whatsoever doing any other thing as may likely to cause infringement of the plaintiff's trademark registration no.293710 in class 5 for the mark "ESGIPYRIN".

(d) The defendant no.4 & 5 undertake not to manufacture, sell or offer for sale, advertise, directly or indirectly, medicinal and pharmaceutical preparations under the trademark "ESGIPYRIN" or any other mark deceptively similar to the plaintiff's registered trademark "ESGIPYRIN" and/or in any manner whatsoever doing any other thing as may be likely to cause confusion or deception amounting to passing off their goods as and for those of the plaintiff or use any other trade-dress or packaging deceptively similar to that of the plaintiff's produce "ESGIPYRIN" as described hereinabove.

(e) The defendant no.4 & 5 undertakes not to manufacture, sell or offer for sale, advertise, directly or indirectly, medicinal and pharmaceutical preparations as yellow colored tablets and/or within yellow, silver & black colored blister strip in back and front portion of strip or bearing the mark "ESGIPYRIN" and exterior carton box with identical colour combination, scheme, layout to the plaintiff's product (d) The defendant no.4 & 5 undertake not to manufacture, sell or offer for sale, advertise, directly or indirectly, medicinal and pharmaceutical preparations under the trademark "ESGIPYRIN" or any other mark deceptively similar to the plaintiff's registered trademark "ESGIPYRIN" and/or in any manner whatsoever doing any other thing as may be likely to cause confusion or deception amounting to passing off their goods as and for those of the plaintiff or use any other trade-dress or packaging deceptively similar to that of the plaintiff's product "ESGIPYRIN" tablets and exterior packaging as filed along with the plaint described herein above amounting to infringement of copyright thereto.

(f) That the defendants shall pay an amount of Rs.25,000/- (Rs.Twenty Five Thousand only) vide demand draft no.141670 dated 12.02.2016 in the name of Abbott Healthcare Private Limited as full and final settlement amount.

(g) That the defendants shall hand over all the existing stocks and any packing material bearing the mark ESGIPYRIN and or any other mark deceptively similar to the plaintiff's registered trademark ESGIPYRIN, lying on their premises or anywhere else to the authorized representatives of the plaintiff for the purpose of destruction within 7 days from the date of signing of the present settlement application."

4. By the application moved, and on the submissions made at the hearing the learned counsel of both sides submit that the settlement has been arrived at by the joint applicants (plaintiff and defendants no.4 and 5) out of their free will and volition, each side having agreed and undertaken to abide by the terms and conditions settled and in the event of any violation to be liable for all the consequences including legal fees and expenses to be incurred for fresh proceedings to be initiated, the plaintiff agreeing to give up the claim for damages and cost of the proceedings. The application is supported by affidavit of Ms.Tejal Mundkur, Manager – Legal and authorized signatory on behalf of the plaintiff and by the affidavit of defendant no.5 on his behalf and on behalf of defendant no.4.

5. Having regard to the facts and circumstances of the case and the submissions made in the application and at the hearing, the settlement having been arrived at voluntarily by the parties, a decree in terms thereof as set out above is passed and the suit is disposed of accordingly leaving the parties to bear their own costs.

6. A decree sheet be prepared accordingly.

7. The date fixed in the matter, *i.e.* 20.10.2016, shall stand cancelled.

R.K.GAUBA, J.

SEPTEMBER 27, 2016

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