IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.05.2017

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.S.No.322 of 2014

Lee Pharma Limited,
Sy.No.257 &258/1,
Door No.11-6/56-C Block,
Opp.IDPL factory, Moosapet,
Balanagar (Post), Hydrebad-500 037
rep. by its Managing Director,
A.Venkata Reddy .. Plaintiff

Versus

Lee Pharmaceuticals,
LEE HOUSE, 18/1, Akbar Sahib Street,
Chepauk, Triplicane,
Chennai 600 005.
rep by T.Balamurugan
Proprietor .. Defendant

The plaint is filed and numbered as Civil Suit under Order VII Rule 1 CPC read with Order IV Rule 1 OS Rules read with Sec.27,134,135 of the Trademarks Act,1999, praying for a judgment and decree:

a. A permanent injunction restraining the Defendant, by himself, his men, servants, agents, distributor, stockiest, representatives or any one claiming through or under him from in any manner passing off and/or enabling others to pass off by using, carrying on business under and using the trade name and trade mark LEE PHARMACEUTICALS as and for the plaintiff's trade name and trade mark LEE PHARMA or in any other manner whatsoever;

b. A permanent injunction restraining the defendant, by himself, his men, servants, agents, distributors, stockiest, representatives or any one claiming through or under him from using, maintaining or operating, posting or in any manner utilizing for the purposes of trade and commerce the website www.leepharmaceuticals.in which is similar to the plaintiff's trade name and trademark LEE PHARMA and their website www.leepharma.com;

c. The Defendants be ordered to surrender to Plaintiffs for destruction of all products, labels, cartons, dyes, blocks, moulds, screen prints, packing materials and other materials bearing the trade name and trademark LEE PHARMACEUTICALS or any mark deceptively similar to plaintiff's trade name and trademark LEE PHARMA.

d. Direct the defendant to pay a sum of Rs.25,00,000/- to the plaintiff as damages on account of passing off;

e. for costs of the suit

For Plaintiff : Mr.G.Ramji
For Defendant : No Appearance

JUDGMENT

The suit has been filed for the following reliefs:

a. A permanent injunction restraining the Defendant, by himself, his men, servants, agents, distributor, stockiest, representatives or any one claiming through or under him from in any manner passing off and/or enabling others to pass off by using, carrying on business under and using the trade name and trade mark LEE PHARMACEUTICALS as and for the plaintiff's trade name and trade mark LEE PHARMA or in any other manner whatsoever;

b. A permanent injunction restraining the defendant, by himself, his men, servants, agents, distributors, stockiest, representatives or any one claiming through or under him from using, maintaining or operating, posting or in any manner utilizing for the purposes of trade and commerce the website www.leepharmaceuticals.in which is similar to the plaintiff's trade name and trademark LEE PHARMA and their website www.leepharma.com;

c. The Defendants be ordered to surrender to Plaintiffs for destruction of all products, labels, cartons, dyes, blocks, moulds, screen prints, packing materials and other materials bearing the trade name and trademark LEE PHARMACEUTICALS or any mark deceptively similar to plaintiff's trade name and trademark LEE PHARMA.

d. Direct the defendant to pay a sum of Rs.25,00,000/- to the plaintiff as damages on account of passing off;

e. for costs of the suit

2. The case of the plaintiff is that originally, the plaintiff-Company was incorporated under the Companies Act on 6th October 1997 and named as Lee Pharma Private Limited Company to carry on the business of pharmaceutical and other allied business. Subsequently, on 14th September 2005, it was converted into a Public Limited Company and re-named as Lee Pharma Limited. In the course of their business, they have adopted several Trade Marks and applied the same to various pharmaceutical products manufactured by them.

3. The plaintiff has established a State-of-Art Research and

Development Centre with experienced team of Senior Scientists. The plaintiff is spending huge amount of money in research and development activities every year and filed many patent applications for the novel process. The plaintiff-Company is the recipient of many awards and they have also participated in a number of national and international pharmaceutical events and exhibitions and spent huge amount of money on marketing.

4. The plaintiff would further state that they have filed several trademark applications to protect their intellectual property rights on 05.11.2011 under various trade names and the applications are still pending. The annual turnover of the plaintiff-Company in 2008-2009 is Rs.58,99,00,635/-, which has raised to Rs.167,98,04,000/- in 2012-2013. In March 2014, the plaintiff became aware that the defendant-Company is carrying on the business under the name and style of Lee Pharmaceuticals and they are also in the same field as that of the plaintiff. The defendant is maintaining a website www.leepharmaceuticals.in, which is almost identical to that of the plaintiff's website www.leepharma.com. The defendant has deliberately copied the plaintiff's trade name and thus infringed the trademark and goodwill and reputation of the plaintiff.

5. The plaintiff would further state that the plaintiff is a pre-user

of the trade name and trademark Lee Pharm since 1997. The defendant has commenced the business only in the year 2013. Since the plaintiff and the defendant are carrying on the same business, the use of identical trade name and trademark will cause confusion among the customers, thereby, causing monetary loss and business reputation of the plaintiff. Therefore, the plaintiff caused a notice dated 13.03.2014, for which, the defendant issued a reply on 23.03.2014, stating that Lee is the daughter of the defendant. Despite notice, the defendant is using the trade name and trademark of the plaintiff. Hence, the suit.

6. On the above pleadings, this Court is called upon to decide whether the plaintiff is entitled for the reliefs sought for in this suit.

7. The learned counsel for the plaintiff placing reliance on the decision reported in AIR 1985 Delhi 210 (B.K.Engineering Co. Vs. U.B.H.I. Enterprises (Regd.) Ludhiana, submitted in similar facts, the Delhi Court granted injunction, paragraph 16, reads as follows:-

> *"The central question in each case is whether the name or description given by the defendant to his goods is such as to create a likelihood that a substantial section of the purchasing public will be misled into believing that his goods are the goods of the plaintiff. Parker -- Knoll Ltd. v. Knoll International Ltd., (1962) RPC 265 at pp. 279, 285, 289-290. The defendants say that thy are entitled to use "B.K.-81" as*

B.K. is an abbreviation of their deceased mother's name, Balwant Kaur. I cannot accept this argument. That the defendants use their mother's name with no intention to deceive anybody does not mean that such likelihood has not been created...."

8. The learned counsel for the plaintiff further submitted that even though the defendant remained ex-parte, this Court has got power to order punitive damages against the defendant. In support of the said contention, learned counsel for the plaintiff relied on the decision in the case of Cartier International Ag & Others Vs. Gaurav Bhatia & Others reported in Indiankannon.org/doc/86715466 (Delhi High Court), paragraph 59 and 60 are extracted below:-

"59. With regard to the relief of damages as claimed by the plaintiffs in para 44 (g) of the plaint, this Court has previously granted both exemplary and punitive damages against the defendants in ex-parte matters of similar nature. In time Incorporated v. Lokesh Srivastava & Anr., (supra) while awarding punitive damages of Rs.5 lakhs in addition to compensatory damages also of Rs.5 lakhs, Justice R.C.Chopra observed that "time has come when the Courts dealing in actions for infringement of trademarks, copyrights, patents etc., should not only grant compensatory damages but also award punitive damages with a view to discourage and dishearten law breakers who indulge in violation with impunity out of lust for money, so

that they realise that in case they are caught, they would be liable not only to reimburse the aggrieved party but would be liable to pay punitive damages also, which may spell financial disaster for them."

60. Further, this Court in Microsoft Corporation v. Rajendra Pawar & Anr., 2008 (36) PTC 697 (Del.) decided on 27th July, 2007 has held "Perhaps it has no become a trend of sorts, especially in matters pertaining to passing off, for the defending party to evade court proceedings in a systematic attempt to jettison the relief sought by the plaintiff. Such flagrancy of the defendant's conduct is strictly deprecatory, and those who recklessly indulge in such shenanigans must do so that their peril, for it is now an inherited wisdom that evasion of court proceedings does not de facto tantamount to escape from liability. Judicial process has its own way of bringing to tasks such erring parties whilst at the same time ensuring that the aggrieved party who has knocked the doors of the court in anticipation of justice is afforded with adequate relief, both in law and in equity. It is here that the concept of awarding punitive damages comes into perspective."

9. Mr.A.Venkata Reddy, Managing Director of the plaintiff company was examined as PW1 and Exs.P1 to P13 were marked. Ex.P1 is the Board resolution held on 24.11.2014. Ex.P2 is the photocopy of the Certificate of Incorporation of the plaintiff Company dated 06.10.1997 issued by the Assistant Registrar of Companies, Andhrapradesh, Hyderabad.

Ex.P3 is the photocopy of the fresh certificate of incorporation of the plaintiff company dated 11.10.2005 issued by the Registrar of Companies, Andhrapradesh, Hyderabad. Ex.P4 is the photocopy of the trademark application dated 05.11.2011 for the trademark “Lee Pharma Limited” under No.2229926 under class 5. Ex.P5 is the photocopy of the trademark application dated 05.11.2011 for the trademark “LEE PHARMA LIMITED” under No.2229927 under class 35. Ex.P6 is the photocopy of the trademark application dated 05.11.2011 for the trademark “LEE PHARMA LIMITED” under No.2229928 under class 42. Ex.P7 is the photocopy of the trademark application dated 05.11.2011 for the trademark “L” (logo) under No.2229929 under class 35. Ex.P8 is the photocopy of the trademark application dated 05.11.2011 for the trademark “L” (logo) under No.2229930 under class 42. Ex.P9 is the photocopy of the trademark application dated 05.11.2011 for the trademark “L” (logo) under No.2229931 under class 5. Ex.P10 is the photocopy of the Cease and desist notice dated 13.03.2014 form the plaintiff to the defendant. Ex.P11 is the copy of the email dated 23.03.2014 from the defendant to the plaintiff's counsel. Ex.P12 is the copy of the email dated 25.03.2014 from the plaintiff's counsel to the defendant. Ex.P13 is the print out of the defendant's website consisting 7 pages.

10. It is seen that apparently, from the above oral and

documentary evidence and on going through the pleadings, the trade name and trade mark of the defendant is deceptively similar to that of the plaintiff. Hence, it has to be inferred that there will be confusion in the minds of the public regarding the name of the company and its products being manufactured and sold in the market.

11. The judgments relied on by the learned counsel for the plaintiff is to the point raised by him and they are squarely applicable to the case of the plaintiff.

12. Hence, the issue framed in the suit is answered accordingly. The plaintiff has proved its claim for the reliefs prayed for in the suit. Accordingly, the suit is decreed in part with costs. The defendant shall pay the punitive damages of Rs.50,000/- (Rupees fifty thousand only) to the plaintiff. Consequently, connected applications are closed.

08.05.2017

Index: Yes/No
Internet:Yes/No
pvs

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pvs

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