

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.03.2017

CORAM

THE HONOURABLE Mr. JUSTICE P.KALAIYARASAN

C.S.No.1019 of 2009

Shield Healthcare Private Limited
Rep. by its Managing Director

...Plaintiff

Vs

1. Konis Pharmaceuticals Pvt. Ltd
Jagriti Sadan
Subathu Road
Solan-173 212(H.P).
Also at
Village & Post Office Saproon
Near Govt. Middle School.
The. & Distt Solan HP
Himachal Pradesh, India.
2. Universal Organics,
Subathu Road,
Solan- 173 212(H.P).
3. Jaya Rami Reddy Silam,
Director
Konis Pharmaceuticals Pvt., Ltd,
2-29, Lingapuram Village,
Proddutur Taluka
Proddutur -516360,
Andhra Pradesh, India.
4. Koto Reddy Seelam,
Director,
Konis Pharmaceuticals Pvt., Ltd.
13/309/A, Krishna Nagar,
Nulakapeta Village, Tadepalli(M),
Guntur,-522501.
Andhra Pradesh, India

... Defendants

Plaint filed under Order VII Rule 1 of The Civil Procedure Code, 1908

Sections 29, 134 & 135 of the Trade marks Act, 1999 (47 of 1999) r/w Order IV Rule 1 of the Original Side Rules of the Madras High Court praying to pass a judgment and decree against the defendants jointly and severally in the following terms:

i. a permanent injunction restraining the defendants, its men, agents, men acting under them or claiming under them, from in any manner infringing the registered trade mark of the Plaintiff viz., "RUDIMIN" being trade mark registration No. 1448654 with effect from 19.04.2006 (vide trade mark registration certificate No. 744807) either by manufacturing or marketing the pharmaceutical product/drug Rudimin and or selling the same in the name and style of "REDIMIN" or nay other deceptively similar mark with minor changes/variation;

ii. a permanent injunction restraining the defendant's its men, agents, men acting under them or claiming under them or through them, from in any manner passing off their "Redimin" pharmaceutical product/ drug as that of the plaintiff's by using the offending trade mark "REDIMIN" which is similar and identical to that of the plaintiff's established trade mark "RUDIMIN" or by using any other trade mark which is similar or deceptively similar to that of the plaintiff either by manufacturing or selling or offering for sale or in any manner advertising the same for pharmaceutical product/drug;

iii. direct the defendant's to render a true and faithful account of the profits earned by through sale of goods where the offending trade mark "RUDIMIN" and directing payment of such profits to the plaintiff by way of damages;

iv. directing the defendants to surrender to the plaintiff the entire stock of "Redimin" pharmaceutical products/drugs bearing the offending trade mark "Redimin" which is similar and or identical to the plaintiff's trade mark "Rudimin" together with cartons labels, brochures, printing blocks, containers, boxes etc, bearing the offending trade mark for destruction and

v. costs of the suit.

For Plaintiff : Mr. M. SUNDAR

For Defendants : No representation

J U D G M E N T

This suit has been filed Order VII Rule 1 of Civil Procedure Code, 1908 Section 29, 134 and 135 of the trade marks Act, 1999 (47 of 1999) r/w Order IV Rule 1 of the Original Side Rules of the Madras High court seeking permanent injunction restraining defendants and their men from in any manner infringing the registered trade mark of plaintiff "RUDIMIN" and from in any manner passing off defendants "REDIMIN" pharmaceutical product as that of the plaintiff's by using the offending trade mark "RUDIMIN" which is similar and identical to that of the plaintiff's established trade mark "RUDIMIN" and other reliefs including rendering of true accounts and surrendering the entire stocks of "RUDIMIN" pharmaceutical products to the plaintiff.

2. The case of the plaintiff is that the plaintiff is a manufacturer and markets pharmaceutical products, which comes under the meaning of Drugs and Cosmetics Act, 1940 in the trade mark "RUDIMIN", which is multivitamin tablet for therapeutical use.

3. The drug license is dated 20-02-2002. Though the product was initially manufactured and marketed under the name of "Shield Pharmaceuticals", a partnership firm, name came to be changed and the present name of the Company is "Shield Health Care Private Limited" as per certificate issued by the Registrar of Companies, Chennai.

4. The multivitamin tablet was manufactured and marketed under the trade mark "RUDIMIN". The trade mark was also registered on 08-08-2008. Owing to the high quality and standard maintained by the plaintiff, the said drug is well known among physicians, who regularly prescribe the same for adults and infants. It has come to the knowledge of the plaintiff in May 2009, that the defendants are manufacturing and marketing the offending product in the name of "REDIMIN", causing huge loss to the plaintiff. The plaintiff issued a notice on 20-05-2009 for which, the first defendant sent a reply dated 12-06-2009 stating that their acts were done unknowingly and they had stopped the manufacturing. But, the manufacturing was not stopped and the defendants marketing the offending infringing product unabated.

5. The defendants 3 and 4 are the Directors of the first defendant, who are in charge of and responsible to the day-to-day affairs of the first defendant company.

6. The offending product is clearly a slavish imitation of the plaintiff's product and it is clearly intended to infringe the plaintiff's registered trade mark and pass off the product of the defendants, as if they are the products of the plaintiff. Therefore, the suit has been filed.

7. The defendant was called absent and set ex parte. The Manager of the plaintiff has been examined as P.W.1, Exhibit-P1 to Exhibit-P23 and M.O.s 1 to 6 were marked. Exhibit-P10 is the trade mark Registration Certificate of "RUDIMIN"

dated 08-08-2008. Notice sent by the plaintiff and the reply of the first defendant to the plaintiff are Exhibits-P15 and P16. Plaintiff product "RUDIMIN" tablets and defendants offending product "REDIMIN" tablets have been marked as M.O.3 and M.O.4.

8. Through the evidence of P.W.1 and the above Exhibits, the plaintiff has established its case that the trade mark used by the defendants is deceptively similar to that of the plaintiff and defendants infringed the plaintiff's registered trade mark. Therefore, the plaintiff is entitled to the relief as prayed for.

9. In fine, the suit is decreed as prayed for with costs.

15.03.2017

Index : Yes/No

bsm/gya

P.KALAIYARASAN, J.

bsm/gya

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