

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2017

CORAM

THE HON'BLE MR.JUSTICE P.KALAIYARASAN

C.S.No.172 of 2009

TTK Healthcare Limited
6, Cathedral Road,
Chennai - 600 086,
Rep. by its Senior Vice President -
Commercial & Company Secretary,
Mr.S.Kalyanaraman .. Plaintiff

vs

S.R.Bio Future Labs
4/543, Paree Street,
Sadhasiva Nagar,
Madurai - 625 020,
Tamil Nadu. .. Defendant

Civil Suit filed under Order IV Rule 1 of O.S.Rules and Order VII Rule 1 of CPC read with Sections 27, 28, 29, 134 and 135 of the Trade Marks Act, 1999, seeking Judgment and Decree against the defendant on the following terms :

(a) a permanent injunction restraining the defendant, their men, distributors, stockists, servants, agents, successors in business, retailers, legal representatives, assigns or any other person claiming through or under them from in any manner infringing the plaintiff's registered trademarks in the Woodward's Gripe water label, logo containing the device of a baby and other features by use of an almost identical and / or deceptively similar label / logo Wonderful Bonnicure Gripe Water for gripe water or any other medicinal preparations or in

any manner whatsoever;

(b) a permanent injunction restraining the defendant, their men, distributors, stockists, servants, agents, successors in business, retailers, legal representatives, assigns or any other person/s claiming through or under them from in any manner manufacturing, selling, offering for sale, stocking, advertising, directly or indirectly dealing in products and preparations using a packaging/label/logo Wonderful Bonnicure Gripe water which is imitative of the plaintiff's trade dress in the Woodward's Gripe water packaging/label/logo or any other identical or deceptively similar packaging/label/logo so as to pass off and enable others to pass off the defendant's gripe water, medicinal preparations as and for gripe water, medicinal preparations of the plaintiff or in any other manner whatsoever;

(c) a permanent injunction restraining the defendant, their men, distributors, stockists, servants, agents, successors in business, retailers, legal representatives, assigns or any other person claiming through or under them from in any manner committing acts of copyright infringement by printing, producing, using, selling Wonderful Bonnicure Gripe water label, which is a substantial reproduction of plaintiff's artistic work Woodward's Gripe water label or in any other manner whatsoever;

(d) The defendant be ordered to surrender to the plaintiff all their products, medicinal preparations, gripe water in bottles wrapped in imitative dress, labels / packaging, leaflet, brochures, dyes, blocks, screen prints and other materials containing the label/logo Wonderful Bonnicure Gripe water deceptively similar to the plaintiff's Woodward's Gripe water label / logo with the device of a baby and other features for destruction purposes.

(e) The defendant be ordered to pay to the plaintiff a sum of Rs.10,05,000/- as liquidated damages for passing off their medicinal preparations as and for the plaintiff's medicinal preparations and for committing trademark infringement and copyright infringement by use of imititiave trade dress.

(f) a preliminary decree be passed in favour of the plaintiff directing the defendant to render account of profits made by use of the deceptively similar trade mark, trade dress and copyright in the artistic work Wonderful Bonnicure Gripe water amounting to infringement of the plaintiff's registered trade mark, copyright and passing off and a final decree be passed in favour of the plaintiff for the amount of profits thus found to have been made by the defendant after the latter have rendered accounts and for costs.

For Plaintiff : Ms. Subha Shiny for
Ms.Brinda Mohan

For Defendant : No appearance (set exparte)

J U D G M E N T

This suit has been filed seeking (a) permanent injunction restraining the defendant and their men from in any manner infringing the plaintiff's registered trademarks in the Woodward's Gripe water label, logo containing the device of the baby and other features by use of an almost identical and / or deceptively similar label / logo Wonderful Bonnicure Gripe Water for gripe water or any other medicinal preparations; (b) permanent injunction restraining the

defendant and their men from in any manner manufacturing, selling, offering for sale, stocking, advertising, using a packaging/label/logo Wonderful Bonnicure Gripe water which is imitative of the plaintiff's trade dress in the Woodward's Gripe water packaging/label/logo or any other identical or deceptively similar packaging/label/logo so as to pass off and enable others to pass off the defendant's gripe water, medicinal preparations of the plaintiff; (c) permanent injunction restraining the defendant and their men from in any manner committing acts of copyright infringement by printing, producing, using, selling Wonderful Bonnicure Gripe water label, which is a substantial reproduction of plaintiff's artistic work Woodward's Gripe water label; (d) ordering the defendant to surrender to the plaintiff all products, medicinal preparations, gripe water in bottles wrapped in imitative dress, labels / packaging, leaflet, brochures, dyes, blocks, screen prints and other materials containing the label/logo Wonderful Bonnicure Gripe water deceptively similar to the plaintiff's Woodward's Gripe water label / logo with the device of a baby and other features for destruction purposes; (e) ordering the defendant to pay to the plaintiff a sum of Rs.10,05,000/- as liquidated damages for passing off their medicinal preparations as and for the plaintiff's medicinal preparations and for committing trademark infringement and copyright

infringement by use of imitative trade dress; (f) for a preliminary decree directing the defendant to render account of profits made by use of the deceptively similar trade mark, trade dress and copyright in the artistic work Wonderful Bonnicure Gripe water amounting to infringement of the plaintiff's registered trade mark, copyright and passing off and a final decree be passed in favour of the plaintiff for the amount of profits and for costs.

2. The plaintiff is one of the popular, famous and historic marks used in respect of baby care products known as Woodward's Gripe water. The product is meant for new born babies, infants suffering due to gripe, stomach pain, gastric troubles caused due to acidity and indigestion.

3. The Woodward's Gripe water are sold in bottles wrapped in a distinctive packaging/label containing the following features :

"(a) Blue and white colour combination with unique get up and lay out.

(b) Center of the packaging/label in white background within rectangle like device with arched top on the front and rear panel.

(c) The words Non-alcoholic written in a wavy rectangular device in the left side corner above

the white background.

(d) The trademark Woodward's written in black lettering on the top of the label.

(e) Device of a baby inside a beautifully decorated and artistically created round logo and floral design.

(f) Beneath that the words "Celebrated Gripe Water" written in stylized script in English and Hindi.

(g) Details about the nature of disorder and reliefs thereto and

(h) The reverse panel consists of the same features as in d,e,f and inter alia contains descriptive details such as dose, manufactures, marketers, name and address, manufacturing license number, MRP, batch no., date of manufacturing, date of expiry, bar coding."

4. The packaging/label was created in an artistic manner and therefore, qualifies for copyright and the plaintiff is entitled to copyright and the plaintiff is entitled to copyright in the colour scheme, get up and lay out of the aforesaid label.

5. The plaintiff is also the registered proprietor of the following trademarks :

- "(a) Logo consisting device of a baby and other features under No.7752 dated 12.11.1942 in Class 5 in respect of medicinal preparations.
- (b) Woodward's under No.149876 dated 16.07.1951 in Class 5 in respect of medicinal preparations.
- (c) Woodward's Celebrated label under 149878 dated 16.07.1951 in Class 5 in respect of medicinal preparations.
- (d) Woodward's Celebrated Gripe Water label under No.248732 dated 20.04.1968 in Class 5 in respect of Gripe mixtures."

6. The registrations have been duly renewed and is subsisting. The plaintiff has been using the aforesaid trademarks with the distinctive packaging continuously since 1940. The plaintiff is maintaining throughout the same packaging for marketing and selling their Woodward's Gripe water and it is the exclusive trade dress of the plaintiff. The consumers especially mothers easily and immediately identify the plaintiff's gripe water merely upon seeing the distinctive packaging even from long distance. The plaintiff has acquired immense reputation and goodwill for its celebrated Woodward's Gripe water packed in a distinctive label/package. The sales of the plaintiff's Woodward's Gripe water are increasing every year. The sales figure gone from 1909.14 lakhs in 1994-95 to Rs.3197.77 lakhs in 2007-

2008. The plaintiff has spent huge expenditures for sales promotion of its Woodward's Gripe water through advertisements in print and electronic media.

7. The plaintiff became aware that the defendant is manufacturing and selling Gripe water under the mark Wonderful Bonnicure Gripe water in identical packaging and get up imitating the exclusive trade dress of the plaintiff's Woodward's Gripe water. The plaintiff issued a notice dated 25.11.2008 to the defendant to cease and desist from imitating the exclusive trade dress of the plaintiff's trade dress Woodward's Gripe water. He received the evasive reply dated 11.12.2008 from the defendant. The defendant though using the brand name Wonderful Bonnicure Gripe water has fully copied the colour scheme, get up and black lettering of the plaintiff's well known product. The defendant has made a substantial reproduction of the plaintiff's Woodward's label / packaging. The defendant's trade label is identical in all aspects. The activities of the defendant are only to derive illicit benefits by diverting the plaintiff's business and sales to their own advantage. The plaintiff is the prior adopter and users of the Woodward's label/packaging containing distinctive features, colour scheme, get up and lay out. The plaintiff has got superiority in title and absolute right over the said label/packaging by virtue of prior adoption,

registration and use. The defendant is fully aware of the pre-existing of plaintiff's distinctive trade dress in the Woodward's Gripe water packaging. The defendant has virtually copied each and every feature of the plaintiff's Woodward's label/packaging/logo including the colour combination, get up, lay out, arrangement of features etc. The customers should believe or tend to believe the defendant's product as plaintiff's only. The use of deceptively similar trade dress, label/packaging/logo for the defendant for selling the Gripe water amounts to passing off. The plaintiff has suffered loss and suffering loss to their reputation and goodwill on account of the wrongful activities of the defendant in adopting an identical trade dress for the purpose of marketing their products. Therefore, the plaintiff has come forward with this suit.

8. The defendant was called absent and set ex parte. The Manager of the plaintiff has been examined as P.W.1 and Exs.P.1 to P.12 have been marked. The certified copy of the registration certificate of trademarks have been marked as Exs.P.2 to P.4. The copy of the photograph of the plaintiff's Woodward's Gripe water label and the photograph of the defendant's product label are marked as Exs.P.11 and P.12. Apart from the above documents, the invoices as to

the sale, advertisement and also copies of notices exchanged have also been marked.

9. From the evidence of P.W.1 and the documents, the plaintiff has made out a case as against the defendant as to the passing off, by deceptively using similar trade dress, label/packaging/logo by the defendant for selling Gripe water.

10. The plaintiff has not produced any evidence to establish the actual damage / loss. It is well settled that actual damage need not be proved and mere possibility of damage is enough and damage / loss can be presumed as a natural consequence of misrepresentation. Here in this case, the plaintiff claims damages of Rs.10,05,000/-. This Court is of the view that the plaintiff is entitled to nominal damages of Rs.1,00,000/-.

In fine, the suit is decreed as prayed for with costs, excepting the relief of damages. The defendant is directed to pay the plaintiff a sum of Rs.1,00,000/- (Rupees One lakh only) as nominal damage for committing acts of infringement.

13.06.2017

Speaking order

Index : Yes / No
tsvn

P.KALAIYARASAN, J

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