

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.03.2017

CORAM

THE HONOURABLE Mr. JUSTICE P.KALAIYARASAN

C.S.No.1024 of 2010

M/s.Aravind Laboratories,
3/17, Valluvuar Salai,
Ramapuram,
Chennai 600 089.
Rep. by its Partner T.Devanathan
Plaintiff

...

Vs

R.Balamukundam,
Trading as SEZJA PHARMACEUTICALS
S P O C 40,
Industrial Area, Phase 3,
Mohali,
Punjab- 160 055.

... Defendant

Plaint filed under Order VII Rule 1 of the C.P.C. and Order IV Rule 1 of the O.S Rules r/w Section 27, 134 & 135 of the Trade Marks Act, 1999 praying to pass a judgment and decree for :

a) granting a permanent injunction, restraining the Defendant, by itself, its servants, agents, distributors, or anyone claiming through them from manufacturing, selling, advertising and offering for sale using the Trade Mark "EYELEYE" upon the goods or in any media and use the same in "MEDICINES FOR HUMAN PURPOSE" invoices, letter heads and visiting cards or on any other cosmetics by using any other trade mark which is in any way visually, phonetically or deceptively similar to the plaintiffs Registered Trade Marks "EYETEX" or in any manner infringing the plaintiffs Registered Trade Mark Nos.124824, 271583 & 296914 in class 3;

b) directing the defendant to surrender to the plaintiffs all the packing material, cartons, advertisement materials and hoardings, letter-heads, visiting cards, office stationery and all other materials containing/bearing the Trade Mark "EYELEYE" or other deceptively similar Trade Mark;

c) a preliminary decree in favour of the plaintiff, directing the defendant to render an account of profits made by them by the use of the Trade Mark "EYELEYE" on the goods referred and for a final decree in favour of the Plaintiffs for the amount of the profits found to have been made by the Defendants, after the defendants have rendered accounts; and

d) directing the defendant to pay to the plaintiff the costs to the suit.

For Plaintiff : Ms.Gladys Daniel
For Defendant : No representation

J U D G M E N T

The suit has been filed seeking permanent injunction restraining the defendant and their men from manufacturing, selling, advertising and selling using the Trade Mark "EYELEYE" upon the products and or in any media and use the same in "Medicines for Human purpose" or by using any other Trade Mark which is visually, phonetically, deceptively similar to the plaintiff's registered Trade Mark "EYETEX" or in any manner infringing the plaintiff's registered Trade Mark Nos. 124824, 271583 & 296914 and for a direction to the defendant to surrender to the plaintiff, all the packing material, cartons, advertisement materials and hoardings, letter-heads etc. and render accounts of profits made by them by use of the Trade Mark "EYELEYE" on the goods.

2. Brief Facts : The plaintiff and its predecessors in title are manufacturers

and marketers of cosmetics for over 65 years. The plaintiff is engaged in manufacturing and marketing Kajal, Kumkum, Eye Liners, Mascaras, Lip Sticks, Compacts and other cosmetics used by women. In order to market its cosmetics, the plaintiff conceived and adopted the unique Trade Mark "EYETEX" along with the coined word "EYETEX", the plaintiff also adopted the picture of the left eye with the word "EYETEX" written in black bold capital letters. The plaintiff obtained statutory protection for its Intellectual Property Rights in the Trade Mark "EYETEX" by getting the Trade Mark "EYETEX" along with the device registered under the Trade Marks Act 1940.

3. The plaintiff is also having various registered Trade Marks for other products manufactured by them and the same have also been registered. All the partners of the plaintiff firm are the joint proprietors of the above mentioned registered Trade Marks. The plaintiff has been exclusively associated with the Trade Mark and the product of the plaintiff has been received well by the trade and the public and has been constantly increasing in popularity over the years. The turnover of the product of the Trade Mark "EYETEX" has raised from Rs.11.44 Crores in the year 1998-99 to Rs.31.35 Crores in the year 2008-09. The expenditure for advertisement and other promotional expenditure incurred by the plaintiff in the year 2008-09 is Rs.2.31 Crores.

4. The plaintiff was shocked to find an application filed before the Trade Mark Registry by the defendant on 04.04.2007, with respect to medicines for human purposes, for registration of the Trade Mark "EYELEYE". The plaintiff

came to know of this Trade Mark application from an advertisement in the Trade Mark Journal dated on 16.09.2008. The plaintiff immediately filed its opposition to the Trade Mark Registry. The plaintiff also issued a legal notice on 23.09.2009 to the defendant, but the defendant has not come forward to settle the differences. Under the Trade Marks Act, 1999, the use of nearly identical Trade Mark with respect to different goods amount to infringement of the Registered Trade Mark. The defendant is guilty of infringement of Trade Mark. The members of the trade and public are made to believe that the goods being offered for sale by the defendant, emanate from the plaintiff and there is some connection in the course of trade between the plaintiff and the defendant. The defendant is deliberately using the Trade Mark "EYELEYE" to mislead the trade and public and trade upon the goodwill and reputation enjoyed by the plaintiff. Therefore, the present suit has been filed.

5. Evidence and analysis : The defendant was called absent and set exparte. Partner of the plaintiff firm has been examined as P.W.1. The documents including Trade Mark Registration Certificates, copy of the defendant's Trade Mark application, the objection filed by the plaintiff, have been marked as Ex.P1 to Ex.P8.

6. P.W.1 reiterated the averments made in the plaint in the proof affidavit. Trade Mark Registration certificate is Ex.P3. Copy of the Trade Mark application filed by the defendant is marked as Ex.P6. Through the evidence of P.W.1 and above documents, the plaintiff has established its case. Balance of convenience is

also in favour of the plaintiff and irreparable loss also will be caused to the plaintiff, if the proposed Trade Mark is allowed to be used by the defendant. Hence, the suit is decreed as prayed for with costs.

23.03.2017

Index : Yes/No
bsm/gya

P.KALAIYARASAN, J.

bsm/gya

C.S.No.1024 of 2010

23.03.2017