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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 16th February, 2017

Pronounced on: 28th February, 2017

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CS (OS) 3799/2014

ABBOTT HEALTHCARE PVT. LTD.

..... Plaintiff

Through: **Ms. Astha Joshi, Advocate**

versus

M/S. FIZARK HEALTHCARE & ANR.

..... Defendants

Through: *Ex parte*

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

J U D G M E N T

1. This civil suit raises the issue of infringement of plaintiff's trademark 'ESGIPYRIN', registered as trademark no.293710 in Class 05 on 1st January, 1974, initially in the name of Suhrid Geigy Limited (SGL), the said company having later changed its name to S.G. Chemicals and Pharmaceuticals Limited (SGCPL) eventually merging with Ambala Sarabhai Enterprises Limited (ASE) forming, in due course, a joint venture (JV) company called Compact Pharma Private Limited, converting into Compact Pharma Limited and later changing its name to Sarabhai Piramal Pharmaceuticals Limited in whose

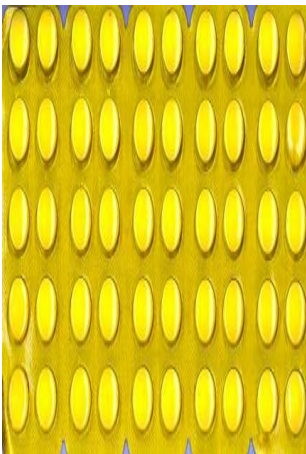
favour the said registered trademark was assigned by ASE by virtue of assignment agreement dated 03.10.1997, the JV company having since merged with Nicholas Piramal India Limited (now named as Piramal Enterprises Limited), the plaintiff being the assignee of the said trademark in terms of assignment agreement dated 8th September, 2010 executed by the last said proprietor of the trademark (Piramal Healthcare Limited), and having applied, on 21st February, 2011, the said assignment of the trademark to be noted by the trademark registry.

2. By the present suit, the plaintiff alleged infringement of its trademark by the defendants, also statedly passing off their similarly placed pharmaceutical product under the mark 'EASIPYRIN'. Besides seeking prohibitory injunction against infringement and passing off, the plaintiff also having alleged breach of its copyright by the defendants on the averments that they have adopted deceptively similar packaging for its tartrazine (yellow) tablets sold by the plaintiff in the form of a unique yellow front strip prominently displayed in silver font in a black box on the silver foil backside and orange colors bearing a unique design (being outline of men in different postures) with the tag line "the potent dual acting analgesic anti inflammatory", seeking prohibitory injunction against such imitation of the packaging, trade dress, *etc.*, in addition to prayer for order for delivery up of all goods, dyes, blocks, labels, printed matter, *etc.* (as infringe the intellectual property rights) for purposes of destruction/erasure and damages for the losses incurred claimed in the sum of Rs.20 lacs.

3. The plaintiff and the first defendant are described as companies engaged in the business of manufacture and sale of pharmaceutical products. The products sold under the trademark ‘ESGIPYRIN’ by the plaintiff is described as diclofenac sodium and paracetamol preparations”, the said preparation being an extremely popular and widely distributed anti inflammatory analgesic drug. The product of the defendants sold under the impugned trademark ‘EASIPYRIN’ is similarly placed medicinal preparation, also described as one containing “diclofenac sodium and paracetamol tablets”, both being non-steroidal anti-inflammatory drugs (NSAID) used to relieve pain and reduce inflammation.

4. In the suit, the plaintiff demonstrated the deceptive similarity of the packaging of the two competing products as under:-

Comparison	Plaintiff's product	Defendants' product
Trade Mark: The mark of both the plaintiff and defendants are identical except few products of defendants are sold in similar yellow coloured blister packaging.	ESGIPYRIN	EASIPYRIN

Front side of strips		
Exterior carton (box) packaging: Both products are packed in a box with identically orange-white colour scheme, layout and design		
Back side of strips		

5. The plaintiff's claim in the suit was based on the averments that the introduction of the defendants' infringing product came to its

knowledge in October, 2014 giving rise to a cause of action, the trademark 'EASIPYRIN' and the packaging with trade dress as mentioned above having been adopted by the defendants intentionally to ride on the goodwill and reputation of the plaintiff and to exploit the same and derive unfair advantage.

6. The defendants were served with summons but failed to put in appearance or contest and consequently were set *ex parte* by order dated 17.07.2015.

7. The plaintiff having been called upon to lead *ex parte* evidence examined Ms. Tejal Mundkur (PW-1) its Manager – Legal and authorized signatory. She deposed on the strength of her affidavit Ex.PW-1/A. By the said affidavit, the plaintiff's witness has proved the registration of trademark 'ESGIPYRIN' in Class 05 vide trademark no.293710 as of 22nd January, 1974 (Ex.PW-1/4). The uncontested and uncontroverted evidence of PW-1 has also proved on record the assignment of the said registered trademark eventually in favour of the plaintiff. The plaintiff's witness further proved the necessary facts concerning the impugned product of the defendants sold under the mark 'EASIPYRIN' in strips and packaging (Ex.PW-1/8 and PW-1/9) which depict the deceptive similarity with the one of the plaintiff's product sold under the registered trademark 'ESGIPYRIN' (Ex.PW-1/6 and PW-1/7).

8. A comparison of the plaintiffs registered trademark with the defendants' mark itself is sufficient to record satisfaction that the plaintiff's grievances are genuine and well founded. Both the marks

are phonetically similar in relation to identical medicinal preparations. Since the plaintiff's trademark has been in prior use, the defendants having not entered appearance so as to plead that it has any registration with regard to mark under which it is selling its product or to raise any other valid defences available in law, the use of the impugned mark by the defendants, in the given facts and circumstances, must be held to be infringing the trademark of the plaintiff's use with regard to similar goods. The stark similarity of the packaging and trade dress is also proved by the plaintiff's evidence to which there has been no contest whatsoever.

9. Thus, while a case for prohibitory injunction has been brought home, it must be observed that there being no evidence brought on record with regard to existence of any such goods, dyes, blocks, labels or printed matter of the defendants as may require to be directed to be delivered up for destruction, or to assess the losses incurred for fair and reasonable damages awardable to be computed, reliefs on the other counts do not deserve to be granted.

10. In the result, the suit is partly decreed with costs. A permanent injunction is granted in favour of the plaintiff and against the defendants, their directors, partners, proprietors, officers, servants, agents and representatives from manufacturing, selling and offering for sale, advertising or doing any other act whatsoever, including the use of blister strip or packaging/trade dress, in relation to the medicinal preparation under the trademark 'EASIPYRIN' or any other deceptively similar mark thereby:-

- (a) infringing the plaintiff's trademark registration no.293710 in Class 05 for the mark 'ESGIPYRIN';
- (b) passing off their goods or business as that of plaintiff; or
- (c) in packaging or using trade dress which is deceptive imitation or substantive reproduction of that of the plaintiff's product.

11. Decree sheet shall be drawn up accordingly.

FEBRUARY 28, 2017

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(R.K. GAUBA)
JUDGE

