

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.10.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.835 of 2015
and O.A.Nos.1115 & 1116 of 2015

Sun Pharma Laboratories Limited,
CD Plot No.3, Door No.8,
Old Tower Block Street,
Nandhanam Extension,
Chennai - 600 035
represented by its Authorized Signatory
Mrs.Radha Kumar .. Plaintiff

Vs.

1.Solis Pharmaceuticals
47/19, 1st floor,
Lakshmipuram, Vadapalani,
Chennai - 600 026.

2.Kniss Laboratories Pvt. Ltd
No.9, Multe Industrial Estate,
Gerugambakkam,
Chennai - 600 122. .. Defendants

This Civil Suit is preferred, under Order IV Rule - 1 of O.S Rules and Order VII Rule 1 of C.P.C Read with Sections 27,28,29,134 and 135 of the Trade Marks Act, 1999; for a permanent injunction restraining the defendants, their proprietor/director/partner, manufacturers, marketers, distributors, stockists, servants, agents, wholesalers, retailers, C & F agents, legal representatives or any other person claiming under them from in any manner manufacturing, selling, offering for sale, stocking, advertising directly or indirectly dealing in medicinal and pharmaceutical preparations infringing Plaintiff's registered trademark GABANTIN by use of deceptively similar trademark GABA-NT or any mark identical and/or deceptively similar to Plaintiff's registered trademark GABANTIN or in any other manner whatsoever; for a permanent injunction restraining the defendants, their proprietor/director/partner, manufacturers, marketers, distributors, stockists, servants, agents, wholesalers, retailers, C & F agents, legal representatives or any other person claiming under them from in any manner manufacturing, selling, offering for sale, stocking, advertising directly or indirectly dealing in medicinal and pharmaceutical preparations under the trademark GABA-NT or any other trademark that is identical and/or deceptively similar as that of the Plaintiff's mark GABANTIN and/or use similar packaging as that of the plaintiff's products under the mark GABANTIN so as to pass off the defendants' medicinal preparations as and for the medicinal preparations of the Plaintiff and/or in any other manner whatsoever connected with the Plaintiff; for

the defendants to be ordered to pay to the Plaintiff a sum of Rs.1,00,000/- as liquidated damages for committing acts of infringement of Plaintiff's registered trademark so as to pass off its products as and for the Plaintiff's products; for the defendants be ordered and decreed to deliver up for destruction to the Plaintiff all the preparations, advertisement, dies, blocks, labels, packaging either filled or empty, brochures, leaflets, pamphlets, hand bills, stationery items and such other sales promotional materials bearing and/or containing the impugned trademark GABA-NT; for a preliminary decree be passed in favour of the Plaintiff directing the defendants to render accounts of profits made by it by use of the trademark GABA-NT which is identical and/or deceptively similar and a final decree be passed infavour of the Plaintiff for the amount of profits found to have been made by the defendants after the latter has rendered accounts; and for costs.

For Plaintiff : Mr. Arun C. Mohan

For Defendants : Mr.Ramesh Venkatachalapathy for D1

JUDGMENT

There is a sole plaintiff and there are two defendants.

2. Mr.Arun C.Mohan, learned counsel on record for sole plaintiff and Mr.Ramesh Venkatachalapathy, learned counsel on record for the first defendant are before this Commercial Division.

3. With regard to second defendant, learned counsel for plaintiff has made an endorsement in the suit file, which reads as follows:

'It is humbly prayed that this Hon'ble Court permit the plaintiff to give up the suit against the 2nd defendant and the plaintiff gives up the claims against them.

-sd/-

(Counsel for Plaintiff)

29.10.2018'

4. The aforesaid endorsement in the suit file is reiterated by the learned counsel for plaintiff and therefore, second defendant stands given up.

5. This leaves the instant suit with a sole plaintiff and a sole defendant. To be noted, sole defendant is 'Solis Pharmaceuticals'. This Commercial Division is informed by learned counsel for sole defendant Mr.Ramesh Venkatachalapathy, that sole defendant i.e, Solis Pharmaceuticals is a partnership firm and the partner who is authorised to represent the firm has given instructions.

6. It is submitted by both the aforesaid learned counsel that the parties to this lis have settled the matter amicably amongst themselves and have reduced the same to a 'Memo of Compromise' dated 26.10.2018 (hereinafter 'said MOC' for brevity).

7. Both learned counsel make a common request in unison that this suit may please be decreed in terms of the said MOC.

8. Both learned counsel have also placed before me a generic certificate in the letterhead of the sole defendant with the caption 'TO WHOMSOEVER IT MAY CONCERN' which gives the date of manufacture of the last batch of 'GABA-NT' by the sole defendant. Though this generic certificate does not contain a date, it is submitted by both learned counsel that it is dated 26.10.2018 i.e., same date as said MOC.

9. With regard to the presence of the parties, both the learned counsel point out that the said MOC has been signed by both parties in the presence of each other and their respective counsel and it is also submitted that the individuals concerned i.e., natural persons who have to represent the plaintiff and defendant entities are traveling and a request is made to dispense with their presence in the light of said MOC being signed in the presence of each other. This request is acceded to.

10. In the light of the narrative supra, the aforesaid suit is disposed of in terms of aforesaid said MOC.

11. In other words, there shall be a compromise decree in this suit in terms of said MOC dated 26.10.2018.

12. Said MOC and the aforesaid generic certificate given in the defendant's letterhead shall also form part of the compromise decree.

13. For the purpose of abundant clarity, I deem it appropriate to extract the entire said MOC which reads as follows:

'The plaintiff and 1st defendant humbly beg to submit as follows:-

The terms plaintiff and 1st defendant shall mean and include their heirs, executors, administrators, successors and assigns of each party.

1. The 1st defendant agrees and acknowledges that the plaintiff is the registered proprietor of the trademark GABANTIN and has exclusive statutory rights by virtue of registration and proprietary rights in respect of the trademark GABANTIN.

2. The 1st defendant upon learning the proprietary right vested with the plaintiff over the mark GABANTIN hereby undertakes that they have stopped production of medicinal products under the trademark GABA-NT and that they would not use the mark GABA-NT or any mark similar/deceptively similar there to or infringe upon any of the marks of the plaintiff in future.

3. The 1st defendant hereby declares that they do not have stock of medicinal products bearing the infringing mark GABA-NT and undertakes that they will not manufacture or market the same even in future.

4. The 1st defendant further declares that they do not have any type of printed materials i.e. packing materials, sales literatures etc. bearing the mark GABA-NT.

5. In view of the above, the 1st defendant submits to a judgment and decree as prayed for in terms of prayers (a) and (b) in para 20 of the plaint, as follows:-

a) A permanent injunction restraining the defendants, their proprietor/director/partner, manufacturers, marketers, retailers, C & F agents, legal representatives or any other person claiming under them from in any manner manufacturing, selling, offering for sale, stocking, advertising directly or indirectly dealing in medicinal and pharmaceutical preparations infringing Plaintiff's registered trademark GABANTIN by use of deceptively similar trademark GABA-NT or any mark identical and/or deceptively similar to plaintiff's registered trademark GABANTIN or in any other manner whatsoever;

b) A permanent injunction restraining the defendants, their proprietor/director/partner, manufacturers, marketers, retailers, C & F agents, legal representatives or any other person claiming under them from in any manner manufacturing, selling, offering for sale, stocking, advertising directly or indirectly dealing in medicinal and pharmaceutical preparations under the trademark GABA-NT or any other trademark that is identical and/or deceptively similar as that of the plaintiff's mark GABANTIN and/or use similar packaging as that of the plaintiff's products under the mark GABANTIN so as to pass off the defendants' medicinal preparations as and for the medicinal preparations of the plaintiff and/or in any other manner whatsoever connected with the plaintiff;

6. Further, in view of the above undertaking, the plaintiff agrees to give up other reliefs sought by

them in para 20 (c),(d),(e) and (f) of the plaint as against the said 1st defendant subject to the conditions as aforesaid.

7. The parties shall bear their own costs.

Dated at Chennai on this the 26th day of October, 2018.

-sd/- -sd/-

Plaintiff 1st Defendant

-sd/- -sd/-

Counsel for Plaintiff Counsel for 1st Defendant'

14. There shall be a compromise decree on above terms. No costs. Consequently, all connected interlocutory applications are closed.

29.10.2018

Index : Yes/No

gpa/mp

M.SUNDAR, J.

gpa/mp

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