

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2018

CORAM:

THE HON'BLE JUSTICE **C.V.KARTHIKEYAN**

C.S. No. 582 of 2015

in

O.A. Nos. 736, 737 of 2015

A.No.4689 of 2015

USV Private Limited.

..

Plaintiff

..Vs..

1. Zoticus Pharmaceuticals

2. Fabulous Life Sciences

3. Zealon Healthcare

4. G.R.Jagadeesh

...

Defendants

For Plaintiff : M/S.Arun C.Mohan

For Defendants : M/S.G.Paramesh(for D3 and D4),

PRAYER : Plaintiff has been filed Under Order IV Rule 1 of O.S Rules and Order VII Rule 1 of Civil Procedure Code read with Sections 27, 28, 29, 134 and 135 of the Trade Marks Act, 1999. a) A permanent injunction restraining the Defendants, their proprietors, partners, distributors, stockists, servants, agents, retailers, legal representatives, job-workers, manufacturers or any other person claiming under it 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 "GLYCOMET" by use of deceptively similar trademark "GLUCOMATE" or any mark similar to Plaintiff's registered trademark "GLYCOMET" or in

any other manner whatsoever; b) A permanent injunction restraining the Defendants, their proprietors, partners, distributors, stockists, servants, agents, retailers, legal representatives job-workers, manufacturers or any other person claiming under it from in any manner manufacturing, selling, offering for sale, stocking, advertising directly or indirectly dealing in medicinal and pharmaceutical preparations under the trademark "GLUCOMATE" or any other trademark that is identical and/or deceptively similar as that of the Plaintiff's registered trademark "GLYCOMET" and/or use similar packaging as that of the Plaintiff's products under the mark "GLYCOMET" so as to pass off their medicinal preparations as and for the medicinal preparations of the Plaintiff and/or in any other manner whatsoever connected with the Plaintiff; c) The Defendants be ordered to pay to the Plaintiff a sum of Rs.1,00,000/- as liquidated damages for committing acts of infringement against Plaintiff's registered trademark and for pass off its products as and for the Plaintiff's products under deceptively similar mark; d) The defendants be ordered and decreed to deliver up for destruction to the Plaintiff all the preparations, dies, blocks, labels, packaging either filled or empty, brochures, leaflets, pamphlets, hand bills, hoardings, wall posters, calendars, carry bags, stationery items and such other sales promotional materials bearing and/or containing the impugned trademark "GLUCOMATE"; e) 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 trademarks "GLUCOMATE" which is identical and/or deceptively similar and a final decree be passed in favour of the plaintiff for the amount of profits found to have been made by the defendants after the latter has rendered accounts; f) For costs of the entire proceedings.

J U D G M E N T

The learned Counsel for the plaintiff has made the following endorsement in the plaint:

"It is respectfully submitted that this suit is not pressed as against the 1st and 2nd defendants as they are 3rd party manufacturers".

The joint memo was signed by the learned Counsel for the 3rd and 4th defendants. Since, the suit is not pressed as against to the 1st and 2nd defendants, the suit is dismissed against them.

The 3rd and 4th defendants have signed a joint memo, which is also signed by the plaintiff. The terms in the joint memo are as follows:

1. *The 3rd and 4th defendants agree and acknowledge that the plaintiff is the registered proprietor of the trademark GLYCOMET and has exclusive statutory rights by virtue of registration and proprietors rights in respect of the trademark GLYCOMET.*
2. *The defendant undertakes that they have stopped using the mark GLUCOMATE or any other mark similar or deceptively similar thereto in any manner as to plaintiff's registered mark GLYCOMET in respect of medicinal and pharmaceutical preparations and also undertakes to use the mark GLUCOVATE in respect of their pharmaceutical preparations.*
3. *The plaintiff's agree and accept that they have no objection for use of the mark GLUCOVATE by the 3rd and 4th defendants.*
4. *The 3rd and 4th defendants undertake to withdraw their trademark application vide no.2555612 in class 5 and to give written*

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confirmation along with acknowledgment of their such withdrawal at Trade Marks Registry to the plaintiff within (15) days hereto. The 3rd and 4th defendants undertake not to file any future applications for registration of the mark GLUCOMATE or any other mark or deceptively similar thereto in any manner as to plaintiff's registered mark GLYCOMET in respect of medicinal and phamaceutical preparations.

5. *The 3rd and 4th defendants further agree and undertake that they will submit a letter to FDA Authority for cancellation of their FDA License of the mark GLUCOMATE and shall send the acknowledgment of such letter to the plaintiff within fifteen (15) days from date of filing this consent terms.*
6. *The plaintiff agrees to the above said undertaking given by the defendant nos. 3 & 4.*

In view of the same, the suit is decreed in terms of the memo of compromise filed by the plaintiff as against the 3rd and 4th defendants. The joint memo is to form part of the decree. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No

Web : Yes / No