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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 7th September, 2018

+ **CS (COMM) 834/2016**

MANKIND PHARMA LTD. Plaintiff
Through: Mr. Hemant Daswani, Ms. Ishanki
Gupta and Mr. Aviral Shukla,
Advocates. (M:9810556744)

versus

ULTRAKIND HEALTH CARE AND ANR. Defendants
Through: Mr. Anuj Chaturvedi, Advocate for
D-2. (M:9810473166)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present suit for infringement of registered trademark, passing of copyright, rendition of accounts has been filed by the Plaintiff – Mankind Pharma Ltd. against two Defendants i.e. Ultrakind Health Care – Defendant No.1 and Atlanta Remedies – Defendant No.2.
2. The case of the Plaintiff is that it owns the trademark ‘MANKIND’ as also the ‘M’ logo, which is written in a distinctive form. The Plaintiff also claims that the trademark ‘MANKIND’ is registered in its name. The Plaintiff further claims that it has a series of marks with the trademark ‘MANKIND’ and the suffix ‘KIND’. Ld Counsel for the Plaintiff, thus, submits that the Plaintiff’s right extends over the trademark ‘MANKIND’ and the family of marks which bear the suffix ending with ‘KIND’. The details of the registrations of the mark ‘MANKIND’ and the other family of marks with the suffix ‘KIND’ as also the domain names are set out in

paragraphs 7 to 10 of the plaint.

3. The grievance of the Plaintiff in the present case is that the Defendants are using the trademark '*ULTRAKIND*' and also using the letter '*U*' in a manner which is imitative of the Plaintiff's '*M*' logo. The two logos and the manner of depiction are set out herein below:



PLAINTIFF'S LOGO



DEFENDANT NO. 1'S LOGO

4. The Plaintiff states in the plaint that the use of the '*U*' logo, the manner of writing '*ULTRAKIND*' and also use of '*KIND*' as a suffix is

violative of its rights and goodwill and also dilutes its reputation. Accordingly, the Plaintiff is seeking an injunction against the use of trade name 'Ultrakind Health Care', deceptively similar 'U' logo, the use of any mark with the suffix 'KIND' as also in the get up of the logo, which may be perceived to be an imitation of the Plaintiff's marks, logos and packaging.

5. The suit was listed on 8th July, 2014 on which date this Court had granted an ad interim injunction in the following terms.

“.....

11. Accordingly, the defendants, their dealers, agents, associates, directors, partners, employees, servants, assigns are restrained from trading, selling, advertising, distributing and dealing in any manner under the trade name ULTRAKIND HEALTH CARE and from using the trade mark MECOKIND or any other mark with the word element 'KIND', which are deceptively and phonetically similar to the plaintiffs well-known registered trade name MANKIND and trademark METROKIND. The defendants are further restrained from infringing, passing off or causing to pass off goods under an artwork, get up, label and symbol etc., which is deceptively similar to the plaintiffs corporate ID in relation to marketing of medicinal and pharmaceutical goods in any manner whatsoever, till the next date of hearing.

.....”

6. Local Commissioners were also appointed to visit the premises of the Defendants and prepare an inventory of the products containing the infringing marks and labels. Subsequently, an application was moved by the Plaintiff submitting that the exact address of Defendant No.1 was not available and that the commission may only be executed at Defendant No.2's premises. Accordingly, the local commission was duly executed only

at the premises of Defendant No.2. The reports of the Local Commissioners have also been filed on record. The said reports show that there were two products, which were found at the premises of Defendant no.2. The Defendant No.2 at the time of execution of the commission stated to the Local Commissioner that they were supplying the infringing goods to Ultrakind Health Care only till 8th July, 2014 and that currently they were not supplying any products to the Defendant No.1. No goods were found bearing mark Ultrakind Health Care. Only two products were found i.e. Lactocal AD-3 and Protocal-DSR, both of which did not bear any of the infringing marks, logos or names. The proprietor of Defendant No.2 had stated to the Local Commissioner that he had, in the past, manufactured *MECOKIND* for the Defendant No.1.

7. The Defendant No.2 has filed its written statement thereafter and taken the stand that it only manufactured the products for Defendant No.1 upon orders received from Defendant No.1 Paragraphs 2 & 5 of the written statement are set out below:

“.....

2. That Defendant no. 2 was engaged by Defendant no.1 to manufacture medicinal and pharmaceutical preparations and the label and packaging was owned and supplied by the Defendant no.1. Defendant no.2 was engaged by Defendant no. 1 who used to market the product manufactured by defendant No.2. Hence, the Defendant no. 2 is third party manufacturer working on job work basis and has no relation with the trade name or logo of defendant no.1.

.....

5. That the Defendants no.2 is a mere manufacturer and has no role in the marketing, labeling or naming of the products nor does it own mark which is mentioned

on the product and therefore, no liability arises against the Defendant No.2 as alleged in the plaint.

.....”

8. Insofar as Defendant No.2 is concerned, learned counsel for the Defendant No.2 submits that Defendant No.2 has no intention of using any of the trademarks of the Plaintiff or the logo including ‘KIND’ family of marks. Accepting the said statement, learned counsel for the Plaintiff submits that he does not press any further reliefs against Defendant No.2.

9. However, insofar Defendant No.1 is concerned, Defendant No.1 was served through publication on 4th August, 2015. The said Defendant has not even filed the written statement, accordingly, Defendant No.1 is now proceeded *ex-parte*.

10. It is clear from the chronology of events, which have transpired and as also the statement recorded by the Local Commissioner of the proprietor of Defendant No.2 that Defendant No.1 was using the impugned ‘U’ logo, ‘ULTRAKIND’ name as also other trademarks with the suffix ‘KIND’. The packaging showing the use of the said mark by the Defendant No.1 has been placed on record. A perusal of the ‘MECOKIND’ plus cartons appearing at page 888 shows the use of the similar ‘U’ logo, the name Ultrakind Health Care with the arrow as also use of MECOKIND plus. These products were admittedly manufactured by Defendant No.2 for Defendant No.1.

11. It is now the settled position that if a Defendant is proceeded *ex-parte*, the formality of filing ex-parte evidence can be dispensed with. In ***Everstone Capital Advisors Pvt. Ltd. & Anr. v Akansha Sharma & Ors., [CS(COMM) 1028/2016, dated 17th July, 2018]*** this Court has held as under:

“6. There being no defence filed the averments in the

Plaint are unrebutted. Under the extant provisions of the CPC, the Plaint is supported by an affidavit and in the absence of any rebuttal or challenge, the Court can take the averments in the Plaint to be correct. Moreover, the documents for eg., registrations of trade marks being public documents, are easily verifiable and the so-called formality of filing affidavit in evidence for marking of exhibits can be dispensed with.....”

12. The Court can accordingly peruse the documents on record to proceed for pronouncement of judgment.

13. From the perusal of the documents placed on record, there is no doubt that the Plaintiff is the owner of the mark ‘*MANKIND*’ and is using the said mark in an extremely distinctive ‘*M*’ logo. The Plaintiff has registrations for several trademarks with the suffix ‘*KIND*’. Copies of the said registrations have been placed on record. The Defendant no.1’s ‘*U logo*’ bears a startling resemblance with the ‘*M*’ logo. Use of marks with the ‘*KIND*’ suffix is also violative of the rights of the Plaintiff as the Plaintiff has a large family of marks ending with the suffix ‘*KIND*’. Such use would result in passing off and infringement of the Plaintiff’s registered trademarks and also result in violation of copyright in the logo. Accordingly, the Defendant No.1 being *ex-parte* no defence having been filed on record, judgment is pronounced and a decree of permanent injunction in terms of paras 41(a), (b) & (c) is passed in favour of the Plaintiff and against the Defendant No.1 only. Since goods have not been recovered from Defendant No.1, the decree of delivery up is not made out. The Plaintiff does not press the relief of rendition of accounts or profits. Decree sheet be drawn up and the goods seized by the Local Commissioner at the premises of the Defendant No.2 be released to

the Defendant No.2. Defendant no.2 shall however be bound by the statement recorded in paragraph 8 above.

14. The suit is decreed accordingly. The suit and all pending I.As. stand disposed of.

PRATHIBA M. SINGH
JUDGE

SEPTEMBER 07, 2018/dk

