

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2019

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.S. No.945 of 2010

Apex Laboratories Private Ltd.
Represented by its Managing Director
Mr.S.S.Vanangamudi,
No.76, C.P.Ramaswamy Road,
Alwarpet, Chennai-600 018. Plaintiff

..Vs..

HEZEN PHARMACEUTICALS LIMITED
Represented by its Executive Director
Mr.K.Prasad Reddy,
No.41 & 44-A, Anrich Industrial Estate
IDA, Bollaram, Medak District-502325
Andhra Pradesh. Defendant

Plaint filed under Order IV, Rule 1 O.S.Rules and under Order VII Rule 1 CPC Read with Sections 134 (2) and 142 of the Trade Marks Act, 1999 praying for:

(a) For the relief of declaration to the effect that the threats made by the defendants against the plaintiffs for the alleged infringement of trade mark ZINCOVIT and passing off action and "groundless and unjustifiable" since the exclusive proprietary rights over the trade mark ZINCOVIT are not vested with the defendants and

the same is vested with the plaintiffs;

(b) Granting a permanent injunction restraining the defendants by themselves, their servants, agents or any one claiming through them from in any manner continuing such groundless threats against the plaintiffs;

(c) Directing the defendants to pay to the plaintiffs the damages suffered by the plaintiffs by virtue of the illegal threats emanated by the defendants after ascertaining the actual damages suffered by the plaintiffs.

(d) Directing the defendants to pay to the plaintiffs the cost of the suit.

For Plaintiff : Mr.R.Sathish Kumar
Defendant : Sole Defendant set exparte

J U D G M E N T

This suit has been filed praying seeking for the following reliefs:

(a) For the relief of declaration to the effect that the threats made by the defendants against the plaintiffs for the alleged infringement of trade mark ZINCOVIT and passing off action and "groundless and unjustifiable"

since the exclusive proprietary rights over the trade mark ZINCOVIT are not vested with the defendants and the same is vested with the plaintiffs;

(b) For a permanent injunction restraining the defendants by themselves, their servants, agents or any one claiming through them from in any manner continuing such groundless threats against the plaintiffs;

(c) Directing the defendants to pay to the plaintiffs the damages suffered by the plaintiffs by virtue of the illegal threats emanated by the defendants after ascertaining the actual damages suffered by the plaintiffs.

(d) Directing the defendants to pay to the plaintiffs the cost of the suit.

2. According to the Plaintiff they are the pharmaceutical and nutraceutical company having established in the year 1978. The Plaintiff has several products which are popular and are widely used in the trade. The plaintiff adopted the trademark ZINCOVIT in the year 1988 and started using the same in the year 1990. The trademark registration of the plaintiff is marked as Ex.P2. The copy of the registration is marked as Ex.P3 and the first Drug license

dated 09.03.1990 is marked as Ex.P4. The Plaintiff states that these documents prove that the plaintiff is using the trademark ZINCOVIT since 1990.

2. It is further stated that in the year 2005, they extended their product portfolio to nutraceutical food supplements under the trademark ZINCOVIT. They have obtained food license dated 4.8.2005 and permission from the local authorities which are marked as **Ex.P5** and **Ex.P6** respectively.

3. The plaintiff manufactures products bearing the trademark ZINCOVIT themselves or through others. The defendant herein approached the plaintiff in the year 2007 for job manufacturing products bearing the trademark ZINCOVIT and accordingly on 24.08.2007 an agreement was signed between the parties. The said agreement is marked as **Ex.P7**.

4. The Plaintiff further states that the said agreement would clearly show that the defendant had no manner of right whatsoever over the trademark ZINCOVIT. There are express clauses being Clause 9(b),(c) which states that the trademark belongs to the

plaintiff herein and that the defendant cannot claim any right, title or interest over the trademark ZINCOVIT clearly. Hence, the trademark absolutely belong to the plaintiff and the defendant cannot claim any right whatsoever.

5. It is the further contention of the Plaintiff that the said agreement was terminated on 06.02.2009 as the defendant violated the terms of the manufacturing agreement. Thereafter, the defendant agreed to discontinue the use of the trademark ZINCOVIT and also surrendered his drug license to the department and a copy of the same was sent by email to the Plaintiff which is marked as **Ex.P8**. However, inspite of the same, the defendant continued to use the trademark ZINCOVIT.

6. The Plaintiff states that the defendant had opposed the plaintiff's registration of the trademark under No.1814175 by claiming that he is the proprietor of the trademark ZINCOVIT. Further, the defendant has also filed a Civil suits being O.S.No.15/2009 & O.S.No.402/2010, the plaint copies of which are marked as **Ex.P9 and Ex.P10**. The Plaintiff states that the prayer in O.S.No.15/2009 was to restrain the plaintiff from interfering with

their business with the trademark ZINCOVIT.

7. While so, the defendant has made a false propaganda in the market that they are the proprietors of the trademark ZINCOVIT inspite of the agreement dated 24.08.2007 where they have agreed that the plaintiff herein is the proprietor of the trademark ZINCOVIT. The plaintiff states that these amounts to threats which are clearly unjustified. Hence this suit.

8. Despite the summons being served on the sole defendant and his name printed in the causelist there was no representation on behalf of the sole defendant when the matter was called on 12.07.2019. Hence, the sole defendant was set exparte. Thereafter, the matter was listed before the Additional Master II for recording exparte evidence.

9. In order to substantiate their claim one Mr.Jude F.L.S. Durai Pandian (P.W.1) was examined on the side of the Plaintiffs and Exhibits P1 to P11 were marked on their side.

10. I have heard the learned counsel for the Plaintiff and also gone through the Proof Affidavit as well as the documents filed on the side of the Plaintiff.

11. On a perusal of **Ex.P3-Copy of the Trade Mark Registration Certificate**, this Court found that the trade name ZINCOVIT got registered under the Trade Marks Act. Further, the Plaintiff obtained the drug license on 09.03.1990 for the purpose of manufacturing ZINCOVIT. The copy of the drug license is marked as Ex.P2. Further, they have obtained food license dated 4.8.2005 and permission from the local authorities which are marked as **Ex.P5** and **Ex.P6** respectively, which would prove that the plaintiff is the proprietor of the trade mark ZINCOVIT. In such circumstances, the defendant making false propaganda stating that they are the trademark owner of the ZINCOVIT which is spoiling the reputation of the plaintiff ZINCOVIT. Further the Plaintiff also referred to copy of the agreement dated 24.08.2007 wherein paragraph 9 (b), it is clearly stated as follows:

"b. It is clearly understood by and between the parties hereby that this clause does not in any way allow or authorize or

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empower "the Manufacturer" either to claim any right, title, interest or ownership in any of the Mark, Trade Mark, Trade Name, Label or does not in any way allow usership by "the Manufacturer" of any of the Trademarks belonging to "APEX". Accordingly it is also clearly understood that this clause does not in any way dilute either ownership and/or usage by "APEX" of the said mark, Trade Mark, Trade Name, Label."

12. On the other hand, taking advantage of the agreement, the defendant is trying to make false propaganda in the public claiming as if he is the proprietor of the ZINCOVIT. However, this Court find that the plaintiff is the proprietor of the trade mark ZINCOVIT and the defendant is not entitled to claim the proprietary right for the same trademark. Therefore, the Plaintiff is entitled to get the relief to restrain the defendant from claiming right over the trademark license in any manner.

12. Resultantly, the suit is decreed as prayed for with costs of Rs.50,000/- (Rupees Fifty Thousand only).

21.08.2019

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