

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.11.2019

Coram

The Honourable Mr.Justice N.SATHISH KUMAR

C.S.No.424 of 2013
and O.A.Nos.466 and 467 of 2013

Sun Pharmaceutical Industries Limited,
CD Plot No.3, Door No.8,
Old Tower Block Street,
Nandhanam Extension,
Chennai – 600 035,
rep. by its constituted Attorney
Mr.P.Natesan.

...Plaintiff

Versus

1.M/s.Cezane Remedies Pvt. Ltd.,
21, Sahajanad Estate,
B/h-Lalji Mulji Transport, Sarkhej,
Ahmedabad – 382210.

2.M/s.Hiral Labs Ltd.,
No.26, Shah-e-alam Society,
Near N.V.Patel School, Shah-e-Alam,
Ahmedabad-380 028.

...Defendants

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This Civil Suit is filed under Order IV Rule 1 of Original Side Rules and Order VII Rule 1 C.P.C read with Sections 27, 28, 29, 134 and 135 of the Trademarks Act, 1999 prayed for (a) a permanent injunction restraining the defendants, their manufacturers, distributors, stockists, servants, agents, wholesalers, retailers, legal representatives 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 LONAZEP by use of deceptively similar trademark ONAZEP or any mark identical or similar to plaintiff's registered trademark LONAZEP or in any other manner whatsoever;

(b) a permanent injunction restraining the defendants, their manufacturers, distributors, stockists, servants, agents, wholesalers, retailers, legal representatives 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 preparation under the trademark ONAZEP or any other trademark that is identical and /or deceptively similar as that of the plaintiff's registered trademark LONAZEP and/or use similar packaging as that of the plaintiff's products under the mark LONAZEP so as to pass off the defendants' medicinal preparation 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 so as to pass off its products as and for the plaintiff's products;

(d) the defendants be ordered and decreed to deliver up for destruction to the plaintiff all the preparations, dies, blocks, labels, packing either filled or empty, brochures, leaflets, pamphlets, hand bills, hoardings, wall posters, calendars, carry bags, stationary items and such other sales promotional materials bearing and /or containing the impugned trademark ONAZEP;

(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 ONAZEP 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) costs of the entire proceedings.

For Plaintiff : Ms.Shruthi Sairam
for M/s. Arun C.Mohan

For Defendants : set ex-parte
vide order dated 24.10.2019

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J U D G M E N T

The suit has been filed for the following reliefs:

(a) a permanent injunction restraining the defendants, their manufacturers, distributors, stockists, servants, agents, wholesalers, retailers, legal representatives 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 LONAZEP by use of deceptively similar trademark ONAZEP or any mark identical or similar to plaintiff's registered trademark LONAZEP or in any other manner whatsoever;

(b) a permanent injunction restraining the defendants, their manufacturers, distributors, stockists, servants, agents, wholesalers, retailers, legal representatives 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 preparation under the trademark ONAZEP or any other trademark that is identical and /or deceptively similar as that of the plaintiff's registered trademark LONAZEP and/or use similar packaging as that of the plaintiff's products under the mark LONAZEP so as to pass off the defendants' medicinal preparation 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 so as to pass off its products as and for the plaintiff's products;

(d) the defendants be ordered and decreed to deliver up for destruction to the plaintiff all the preparations, dies, blocks, labels, packing either filled or empty, brochures, leaflets, pamphlets, hand bills, hoardings, wall posters, calendars, carry bags, stationary items and such other sales promotional materials bearing and /or containing the impugned trademark ONAZEP;

(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 ONAZEP 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) costs of the entire proceedings.

2. The case of the plaintiff is that the plaintiff is carrying on business as manufacturer of medicinal preparation for human consumption. The plaintiff markets drugs and formulations over 40 markets across the World under its various other distinctive trademark. The plaintiff has 23 manufacturing plants in four continents and five world class research centre with a total work force of over 12,000 employees. The plaintiff enjoys a very high reputation for its medicinal preparations because of the excellent quality and efficacy. In the course of its business, in June 1994, the plaintiff adopted the trademark 'LONAZEP' in respect of pharmaceutical preparations for treatment of epilepsy also known as seizures or fits. The said mark 'LONAZEP' is unique, inventive

and distinctive of pharmaceutical preparations manufactured and marketed by the plaintiff. The plaintiff is the registered proprietor of the mark 'LONAZEP' under No.632391 dated 30.06.1994. While so, the plaintiff came across the defendant's medicinal preparation bearing the mark 'ONAZEP' which is almost identical with the plaintiff's registered trademark 'LONAZEP'. Hence, the suit has been filed.

3. Though suit summon was served on first defendant and substituted service effected against the second defendant, there was no representation on behalf of the defendants. Hence the defendants were set ex-parte vide order dated 24.10.2019.

4. One Ms.Radha kumar, who has been described as constituted attorney of the plaintiff has been examined as P.W.1 and the following documents were marked as Exs.P1 to P12.

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<i>Exhibit</i>	<i>Description of documents</i>
P-1	The photocopy of Power of Attorney executed by plaintiff Company in favour of the defendant.
P-2	The photocopy of the Certificate for Registration of Trademark 'LONAZEP' under No.632391 in class 5.
P-3	The photocopy of the product permission granted by Food and Drug control Administration for manufacture of tablets under mark 'LONAZEP'.
P-4	The photocopy of Invoices for sale of plaintiff's 'LONAZEP' tablets.
P-5	The photocopy of extract from medical journals listing plaintiff's 'LONAZEP' tablets.
P-6	The photocopy of product brochure for plaintiff's 'LONAZEP'
P-7	The photocopy of Chartered Accountant certificate of sales promotion expenditure in respect of plaintiff's 'LONAZEP' tablets.
P-8	The photocopy of Chartered Accountant certificate of sales promotion expenditure in respect of plaintiff's 'LONAZEP' tablets.
P-9	The photocopy of the Cease and Desist notice issued to the defendants along with acknowledgments.
P-10	The photocopy of reply issued by the second defendant to plaintiff.
P-11	The photocopy of rejoinder issued by plaintiff to second defendant.
P-12	The photocopy of the reminder issued to first defendant along with acknowledgment.

5. Ex.P2 is the photocopy of certificate for registration of trademark 'LONAZEP' under No.632391 in Class 5. Ex.P3 is the photocopy of product permission granted by Food and Drug Control Administration for manufacture of tablets under mark 'LONAZEP'. Ex.P4 is the photocopy of Invoices for sale of plaintiff's 'LONAZEP' which has been filed to prove the sale of plaintiff's tablet. Ex.P5 is the extract from medical journals listing plaintiff's 'LONAZEP' tablets and Ex.P9 is the legal notice issued to the defendants along with acknowledgments. P.W.1 in his evidence spoken about the manner in which the plaintiff's trademark has been infringed. Ex.P2, copy of the registration certificate proves that the plaintiff is a registered owner of the trademark 'LONAZEP'. The defendants' trademark 'ONAZEP' is phonetically and visually similar to that of the plaintiff's trademark. If the defendants are allowed to continue their business in the trade name 'ONAZEP' it will lead to confusion among the people.

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6. From the above evidence and documents the plaintiff has proved their claim. Accordingly, the suit is decreed with costs in respect of prayer 'a' and 'b' and the defendants are directed to pay the liquidate stocks within two months.

21.11.2019

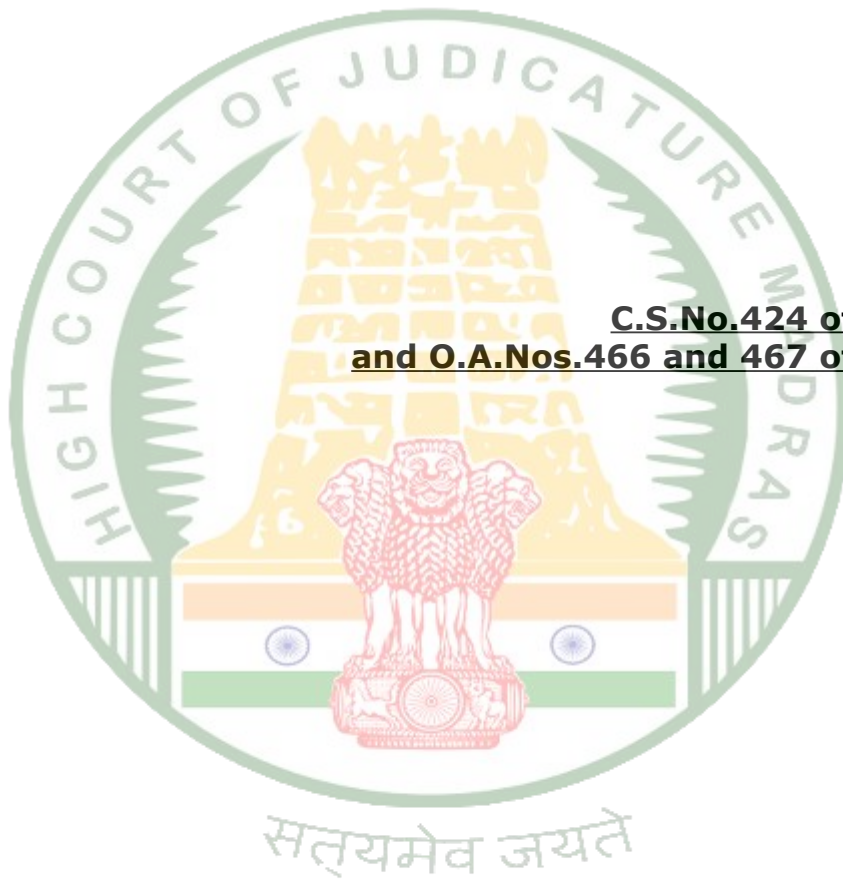
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N.SATHISH KUMAR, J.,

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