

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.12.2019

PRONOUNCED ON : 13.12.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Civil Suit No.204 of 2016

Apollo Hospitals Enterprise Ltd.,
Regd. Office at No.19, Bishop Gardens,
Raja Annamalaipuram,
Chennai – 600 028.

Plaintiff

Vs

New Apollo Pharmacy,
L R Street Valmikipuram,
517-299, Vayalpad Chittoor Dist.,
Andhra Pradesh.

Defendant

This Civil Suit is filed under Order VII Rule 1 of C.P.C., Order IV Rule 1 of High Court Original Side Rules and read with Sections 27, 28, 29, 134 & 135 of the Trade Marks Act, 1999 for the following reliefs:-

"(a) permanent injunction restraining the defendant, its men, agents, partner, associate, officer, representative, servant and all other persons acting on defendant's behalf from in any manner infringing the

plaintiff's registered trade mark "Apollo Pharmacy", "Apollo Clinic" and "Apollo Hospital" either directly or by using any structurally, visually, phonetically or deceptively similar mark to the plaintiff's trademark "Apollo", "Apollo pharmacy", "Apollo Clinic" and "Apollo Hospital";

(b) permanent injunction restraining the defendant, its men, agents, partner, associate, officer, representative, servant and all other persons acting on defendant's behalf from in any manner passing off their services as that of the plaintiff's by either using the plaintiff's trademark "Apollo" "Apollo Pharmacy", "Apollo Clinic" and "Apollo Hospital" or any structurally, visually phonetically or deceptively similar mark to the plaintiff's trademark "Apollo", "Apollo Pharmacy", "Apollo Clinic" and "Apollo Hospital" ;

(c) permanent injunction restraining the defendant, its men, agents, partner, associate, officer, representative, servant and all other persons acting on defendant's behalf from in any manner using the name / mark "Apollo", "Apollo Pharmacy", by themselves or in combination with other characters or words in connection with any pharmaceutical establishment operated, or pharmaceutical services, rendered by the defendant;

(d)The defendant be directed to surrender to the plaintiff all materials, media, etc., whether for invoicing, advertising or any other purpose which contain or bear the plaintiff's registered trademark or any structurally, visually, phonetically or deceptively similar mark to the plaintiff's trademark "Apollo" and "Apollo pharmacy";

(e)The defendant be directed to render accounts of profits of the defendant in favour of the plaintiff to examine and ascertain the profits made by the defendant, and thereafter on enquiry final decree be passed and or an order for rendition of accounts of profits made by the defendant by using the mark "Apollo" and "Apollo Pharmacy" or any structurally, visually, phonetically or deceptively similar mark to the plaintiff's trademark "Apollo" and "Apollo Pharmacy" towards damages as and when ascertained to be awarded to the plaintiff and against the defendant on account of use of the offending trade mark;

(f)award damages of Rs.25,00,000/- (Rupees Twenty Five Lakhs only); and other reliefs"

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For Plaintiff :Mr.Vineet Subramani

For Defendant :Exparte

JUDGMENT

Gist of the plaint:

The plaintiff company was incorporated as a Public Limited Company on 05.12.1979. It is a multi-specialty medical service provider across the spectrum of medical and health care services and facilities. The plaintiff also provides consultancy, management and operations services relating to healthcare and hospitals globally.

2.The plaintiff company is forerunner of integrated healthcare in Asia, and is globally recognised as a top integrated healthcare services provider which manages hospitals, diagnostic clinics, dispensing medicines and consultancy services, through its Apollo Hospitals, Apollo clinics, Apollo Pharmacy etc., across the world. It provides education, training and research through Apollo trusts, institutes and foundations.

3.The plaintiff has adopted a unique trademark "Apollo" to be used as its trademark with respect of all its hospitals and other medical undertakings. Prior to the plaintiff, no other person had adopted the said "Apollo" trade mark in the field of Pharma, healthcare and medical services

and products. The Plaintiff has registered "Apollo", " Apollo Pharmacy", "Apollo Hosptial" and other associate marks.

4.The trademark "Apollo Pharmacy" is registered under various classes of goods and services, including classes 3,5,10,24,35,41 and 42. The trademark certificates covers goods and services related to pharmaceutical, medical, sanitary, surgical, apparatus and instruments including dispensing pharmaceutical products and services.

5.Being the exclusive owner of the trade mark "Apollo", no other person is entitled to use the relevant registered trademark " Apollo" or "Apollo Pharmacy" visually, phonetically, structurally or deceptively similar to the trademarks, in connection with medical services and goods, including pharmaceutical goods and services, and the dispensing thereof 'whether directly or with any prefix or suffix or in combination with any other characters, words or devices'.

6.To cater the patients to get high quality pharmaceuticals and medical products each of the Apollo hospitals, Apollo Clinic, Apollo wellness centres etc. Contains an " Apollo Phamacy" besides 2,122 stand alone "Apollo Pharmacy" outlets. To provide customers service like delivery of medicines

at door steps, loyalty discount, integrated services as seamless network and single point of contract for the patient. Thus, the trademark "Apollo" and "Apollo Pharmacy" are distinctive designation of the Plaintiff's establishments. It is an assets of enormous value as symbolic of the plaintiff and its quality services, goods, facilities and goodwill.

7.The defendant shamelessly infringing on plaintiff's registered trademark "Apollo Pharmacy" and passing off its services by selling goods under the name and style of 'New Apollo Pharmacy'. In the signboard of the defendant, the dominant aspect is "Apollo Pharmacy" and the word 'New' is virtually invisible. The defendant being well aware of the plaintiff's business establishments and its reputation and goodwill build through years, with *mala fide* intention of usurping the trade name wilfully and wantonly use the structurally, visually, phonetically and deceptively similar mark of the plaintiffs' registered Trademark "Apollo" and "Apollo Pharmacy".

8.The plaintiff and defendant are engaged in the same services of providing pharmaceutical services by selling drugs and pharmaceutical products. The use of the name "New Apollo Pharmacy" is direct infringement of the plaintiff's registered trademark and also a passing off by defendant of its services as that of the plaintiff causing confusion in the market and deceiving the stellar reputation of the plaintiff.

9.The defendant was served with notice by the plaintiff through its counsel calling upon to cease and desist from using words or marks deceptively similar or identical to its registered trademarks – “Apollo” and “Apollo Pharmacy”. The Defendant failed to reply. In view of the defendants’ illegal actions in infringement of plaintiff’s trademark and passing off the services under “New Apollo Pharmacy”, the plaintiff has already suffered damage to its reputation, name, goodwill and business which cannot be compensated monetarily, and is likely to suffer further damage, unless the defendant is restrained from using the marks “Apollo” and “Apollo Pharmacy” the plaintiff will be put to irreparable loss and suffering.

10.With the above averments, the suit is filed for the following reliefs:

“(a) permanent injunction restraining the defendant, its men, agents, partner, associate, officer, representative, servant and all other persons acting on defendant's behalf from in any manner infringing the plaintiff's registered trade mark “Apollo Pharmacy”, “Apollo Clinic” and “Apollo Hospital” either directly or by using any structurally, visually, phonetically or deceptively similar mark to the plaintiff's trademark “Apollo”, “Apollo pharmacy”, “Apollo Clinic” and “Apollo Hospital”;

(b) permanent injunction restraining the defendant, its men, agents, partner, associate, officer, representative, servant and all other persons acting on defendant's behalf from in any manner passing off their services as that of the plaintiff's by either using the plaintiff's trademark "Apollo" "Apollo Pharmacy", "Apollo Clinic" and "Apollo Hospital" or any structurally, visually phonetically or deceptively similar mark to the plaintiff's trademark "Apollo", "Apollo Pharmacy", "Apollo Clinic" and "Apollo Hospital" ;

(c) permanent injunction restraining the defendant, its men, agents, partner, associate, officer, representative, servant and all other persons acting on defendant's behalf from in any manner using the name / mark "Apollo", "Apollo Pharmacy", by themselves or in combination with other characters or words in connection with any pharmaceutical establishment operated, or pharmaceutical services, rendered by the defendant;

(d) The defendant be directed to surrender to the plaintiff all materials, media, etc., whether for invoicing, advertising or any other purpose which contain or bear the plaintiff's registered trademark or any structurally, visually, phonetically or deceptively similar mark to the plaintiff's trademark "Apollo" and "Apollo pharmacy";

(e)The defendant be directed to render accounts of profits of the defendant in favour of the plaintiff to examine and ascertain the profits made by the defendant, and thereafter on enquiry final decree be passed and or an order for rendition of accounts of profits made by the defendant by using the mark "Apollo" and "Apollo Pharmacy" or any structurally, visually, phonetically or deceptively similar mark to the plaintiff's trademark "Apollo" and "Apollo Pharmacy" towards damages as and when ascertained to be awarded to the plaintiff and against the defendant on account of use of the offending trade mark;

(f)award damages of Rs.25,00,000/- (Rupees Twenty Five Lakhs only); and other reliefs"

11.The suit summons attempted to serve through the Junior Civil Judges Court, Vayalpad, Chittor District on the defendant returned unserved. Notice sent through Speed Post privately returned with postal endorsement 'no such pharmacy – returned to sender'. Therefore, substitute service through one daily of Hindu (English) and Enadu (Telugu) was effected. Despite substituted service, none appeared on behalf of the defendant. Hence, the defendant was set exparte. Master was directed to record the exparte evidence.

12.On behalf of the plaintiff, the Manager Legal of the Plaintiff company Mr.S.M.Mohan Kumar was examined as PW-1. Proof affidavit in lieu of chief examination was filed. 19 documents were marked as Exs.P-1 to P-19.

13.Proof affidavit and documents perused. Exs.P-1 to P-9 are the photocopies of the trademark certificates issued to the plaintiff in respect of the trademark "Apollo Pharmacy" for goods and services enumerated in classes 42,5,35,10,41,3,24 and 5 respectively. These documents prove that the plaintiff have a valid registered trademark of "Apollo Pharmacy" for goods and services related to Pharmaceuticals, medicines and allied products and services. Exs.P-10 to P-13 are the photocopies of the trade certificates for the trademark "Apollo Hospitals" for goods and services enumerated in classes 5,42,35 and 42 respectively. Ex.P-14 is the photo of the defendant signboard at his business premises. It discloses the fact that the defendant is running pharmacy business in the name of 'New Apollo Pharmacy'. The word 'New' is less predominantly written compared to the other words 'Apollo Pharmacy'. Thus, the deceptive use of structurally, visually and phonetically similar word is proved. Ex.P-19 is the copy of the legal notice dated 09/07/2015 issued to the defendant through the plaintiff's lawyer. There is no evidence to show that the defendant received this notice.

14.On perusal of the plaint, proof affidavit of PW-1 and exhibits marked on behalf of the plaintiff, the claim of the plaintiff that the defendant illegal use of the plaintiff's registered trademark " Apollo Pharmacy " by the defendant is proved.

15.In the result, the suit is decreed with costs as follows:-

(i)The relief of permanent injunction sought in prayer (a),(b) and (c) are granted;

(ii)In respect of prayer (d), the defendant is directed to hand over the infringed materials to the plaintiff;

(iii)In respect of prayer (e), preliminary decree is passed directing the defendant to render accounts of profit to the plaintiff and

(iv)In respect of prayer (f), for want of evidence, damages claimed by the plaintiff is rejected.

jbm

Index: Yes/No

Speaking order/non speaking order

List of Witness examined on the side of the Plaintiff:-

1.Mr.S.M.Mohan Kumar – P.W.1

List of Witness examined on the side of the Defendant :-

Nil

List of Exhibits marked on the side of the Plaintiff:-

<u>Exhibit Nos.</u>	<u>Dated</u>	<u>Particulars</u>
1.Ex.P.1 –	11.05.2003	Board Resolution
2.Ex.P.2 –	06.07.2007	T.M.Registration Certificate No.1576795 in Class No.42 for Apollo Pharmacy
3.Ex.P.3 –	06.07.2007	T.M.Registration Certificate No.1576790 in Class No.5 for Apollo Pharmacy
4.Ex.P.4 –	05.08.2008	T.M.Registration Certificate No.1718084 in Class No.35 for Apollo Pharmacy.
5.Ex.P.5 –	05.08.2008	T.M.Registration Certificate No.1718078 in Class No.10 for Apollo Pharmacy.
6.Ex.P.6–	16.02.2009	T.M.Registration Certificate No.1718086 in Class No.41 for Apollo Pharmacy.
7.Ex.P.7 –	16.02.2009	T.M.Registration Certificate No.1785330 in Class No.3 for Apollo Pharmacy.
8.Ex.P.8 –	16.02.2009	T.M.Registration Certificate No.1785333 in Class No.24 for Apollo Pharmacy.
9.Ex.P.9 –	06.07.2009	T.M.Registration Certificate No.1836922 in Class No.5 for Apollo Pharmacy.
10.Ex.P.10 –	06.07.2009	T.M.Registration Certificate No.1576796 in Class No.5 for Apollo Hospitals.

11.Ex.P.11 –	06.07.2009	T.M.Registration Certificate No.1576797 in Class No.42 for Apollo Hospitals.
12.Ex.P.12 –	08.04.2009	T.M.Registration Certificate No.1804010 in Class No.35 for Apollo Hospitals.
13.Ex.P.13 –	06.07.2009	T.M.Registration Certificate No.1576799 in Class No.42 for Apollo Hospitals.
14.Ex.P.14 –		Photos of the defendant's signboard
15.Ex.P.15 –		Photos of the plaintiff's signboard
16.Ex.P.16 –		Copy of 1 st Commemorative Stamp issued in the name of Apollo Hospital
17.Ex.P.17		Copy of 2 nd Commemorative stamp issued in the name of Apollo Hospital
18.Ex.P.18	10.02.2016	Copy of Auditors Certificate
19.Ex.P.19	09.07.2015	Legal Notice.

List of Exhibits marked on the side of the Defendant:-

Nil

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G.JAYACHANDRAN.J.,

jbm



Pre Delivery Judgment made in
C.S.No.204 of 2016

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