

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2019

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THE HONOURABLE **MR.JUSTICE KRISHNAN RAMASAMY**

C.S.No.216 of 2016

Apollo Hospitals Enterprises Ltd.,
regd.Office at No.19, Bishop Gardens
Raja Annamalaipuram, Chennai-600 028.
rep.by its authorised signatory

...Plaintiff

Vs.

New Apollo Pharmacy
Cross Road,
Kalkiri 517234 Chittoor District,
Andhra Pradesh.

...Defendant

This Civil Suit is preferred under Order VII Rule 1 of CPC, Order IV Rule 1 of OS Rules r/w Sections 27, 28, 29, 134 & 135 of the Trade Marks Act, 1999 prays to grant judgment and decree against the defendant:
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", "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" and "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 profits made by the defendant by using the make "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); G) an order for costs of the proceedings and H) such other order or orders as this Court may deem fit and proper in the facts and circumstances of the present case.

For Plaintiff : Mr.Vineet Subramani

For Defendant : No appearance

JUDGMENT

The plaintiff is a Company incorporated under the provisions of the Companies Act, 1956 in the name and style of M/s.Apollo Hospitals Enterprises Ltd.,. The plaintiff is a multi-specialty medical service provider across the spectrum of medical and healthcare services and facilities right from diagnostic clinics, to general hospitals, multi-specialty hospitals, cancer hospitals, training institutes/colleges, pharmacies, etc., and he is a pioneer in the field of treatment of various ailments. The plaintiff provides consultancy, management and operations services relating to healthcare and hospitals globally.

2. The petitioner has a flagship Apollo Hospital and carrying on its services in the name and style of Apollo Hospital at Chennai. It was started with just 150 beds and was inaugurated by the President of India, His Excellency Shri.GianiZail Singh. The first 'Apollo Pharmacy' was established as early as in 1988. Today, the plaintiff has both Apollo Hospitals and Apollo Pharmacy outlets throughout India, and abroad including in Sri Lanka, Bangladesh, Ghana, Nigeria, Mauritius, Qatar, Kuwait and Oman amongst others.

3. The plaintiff adopted the unique trademark "Apollo" to be used as its trademark with respect to all its hospitals and other medical undertakings. Prior to the plaintiff no other person had adopted the said "Apollo" trademark in the field of pharma, healthcare and medical services and products. The plaintiff has registered "Apollo", "Apollo Pharmacy", "Apollo Hospital" and other associated marks with the trademark Registry and obtained trademark registration certificate. The plaintiff has registered the trademark "Apollo" in No.1576799 in Class 42 dated 06.07.2007. Therefore, according to the plaintiff, they are the only person authorised to

use the word "Apollo". They also got legal right to use the word "Apollo Pharmacy" by virtue of registration of the said Mark with the trademark Registry. Therefore, they are the proprietor of the said trademark and in this regard, they also filed Registration Certificate as Ex.P.1/ trademark Registration Certificate No.1576795 in class no.42 for Apollo Pharmacy.

4. Under these circumstances, the plaintiff came to know that the defendant is running the business in the name and style of "New Apollo Pharmacy" and immediately after he came to know about this fact, he sent a legal notice and the same is marked as Ex.P18. So far the defendant has not sent any reply to the said notice, which was sent on 09.07.2015. Therefore, the plaintiff left with no other option, filed the present suit.

5. In the suit after the receipt of suit summons by the defendant on 28.06.2016, the sole defendant failed to appear before this Court. Therefore, the sole defendant was set exparte vide order of this Court on 04.07.2019. Thereafter on behalf of the plaintiff, P.W.1 was examined and Ex.s 1 to 18 have been marked.

6. Heard the learned counsel for the plaintiff and this Court has also perused the plaint, proof affidavit and also Exs.P1 to P18.

7. The plaintiff is a Company incorporated under the provisions of the Companies Act, 1956 and rendering its health care services in the name and style of "Apollo Hospital". By virtue of Ex.P1, the plaintiff registered the name "Apollo Pharmacy" with the Registrar of Trademark with effect from 06.07.2007. The plaintiff started "Apollo Pharmacy" during the year 1988 and as on date, they are functioning across India and other countries and having more than 70,000 pharmacies throughout India and across the country. Though the word "Apollo Pharmacy" is descriptive in nature, the plaintiff has obtained the distinctiveness by way of usage of the word exclusively in respect of their business.

8. This Court is of the view that the plaintiff has established their business as early as in 1988. Across the country, they are having more than 70,000 pharmacies and rendering their medical care to lakhs and lakhs of

people. The plaintiff has also registered the word "Apollo Pharmacy" with the trademark Registry on 06.07.2007 and obtained the registration certificate no.1576795 in class no.42.

9. The defendant has been using its trade name as 'NEW APOLLO PHARMACY'. Whereas, the plaintiff registered trademark is 'Apollo Pharmacy'. The defendant has been using the whole registered word mark of the plaintiff viz. APOLLO PHARMACY as part of the trade name of defendant. This clearly amounts to infringement of registered trademark of plaintiff. Therefore, this Court holds that the defendant is infringing the registered trademark of the plaintiff.

10. Therefore, the plaintiff is entitled to the relief as prayed for in the plaint. Accordingly the suit claim is proved and hence, the suit is decreed as prayed for with a cost of Rs.1,00,000/- (Rupees One lakh only)

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Index: Yes/No

Internet: Yes/No

List of Witnesses and Exhibits:

Plaintiff's Side Witnesses:

P.W.1 - Mr.S.M.Mohan Kumar

Plaintiff side Documents:

Ex.P1-Copy of T.M Registration Certificate No.1576795 in Class no.42 for Apollo Pharmacy dated 06.07.2007.

Ex.P2-Copy of T.M Registration Certificate No.1576790 in Class no.5 for Apollo Pharmacy dated 06.07.2007.

Ex.P3-Copy of T.M Registration Certificate No.1718084 in Class no.35 for Apollo Pharmacy dated 05.08.2008.

Ex.P4-Copy of T.M Registration Certificate No.1718078 in Class no.10 for Apollo Pharmacy dated 05.08.2008.

Ex.P5-Copy of T.M Registration Certificate No.1718086 in Class no.41 for Apollo Pharmacy dated 05.08.2008.

Ex.P6-Copy of T.M Registration Certificate No.1785330 in Class no.43 for Apollo Pharmacy dated 16.02.2009.

Ex.P7-Copy of T.M Registration Certificate No.1785333 in Class no.24 for Apollo Pharmacy dated 16.02.2009.

Ex.P8-Copy of T.M Registration Certificate No.1836922 in Class no.5 for

Apollo Pharmacy dated 06.07.2009.

Ex.P9-Copy of T.M Registration Certificate No.1576796 in Class no.5 for Apollo Pharmacy dated 06.07.2007.

Ex.P10-Copy of T.M Registration Certificate No.1576797 in Class no.42 for Apollo Pharmacy dated 06.07.2007.

Ex.P11-Copy of T.M Registration Certificate No.1804010 in Class no.35 for Apollo Pharmacy dated 08.04.2009.

Ex.P12-Copy of T.M Registration Certificate No.1576799 in Class no.42 for Apollo Pharmacy dated 06.07.2007.

Ex.P13-Copy of photo of the defendant's signboard.

Ex.P14-Copy of photo of the plaintiff's signboard.

Ex.P15-Copy of 1st commemorative stamp issued in the name of Apollo Hospitals.

Ex.P16-Copy of 2nd commemorative stamp issued in the name of Apollo Hospitals.

Ex.P17-Copy of Auditors Certificate dated 19.02.2016.

Ex.P18 Copy of Legal Notice dated 09.07.2015.

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