

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

Civil Suit (Comm. Div.) No.770 of 2017

Foundation Medicine, INC
150 Second Street,
Cambridge,
Massachusetts 02141
rep. by its Constituted Attorney,
Shivprasad Laud,
S/o.Madao Laud,
No.18, Ratan Abad, T.J. Road,
Grant Road West,
Mumbai 400 007.

...Plaintiff

Vs.

POSITIVE BIOSCIENCES LIMITED,
645, Anna Salai,
Thousand Lights,
Chennai 600 006, Tamil Nadu.

...Defendant

Plaint filed under Order IV Rule 1 of O.S. Rules and Order VII Rule 1 of C.P.C. read with Sections 28, 29, 134 and 135 of the Trade Marks Act, 1999 and Sections 51, 55 and 62 of the Copyright Act, 1957.

For Plaintiff

:

Mr.V.P.Raman

For Defendant

:

Mr.Vinod Kumar

J U D G M E N T

This Civil Suit has been filed by the plaintiff seeking for the following

reliefs:

(a) for a permanent injunction restraining the Defendant, by itself, its proprietors, servants, subordinates, representatives, successors-in-business, assigns, distributors, stockists, dealers, agents and all other persons claiming under or through them or acting in concert with them from infringing the Plaintiff's registered trade mark "Foundation One" bearing No.2351183 in any manner and from using in relation to any goods and/or services for which the mark "Foundation One" is registered or any goods and/or services similar to the services for which the mark "Foundation One" is registered or as their trade name or trading style or domain name or any part thereof, the impugned mark "FoundationOne" or any other mark, which is identical or similar to the mark "FoundationOne" and from selling, offering for sale, advertising or dealing in goods under the mark "FoundationOne" and from selling, offering for sale, advertising or dealing in any goods/services for which the mark "FoundationOne" is registered or which are similar to the goods/services for which the mark "FoundationOne" is registered or any other mark, which is identical or similar to the mark "FoundationOne";

(b) Permanent injunction restraining the Defendant by itself, its proprietors, servants, subordinates, representatives, successors-in-business, assigns, distributors, stockists, dealers, agents and all other persons claiming under or through them or acting in concert with them from infringing the Plaintiff's copyright over the test report format having claims, distinctive colour scheme, get-up and lay out in any manner and from using in relation to any goods and/or services for which the Plaintiff is using the said test report format or any work, which is a substantial reproduction of the Plaintiff's literary work or any part thereof and from selling, offering for sale, advertising or dealing with respect to the test report format of the Plaintiff;

(c) Permanent injunction restraining the Defendant by itself, its proprietors, servants, subordinates, representatives, successors-in-business, assigns, distributors, stockists, dealers, agents and all other persons claiming under or through them or acting in concert with them from marketing, selling, advertising, retailing, offering to sell any products or offer services including in particular cancer genomic testing by misusing the impugned mark "FoundationOne" or any other mark resembling the Plaintiff's "FoundationOne" mark and from using in relation to any

such goods/services or as a trade name or trading style or domain name or a part thereof the impugned mark or any other mark resembling the Plaintiff's "FoundationOne" mark in any manner or the Plaintiff's test report format having claims, distinctive colour scheme, get-up and lay out or by fabricating the original report of the Plaintiff in any manner so as to pass off or enable others to pass off the Defendant's goods/services/business or website as those of the Plaintiff's goods/services/business or website;

(d) that the Defendant be ordered to surrender to the Plaintiff for destruction of all materials, brochures, pamphlets and other materials bearing the trade mark "FoundationOne"; the materials which are identical or similar to that of the Plaintiff's test report format having claims, distinctive colour scheme, get-up and lay out, and the materials in which the Plaintiff's test results are misused and/or fabricated;

(e) that the Defendant be ordered and directed to disclose to the Plaintiff in an Affidavit the details of sale of each of the impugned products or services including period of sales; amounts of sale price realized or realizable; profits collected and/or due and payable in respect of the impugned products or services as also produce the registers, records, invoices and documents relating to the sale of the impugned products or services;

(f) that the Defendant be directed to pay to the Plaintiff as damages a sum of Rs.1,00,00,000/- (Rupees One Crore only) in respect of acts of infringement of trade mark, infringement of copyright and passing off committed by the Defendant;

(g) for costs of the suit;

2. Today, when the matter is taken up for hearing, learned counsel for the parties submitted that the parties have entered into compromise and produced the Memorandum of Compromise dated 23.04.2019 entered into between them. Recording the same, **this Civil Suit is decreed in terms of the Memorandum of Compromise.** The Memorandum of Compromise shall form part of the Decree. No costs. Refund of Court Fee to the Plaintiff, as permissible under Rules, is ordered.

26.04.2019

Index : Yes/No
Speaking Order : Yes/No
(aeb)

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S.VAIDYANATHAN,J.

(aeb)



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