

C.S.No.865 of 2018
and
A.No.4818 of 2019 and O.A.No.1177 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2019

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THE HONOURABLE MR.JUSTICE Krishnan Ramasamy

C.S.No.865 of 2018
and
A.No.4818 of 2019 and O.A.No.1177 of 2018

1.MMC Pharmaceuticals Limited
1st Floor, Old No:3, New No:5,
P.T.Road, 20th Avenue,
Ashok Nagar, Chennai – 600 083
Represented by its Managing Director
Mr.M.Rajarathinam

2.M/s.Cu-V-Kar Genetic Medicines (P) Limited
AE-Block No.75, 3rd Street,
Anna Nagar,
Chennai – 600 040.
Represented by its Managing Director
Mr.S.Ram Kumar

... Plaintiffs

Vs.

1.Lincs Pharma,
No.103-B, Gandhi Main Road,
S.V.Nagar, Oragadam,
Ambattur,
Chennai – 600 053.

2.GK Health Care,
No.12-A/31, KPM's Enclave,
Vishwanathapuram 3rd Street,
Kodambakkam,
Chennai – 600 024.

3.M.M.Naattu Marundhu Kadai
No.9, Arunasalam Road,
Saaligramam,
Chennai – 600 093.

... Defendants

Plaint filed under Order VII Rule 61 C.P.C. read with Order IV Rule 1 of the High Court Original Side Rules praying for:

(a) granting a permanent injunction, restraining the defendants, by themselves, their directors, servants, agents, men, or anyone claiming through them from manufacturing, marketing, distributing, offering or advertising for sale any pharmaceutical preparation using the Trademark "LIBIDUP-PLUS" or any other name which is in any way phonetically or deceptively and visually similar to the plaintiff's Trademark "LIBIDUP" and pass off their pharmaceutical preparation "LIBIDUP-PLUS" as the pharmaceutical preparation of the plaintiffs or enable others to pass off in any manner.

(b) direct and decree the defendants to deliver to the plaintiffs all the goods, dies, labels, wrappers, packages, cartons, boxes, articles, literature and all other materials bearing reference whatsoever with respect to the offending mark "LIBIDUP-PLUS" for destruction without compensation;

(c) The defendants be ordered and directed to render true and faithful accounts of the profits illegally earned by the defendants by using the identical,

deceptively, visually and phonetically similar and confusing trademark "LIBIDUP-PLUS" and a decree for the said amount be passed in favour of the plaintiffs against the defendants;

(d) directing the defendants to pay to the plaintiffs the costs to the suit.

(e) pass such further or other order, as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Plaintiffs : Mr.Gladys Daniel

For defendants : Mr.S.Ezhil Raj
D2 and D3 Given up

J U D G M E N T

The suit has been laid for the following reliefs:

(i) *granting a permanent injunction, restraining the defendants, by themselves, their directors, servants, agents, men, or anyone claiming through them from manufacturing, marketing, distributing, offering or advertising for sale any pharmaceutical preparation using the Trademark "LIBIDUP-PLUS" or any other name which is in any way phonetically or deceptively and visually similar to the plaintiff's Trademark "LIBIDUP" and pass off their pharmaceutical preparation "LIBIDUP-PLUS" as the pharmaceutical preparation of the plaintiffs or enable others to pass off in any manner.*

(ii) direct and decree the defendants to deliver to the plaintiffs all the goods, dies, labels, wrappers, packages, cartons, boxes, articles, literature and all other materials bearing reference whatsoever with respect to the offending mark "LIBIDUP-PLUS" for destruction without compensation;

(iii) The defendants be ordered and directed to render true and faithful accounts of the profits illegally earned by the defendants by using the identical, deceptively, visually and phonetically similar and confusing trademark "LIBIDUP-PLUS" and a decree for the said amount be passed in favour of the plaintiffs against the defendants;

(iv) directing the defendants to pay to the plaintiffs the costs to the suit.

(v) pass such further or other order, as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

2. When the matter is taken up for hearing, a joint memo of compromise entered into between the plaintiffs and defendants dated 31.07.2019, signed by the parties and duly attested by their respective counsel has been produced.

3.Learned senior counsel appearing for the plaintiffs as well as the learned counsel appearing for the defendants would submit that the suit may be decreed in terms of the joint memo of compromise dated 31.07.2019. The joint memo of compromise reads as under:

The parties submit as under:

1.The terms plaintiffs and the 1st defendant shall mean and include their heirs, executors, administrators, successors and assignees of each party.

2.The 1st defendant shubmits to a Judgment and Decree as prayed for in terms of prayer (a) of para 20 of the plaint for

a)granting a permanent injunction, restraining the defendants, by themselves, their directors, servants, agents, men, or anyone claiming through them from manufacturing, marketing, distributing, offering or advertising for sale any pharmaceutical preparation using the Trademark "LIBIDUP-PLUS" or any other name which is in any way phonetically or deceptively and visually similar to the plaintiffs Trademark "LIBIDUP" and pass off their pharmaceutical preparation "LIBIDUP-PLUS" as the pharmaceutical preparation of the plaintiffs or enable others to pass off in any manner.

3.The 1st defendant undertakes not to apply for any Trademark seeking registration of the Trademark "LIBIDUP"/"LIBIDUP PLUS" or any mark deceptively similar thereto on the file of the Registrar of Trademark and also undertakes hereby not to assert any right in respect of the trademark "LIBIDUP"/"LIBIDUP PLUS" or similar sounding expression or its logo for any goods in future.

4.The 1st defendant undertakes to withdraw any Trademark application already filed in respect of the Trademark "LIBIDUP"/"LIBIDUP PLUS".

5.The 1st defendant undertakes not to use any trading style with the mark "LIBIDUP"/"LIBIDUP PLUS".

6.The 1st defendant undertakes not to oppose any application for registration of the Trademark "LIBIDUP"/"LIBIDUP PLUS" filed by the plaintiffs.

7.The 1st defendant acknowledge receipt of a sum of Rs.2,50,000/- (Rupees Two lakhs fifty thousand only) by way of DD No.506883 dated 01.08.2019 drawn on ICICI Bank as full and final settlement in respect of the unregistered trademark "LIBIDUP"/"LIBIDUP PLUS" used since 1990/2007.

8.The plaintiffs are giving up defendant Nos.2 &
3.

In view of the decree for permanent injunction the plaintiffs have given up the reliefs contained in prayers [b], [c] & [d] in para 20 of the suit including cost of the suit.

4.Accordingly, the suit stands decreed in terms of the joint memo of compromise dated 31.07.2019 and the joint memo of compromise shall form part of the decree. No costs. Consequently, connected applications are closed.

02.08.2019

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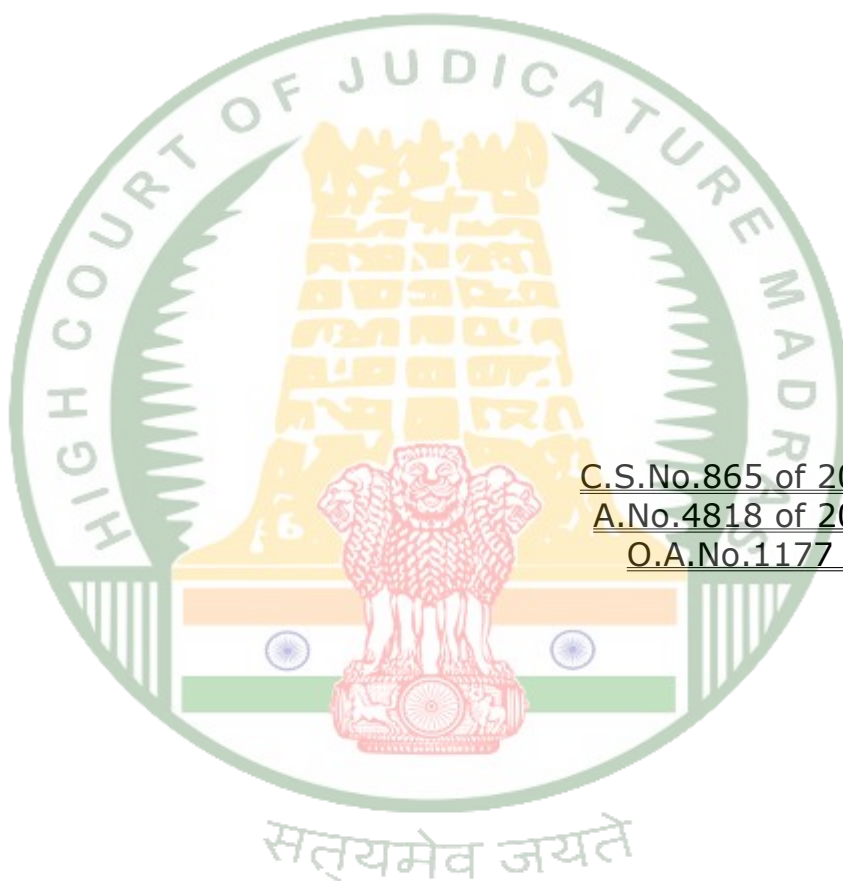
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Krishnan Ramasamy,J.

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