

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.10.2020

CORAM:

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

C.S.(Comm. Div.) No.197 of 2020

and

O.A.Nos.348, 349 and 350 of 2020

and

A.No.1807 of 2020

M/s.Apex Laboratories Pvt. Ltd.,

29, III Floor, SIDCO Garment Complex,

Guindy, Chennai – 600 032.

rep.by its Authorized Signatory,

D.Jude F.L.S.Durai Pandian

.. Plaintiff

/versus/

1.Universal Health Science,

D.No.4-3-529-530B,

Hyderabad – 500 095.

2.Concord Drugs Limited,

Survey No.249, Brahmanapally,

Hayath Nagar (M), R.R.District,

Telangana – 501 511.

.. Defendants

This Civil Suit is filed under Order VII Rule 1 of the Code of Civil Procedure and Order IV Rule 1 of the O.S Rules read with sections 27,28,29,134 and 135 of the Trade Marks Act, 1999 and Sections 51,55 and 62 of the Copyright Act, 1957, prayed for:-

a).A permanent injunction restraining the Defendants, by themselves, their men, servants, agents, distributors, stockiest, representatives or any one claiming through or under them from in any manner infringing the plaintiff's registered trademarks ZINCOVIT under No.484753 in Class 5 and other registered trademarks by using a deceptively similar trademark ZINNOVITA or any other trademark deceptively similar to the plaintiff's registered trademark or in any other manner whatsoever;

b).A permanent injunction restraining the defendants, by themselves, their men, servants, agents, distributors, stockiest, representatives or any one claiming through or under them from in any manner committing acts of copyright infringement by using, in the course of trade, labels/artistic works which are a substantial reproduction of plaintiff's registered copyright under Nos.A-112789/2017 and other registered copyrights in colour scheme, get up and layout for their ZINNOVITA for any tablets, syrup, drops etc., or in any other manner whatsoever;

c).A permanent injunction restraining the defendants their men, servants, agents, distributors, stockiest, representatives or any one claiming through or under them from in any manner passing off and / or enabling others to pass off the defendants' products under the trademark ZINNOVITA as and for the plaintiff's products by manufacturing, selling, or offering to sell, distributing, displaying, printing, stocking, using, advertising their products with a trademark and / or label or

artistic work that is identical in colour scheme, get up and layout with that of the plaintiff's ZINCOVIT trademark or artistic work or in any other manner whatsoever;

d).The defendants be ordered to surrender to plaintiffs for destruction of all products, label, cartons, dyes, blocks, moulds, screen prints, packing materials and other materials bearing the trademark ZINNOVITA label or any mark deceptively similar to plaintiffs' trademark and artistic work ZINCOVIT label.

e).A preliminary decree be passed in favour of the plaintiff's directing the defendants to render account of profits made by use of trademark and copyright in the artistic work ZINNOVITA label and a final decree be passed in favour of the plaintiffs for the amount of profits thus found to have been made by the defendants after the latter have rendered accounts;

f). for the costs of the suit; and

g).and pass such further or other relief as this Court may deem fit and necessary in the circumstances of the case.

For Plaintiff : Mr.R.Sathish Kumar

For Defendants : Mr.V.Sivakumar

JUDGMENT

A Memo of Compromise had been forwarded to the Registry, in which, the Chief Vigilance Officer of the plaintiff, the Proprietor of the 1st defendant and the Chairman of the 2nd defendant have signed. It has also been signed by the learned counsels for the plaintiff and the defendants.

2.The terms of the Memorandum of Compromise are as follows:

“2.The defendant approached the plaintiff for amicable settlement of the dispute and the plaintiff also agreed to settle the dispute on the following terms and conditions reduced hereunder;

b).That the defendant undertakes that it will not manufacture or market or otherwise deal with the products bearing the trademark ZINNOVITA or any other trademark identical or deceptively similar to the plaintiff's product ZINCOVIT at point of any point in future whatsoever and has agreed to change their trademark which is agreed by the plaintiff.

c).The plaintiff and defendant pray that the above suit may be decreed in terms of prayers (a), (b) and (c) of Paragraph 35 of the Plaint and the plaintiff is willing to give up the reliefs under Prayers 35(d), 35(e) and 35(f) of the Suit in view of this Memorandum of Compromise.

d).That the defendant states that in the event of breach of this undertaking to this Hon'ble Court, they are liable for punitive damages to the plaintiff in addition to any other legal right available to the plaintiff.

In the above circumstances, it is prayed that this Hon'ble Court may be pleased to pass a judgment and decree in terms of the memo of compromise and pass such further or other order which may deem fit and proper to the facts of circumstances of the case and thus render justice.”

C.V.KARTHIKEYAN,J.

smv

3.Since both the parties have agreed to the terms of the Memorandum of Compromise, the same is recorded and the suit is decreed accordingly. No order as to costs. Consequently, connected Applications are closed. The Memorandum of Compromise shall form part of the decree.

08.10.2020

smv

Internet : Yes / No

Index : Yes / No

Speaking Order : Yes / No

C.S.(Comm. Div.) No.197 of 2020

and

O.A.Nos.348, 349 and 350 of 2020

and

A.No.1807 of 2020

WEB COPY