



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 26TH DAY OF AUGUST 2021

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

C.S. No.373 of 2005

Apex Laboratories Ltd.,
No.76, C.P.Ramaswamy Road,
Alwarpet, Chennai – 600 018.

...Plaintiff

-Versus-

1.Chirag Pharmaceuticals,
151-A, Baajujei,
Shahajanpur – 242 001.

2.Trimax Pharmaceuticals Pvt. Ltd.,
E-126, Industrial Area, Phase VII,
SAS Nagar – 160 055.

...Defendants

Civil Suit praying that this Hon'ble Court be pleased for a judgment
and decree:-

a) granting a permanent injunction restraining the defendants above
named by themselves, their servants, agents or anyone claiming through
them from in any manner infringing the Plaintiffs' registered Trade Mark
“ZINCOVIT” by using the offending trade mark “ZINCOVIT” or any other
mark or marks which are identical and similar to the plaintiff's registered
trade mark “ZINCOVIT”;



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b) granting a permanent injunction restraining the defendants, their servants or agents or anyone claiming through them from in any manner passing off of their pharmaceutical products bearing the offending trade mark “ZINCOVIT” as and for the celebrated pharmaceutical products of the plaintiffs bearing the registered trade mark “ZINCOVIT”, either by manufacturing, selling or offering for sale or in any manner advertising the same;

c) directing the defendants to surrender to the plaintiffs the entire stock of unused offending cartons bearing the offending trade mark “ZINCOVIT” together with blocks and dyes for destruction;

d) directing the defendants to render a true and faithful account of the profits earned by the defendants through the sale of the pharmaceutical products sold under the offending trade mark 'ZINCOVIT' and directing payment of such profits to the plaintiffs for the passing off committed by the Defendants;

e) directing the defendants to pay to the plaintiffs the costs of the suit.

This civil suit coming on this day before this court for hearing in the presence of Mr.R.Sathish Kumar, advocate for the plaintiff herein and the defendants herein not appearing in person or by advocate and the said defendants herein having been set ex-parte and upon reading the plaint filed



herein and the other exhibits therein referred to and upon perusing the evidence adduced therein, and it is ordered and decreed as follows:-

That 1.Chirag Pharmaceuticals, 2.Trimax Pharmaceuticals Pvt. Ltd., the defendants herein, by themselves, their servants, agents or anyone claiming through them be and are hereby restrained by an order of permanent injunction from in any manner infringing the Plaintiffs' registered Trade Mark “ZINCOVIT” by using the offending trade mark “ZINCOVIT” or any other mark or marks which are identical and similar to the plaintiff's registered trade mark “ZINCOVIT”.

2. That 1.Chirag Pharmaceuticals, 2.Trimax Pharmaceuticals Pvt. Ltd., the defendants herein, their servants or agents or anyone claiming through them be and are hereby restrained by an order of permanent injunction from in any manner passing off of their pharmaceutical products bearing the offending trade mark “ZINCOVIT” as and for the celebrated pharmaceutical products of the plaintiffs bearing the registered trade mark “ZINCOVIT”, either by manufacturing, selling or offering for sale or in any manner advertising the same.

3. That the defendants herein be and are hereby directed to surrender to the plaintiffs the entire stock of unused offending cartons bearing the offending trade mark “ZINCOVIT” together with blocks and dyes for destruction.



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4. That the defendants herein be and are hereby directed to render a true and faithful account of the profits earned by the defendants through the sale of the pharmaceutical products sold under the offending trade mark 'ZINCOVIT' and pay of such profits to the plaintiffs for the passing off committed by the Defendants;

5. That there shall be no costs of this suit.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
26TH DAY OF AUGUST 2021.

Sd./-

ASSISTANT REGISTRAR (Comm. Cases)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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KLY-18/09/2021

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C.S. No.373 of 2005

DECREE

DATED: 26.08.2021

THE HON'BLE MR. JUSTICE
R.SUBRAMANIAN

FOR APPROVAL:20/09/2021

APPROVED ON:21/09/2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.S.No.373 of 2005

Apex Laboratories Ltd.,
No.76, C.P.Ramaswamy Road,
Alwarpet, Chennai – 600 018.

...Plaintiff

Vs.

1.Chirag Pharmaceuticals,
151-A, Baajujei,
Shahajanpur – 242 001.

2.Trimax Pharmaceuticals Pvt. Ltd.,
E-126, Industrial Area, Phase VII,
SAS Nagar – 160 055.

...Defendants

Prayer: Complaint filed under Order IV Rule 1 of the Original Side rules and Order VII Rule 1 of C.P.C., r/w. Sections 134 & 135 of the Trademarks Act, 1999, praying as follows:-

a) granting a permanent injunction restraining the defendants above named by themselves, their servants, agents or anyone claiming through them from in any manner infringing the Plaintiffs' registered Trade Mark “ZINCOVIT” by using the offending trade mark “ZINCOVIT” or any other mark or marks which are identical and similar to the plaintiff's registered trade mark “ZINCOVIT”;

b)granting a permanent injunction restraining the defendants, their servants or agents or anyone claiming through them from in any manner passing off of their pharmaceutical products bearing the offending trade mark “ZINCOVIT” as and for the celebrated pharmaceutical products of the



plaintiffs bearing the registered trade mark “ZINCOVIT”, either by manufacturing, selling or offering for sale or in any manner advertising the same;

c) directing the defendants to surrender to the plaintiffs the entire stock of unused offending cartons bearing the offending trade mark “ZINCOVIT” together with blocks and dyes for destruction;

d) directing the defendants to render a true and faithful account of the profits earned by the defendants through the sale of the pharmaceutical products sold under the offending trade mark 'ZINCOVIT' and directing payment of such profits to the plaintiffs for the passing off committed by the Defendants;

e) directing the defendants to pay to the plaintiffs the costs of the suit.

For Plaintiff : Mr.R.Sathishkumar

For Defendants : Set exparte

J U D G M E N T

The plaintiff, who is the registered proprietor of the trademark “ZINCOVIT”, seeks a decree for permanent injunction restraining the defendants from using the same trademark for the same goods namely, multi vitamin tablets, injunction restraining the defendants from passing off of their pharmaceutical products with the offending mark “ZINCOVIT”



injunction for surrender of all the unused offending cartons and packing materials, for accounts and for costs.

2. According to the plaintiff, it is the owner of the trademark “ZINCOVIT”, which is the name assigned for the multi vitamin tablets manufactured and marketed by it for over 31 years now. At the time of the suit, the user was for about 15 years. Despite service, the defendants have not appeared either in person or through counsel. Hence, the defendants were set exparte.

3. One Mr.D.Jude F.L.S.Durai Pandian has been examined as P.W.1. The plaintiff has a valid registration of the said trademark. The registration certificate has been produced as Ex.P2 along with relevant legal user certificate. It is seen there from that the registration of the plaintiff is still alive. The packaging and the representation of the plaintiff's product has been marked as Ex.P3. The defendants' product along with the packaging has been marked as Ex.P4. A perusal of the same reveals that the defendants are also using the same name “ZINCOVIT” for their multi vitamin tablets.

4. The above action of the defendant amounts to a clear infringement of the plaintiff's mark. No doubt, there is a slight difference in the manner of the writing of the word “ZINCOVIT”, but the same will not constitute a sufficient cause to allow the defendants to continue the infringement of the



plaintiff's mark. I am therefore, of the considered opinion that the plaintiff is entitled to a decree as prayed for. Accordingly, this suit is decreed as prayed for. No costs.

Sd./-G.J.J.
26/08/2021

List of witness examined on the side of the plaintiff:

Mr.D.Jude F.L.S.Durai Pandian (P.W.1)

List of documents marked on the side of the plaintiff:

<i>S.No.</i>	<i>Description of Documents</i>	<i>Exhibit</i>
1	The certified copy of the Board resolution dated 22.08.2019.	Ex.P1
2	The certified copy of the Trade Mark registration bearing No.487453 in Class 5.	Ex.P2
3	The specimen of the plaintiff "ZINCOVIT".	Ex.P3
4	The specimen of the defendant "ZINCOVIT".	Ex.P4

List of witness and documents filed on the side of the defendants:

Nil

Sd./-G.J.J.
26/08/2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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