

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.03.2021

CORAM :

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

C.S. (Comm.Div) No.433 of 2018 (A)
and O.A.Nos. 618 to 620 of 2018

M/s. Apex Laboratories Pvt. Ltd.,
29, III Floor, SIDCO Garment Complex,
Guindy, Chennai - 600 032,
Represented by its Authorised Signatory,
D.Jude F.L.S.Durai Pandian.

... Plaintiff

Vs.

1. Grownmax Medicare Private Limited,
No.495, Narayan Peth,
Pune-411 030,
and also at B-159, 2nd Floor, DDA Shed,
Okhala Industrial Area, Phase-I,
New Delhi-110 020.

2. Samson Laboratories Private Limited,
152, Sansiwala, Barotiwala,
Distt. Solan, Himachal Pradesh - 174 103.

... Defendants

Prayer:

Civil Suit is filed under Order VII Rule 1 of CPC and Order IV Rule

1 O.S. Rules, read with Sections 27, 28, 29, 134, 135 of the trademarks
Act, 1999 and Sections 51, 55, 62 of the Copyrights Act, 1957, (a)

permanent injunction restraining the defendants, by itself, its partners, 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 by using a deceptively similar trademark ZINKOACT or any other trademark deceptively similar to the plaintiff's registered trademark or in any other manner whatsoever;

(b) permanent injunction restraining the defendants, by itself, its partners, 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 plaintiffs' registered copyright under Nos.A-54243/1997 and A-91339/2011 and A-108878/2014 and A-115854/2017 in colour scheme, get up and layout for their ZINKOACT for any syrup, tablets etc., or in any other manner whatsoever;

(c) permanent injunction restraining the defendants, by itself, its partners, 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 ZINKOACT as and for the plaintiffs' 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, labels, cartons, dyes, blocks, moulds, screen prints, packing materials and other materials bearing the trademark ZINKOACT label or any mark deceptively similar to plaintiffs' trademark and artistic work ZINCOVIT label;

(e) a preliminary decree be passed in favour of the plaintiffs directing the defendants to render account of profits made by use of trademark and copyright in the artistic work ZINKOACT 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 costs of the suit.

For Plaintiff : Mr.R.Sathish Kumar
For D1 : Mrs.Smitha Manu
For D2 : Set Ex-parte

JUDGMENT

There are two defendants. The 1st defendant had been served on 21.08.2018 and the 2nd defendant had been served on 20.07.2018. Learned counsel had entered appearance on behalf of the 1st defendant and written statement had also been filed. In the meanwhile, the Interlocutory Application had been argued and thereafter, an Original Side Appeal had also been filed. The parties to the suit in that stage were primarily the plaintiff and the 1st defendant. Subsequently, a Memorandum of Compromise had been filed which had been entered into between the plaintiff and the 1st defendant. This Memorandum of Compromise dated 10.01.2021 had been presented into Court on 15.02.2021. Thereafter, an Additional Memorandum of Compromise had been entered into wherein there has been a specific reference to the Original Side Appeals.

2. Heard Mr.R.Sathish Kumar, learned counsel for the plaintiff.

3. The 1st defendant is represented by counsel but the 2nd defendant has not answered the suit summons though they had been served. The name and address of the 2nd defendant is printed in the cause list. They have also not filed written statement. Since they had not answered the suit summons, the 2nd defendant is set ex-parte.

4. By the Memorandum of Compromise dated 10.01.2021, the 1st defendant has stated that they would not manufacture or market or otherwise deal with the products bearing the trade mark ZINKOACT. They have also undertaken that they would also not apply for registration or claim right over the trade mark ZINKOACT. They had agreed to change their trade mark to ZEOACT.

5. In view of such undertaking, they had submitted that the suit may be decreed with respect to reliefs A, B and C. The plaintiff also agreed to give up the reliefs D, E and F.

6. By the Additional Memorandum of Compromise, the same terms and undertakings have been reiterated and additionally it had been mentioned that O.S.A.Nos.96 and 98 of 2020 had been filed by the plaintiff against the interim order dated 19.06.2019 and has also been withdrawn.

7. In view of the Memorandum of Compromise and Additional Memorandum of Compromise:

(i) the suit is partly decreed with respect to the 1st defendant with respect to reliefs A, B and C and the suit is dismissed with respect to reliefs D, E and F. No order as to costs.

(ii) Since the 2nd defendant had not responded to the suit summons issued by this Court and had been set ex-parte, the suit is decreed as against the 2nd defendant with costs.

(iii) Consequently, connected Applications are closed.

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Index : Yes

Internet : Yes

Speaking order : Yes/No

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