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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 12TH DAY OF APRIL 2022

THE HON'BLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

C.S.No. 650 of 2008

M/s. Dr JRK's SIDDHA RESEARCH
AND PHARMACEUTICALS (P) LTD.,

A company registered under the Indian
Companies Act, 1956 and Having its
Registered Office at
No.11, Perumal Koil Street,
Kundrathur, Chennai – 600 069.

... Plaintiff

-Vs-

1. M/s. Inoda Healthkare (P) Ltd.,
E-15, SIPCOT Industrial Estate,
Maraimalai Nagar – 603 209.
2. M/s. J R Agencies,
705/390, 1st Floor,
Pachaiappagramani Street,
(Opp Anna Arch), Arumbakkam,
Chennai – 600 106.
3. Mr. S. Vadhiraajan,
E-15, SIPCOT Industrial Estate,
Maraimalai Nagar – 603 209.

... Defendants

Civil Suit praying that this Hon'ble Court be pleased to pass a



A) Granting a permanent injunction restraining the defendants, their men, servants, agents or anyone claiming through or under them from in any manner infringing the plaintiff Trade Mark “777 oil” by using the offending Trade Mark “777 oil” or any other mark or marks which are similar or in any way deceptively similar to or a colourable imitation of the plaintiff Trade Mark “777 oil” either by manufacturing or selling or offering for sale or in any manner advertising the same.

B) Granting a permanent injunction restraining the defendants, their men, servants, agents or anyone claiming through or under them from in any manner passing off their pharmaceutical products as that of the plaintiff by using the offending Trade Mark “777 oil” as and for the celebrated pharmaceutical products of the plaintiff with the registered Trade Mark “777 oil” or by using any other Trademark which is similar or deceptively similar to that of the plaintiff trade mark “777 oil”.

C) Directing the defendants to render a true and faithful accounts of the profits earned by them through the sale of pharmaceutical products bearing the offending trade mark “777 oil” and directing payment of such profits to the plaintiff by way of damages.

D) Directing the defendants to surrender to the plaintiff the entire stock of unused offending goods with Trade Mark “777 oil” together with



cartons, strips, brochures etc, bearing the offending Trademark for destruction.

E) Directing the defendants to pay the plaintiff the costs of the suit.

This Civil Suit coming on this day before this Court for hearing in the presence of Mr. Prasanna, for M/s. APR Associates, Advocates for the plaintiff herein and M. S. Sivashankar, Advocate for the 3rd defendant herein and the defendants 1 & 2 herein, not appearing in person or by advocate and the said defendants 1 & 2 herein having been set exparte on 09.09.2021 and upon reading the plaint filed herein and the other exhibits therein referred to and upon perusing the evidence adduced therein and this Court having observed that the plaintiff company has proved the case with respect to the relief sought for in this suit, **It is ordered and decreed as follows :-**

That (1) M/s. Inoda Healthcare (P) Limited., (2) M/s. J.R. Agencies and (3) S. Vadhiraajan, the defendants herein their men, servants, agents or anyone claiming through or under them, be and are hereby restrained by an order of permanent injunction from (a) in any manner infringing the plaintiff Trade Mark “777 oil” by using the offending Trade Mark “777 oil” or any other mark or marks which are similar or in any way deceptively similar to or a colourable imitation of the plaintiff Trade Mark “777 oil”



either by manufacturing or selling or offering for sale or in any manner advertising the same (b) in any manner passing off their pharmaceutical products as that of the plaintiff by using the offending Trade Mark “777 oil” as and for the celebrated pharmaceutical products of the plaintiff with the registered Trade Mark “777 oil” or by using any other Trademark which is similar or deceptively similar to that of the plaintiff trade mark “777 oil”.

2. That insofar as the prayer (C) and (D) are concerned, the suit in C.S.No. 650 of 2008, be and is hereby dismissed.

3. That the defendants herein, shall pay the costs of Rs.1,000/- (Rupees One Thousand only) to the plaintiff herein.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 12TH DAY OF APRIL 2022.

Sd/-

ASSISTANT REGISTRAR (Comm.Cases)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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ED
06.05.2022

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C.S.No. 650 of 2008

DECREE

DATED : 12.04.2022

THE HON'BLE MRS. JUSTICE
V. BHAVANI SUBBAROYAN

FOR APPROVAL : 06.05.2022

APPROVED ON : 11.05.2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.04.2022

CORAM :

THE HONOURABLE MRS. JUSTICE **V.BHAVANI SUBBAROYAN**

C.S.No. 650 of 2008

M/s. Dr.JRK's Siddha Research and
Pharmaceuticals (P) Limited,
A company registered under the Indian
Companies Act, 1956 and having its
Registered Office at No.11,
Perumal Koil Street,
Kunrathur,
Chennai - 600 069.

..Plaintiff

Versus

1.M/s. Inoda Healthcare (P) Limited,
E-15, SIPCOT Industrial Estate,
Maraimalai Nagar-603 209.

2. M/s.J.R. Agencies,
No.705/390, 1st Floor,
Pachaiappagramani Street,
(Opp. Anna Arch), Arumbakkam,
Chennai - 600 106.

3. S. Vадhirajan

..Defendants

Prayer: Civil Suit is filed under Order IV Rule 1 of Original Side Rules

Read With Order VII Rule 1 of CPC., Read With Section 134 and 135 of the

Trade Marks Act,1999, (a) granting a permanent injunction restraining the

defendants, their men, servants, agents or anyone claiming through or under



them from in any manner infringing the plaintiff Trade Mark "777 Oil" by using the offending Trade Mark "777 Oil" or any other mark or marks which are similar or in any way deceptively similar to or a colourable imitation of the plaintiff Trade Mark "777 Oil" either by manufacturing or selling or offering for sale or in any manner advertising the same, (b) granting a permanent injunction restraining the defendants, their men, servants, agents or anyone claiming through or under them from in any manner passing off their pharmaceutical products as that of the plaintiff by using the offending Trade Mark "777 Oil" as and for the celebrated pharmaceutical products of the plaintiff with the registered Trade Mark "777 Oil" or by using any other Trademark which is similar or deceptively similar to that of the plaintiff Trade Mark "777 Oil", (c) directing the defendants to render a true and faithful accounts of the profits earned by them through the sale of pharmaceutical products bearing the offending Trade Mark "777 Oil" and directing payment of such profits to the plaintiff by way of damages, (d) directing the defendants to surrender to the plaintiff the entire stock of unused offending goods with Trade Mark "777 Oil" together with cartons, strips, brochures etc., bearing the offending Trademark for destruction and for costs.

For Plaintiff : Mr.Prasanna
For M/s. APR Associates

For Defendants : Set-Ex-parte on 09.09.2021



For D3 : Mr.S. Siva Shankar

JUDGEMENT

Suit has been filed by the plaintiff-Company for the following reliefs:

(a) for granting a permanent injunction restraining the defendants, their men, servants, agents or anyone claiming through or under them from in any manner infringing the plaintiff Trade Mark "777 Oil" by using the offending Trade Mark "777 Oil" or any other mark or marks, which are similar or in any way deceptively similar to or a colourable imitation of the plaintiff's Trade Mark "777 Oil", either by manufacturing or selling or offering for sale or in any manner advertising the same,

(b) granting a permanent injunction restraining the defendants, their men, servants, agents or anyone claiming through or under them from in any manner passing off their pharmaceutical products as that of the plaintiff by using the offending Trade Mark "777 Oil" as and for the celebrated pharmaceutical products of the plaintiff with the registered Trade Mark "777 Oil" or by using any other Trademark which is similar or deceptively similar to that of the plaintiff's Trade Mark "777 Oil",



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(c) directing the defendants to render a true and faithful accounts of the profits earned by them through the sale of pharmaceutical products bearing the offending Trade Mark "777 Oil" and directing payment of such profits to the plaintiff by way of damages, (d) directing the defendants to surrender to the plaintiff the entire stock of unused offending goods with Trade Mark "777 Oil" together with cartons, strips, brochures etc., bearing the offending Trademark for destruction and for costs.

2. Brief facts as set out in the plaint, are as follows:-

The plaintiff is a Private Limited Company incorporated under the Indian Companies Act, 1955 on 16.02.1990 and are engaged in research, development, manufacture and marketing of products based on Indian System of Medicine. The plaintiff has several trade marks, which include "777 Oil" "Psorolin" "Keshraksha" "Dano" and they have filed necessary application before the appropriate Office of the Trade marks Registry and they have obtained registration of the trade marks "777 Oil", "Psorolin" and "Dano". Subsequently, Dr.J.R. Krishnamoorthy promoted the plaintiff-Company, which is qualified both in Allopathic and Indian system of



Committees and Forums established by the Government of India in the field of research in Siddha medicine. To his credit, Dr.J.R. Krishnamoorthy, after extensive research, formulated the Siddha medicinal oil for treatment of Psoriasis. The said Dr.J.R.Krishnamoorthy has developed the Siddha medicine in association with National Research Development Corporation (hereinafter referred to as NRDC) and in the extensive clinical trials. The said oil has proved its effectiveness in the treatment of Psoriasis. The said Siddha oil is made using specific and inventive process. The medicinal oil had been developed in association with NRDC. The NRDC has come to be vested with the know-how and the process for preparation of the said medicinal oil Dr.J.R.Krishnamoorthy named the medicinal product as "777 Oil". In acknowledgment of the contribution made by Dr.J.R. Krishnamoorthy in the development of the process for manufacturing the Siddha oil in the treatment of Psoriasis, the NRDC has given exclusive license to manufacture and market the said Siddha medicinal oil "777 OIL" to the plaintiff-Company promoted by Dr.J.R. Krishnamoorthy.

3. It is the further case of the plaintiff that the plaintiff was given the exclusive license to manufacture and market the Siddha oil under the agreement dated 19.11.1990 for ten years and the same has been renewed

for a further period of ten years and was valid till 2012. The plaintiff has



adopted the trade mark "777 Oil" in respect of the said medicinal oil since August 1992 and is continuously using the same without interruption whatsoever. The plaintiff is promoting this medicinal product like any other product manufactured and marketed by the plaintiff by ethical means i.e., through Doctors. The plaintiff-Company has widely promoted their products by using the same in their product literatures distributed to Doctors, patients and public, on the Internet, print media, advertisements in journals, magazines, exhibitions and medical, natural therapy events. By virtue of high standard and effectiveness in the treatment of Psoriasis, Doctors prescribed the same and the public also have highly patronized the said product under the Trademark "777 Oil". The Trademark "777 Oil", by virtue of its extensive use and patronage, has become distinctive of the products of the plaintiff and is being associated with the plaintiff-Company exclusively. The plaintiff has become the exclusive proprietor of the Trademark. The plaintiff has also applied for and obtained registration of the trade mark "777 Oil" under No.1061418. Thus, the plaintiff is the registered proprietor of the Trademark and they have exclusive right to use the Trademark "777 Oil". The plaintiff gives the sales turnover, which would clearly establish beyond any doubt the popularity and the demand enjoyed by the plaintiff's product under the Trademark "777 Oil".



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Year	Sales Turnover in Rs.
2002-03	3804952
2003-04	4277116
2004-05	4888464
2005-06	6286744
2006-07	6534406
2007-08	7633876

4. It is the further case of the plaintiff-Company is that they came to know during the first week of June 2008 that the first defendant is manufacturing identical medicinal product under the identical offending Trademark "777 Oil" and the second defendant is marketing the same. Moreover, the third defendant, who was an ex-Employee of the plaintiff-Company and who had resigned the services of the plaintiff-Company in 2004, has in fact, promoted the defendants 1 and 2 who are manufacturing and marketing the medicinal product under the offending Trademark "777 Oil". Furthermore, the product being manufactured and marketed by the plaintiff under the Trademark "777 Oil", is a proprietary medicine that is manufactured under the inventive process and technical know-how. Even though the promoter of the plaintiff-Company has invented the process and technical know-how in manufacture of the medicine under the Trademark



NRDC has the exclusive right to use the process and technical know-how in manufacture of the medicinal product in the treatment of Psoriasis, and the NRDC, by way of reciprocating the contribution made by Dr.J.R.Krishnamoorthy, has granted the exclusive licence to manufacture the product and the plaintiff is manufacturing and marketing the said medicinal oil under the Trademark "777 Oil". The third defendant, by abusing the information obtained by virtue of his employment with the plaintiff-Company and in total violation of the exclusive right to use the Trademark "777 Oil" by the plaintiff, promoted the defendants 1 and 2 and they are manufacturing and marketing the identical medicinal oil under the identical offending trade mark "777 Oil". Further, the act of the defendants is a clear infringement of the registered Trademark of the plaintiff. It is pertinent to mention that originally, the defendants were marketing the offending product under the Trademark Psoriasis and having failed in marketing their product and with the intention to trade upon the goodwill of the plaintiff over their registered trademark "777 Oil" and to cheat the public by misleading and by making them to believe that the product sold by the defendants also emanate from the plaintiff or that the defendants have some connection or association with the plaintiff, ventured into lavishly adopting the offending Trademark "777 Oil" in respect of their medicinal product. Apart from infringement of the Trademark, the defendants are also



guilty of passing off their product as that of the plaintiff using the plaintiff's celebrated and registered trade mark "777 Oil" and the defendants can have no other explanation, but to trade upon the goodwill of the plaintiff. The said act of the defendants also amounted to fraud on the public by making the public to believe that the product sold by the defendants, also emanate from the plaintiff or that the defendants have some connection or association with the plaintiff. Therefore, the defendants have circulated literature relating to the offending product, wherein, it has been claimed that it is a proprietary drug, which is contrary to truth and real facts, whereas, the defendants were in no way connected or concerned with the development of neither the drug, nor are they parties to this clinical trials and the articles published as referred to in their literature. This enormously establishes that the defendants are always making attempts to project that their products also emanate or come from the plaintiff. Therefore, the plaintiff has come forward with the present suit for infringement.

5. It had been stated in the plaint that the suit falls under the definition of Commercial Dispute under Sections 2(1)(c)(xvii) of the Commercial Courts Act, 2015. The jurisdiction is thus determined and this Commercial Division takes cognizance of the suit.



6. Learned counsel appearing for the plaintiff has filed an affidavit of service enclosing the returned notices sent by him to the defendants 1 and 2.

He has also reported "No Instructions". Insofar as the third defendant is concerned, a memo dated 09.08.2021 has been filed stating that the third defendant's mental health is affected to such extent that he is unable to take care of himself and perform his normal activities. Hence, the matter was adjourned to enable the learned counsel to take steps for appointment of a guardian for the 3rd defendant.

7. Learned counsel appearing for the plaintiff submitted that he is not pressing the suit as against the 3rd defendant. Therefore, the suit as against the third defendant is dismissed.

8. Insofar as the defendants 1 and 2 are concerned, though service has been completed and they have filed Vakalat, their counsel has reported no instructions. However, the defendants did not file any written statement and therefore, hence, they were set ex-parte on 09.09.2021 and the ex-parte evidence was recorded on 06.01.2022.

9. The plaintiff-Company has filed Proof Affidavit reiterating the plaint averments and the representation of the plaintiff-Company was also examined before the learned Master on 06.01.2022, in which, the plaintiff reiterated the averments in the Proof Affidavit, besides marking seven



certificate of Renewal of License to manufacture for sale of Siddha Drugs (Form-25-D), dated 13.03.2007 and Ex.P2 is the xerox copy of the Certificate of Good Manufacturing Practices (GMP) to manufacturer of Siddha Drugs (Form-26-E), dated 27.03.2007, Ex.P3 is the xerox copy of the Licence Agreement to the plaintiff and NRDC, dated 19.11.1990, Ex.P4 is the xerox copy of the Renewal License Agreement to the plaintiff and NRDC, dated 28.08.2002 (Original was produced, compared and it is undertaken by the plaintiff that it can be produced as and when required). Ex.P5 is the xerox copy of the Bill of the product, dated 03.06.2008. Ex.P6 is the xerox copy of the Trademark Registration Certificate dated 08.04.2008 (Original was produced, compared and it is undertaken by the plaintiff that it can be produced as and when required). Ex.P7 is the original copy of Board Resolution of the plaintiff dated 03.01.2022. Subsequently, M.O.1 is the original plaintiff's bottle with the Trademark and M.O.2 is the original defendant bottle with the Trademark.

10. On perusal of the documents, it seen that the plaintiff-Company had been filed the suit for permanent injunction restraining the defendants from in any manner infringing the plaintiff Trademark "777 Oil" by using the offending Trademark "777 Oil" or any other mark or marks which are similar or in any way deceptively similar to or a colourable imitation of the



plaintiff Trademark "777 Oil" either by manufacturing or selling or offering for sale or in any manner advertising the same and permanent injunction restraining the defendants their men, from in any manner passing off their pharmaceutical products as that of the plaintiff by using the offending Trademark "777 Oil" as and for the celebrated pharmaceutical products of the plaintiff with the registered Trademark "777 Oil" by using any other Trademark which is similar or deceptively similar to that of the plaintiff Trademark "777 Oil", and directing the defendants to render a true and faithful accounts of the profits earned by them through the sale of pharmaceutical products bearing the offending Trademark "777 Oil" and directing the defendants to surrender to the plaintiff the entire stock of unused offending goods with Trademark "777 Oil" together with cartons, strips brochures etc., bearing the offending Trademark for destruction.

11. Despite several opportunities were granted to the defendants but the 1st and 2nd defendants called absent and set ex-parte as their counsels reported "no instructions" and the ex-parte evidence was recorded before the learned Master on 06.01.2022. Subsequently, proof affidavit of PW1-Munusamy, Deputy Manager, was examined and Ex.P1 to Ex.P7 were marked on the side of the plaintiff-Company. No oral or documentary

evidence was marked on the side of the defendants. The 3rd respondent



has filed a memo dated 09.08.2021 stating that he is no longer associated with the Company as its Director from 31.08.2009, he is not associated in any capacity with the 1st respondent Company, namely, M/s.Inoda Healthcare (P) Limited. The plaintiff has not pressed the suit as against the 3rd defendant and the suit as against the 3rd defendant is dismissed on 09.09.2021. Furthermore, M.O.1 is the original copy of the plaintiff's bottle with the Trademark and M.O.2 is the original copy of the plaintiff's bottle with the Trademark were marked before the learned Master. Hence, this Court is of the view that the Trademark of the defendants is offending the Trademark of the plaintiff. This aspect has been proved by the plaintiff-Company through oral and documentary evidence. On a perusal of the oral and documentary evidence adduced on behalf of the plaintiff-Company, this Court is of the view that the plaintiff-Company has proved the case with respect to the relief sought for in this suit.

12. Accordingly, the Civil Suit is partly decreed insofar as the prayer (A), (B) and (E) are concerned. Insofar as the prayer (C) and (D) are concerned, the suit is dismissed. The defendants shall pay the costs of Rs.1,000/- (Rupees One Thousand Only) to the plaintiff.

**List of Witnesses examined on the side of the plaintiff:**

P.W.1: (Chief) Mr.Munusamy (Deputy Manager)

List of documents marked on the side of the plaintiff:

Sl. No	Exhibits	Date	Description of Documents
1.	P1	13.03.2007	Xerox copy of the Certificate of Renewal of License of Manufacture for Sale of Siddha Drugs (Form-25(D)
2.	P2	27.03.2007	Xerox copy of the Certificate of Good Manufacturing Practices (GMP) to Manufacturer of Siddha Drugs (Form-26-E)
Sl. No	Exhibits	Date	Description of Documents
3.	P3	19.11.1990	Xerox copy of the License Agreement to the Plaintiff
4.	P4	28.08.2002	Xerox copy of the Renewal License Agreement
5.	P5	03.06.2008	Xerox copy of the Bill of Product
6.	P6	08.04.2008	Xerox copy of the Trademark Registration Certificate
7.	P7	03.01.2022	Authorization Letter given by the Plaintiff's Firm (Original)

List of Witness examined on the side of the defendant: Nil

List of document marked on the side of the defendant: Nil

Material Objects:



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Sl.No.	Material Objects	Description of Documents
1.	MOs	Original product specimen of the plaintiff's bottle with the Trademark
2.	MOs	Original product specimen of the plaintiff's bottle with the Trademark

Sd./- V.B.S.J.,
12.04.2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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