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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 18TH DAY OF MARCH 2022

THE HON'BLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

C.S.No. 77 of 2008

M/s. Healers Nutraceuticals (P) Ltd.,
* **Rep.by its Whole Time Director,**
Ms. Deepa Sathe,
Having Registered Office at
Old No. 18, New No.53,
Bakthavachalam Colony,
Vadapalani, Chennai – 600 026. ... Plaintiff

**(Amended as per order dated 26.09.2018
in A.No. 7313 of 2018)**

-Vs-

1. M/s. Kaushik Therapeutics (P) Ltd.,
Plot No.6 & 7, Paraniuthur Village,
Gerugambakkam,
Chennai – 602 101.
2. M/s. Growth Pharmaceuticals,
No.9/12, Ramaiah Street,
Shenoy Nagar,
Chennai – 600 030. ... Defendants

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

Judgment and Decree granting



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a) Permanent Injunction restraining the defendants, its agents, servants, distributors and representatives or any one claiming through them from manufacturing, selling, distributing, advertising and offering for sale or otherwise dealing in any goods similar to the goods of the plaintiff using the Trade Mark NACXOL upon the goods or in any media and use the same in invoices, letter heads and visiting cards or by using any other mark which is in any way visually, phonetically or deceptively similar to the plaintiff's Registered Trade Mark NACZOL or in any manner infringing the plaintiff's Registered Trade Mark No.1075966 in Class 5.

b) Permanent Injunction restraining the defendants by themselves, its agents, servants, distributors and representatives or any one claiming through them from manufacturing, selling, distributing, advertising and offering for sale the capsule using the Mark NACXOL or similar sounding names in the course of their business and pass off their capsule using the Trade Mark NACXOL as and for the NACZOL goods of the plaintiff or enable others to pass off.

c) Direction directing the defendants to surrender to the plaintiffs all of the infringing capsules, packing material, cartons, advertisement materials, hoardings, labels, letter heads, visiting cards, office stationery and



all other materials containing/bearing the Trade Mark NACXOL or other deceptively similar Trade Mark in respect of the capsule.

d) A preliminary decree in favour of the plaintiffs, directing the defendants to render an account of the profits earned by the defendant by use of the mark NACXOL which is similar to the Mark of the Plaintiff's Trade Mark NACZOL on the goods referred and for a final decree for such amount in favour of the plaintiff against the defendants as may be found due on taking the accounts.

e) directing the defendants to pay the cost of the suit.

This Civil Suit coming on this day before this Court for hearing in the presence of Mrs.Srividhya Aravindan, For M/s. V. Chandrakanthan, Advocates for the plaintiff herein and the defendants 1 and 2 herein having not appeared in person or by advocate and the 1st defendant herein having been set exparte on 10.11.2010, and upon reading the pleadings filed herein, and upon perusing the evidence adduced therein, and the other exhibits therein referred to, **it is ordered and decreed as follows :-**

That (1) M/s. Kaushik Therapeutics (P) Ltd., and (2) M/s. Growth Pharmaceuticals, the defendants herein, its agents, servants, distributors and representatives or any one claiming through them be and are hereby



restrained by an order of permanent injunction from (a) manufacturing, selling, distributing, advertising and offering for sale or otherwise dealing in any goods similar to the goods of the plaintiff using the Trade Mark NACXOL upon the goods or in any media and use the same in invoices, letter heads and visiting cards or by using any other mark which is in any way visually, phonetically or deceptively similar to the plaintiff's Registered Trade Mark NACZOL or in any manner infringing the plaintiff's Registered Trade Mark No. 1075966 in Class 5. (b) manufacturing, selling, distributing, advertising and offering for sale the capsule using the Mark NACXOL or similar sounding names in the course of their business and pass off their capsule using the Trade Mark NACXOL as and for the NACZOL goods of the plaintiff or enable others to pass off.

2) That the defendants, herein be and are hereby directed to surrender to the plaintiff all of the infringing capsules, packing material, cartons, advertisement materials, hoardings, labels, letter heads, visiting cards, office stationery and all other materials containing / bearing the Trade Mark NACXOL or other deceptively similar Trade Mark in respect of the capsule.

3) That the defendants herein be and are hereby directed to render an

account of the profits earned by the defendant by use of the mark



NACXOL which is similar to the mark of the plaintiff's Trade Mark NACZOL on the goods referred and do pay for such amount in favour of the plaintiff against the defendants as shall be found due on taking the accounts.

4) That there shall be no costs of this suit.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 18TH DAY OF MARCH 2022.

Sd/-

ASSISTANT REGISTRAR (O.S. I)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.



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29.03.2022

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C.S.No. 77 of 2008

DECREE

DATED : 18.03.2022

THE HON'BLE MRS. JUSTICE
V. BHAVANI SUBBAROYAN

FOR APPROVAL : 01.04.2022

APPROVED ON : 01.04.2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2022

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THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYANC.S.No.77 of 2008

M/s.Healers Nutraceuticals (P) Ltd.,
Rep. by its Whole Time Director,
Ms.Deepa Sathe,
having Registered Office at
Old No.18, New No.53,
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Vadapalani, Chennai - 600 026.

[Amended as per order dated 26.09.2018
in A.No.7313 of 2018]

... Plaintiff

Vs.

1. M/s.Kaushik Therapeutics (P) Ltd.,
Plot No.6 & 7, Paraniputhur Village,
Gerugambakkam, Chennai - 602101.

2. M/s.Growth Pharmaceuticals,
No.9/12, Ramaiah, Street,
Shenoy Nagar, Chennai - 600 030.

... Defendants

Plaint filed under Order VII Rule 1 of CPC and Order IV Rule 1 of
O.S. Rules read with Sections 27, 134 & 135 of the Trade Marks Act, 1999,

praying for a judgment and decree as follows :



a) Permanent Injunction restraining the defendants, its agents, servants, distributors and representatives or any one claiming through them from manufacturing, selling, distributing, advertising and offering for sale or otherwise dealing in any goods similar to the goods of the plaintiff using the Trade Mark NACXOL upon the goods or in any media and use the same in invoices, letter heads and visiting cards or by using any other mark which is in any way visually, phonetically or deceptively similar to the plaintiff's Registered Trade Mark NACZOL or in any manner infringing the plaintiff's Registered Trade Mark No.1075966 in Class 5.

b) Permanent Injunction restraining the defendants by themselves, its agents, servants, distributors and representatives or any one claiming through them from manufacturing, selling, distributing, advertising and offering for sale the capsule using the Mark NACXOL or similar sounding names in the course of their business and pass off their capsule using the Trade Mark NACXOL as and for the NACZOL goods of the plaintiff or enable others to pass off.

c) Direction directing the defendants to surrender to the plaintiffs all of the infringing capsules, packing material, cartons, advertisement materials, hoardings, labels, letter heads, visiting cards, office stationery and



all other materials containing/bearing the Trade Mark NACXOL or other deceptively similar Trade Mark in respect of the capsule.

d) A preliminary decree in favour of the plaintiffs, directing the defendants to render an account of the profits earned by the defendant by use of the mark NACXOL which is similar to the Mark of the Plaintiff's Trade Mark NACZOL on the goods referred and for a final decree for such amount in favour of the plaintiff against the defendants as may be found due on taking the accounts.

e) directing the defendants to pay the cost of the suit.

For Plaintiff : Mrs.Srividhya Aravindan
For Mr.V.Chandrakanthan

For D1 : Set Exparte on 10.11.2010

For D2 : No Appearance

JUDGMENT

The suit is filed by the plaintiff seeking the following reliefs :-

a) Permanent Injunction restraining the defendants, its agents, servants, distributors and representatives or any one claiming through them



from manufacturing, selling, distributing, advertising and offering for sale or otherwise dealing in any goods similar to the goods of the plaintiff using the Trade Mark NACXOL upon the goods or in any media and use the same in invoices, letter heads and visiting cards or by using any other mark which is in any way visually, phonetically or deceptively similar to the plaintiff's Registered Trade Mark NACZOL or in any manner infringing the plaintiff's Registered Trade Mark No.1075966 in Class 5.

b) Permanent Injunction restraining the defendants by themselves, its agents, servants, distributors and representatives or any one claiming through them from manufacturing, selling, distributing, advertising and offering for sale the capsule using the Mark NACXOL or similar sounding names in the course of their business and pass off their capsule using the Trade Mark NACXOL as and for the NACZOL goods of the plaintiff or enable others to pass off.

c) Direction directing the defendants to surrender to the plaintiffs all of the infringing capsules, packing material, cartons, advertisement materials, hoardings, labels, letter heads, visiting cards, office stationery and all other materials containing/bearing the Trade Mark NACXOL or other deceptively similar Trade Mark in respect of the capsule.



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d) A preliminary decree in favour of the plaintiffs, directing the defendants to render an account of the profits earned by the defendant by use of the mark NACXOL which is similar to the Mark of the Plaintiff's Trade Mark NACZOL on the goods referred and for a final decree for such amount in favour of the plaintiff against the defendants as may be found due on taking the accounts.

e) directing the defendants to pay the cost of the suit.

2. The brief facts of the case as averred in the plaint are as follows :

i) The plaintiff carries on business of Manufacturing / Marketing Pharmaceutical products at Chennai. They have various distributors all around India for sale of its products. One of the capsules marketed by the plaintiff is for the purpose of Anti-Oxidant and Anti Inflammatory, Chest-specific, ideal for severe lung congestion and with Antibiotics, and in order to market its drugs, the plaintiff conceived and adopted the coined work NACZOL as its Trademark. The plaintiff had acquired very good reputation in the market because of the quality of the product and the above product is a research product of the plaintiff company and is intended to be used for the said ailment.



ii) The manufacturing process of the said product is subject to rigorous and stringent quality standards and it is a Schedule 'H' Drug. The plaintiff has spent huge sums of money of over Rs.1,00,000/- for research of the product NACZOL and has come up with this product for the said ailment. While this being so, they were shocked to find a product called NACXOL in the market with the same contents and for same ailment. Subsequently, it was found that the 1st defendant is manufacturing a product in the name of NACXOL which is phonetically similar and identical to the plaintiff's product and marketing the same through the 2nd defendant.

iii) By using the name of NACXOL, the defendants are creating a confusion in the minds of unwary consumers and thereby mislead the General Public at large in order to gain illegally. Due to the high research made by the plaintiff, plaintiff had introduced their product NACZOL with high quality resulting in creation of a good reputation for their product amongst the public for the past several years. The goods sold by the plaintiff and the defendants are sold to the same customers through practically identical trade channels. In the present day of diversification, the customers / patients will be let to believe that it is the plaintiff who has introduced the defendant's product into the market with the change in the spelling. Hence,



3. Heard the learned counsel for the plaintiff and perused the materials available on record.

4. When this matter was taken up for hearing on 03.11.2010, there was no representation for the 1st defendant. Hence, the Registry was directed to list the matter on 10.11.2010 for passing orders in respect of D1. Accordingly, when the matter was listed on 10.11.2010, again there was no representation for the 1st defendant. Hence, 1st defendant was set exparte and the matter was directed to be posted after a week for filing of draft issues. On 19.11.2010, the following issues were framed by this Court :

“1. Whether plaintiff has valid registered trade mark in respect of the product NACZOL?”

2. Whether the defendants had infringed the trade mark NACZOL registered by the plaintiff?

3. Whether the plaintiff is entitled to relief prayed in the plaint.

4. To what extent, the defendants are liable for infringement of trade mark NACZOL registered by the plaintiff?



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5. Whether the defendants are entitled to manufacture and sell NACZOL, which is phonetically similar and identical with same combination of contents NACZOL registered and held by the plaintiff?

6. To what other reliefs, the plaintiff is entitled to?"

5. After framing of the above issues, the matter was posted before the Learned Additional Master for recording of evidence. Before the Master, on the side of the plaintiff, one Mr.R.Seetharaman was examined as PW1 and the following documents were marked :-

Exhibit Nos.	Description
Ex.P1	Authorisation letter dated 13.06.2011
Ex.P2	Photocopy of the Plaintiff's Trade Mark Certificate dated 25.01.2002
Ex.P3	Office copy of the legal notice dated 14.09.2006 sent by the plaintiff to the 2 nd defendant
Ex.P4	Reply notice dated 19.09.2006 sent by the 2 nd defendant to the plaintiff
Ex.P5	Rejoinder to reply notice dated 19.07.2007 sent by the plaintiff to the 2 nd defendant
Ex.P6	Carton of the plaintiff's product
Ex.P7	Literature of the plaintiff's product
Ex.P8	Carton of the defendant's product
Ex.P9	Original Bill issued for the defendant's product NACXOL dated 01.11.2007
Ex.P10	Original Bill issued for the defendant's product NACXOL dated 24.01.2009
Ex.P11	Original Letter issued by the 2 nd defendant to the counsel for the plaintiff dated 06.03.2010



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6. The plaintiff's side evidence was closed on 30.01.2012 and thereafter, the matter was adjourned to 07.02.2012 for defendants' side evidence. On the side of the defendants, no witnesses were examined and only the following documents were marked :

Exhibit Nos.	Description
Ex.D1	Computer Generated Trademark Search Report downloaded from the Website
Ex.D2	Application No.1102782 filed by the plaintiff company before the Registrar of Trade Marks, Chennai

7. On 07.02.2012, the defendants' side evidence was closed and the matter was posted before this Court for deciding the issues. Thereafter, the plaintiff has moved an application before the Master seeking certain amendments in the cause title of the plaint. The said application was allowed on 26.09.2018 and subsequently, the amendments have been carried out in the plaint.

8. It is now seen from the records that the 1st defendant, after receiving the suit summons in the above suit, has sent a letter to the counsel for the plaintiff on 06.03.2010, in which, they have stated that the said



product NACXOL as alleged by the plaintiff has been withdrawn from their manufacture since October, 2007. They have also enclosed a copy of the Drug License issued by the Director of Drugs Control, Government of Tamil Nadu, along with the said letter, whereby, it was informed that the Director of Drugs Control has not approved the said product NACXOL.

9. In view of the above letter issued by the 1st defendant and taking into consideration the fact that the said product NACXOL has been withdrawn from the manufacture of the defendants and that the product NACXOL which has been sent for approval by the defendants has been rejected by the Director of Drugs Control, this Court is of the view that the plaintiff is entitled to the relief sought for in the suit.

10. Accordingly, this Civil Suit is allowed and decreed as prayed for.

No costs.

Sd./- V.B.S.J.,
18.03.2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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