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C.S.No.254 of 2020
(Comm.Suit)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.01.2022

Coram:

THE HONOURABLE Mr.JUSTICE N.ANAND VEKATESH

Civil Suit No.254 of 2020
(Comm.Suit)

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

.. Plaintiff

.VS.

Axis Life sciences
24-91/73/2, L.N.Colony
Uppal, Hyderabad-500 013.

..Defendant

Prayer: Civil Suit has been filed under Order VII Rule 1 of CPC and Order IV Rule 1 O.S.Rules r/w Sections 27, 28, 29, 134 and 135 of the Trademarks Act, 1999 and Sections 51, 55 and 62 of the Copyrights Act, 1957, pleased to grant a judgment and decree on the following terms:-

a) a permanent injunction restraining the defendant, by itself, its partners, men, servants, agents, distributors, stockiest, representatives or any one claiming through or



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under them from in any manner infringing the plaintiff's registered trademarks ZINCOVIT under No.487453 in Class 5 and other registered trademarks by using a deceptively similar trademark ZENKO-VIT or any other trademark deceptively similar to the plaintiff's registered trademark or in any other manner whatsoever;

b) a permanent injunction restraining the defendant, 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-112789/2017 and other registered copyrights in colour scheme, get up and layout for their ZENKO-VIT for any tablets, syrup, drops etc., or in any other manner whatsoever;

c) a permanent injunction restraining the defendant, 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 Defendant's products under the trademark ZENKO-VIT 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 defendant 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 ZENKO-VIT label or any mark deceptively similar to plaintiffs' trademark and artistic work ZINCOVIT label.



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e)a preliminary decree be passed in favour of the Plaintiff's directing the defendant to render account of profits made by use of trademark and copyright in the artistic work ZENKO-VIT label and a final decree b passed in favour of the plaintiff's for the amount of profits thus found to have been made by the defendant after the latter have rendered accounts;

f)for costs of the suit; and

g)pass such further or others reliefs as this Hon'ble Court may deem fit and necessary in the circumstances of the case and thereby render justice.

For Plaintiff :Mr.r.Sathish Kumar

J U D G M E N T

The instant suit has been filed seeking for a permanent injunction, restraining the defendant, by itself, its partners, men, servants, agents, distributors, stockiest, representatives or anyone claiming through or under them from in any manner infringing or passing off the plaintiff's registered trademark "ZINCOVIT" under No. 487453 in Class 5, other registered trademarks by using a deceptively similar trademark "ZENKO-VIT"/  or any other trademark deceptively similar to the plaintiff's registered trademark, in any manner committing acts of copyright infringement by using,



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in the course of trade, labels/artistic works which are a substantial reproduction of

Plaintiffs' registered copyright under Nos. A-112789/2017/



and other registered copyrights in colour scheme, get up and layout for their ZENKO-VIT/



, for any tablets, syrup, drops, etc, in any other manner whatsoever. The plaintiff has further prayed for a direction to the Defendant to surrender all the materials bearing the infringing trade mark. The Plaintiff has also sought for a direction to the Defendants for rendition of accounts.

Case of the Plaintiff:

2. The case of the plaintiff is with respect to the infringement and passing off of their registered trademark "ZINCOVIT" and infringement of copyright for the artistic work . The plaintiff is a Company incorporated under the Companies Act in the year 1978 to carry on the business of pharmaceutical and other allied businesses. The plaintiff in the course of their business have adopted several trademarks and one such trademark adopted by the plaintiff is "ZINCOVIT" in the year 1988 and the same mark has been in use since 1990. The plaintiff states that the trademark "ZINCOVIT" is registered under No. 487453 in Class 5 and has been granted with effect from 16-3-1988 and that the same is subsisting till the year 2029. The plaintiff claims that they have also adopted a unique packaging for its product under the trademark "ZINCOVIT" with distinctive features and that the said packaging has been registered by the copyright office under No. A-54243/1997. The plaintiff also has copyright registrations for the



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7 colour strip labels/  and the copyright over the 7 colour strip labels are under Nos. A-112788/2014, A-112789/2014 and A-115854/2017 for ZINCOVIT SYRUP, ZINCOVIT DROPS and ZINCOVIT TABLETS respectively. The plaintiff states that they have been using the 7 colour strips label across all its products since 2014.

3.The plaintiff states that since 1990, for the last 30 years, they have been using "ZINCOVIT" openly and continuously. The plaintiff states that their product is essentially a multi-vitamin supplement given to develop immunity to children and also adults. The plaintiff claims that their trademark has acquired tremendous reputation and goodwill in the market among the members of the trade and public and also states that every Indian household would be aware of the plaintiff's "ZINCOVIT". The plaintiff states that they are the market leaders in the particular segment and their average annual turnover for the year 2019-2020 was Rs.1,706,816,457/-. The plaintiff claims that the trademark "ZINCOVIT" has been etched in the memory of people of India so widely as to render the trademark "ZINCOVIT" a well-known mark. The plaintiff further states that they are advertising their products under the said trademark with the distinctive copyright for ZINCOVIT in pharma guides and other modes which has generates tremendous amounts of goodwill and reputation in the market. Further, the plaintiff claims that their product reputation has increased tremendously by repeated recommendations by doctors and medical practitioners.

4. The grievance of the plaintiff is that in July 2020, they came across the





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defendant's product (tablets) bearing the trademark ZENKO-VIT/

The plaintiff states that upon enquiries it was revealed that the defendant manufactures and markets the said products under the trademark "ZENKO-VIT" tablets with the similar 7 colour label as that of the plaintiff's registered trademark "ZINCOVIT" and copyright . The plaintiff states that since 2014 the plaintiff is using only the

7-colourstrip label with the trademark ZINCOVIT/ in India. The plaintiff states that the product "ZENKO-VIT" is identical to the plaintiff's product viz., they are health supplements. The plaintiff states that the trademarks are phonetically identical with only a change of spelling. Further, the product carton of the defendant is also identical with the 7-colour label albeit with a different shape but retaining the essential feature. The plaintiff claims that the trade and public have always identified the product "ZINCOVIT" with the 7-colour label and the fruits and vegetables label. The plaintiff states that the defendant has deliberately and knowingly adopted an identical trademark "ZENKO-VIT" and has also adopted an almost identical label for their product which clearly shows that they are aware of the plaintiff's product and have deliberately chosen to copy the plaintiff's trademark and copyright in the artistic work. The plaintiff claims that the defendant's trademark is phonetically similar and they have changed the spelling in the trademark "ZINCOVIT" but have retained the entire pronunciation with minor modifications to the label like the curved 7 colour label to sail as close as possible to the

plaintiff's product ZINCOVIT/  and pass off their product ZENKO-VIT/





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as that of the plaintiff's.

Discussion and Findings:

5. The defendant was served and the defendant did not choose to defend themselves either in person or through counsel and was called absent and was set ex parte by this Court on 18-11-2021.

6. The only issue that arises for consideration in the present suit is as to whether the defendant, by using the mark ZENKO-VIT/  has infringed the plaintiff's registered trademark "ZINCOVIT" and their copyright for the artistic work in the adoption of their trademark ZINCOVIT/  and whether the same is phonetically, visually and structurally identical to the registered trademark of the plaintiff and as to whether the plaintiff is entitled for the reliefs sought for in this suit.

7. Mr. D. Jude F.L.S. Durai Pandian, chief vigilance officer of the plaintiff Company was examined as PW-1 and Exhibits P-1 to P-6 were marked.

8. Heard Mr.R.Sathish Kumar, learned counsel for the plaintiff and carefully perused the documents relied upon by the Plaintiff.

9. On carefully going through exhibits P2, P3, P4 and P5 it can be seen that the Plaintiff is a registered trademark owner of the mark "ZINCOVIT". It is also seen that plaintiff's are using these trademarks for manufacture and sale of health supplements by





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way of drops, syrups, tablets and capsules and became registered proprietors of the trademark "ZINCOVIT" on 16-3-1988 for which trademark number 487543 (Ex.P-2) was assigned. Further it can also be seen that the plaintiff has copyright registration for the 7 colour strip labels/ and the registration numbers for the same are Nos. A-112788/2014, A-112789/2014 and A-115854/2017 for ZINCOVIT SYRUP, ZINCOVIT DROPS and ZINCOVIT TABLETS respectively. Further the plaintiff's have been using the 7 colour strips label across all its products since 2014.

10.It can be seen that the mark "ZINCOVIT"/  has become a well-known mark for health supplements. The defendant who was aware about the same decided to make use of this mark for selling the same class of goods. The defendant's are passing off on the goodwill and reputation earned by the plaintiff for over more than 30 years by adopting each and every essential feature of the Plaintiff's trademark, colour scheme and getup.

Infringement of Trademark:

11.A careful scrutiny of the impugned mark of the defendant "ZENKO-VIT" shows that the mark is deceptively and phonetically similar to the plaintiff's registered trade mark "ZINCOVIT". The defendant has adopted this trademark only with a view to exploit the commercial goodwill achieved by the plaintiff.

12. This Court in the case of **ISSAC ISAAC Mathai .v Sowkhya Way2health**



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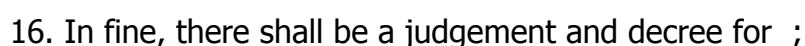
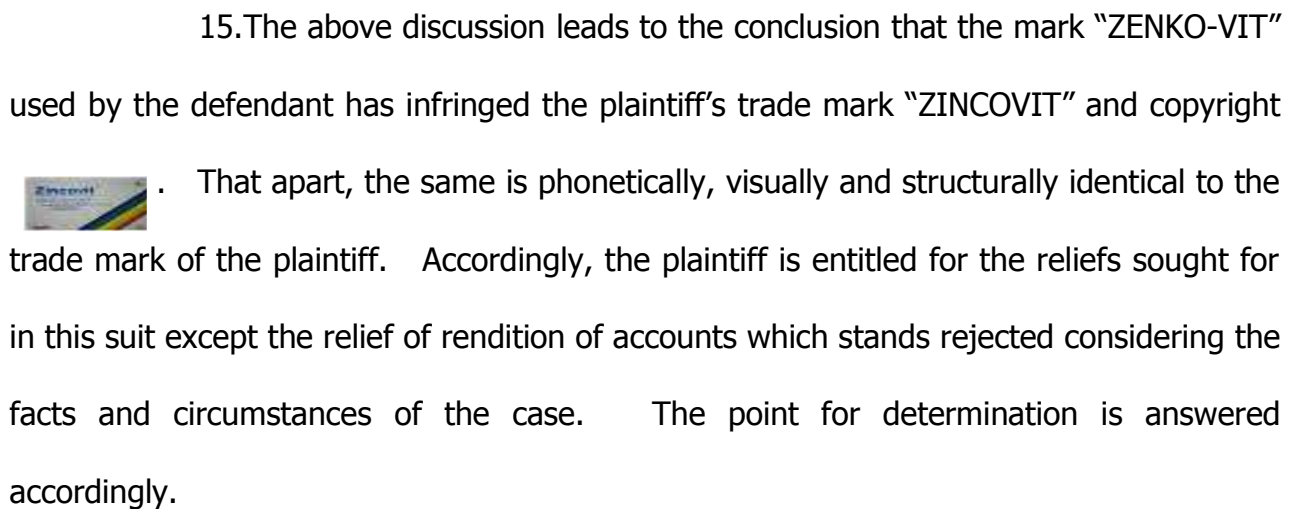
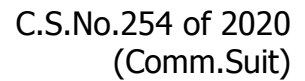
P. Ltd. cited in MANU/TN/2823/2013, held that adding of one or two words in a mark does not make any difference as far as phonetic similarity is concerned. The relevant paragraphs from the judgment are extracted below:

60. *It may also be noticed here that act of the defendant/respondent is not bonafide, though they are claiming to use the trademark "SOUKYA WAY2HEALTH", but in all their letter heads and other documents displayed "SOWKHYA" prominently, whereas "WAY2HEALTH" is not that prominent. Besides, e-mail address is also deceptively similar to that of the plaintiffs/applicants, i.e. www.sowkhya.com.*

61. *It is well settled law that when there is phonetic similarity between the two names, then adding of one or two words does not make it distinct from similarity. It can therefore, be safely said that the defendants/respondents have deliberately infringed the registered trademark of the plaintiffs/applicants.*

Infringement of Copyright:

13. A closer look at the mark ZENKO-VIT /  shows that the product carton of the defendant is identical with the 7-colour label/  albeit with a different shape but retaining the essential feature. This clearly shows that the defendant's are aware of the plaintiff's product and have deliberately chosen to copy the plaintiff's copyright in the artistic work to piggy bank on the goodwill and reputation earned by the plaintiff.





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a) Permanent injunction, restraining the defendant, by itself, its partners, men, servants, agents, distributors, stockiest, representatives or anyone claiming through or under them from in any manner infringing or passing off the plaintiff's registered trademark "ZINCOVIT" under No. 487453 in class 5, other registered trademarks by using a deceptively similar trademark ZENKO-VIT /  or any other trademark deceptively similar to the plaintiff's registered trademark.

b) Permanent injunction restraining the defendant 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-112789/2017/  and other registered copyrights, in colour scheme, get up and layout for their ZENKO-VIT/ , for any tablets, syrup, drops, etc, in any other manner whatsoever.

c) There shall be a further direction directing the defendant to surrender all the materials bearing the impugned mark of the defendant. and;

d) The defendant is directed to pay cost of a sum of Rs 50,000/- [Rupees



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Fifty Thousand only] to the plaintiff.

17. The suit is allowed in the aforesaid terms.

03.01.2022

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Internet: Yes

Index : Yes/No

urt, Madras.

List of Witness examined on the side of the Plaintiff:-

D.Jude F.L.S.Durai Pandian ----- PW.1

List of Witness examined on the side of the Defendant:- ---

List of the Exhibits marked on the side of the Plaintiff:-



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S.No.	Exhibits	Description of the Documents
1.	Ex.P-1	- is the original Board Resolution dated 03.09.2021.
2.	Ex.P-2	- is the Certified copy of Trademark registration legal use certificate of the plaintiff under No.487453 in Class 5 for ZINCOVIT dated 16.03.1988.
3.	Ex.P-3	- is the Certified copy of Trademark registration legal use certificate of the plaintiff under No.2158593 in Class 30 ZINCOVIT dated 13.06.2011
4.	Ex.P-4	- is the Certified copy of Trademark registration legal use certificate of the plaintiff under No.2158594 in Class 30 ZINCOVIT dated 13.06.2011
5.	Ex.P-5	-is the copy of the plaintiff's ZINCOVIT (original seen verified and returned).
6.	Ex.P-6	-is the online copy of the defendant ZeNCO-VIT cartonw ith 7 colour label with bill dated 29.07.2020 affidavit filed under 65B Indian Evidence Act.

List of the Exhibits marked on the side of the Defendants:- --

To
The Sub-Assistant Registrar,
Original Side,
High Co

N.ANAND VENKATESH,J.
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