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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 23.06.2022

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The Hon'ble Mr. Justice **SENTHILKUMAR RAMAMOORTHY**

Civil Suit No.8 of 2014
(Comm. Suits)

M/s.Apex Laboratories Pvt. Ltd.
29, III Floor, SIDCO Garment Complex,
Guindy, Chennai-600 032. ... Plaintiff

vs.

1. Sree Sai Varsha Nutritions
   Plot No.34, L.N.Colony,
   UPPAL, Hyderabad-500 039
   Rep. By its Proprietor,
   K.Gangadhar Reddy

2. Vyshnavi Pharma
   2-4-81, Medical Complex,
   Rajagiri Kota, narasaropet-522 601
   Guntur District,
   Rep. By its Partner, N.Ramalingeswara Rao

3. Sri Vari Pharma,
   120/43, Rasappa Chetty Street,
   Parrys, Chennai-600 003. ... Defendants

The suit is filed under Order VII Rule 1 CPC and Order IV Rule 1 of O.S. Rules READ WITH Sections 27,28,29,134,135 of the Trade Marks Act, 1999 and Sections 51,55 & 62 of the Copyrights Act 1957 praying to

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grant a judgment and decree (a) a permanent injunction restraining the Defendants, by itself, its partners, men, servants, agents, distributors, stockists, representatives or any one claiming through or under them from in any manner infringing the plaintiff's registered trademark ZINCOVIT under No.487453 in class 5 by using a deceptively similar trademark ZINKOWIT or any other trademark deceptively similar to the plaintiff's registered trademark or in any other manner whatsoever; (b) a permanent injunction restraining the Defendants, by itself, its partners, men, servants, agents, distributors, stockists, 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 No.A-54243/1997 in colour scheme, get up and layout for their ZINKOWIT syrup, drops tablets etc., or in any other manner whatsoever; (c) a permanent injunction restraining the Defendants, by itself, its partners, men, servants, agents, distributors, stockists, 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 No.A-91339/2011 for

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their ZINKOWIT syrup, drops etc., or in any other manner whatsoever; (d) a permanent injunction restraining the Defendants, by itself, its partners, men, servants, agents, distributors, stockists, 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 ZINKOWIT as and for the plaintiffs' products by manufaturing, 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: (e) 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 ZINKOWIT label or any mark deceptively similar to plaintiffs' trademark and artistic work ZINCOVIT label; (f) 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 ZINKOWIT label and a final decree be passed in favour of the Plaintiffs for the amount of profit thus

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found to have been made by the Defendants after the latter have rendered accounts; and (g) for costs of the suit.

For Plaintiff : M/s.R.Sathish Kumar

JUDGMENT

The suit was filed seeking relief in respect of alleged trademark and copyright infringement and passing off. Subsequently, the plaintiff settled the dispute with the third defendant. Since the first and second defendants did not appear, they were set ex parte. Accordingly, the case was posted for recording ex parte evidence. The plaintiff adduced evidence by examining Mr.D.Jude F.L.S.Durai Pandian, the Chief Financial Officer of the plaintiff, who was examined as PW1. In course of examination-in-chief of PW1, seven documents were exhibited as Ex.P1 to P7. These documents include the certified copy of the Trade Mark Registration Certificate bearing No.487453 in class 5. It also includes the plaintiff's original carton, which was exhibited as Exs.P5 and P6 and the defendant's carton which was exhibited as Ex.P7. The plaintiff's registered trade mark is “ZINCOVIT”, which is registered in class 5, and the impugned mark is “ZINKOWIT”.

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2. On considering the evidence on record and, in particular, by comparing Ex.P5 and Ex.P7, it is clear that the defendant's mark is near identical to the plaintiff's mark. Consequently, the plaintiff is entitled to succeed. Since the first and second defendants remained ex parte, the accounts are not available for purpose of considering the relief claimed in paragraph 28(f) or for payment of additional court fee in respect thereof. Therefore, the relief claimed in paragraph 28(f) is rejected.

3. Hence, C.S.No.8 of 2014 is decreed in terms of the reliefs prayed for in paragraph 28 (a), (b), (c), (d) and (e) of the plaint. On the loser pays principle, the first and second defendants shall pay costs assessed in a sum of Rs.1,50,000/- to the plaintiff. This shall include court fees, lawyer's fees and other expenses.

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Index : Yes
Internet : Yes
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Plaintiffs' witnesses:

Mr.D.Jude F.L.S.Durai Pandian - PW1

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Documents exhibited by the Plaintiff:

Sl.No	Exhibits	Date	Particulars of Documents
1.	Ex.P1	19.01.2018	The copy of Board Resolution dated 19.01.2018. (Original verified and returned)
2.	Ex.P2		Certified copy of Trade mark Registration under No.487453 in class 5.
3.	Ex.P3	12.11.2013	The original news report in the daily, Dinakaran, Puduchery edition.
4.	Ex.P4		The copy of the letter by the 1st defendant along with the FIR filed in the Vikaravandi Police Station.
5.	Ex.P5		The original Carton of the plaintiff
6.	Ex.P6		The original Carton of the plaintif.
7.	Ex.P7		The photo of the defendants Carton.

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SENTHILKUMAR RAMAMOORTHY, J.

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