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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.03.2022

Coram:

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

C.S.(Comm. Div.) No.76 of 2021

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

.. Plaintiff

VS

1. Antex Pharma Private Limited,
Plot No.423, Shahbad Daulatpur,
Main Bawana Road, Opp. Hanuman Mandir,
Delhi-110 042.

2. Russian Remedies,
414, E.P.I.P.,
HSI IDC, Kundli-131 028
Haryana.

.. Defendants

This Civil Suit has been filed under Order VII Rule 1 CPC and Order IV Rule 1 of the Original Side Rules read with Sections 27,28,29,134 and 135 of the Trademarks Act, 1999 and Sections 51, 55 and 62 of the Copyrights Act, 1957, praying to grant a judgment and decree for (a) a permanent injunction restraining the Defendants, by itself, its lawful assignees, men, servants,

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agents, distributors, stockiest, representatives or any one claiming through or under them from in any manner infringing the plaintiff's registered trademarks ZINCOVIT under No.215859 in Class 30 and other registered trademarks by using the identical colour scheme, get up and layout of their trademark NEUROVIT or any other trademark identical or deceptively similar to the plaintiff's registered trademarks in its colour scheme, getup and layout or in any other manner whatsoever; (b) a permanent injunction restraining the Defendants, by itself, its lawful assignees, 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 Plaintiff's registered copyright under Nos.A-112789/2017 and other registered copyrights in colour scheme, get up and layout for their Zincovit for any tablets, syrups, drops etc., or in any other manner whatsoever; (c) a permanent injunction restraining the Defendants, by itself, its lawful assignees, 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 plaintiff's 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 Plaintiff for destruction of all products, labels, cartons, dyes, blocks, moulds, screen prints, packing materials and other materials bearing the trademark



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NEUROVIT label or any mark deceptively similar to plaintiff's trademark and artistic work NEUROVIT label. And (e) a preliminary decree be passed in favour of the Plaintiff directing the Defendants to render account of profits made by use of trademark and copy right in the artistic work NEUROVIT label and final decree passed in favour of the Plaintiff for the amount of profits thus found to have been made by the Defendants after the latter have rendered accounts and for costs of the suit.

For Plaintiff : M/s.R.Sathish Kumar

JUDGMENT

The suit is filed in respect of the infringement of the plaintiff's registered trademark "ZINCOVIT" under No.215859 in Class 30 and also for infringement of the plaintiff's copyright under the registered copyright bearing No.A-112789/2017. The plaintiff also seeks to prevent the defendants from passing off their products as that of the plaintiff by adopting the identical colour scheme, get up and layout.



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2. Upon service of suit summons, the second defendant did not enter appearance. Consequently, the second defendant was set *ex parte* on 06.12.2021. Subsequently, upon service by way of substituted service, the first defendant was set *ex parte* on 21.12.2021. The matter was posted for recording of the plaintiff's evidence. Pursuant thereto, the plaintiff adduced evidence by filing the proof affidavit of D.Jude F.L.S.Durai Pandian, who was examined as PW1. Seven documents were exhibited through PW1 as Exs.P1 to P7. These documents include the Trademark Registration Certificate of the plaintiff under No.487453 in Class 5 for the word mark “ZINCOVIT” (Ex.P3), the Trade Mark Registration Certificate of the plaintiff under No.2158593 in class 30 for the device mark (Ex.P4), the Trademark Registration Certificate under No.2158594 in class 30 in respect of the device mark and extract from the Register of Copyrights for the 7 coloured label, Zincovit Syrup (Ex.P5). The plaintiff's “ZINCOVIT” syrup carton with 7 coloured label (Ex.P6) and the defendants' “NEUROVIT” syrup carton with 7 coloured label (Ex.P7).

3. Although the plaintiff does not claim infringement and passing off as regards the word mark, it is asserted that the labels are near identical or at least



deceptively similar. On comparing the plaintiff's "ZINCOVIT" syrup carton and the defendants' "NEUROVIT" syrup carton (Exs.P6 and P7), it is clear that the plaintiff has established the case insofar as the reliefs prayed for at clauses (a) to (d) of paragraph 36 are concerned. Since the defendants were set *ex parte* and did not render accounts, it is not possible to consider the relief prayed for under clause – (e) of paragraph 36 of the plaint.

4. For the reasons set out above, C.S.(Comm. Div) No.76 of 2021 is decreed in terms of the reliefs prayed for under clauses (a), (b), (c) and (d) of paragraph 36. In addition, the defendants are liable to pay costs assessed in a sum of Rs.2 lacs to the plaintiff. This shall include court fees, lawyer's fees and costs.

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Speaking Order

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List of witness examined on the side of the plaintiff:

WEB COPY Mr.D.Jude F.L.S. Durai Pandian (P.W.1)

List of documents marked on the side of the plaintiff:

<i>Sl.No.</i>	<i>Description of documents</i>	<i>Exhibit</i>
1.	The photocopy of the authorization letter	Ex.P1
2.	The photocopy of the letter from the Director of Drugs Control to the Plaintiff stating the date of drug license for ZINCOVIT to the Plaintiff dated 26.04.2012.	Ex.P2
3.	The photocopy of the Trademark Registration Certificate of the Plaintiff under No.487453 in class 5 for ZINCOVIT (word per se) along with its latest renewal dated 16.03.1988.	Ex.P3
4.	The photocopy of the Trademark Registration Certificate of the Plaintiff under No.2158593 in class 30 ZINCOVIT dated 13.06.2011.	Ex.P4
5.	The photocopy of the Trademark Registration Certificate of the Plaintiff under No.2158594 in class 30 ZINCOVIT dated 13.06.2011.	Ex.P5
6.	The photocopy of the Plaintiff's ZINCOVIT syrup carton with the 7 coloured label.	Ex.P6
7.	The photocopy of the Defendant NEUROVIT syrup carton with 7 coloured label.	Ex.P7

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