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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 18th April, 2022

+ **CS (COMM) 430/2020**

ABBOTT HEALTHCARE PRIVATE LIMITED Plaintiff

Through: Mr. Ranjan Narula, Mr. Shashi P.Ojha, Ms. Deeksha Singh, Advocates.

versus

GLENSMITH LABS PVT. LTD & ANR. Defendants

Through: Mr. Sumit Aggarwal, Advocate along with Mr. Manish Garg, Director of D-1&2.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present suit has been filed by the Plaintiff seeking permanent injunction, restraining infringement of the trademark, copyright passing off, damages, rendition of accounts, dilution, delivery up, etc. The Plaintiff is stated to have over 14,000 employees with a network of over 5 lakh retailers in India. The Plaintiff seeks protection of its trademark 'LIMCEE' which is a chewable Vitamin - C preparation. The said mark was adopted by the Plaintiff's predecessor-in-title Ambalal Sarabhai Enterprises Private Limited in 1977. The said mark was also registered as of 5th October, 2001, with user claimed from 4th January, 1977, bearing registration no. 1049892. Vide Deed of Intellectual Property Assignment dated 8th September, 2010, the predecessor-in-interest had assigned the mark to the Plaintiff. The sales of



the Plaintiff are stated to have been in excess of Rs.2,457.50 lakhs in 2019.

3. The grievance of the Plaintiff in the present suit is that the trademark 'LIMCEE' along with its packaging has been identically copied by the Defendants by using the mark 'LICMEE' and 'LICMEE PLUS' for identical preparations of Vitamin - C. This was noticed by the Plaintiff in August, 2020, and in September, 2020, it was also revealed that Defendant No.1 had applied for the registration of the mark LICMEE PLUS under No.4635687 in Class 5. The product of the Defendants including the packaging, is nothing but an imitation of the Plaintiff's mark and packaging. Accordingly, the Plaintiff had filed the present suit.

4. The suit was initially listed on 9th October, 2020 on which date, on behalf of the Defendants a submission was made that the Defendants had stopped using the impugned trademark two weeks prior to that day. An affidavit was also directed to be filed by the Defendants, in respect of the stock of the impugned products that may be available with them. In response, the Defendants filed an affidavit dated 20th October, 2020, disclosing that they have 'zero stock' of the impugned products. The matter was also referred to mediation, however the mediation did not prove to be successful.

5. Today, Mr. Aggarwal, Id. Counsel appearing for the Defendants, submits upon instructions, that the total manufacturing by Defendant No.2, i.e., Skymap Pharmaceuticals Pvt. Ltd., is about 99,000 strips of 'LICMEE' Vitamin - C chewable tablets, which was supplied to Defendant No.1- GlenSmith Labs Pvt. Ltd. He submits that the total value of the sale was around Rs.7.42 lakhs. He thus submits that beyond this, no other manufacturing or sale was made and the Defendants are willing to give an



undertaking that they will not use the mark 'LICMEE' and any other mark identical or similar to 'LIMCEE' and also not use any packaging or cartons which would be similar to the Plaintiff's 'LIMCEE' packaging/cartons.

6. In view of this stand of the Defendants, Id. counsel for the Plaintiff, Mr. Narula, submits that while the suit may be decreed, some costs ought to be imposed in as much as the Defendants tried to take advantage of the pandemic period, when Vitamin - C tablets were being prescribed for Covid-19 patients, and thus at least the cost of the Court fee ought to be reimbursed to the Plaintiff by the Defendants.

7. After perusing the record, it is clear that the mark 'LIMCEE' and 'LICMEE' are almost identical to each other. There is deceptive, ocular and phonetic similarity between the two marks. The Defendants' packaging is also an imitation of the Plaintiff's packaging as is clear from the images set out below:



8. There is no justification from the Defendants to use the such identical mark and such identical packaging so as to deceive chemists, consumers, patients at large. The mark of the Plaintiff is a registered mark and considering the sales of the Plaintiff, the Plaintiff's product enjoys enormous goodwill and reputation. Accordingly, the suit is liable to be decreed in



terms of the paragraphs 37 (i), (ii) and (iii) and (iv) of the plaint. The Defendants are also directed to remove all the listings on any B2B/B2C or any other websites, where the products under the mark 'LICMEE' are listed. In view of the disclosure made today, of the sales which have been made, the following directions are issued:

- (i) The invoices which are relied upon by Mr. Agarwal, Id. counsel for the Defendants, shall be filed on record with an Index and the copy of the same shall be served upon Mr. Narula, within four weeks.
- (ii) Considering the total value of the product which has been sold, Rs.1.5 Lacs shall be paid by Defendant Nos. 1 and 2 to the Plaintiff, as litigation costs. Id. Counsel for the Plaintiff to supply the details of the bank account to the Defendants, within two days. Mr. Manish Garg, Director of Defendant Nos. 1 and 2 has joined the proceedings virtually, and agrees to pay a sum of Rs.1.5 Lacs, within one week.
- (iii) If the Defendants are found in future to be imitating or copying any of the brands or marks of the Plaintiff, then the Defendants would be liable to pay further damages of at least Rs.20 lakhs to the Plaintiff, for repeat infringement.
- (iv) The trademark application filed by the Defendants for the mark 'LICMEE' bearing no.4635687 in Class 5 is also stated to be withdrawn by the Plaintiff. The Registrar of Trademarks shall pass an order directing the abandonment of the said application in view of the above order within four weeks.

9. Copy of this order be communicated to the Registrar of Trademarks,



the Trademark Registry

(**Address:** Trademarks Registry, New Delhi, Boudhik Sampada Bhawan, Plot No. 32, Sector 14, Dwarka, New Delhi-110078; **Email:** cgofficemh@nic.in, hodel.tmr@nic.in) both by the Registry, as also by the ld. counsel for the Plaintiff.

10. The suit is decreed in the above terms. Decree sheet be drawn up. All pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

APRIL 18, 2022/aman/MS