



C.S.No.651 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	19.12.2022
Pronounced On	10.02.2023

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.S.No.651 of 2008
(Comm. Suits)

Dr.J.R.K's Research and
Pharmaceuticals Pvt. Ltd.,
A company registered under the Indian
Companies Act, 1956 and having its
registered office at No.11,
Perumal Koil Street, Kunrathur,
Chennai 600 069.

... Plaintiff

[Name of plaintiff 'M/s.Dr.JRK's Siddha
Research and Pharmaceuticals (P) Ltd. was
amended *vide* order 26.10.2021 in
A.No.3785 of 2021]

Vs.

M/s.Sanjeevi Pharma,
3/479, MIG Plot, Mugappair East,
Chennai – 600 050.

... Defendant

Civil Suit is filed under Order IV Rule 1 of Original Side Rules
r/w. Order VII Rule 1 of the Civil Procedure Code, 1908 r/w. Section 134



C.S.No.651 of 2008

& 135 of the Trade Marks Act, 1999 praying to pass a Judgment and

Decree :-

- (a) Granting a permanent injunction restraining the defendant, their men, servants, agents or anyone claiming through or under them from in any manner infringing the plaintiffs' Trade Mark “777 Oil” by using the offending Trade Mark “777 Oil” or any other mark or marks which are similar or in any way deceptively similar to or a colourable imitation of the plaintiffs' Trade Mark “777 Oil” either by manufacturing or selling or offering for sale or in any manner advertising the same;
- (b) Granting a permanent injunction restraining the defendant, their men, servants, agents or anyone claiming through or under them from in any manner passing off their pharmaceutical products as that of the plaintiffs' by using the offending Trade Mark “777 Oil” as and for the celebrated pharmaceutical products of the plaintiff with the registered Trade Mark “777 Oil” or by using any other Trademark which is similar or deceptively similar to that of the plaintiffs trade mark “777 Oil”;
- (c) Directing the defendant to render a true and faithful account of the profits earned by them through the



C.S.No.651 of 2008

sale of pharmaceutical products bearing the offending trademark “777 Oil” and directing payment of such profits to the plaintiffs by way of damages;

- (d) Directing the defendant to surrender to the plaintiffs the entire stock of unused offending goods with Trade Mark “777 Oil” together with cartons, strips, brochures etc. bearing the offending Trademark for destruction;
- (e) Directing the defendant to pay the plaintiffs the costs of the suit.
- (f) Grant such further or other reliefs as this Court may deem fit and proper.

For Plaintiff : Mr.Prabhakar Reddy
for APR Associates

For Defendant : Mr.R.Sathish Kumar
for T.S.Gopalan & Co.

J U D G M E N T

The plaintiff has filed this suit for the following reliefs:-

- i. Granting a permanent injunction restraining the defendant, their men, servants, agents or anyone claiming through or under them from in any manner



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C.S.No.651 of 2008

infringing the plaintiffs' Trade Mark “777 Oil” by using the offending Trade Mark “777 Oil” or any other mark or marks which are similar or in any way deceptively similar to or a colourable imitation of the plaintiffs' Trade Mark “777 Oil” either by manufacturing or selling or offering for sale or in any manner advertising the same;

- ii. Granting a permanent injunction restraining the defendant, their men, servants, agents or anyone claiming through or under them from in any manner passing off their pharmaceutical products as that of the plaintiffs' by using the offending Trade Mark “777 Oil” as and for the celebrated pharmaceutical products of the plaintiff with the registered Trade Mark “777 Oil” or by using any other Trademark which is similar or deceptively similar to that of the plaintiffs trade mark “777 Oil”;
- iii. Directing the defendant to render a true and faithful account of the profits earned by them through the sale of pharmaceutical products bearing the offending trademark “777 Oil” and directing payment of such profits to the plaintiffs by way of damages;
- iv. Directing the defendant to surrender to the plaintiffs the entire stock of unused offending goods with



Trade Mark “777 Oil” together with cartons, strips, brochures etc. bearing the offending Trademark for destruction;

- v. Directing the defendant to pay the plaintiffs the costs of the suit.
- vi. Grant such further or other reliefs as this Court may deem fit and proper.

2. Following issues were framed on 21.06.2021 for consideration in this suit:-

- i. *Whether the plaintiff is the proprietor of the trademark 777 OIL and whether they have the right to restrain the defendant from using 777 in their trademark?*
- ii. *Whether the expression 777 oil publici juris in Siddha medicine?*
- iii. *Whether the defendant had registered and used the trademark SANJEEVI 777 OIL since 1993 and whether they have the right to continue to use the trademark SANJEEVI 777 OIL?*
- iv. *Whether the suit is liable to be dismissed on the ground of delay and laches?*
- v. *Whether the defendant had infringed the trademark of the plaintiff?*
- vi. *Whether the action of the defendant in using the trademark Sanjeevi 777 oil would amount to passing off its goods as the goods of the plaintiff?*
- vii. *To what reliefs is the plaintiff entitled to?*
- viii. *To what other reliefs?*



C.S.No.651 of 2008

3. Following witnesses were examined before the Additional Master – II on behalf of the plaintiff and the defendant:-

<i>Plaintiff side witness</i>		<i>Defendant side witness</i>	
PW1	Munusamy, the Deputy Manager of the plaintiff	DW1	R.Gunasekaran, the Proprietor of the defendant

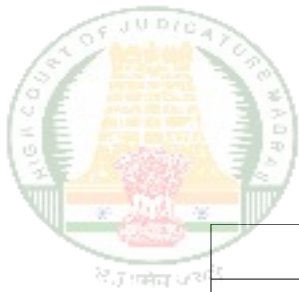
4. Following Exhibits were marked during the trial by the plaintiff and the defendant:-

<i>Plaintiff's Exhibits</i>		<i>Defendant's Exhibits</i>	
Ex.P1 dt.09.08.2021	Board Resolution authorising the Plaintiff to be represented by PW1	Ex.D1 dt.24.01.2014	Email Communication addressed from the plaintiff to CCRAS and forwarding mail to the defendant's consultant.
Ex.P2 dt.13.03.2007	Certificate of Renewal of License for Manufacture of Ayurvedic / Siddha / or Unani Drugs for sale in Form 26-D		-
Ex.P3 dt.27.03.2007	Certificate of Good Manufacturing Practices (GMP) for manufacture of Siddha Drugs		-



C.S.No.651 of 2008

Plaintiff's Exhibits		Defendant's Exhibits	
Ex.P4 dt.09.03.2017	Certificate of Renewal of License for manufacture of Ayurvedic / Siddha / or Unani Drugs for sale		-
Ex.P5 dt.09.03.2017	Certificate of Good Manufacturing Practices (GMP) for manufacture of Ayurveda, Siddha or Unani Drugs (Form 26-E)		-
Ex.P6 dt.03.06.2008	Bill of Product		-
Ex.P7 dt.20.11.2001	Legal User Certificate of the trademark 777 Oil registered under No.1061418 in Class 5		-
Ex.P8 dt.04.09.2017	Trade Mark Registration Certificate No.2731595		-
Ex.P9 dt.23.08.2017	Trade Mark Registration Certificate No.2711297		-
Ex.P10 dt.17.08.2018	Trade Mark Registration Certificate No.2731596		-
Ex.P11 dt.15.08.2018	Trade Mark Registration Certificate No.2550953		-
Ex.P12 dt.31.10.2016	Trade Mark Registration Certificate No.2550952		-



C.S.No.651 of 2008

<i>Plaintiff's Exhibits</i>		<i>Defendant's Exhibits</i>	
Ex.P13 dt.16.08.2011	Certified Copy of the order passed by the Intellectual Property Appellate Board (IPAB)		-
Ex.P14 dt.19.11.1990	License Agreement		-
Ex.P15 dt.28.08.2000	License Agreement		-
Ex.P16 dt.20.01.2003	Form TM-1 filed by the defendant		-

5. Apart from the above, the following three material objects were filed:-

M.O.1 – Plaintiff Bottle

M.O.2 – Defendant Bottle

M.O.3 – Plaintiff Bottle

6. The plaintiff, a research and pharmaceutical company has filed the present suit on the strength of registration obtained by the plaintiff vide Ex.P7 dated 20.11.2001, i.e., Trade Mark Registration No.1061418 in Class 5, for the following description:-



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C.S.No.651 of 2008

Pharmaceuticals, Ayurvedic, Medicinal Preparations, Veterinary and Sanitary Substances, Infant and Invalid Foods, Plasters, Material for Bandaging, Material for stopping teeth, Dental Wax, Disinfectants, Preparations for killing weeds and destroying Vermin included in Class 05.

7. The registration which has been obtained by the plaintiff is for 'alphanumeric' trademark '**777 Oil**' as a device consisting of number '777' and word '*Oil*'. The trademark '**777 Oil**' as in Ex.P7 Trade Mark Registration No.1061418 in Class 5, dated 20.11.2001 is reproduced below:-



8. The plaintiff's Deputy Manager claims to have formulated the above Siddha Medicinal Oil for treatment of patients with Psoriasis. The product was said to have been developed in association with National Research Development Corporation (NRDC) after an extensive clinical trial and that the product is said to be effective for treatment for Psoriasis.



C.S.No.651 of 2008

9. It is further case of the plaintiff that the product was named as “**777 Oil**” by its promoter Dr.J.R.Krishnamoorthy who was using the aforesaid trademark since 1992. It is submitted that since the oil was developed in association with the National Research Development Corporation (NRDC), National Research Development Corporation (NRDC) has authorized the manufacture of the aforesaid oil *vide* Ex.P14 License Agreement, dated 19.11.1990. The said License Agreement was again renewed *vide* Ex.P15 License Agreement dated 28.08.2000.

10. It is further case of the plaintiff that the plaintiff has also obtained requisite license from the Authorities by duly complying with the requirements of the provisions of the Drugs and Cosmetics Act, 1940 and Rules made thereunder *vide* Manufacturing License No.546 dated 04.01.1992 in Form 25D as renewed *vide* Ex.P2 Certificate of Renewal of Licence dated 13.03.2007.

11. It is further case of the plaintiff that the defendant attempted to infringe the plaintiff's trademark by adopting the same for marketing the similar product using the offensive trademark '**SANJEEVI 777 OIL**'.



C.S.No.651 of 2008

The trademark '**SANJEEVI 777 OIL**' as in Ex.P16 Trade Mark Registration No.1167605 in Form TM-1 dated 20.01.2003 is reproduced below:-

SANJEEVI 777 OIL

12. It is further submitted that the defendant also claims to be user of the above trademark '**SANJEEVI 777 OIL**' from 14.09.1999 and filed an application in Form TM-1 for registration of trademark under the provisions of Trade and Merchandise Marks Act, 1958 on 03.01.2023 which was registered on 20.01.2003 *vide* Ex.P16 Trade Mark Registration No.1167605 in Class 5. The offensive trademark '**SANJEEVI 777 OIL**' was subsequently registered by the Trade Mark Registry.

13. It is further case of the plaintiff that the registration of the above trademark was challenged by the plaintiff before the Intellectual Property Appellate Board (IPAB) in ORA/218/2008/TM/CH/6413. *Vide*



C.S.No.651 of 2008

Ex.P13 Order dated 16.08.2011, Intellectual Property Appellate Board (IPAB) concluded that the defendant had no documents to substantiate the use of the trademark as no drug licence was produced under the provisions of the Drugs and Cosmetics Act, 1940.

14. The Intellectual Property Appellate Board (IPAB) further concluded that the defendant was not the proprietor of the trademark '**SANJEEVI 777 OIL**' and thus the offensive trademark '**SANJEEVI 777 OIL**' registered *vide* Ex.P16 Trade Mark Registration No.1167605 in Form TM-1 dated 20.01.2003 was directed to be removed from the Register of Trade Marks. The conclusion of the Intellectual Property Appellate Board (IPAB) was that the defendant, the proprietor of the offensive trademark was not entitled to use the same.

15. The facts on record further indicate that further appeal against Ex.P13 Order dated 16.08.2011 of the Intellectual Property Appellate Board (IPAB) before this Court in W.P.No.20195 of 2011 was also dismissed *vide* order dated 06.09.2011. Thus, the order of the Intellectual Property Appellate Board (IPAB) dated 17.08.2011 stands confirmed.



C.S.No.651 of 2008

16. In support of the plea, the learned counsel for the plaintiff has

relied on the following decisions:-

- i. **Laxmikant V. Patel Vs. Chetanbhai Shah and Another**, (2002) 3 SCC 65.
- ii. **S.Syed Mohideen Vs. P.Sulochana Bai**, (2016) 2 SCC 683.
- iii. **Patel Field Marshal Agencies and Another Vs. P.M.Diesels Limited and Others**, (2018) 2 SCC 112.
- iv. **Erven Warnink Besloten Vennootschap and Another Vs. J.Townend & Sons (Hull) Ltd. and Another**, (1979) 3 WLR 68.
- v. **Reckitt & Colman Products Ltd. Vs. Borden Inc. and others**, (1990) 1 WLR 491.
- vi. **The Andhra Perfumery Works Joint Family Concerns Vs. Karupakula Suryanarayaniah and others**, 1967 SCC OnLine Mad 177 : AIR 1969 Mad 126.
- vii. **K.R.Jadayappa Mudaliar trading as M/s.Sarasu Match Works, Gudiyatham and another Vs. K.B.Venkatachalam, trading as M/s.Golden Match Industries, Gudiyatham**, 1990-2-L.W-720.
- viii. **Mr.B.V.Ilango Himachalapathy Vs. M/s.Rank Xerox Limited and others**, 2012 SCC OnLine



WEB COPY



C.S.No.651 of 2008

IPAB 154.

- ix. **Ford Vs. Foster**, [1872] 7 Ch A 611.
- x. **M/s.Power Control Appliances Vs. Sumeet Machines Pvt. Ltd.**, (1994) 2 SCC 448.
- xi. **Ruston & Hornsby Ltd. Vs. The Zamindara Engineering Co.**, 1970 AIR SC 1649.
- xii. **K.R.Chinna Krishna Chettiar Vs. Sri Ambal & Co, Maras and another**, 1969 (2) SCC 131.
- xiii. **Kaviraj Pandi Durga Dutt Sharma Vs. Navaratna Pharmaceutical Laboratories**, AIR 1965 SC 980.
- xiv. **Kali Arated Water Works, Tiruchirapalli Vs. Rashid and others**, 1987 SCC OnLine Mad 198.

17. The defendant in its Written Statement has disputed the claim of the plaintiff. It is submitted that at the time when the Written Statement was filed, the offensive trademark of the defendant was cancelled and was not rectified. That apart, it is stated that the defendant has been using the trademark since 1993 and that the defendant has tremendous goodwill in the market for the product. It is further submitted that the plaintiff is merely a licensee of National Research Development Corporation (NRDC).



C.S.No.651 of 2008

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18. It is submitted that the defendant has adopted the numerical '777' in the trademark for the following reasons:-

- i. Some of the ingredients of the product are dried in the sunlight for 7 days;
- ii. Other ingredients are soaked in oil for 7 days and thereafter they are processed and packed;
- iii. The product has to be used for a minimum period of 7 days for getting results.

19. It is submitted that drug license was granted on 12.03.1993 *vide* License No.589 in Form 25D which was later returned to the Controller and that in any event, the trademark registration under No.1167605 in Class 5 was granted which was cancelled only later pursuant to Ex.P13 Order dated 16.08.2011 of the Intellectual Property Appellate Board (IPAB).

20. On behalf of the defendant, it is further submitted that the plaintiff has admitted that the plaintiff has abandoned the use of the trademark “777 *Oil*” and has started using the trademark “*Dr.JRK's 777*”



C.S.No.651 of 2008

oil” registered *vide* Ex.P8 Registration Certificate under No.2731595 dated 04.09.2017 in Class 5 w.e.f. 06.05.2014. In this connection, a reference was made to Ex.D1 dated 24.01.2014. This is a reply of the plaintiff to the E-mail dated 20.01.2014 of the Central Council for Research in Siddha (CCRS) which was forwarded to the defendant's consultant, wherein, it was stated that to strengthen further focus on research, the plaintiff was proposing to promote the brand “**Dr.JRK's 777 oil**” in the near future. Therefore, it is prayed for dismissal of this Suit. The learned counsel for the defendant has relied on the following two judgments to state that the Courts can mould the relief taking note of the subsequent events:-

- i. **Ram Nibas Gagar (dead) by Lrs. Vs. Debojyoti and others**, (2003) 1 SCC 472.
- ii. **Shipping Corporation of India Ltd. Vs. Machado Brothers and others**, (2004) 11 SCC 168.

21. I have considered the arguments advanced on behalf of the plaintiff and the defendant. I have perused the evidences marked by the



C.S.No.651 of 2008

plaintiff and the defendant and the decisions cited by the learned counsel
for the plaintiff and the defendant.

22. The use of the subject trademark '**777 Oil**' by the plaintiff for treatment of Psoriasis *prima facie* appears to be adoption of the alphanumeric words '**777 Oil**' as a trademark. It is coined name for the product which was licenced by the National Research Development Corporation to the plaintiff *vide* Ex.P14 License Agreement dated 19.11.1990. The preamble to the said Ex.P14 License Agreement states that the National Research Development Corporation has acquired the absolute ownership from Central Council for Research in Ayurveda & Siddha (CCRAS) and was the absolute owner of the KNOWHOW pertaining to the PROCESSES together with the intellectual property rights in the KHOWHOW and PROCESSES for manufacture of the ARTICLE. The expression ARTICLE has been defined as follows:-

ARTICLE shall mean the article or substance or product (described in Schedule-I hereto) produced, made or manufactured by use, exercise and / or practice of the KNOWHOW, wholly or partially, with the intent to sell and vend such



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C.S.No.651 of 2008

article/substance/product commercially, and shall include any other article, substance or product which has as its component or part thereof the article made or manufactured by use/exercise of the KNOWHO or which is an intermediate or derivative article, substance or product as well as modifications, developments or improvements of any of them.

23. Ex.P14 License Agreement dated 19.11.1990 contemplates the payment of premium and royalty for a period of 10 years. Clause 2 of the Ex.P14 License Agreement dated 19.11.1990 reads as under:-

2. GRANT OF LICENCE

In consideration of the payment of Rs.20,000 (Rupees Twenty Thousand only) by the Licensee to the Licenser on or before the execution of these presents as and by way of premium and additionally, the payment of the royalty hereinafter provided and in further consideration of due and faithful observance and performance by the Licensee of the covenants and conditions hereinafter contained, the Licenser hereby grants to the Licensee the Licence to use and practice the KNOWHOW and PROCESSES to manufacture the ARTICLE and to sell and vend the article commercially on the terms and conditions herein provided.

3. DURATION OF THE LICENCE

This Licence shall come into force on the EFFECTIVE DATE and subject to covenants and conditions herein contained, will remain in force for



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C.S.No.651 of 2008

a period of ten years from the effective date or for a period of ten years commencing from the accrual of the Licensee's obligation to pay Royalty to the Licensor, in terms of Clause 5(ii) hereof, whichever is longer.

24. The following Clauses are also relevant to the present dispute:-

4. CONVENANTS

A. The Licence hereby granted is and shall always be strictly non-exclusive in its nature and Licensor may, at its discretion grant to any other person a Licence or permission to use and practice the KNOWHOW in any manner and at any time.

B. The Licensee shall not use and practice the KNOWHOW and/or the PROCESS for manufacture of the ARTICLE outside the PLANT without the prior written consent of the Licensor.

C. The Licence shall extend to the whole of India, only for the purpose of the manufacture and sale of the ARTICLE. The ARTICLE may however be exported under intimation to Licensor within 30 days of acceptance of each export order.

D. The Licensee shall not at any time disclose the KNOWHOW and/or the PROCESS to any third party or person, without prior written consent of the Licensor and shall take all possible precaution against any such disclosure.

E. The Licensee shall not assign, transfer, encumber, mortgage, charge or sub-licence or part with possession of, the KNOWHOW and/or PROCESS, wholly or partially, without the prior



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C.S.No.651 of 2008

written consent of the Licensor.

F. The Licensee shall not at any time hereafter deny or dispute the legality, validity or enforceability of this Licence or any of its obligations hereunder.

G. The Licensee shall not at any time hereinafter claim any independent, exclusive or any other right to the KNOWHOW and/or PROCESS, including the absolute property of the Licensor.

H. The Licensee shall have the right to continue manufacture of the Articles in accordance with the KNOWHOW and the benefits of all technical information and experience acquired by it in terms of this Agreement.

I. The Licensee shall not represent or threaten to pass off the KNOWHOW / PROCESSES as its own technology or KNOWHOW or invention.

J. The covenants contained in the Clause 4 shall survive the termination or the expiry of this Licence.

5. PAYMENT OBLIGATIONS

In consideration of the Licence hereby granted the Licensee shall pay to the Licensor :

i) Premium of a consolidated sum of Rs.20,000/- (Rupees Twenty Thousand only) on or before the execution of those presents.

ii) Royalty @ 4%, on the ex-factory sale price from the time being of the ARTICLE, on the first day of April and on the first day of October every year regularly and punctually and in any event not later than the first day of May and first day of November immediately following, in every such year.

PROVIDED that the liability of the Licensee to pay royalty under and in terms of this sub-clause (ii) shall accrue upon the commencement of the manufacture of the ARTICLE for commercial purposes at the



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C.S.No.651 of 2008

PLANT including for any usage of the article by the Licensee and shall continue for a minimum period of 10 years from such commencement.

iii) Interest @ 18 % per annum on all overdue amounts (including any interest in arrear) from the due dates of payments till realisation / recovery of such amounts by the Licensor. Provided that interest on interest in arrear shall not be charged until the expiry of the period fixed by the Corporation.

EXPLANATION : For the purposes of computation of royalty;

(i) “the manufacture of the ARTICLE” shall deem to commence or take place when such ARTICLE is in a marketable / consumable / usable state (including the ARTICLE in storage or ready for the Licensee's own use or otherwise).

(ii) “ex-factory sale price” shall deem to be the total price from time to time declared to, and accepted by, the authority under the Central Excise & Salt Act, 1947 or any other authority of the Government of India, or, in the absence of such declaration, as published / communicated to the trade or the public in this behalf; the price relevant for the purpose of sub-clause (ii) of Clause 5 is deemed to be the highest price so declared/published/communicated during the six month period for which the royalty is to be calculated (without any deduction being made therefrom on account of any discount or rebate whatever).

(iii) All payments due under this Clause 5 shall be made within 30 days from the stipulated dates and without any deduction, withholding or adjustment except to the extent required by law.



C.S.No.651 of 2008

25. Name of the Process as per Ex.P14 License Agreement dated

19.11.1990 also reads as under:-

1. Process knowhow manual for “777 *Oil Treatment of Psoriasis*” as developed by Research Institute.

Consisting of:-

- i. Laboratory scale process data
- ii. Recommendation for plant layout and of manufacturing process.

26. In Ex.P14 License Agreement dated 19.11.1990, the Alphanumeric words “777 *Oil*” has been used as a generic name for the product. Ex.P14 License Agreement dated 19.11.1990 does not state that the Alphanumeric words “777 *Oil*” is the exclusive trade mark of the plaintiff. Similarly, as per Ex.P15 Licence Agreement dated 28.08.2000, upon termination of the Licence, the plaintiff shall cease to have any right to use and practice of the Know-How and the Process and shall require to return to the Licensor, namely, National Research Development Corporation (NRDC) or its nominee all information data or documentation within such time as may be specified by the latter. It further stipulates that upon termination of the Licence, the plaintiff is not discharged its obligations and liabilities under and in terms of Clause 4



C.S.No.651 of 2008

and Clause 5(i) of the Agreement. Clause 4 and Clause 5 in Ex.P15 Licence Agreement dated 28.08.2000 is similar to Ex.P14 Licence Agreement dated 19.11.1990 which have been extracted above.

27. Thus, this is a peculiar case. The plaintiff has adopted an Alphanumeric words “**777 Oil**” as a trade mark which is generic name for the process to manufacture an oil for treatment of Psoriasis and registered it *vide* Ex.P7 Trade Mark Registration No.1061418 in Class 5, dated 20.11.2001 and was later using a slightly different trademark viz., “**Dr.JRK's 777 oil**” and had registered the same *vide* Ex.P8 Registration Certificate under No.2731595 dated 04.09.2017 in Class 5 w.e.f. 06.05.2014.

28. On the other hand, the defendant had attempted to register a slightly different variant of the trade mark and had successfully obtained a registration *vide* Ex.P16 T.M.No.1167605 (Form TM-1) dated 20.01.2003 which was eventually ordered to be removed from the Register of Trade Mark *vide* Ex.P13 Order dated 16.08.2011 of the Intellectual Property Appellate Board (IPAB) in



C.S.No.651 of 2008

ORA/218/2008/TM/CH/6413. In Ex.P13 Order dated 16.08.2011, the Intellectual Property Appellate Board (IPAB) has merely rectified the registration granted to the defendant *vide* Ex.P16 T.M.No.1167605 (Form TM-1) in Class 5 dated 20.01.2003. In Ex.P13 Order dated 16.08.2011, the Intellectual Property Appellate Board (IPAB) has merely concluded that there is a possibility of confusion if the defendant continues to the offended mark '**SANJEEVI 777 OIL**'. However, the Intellectual Property Appellate Board (IPAB) has not examined the Schedule to Ex.P14 License Agreement dated 19.11.1990 and Ex.P15 License Agreement dated 28.08.2000.

29. Neither the plaintiff nor the defendant are entitled to claim any monopoly over mark “**777 Oil**” which was registered *vide* Ex.P7 Trade Mark Registration No.1061418 in Class 5 dated 20.11.2001 or the mark '**SANJEEVI 777 OIL**' which was earlier registered *vide* Ex.P16 T.M.No.1167605 (Form TM-1) in Class 5 dated 20.01.2003 and later rectified by virtue of Ex.P13 Order dated 16.08.2011 of the Intellectual Property Appellate Board (IPAB).



C.S.No.651 of 2008

30. Neither the adoption of the trade mark by the plaintiff as “**777 Oil**” nor the adoption of the trade mark by the defendant as '**SANJEEVI 777 OIL**' was a *bonafide*. Ex.P7 Trade Mark Registration No.1061418 in Class 5 dated 20.11.2001 registering the trade mark “**777 Oil**” ought not to have been granted by the Trade Mark Registry to the plaintiff. The fact remains that neither the defendant nor the National Research Development Corporation (NRDC) has taken any steps for rectifying the registration granted by the Trade Mark Registry to the plaintiff *vide* Ex.P7 Trade Mark Registration No.1061418 in Class 5 dated 20.11.2001.

31. The facts on record also indicate that the plaintiff started using a slightly different trade mark, i.e. “**Dr.JRK's 777 oil**” which was subsequently registered *vide* Ex.P8 Registration Certificate No.2731595 dated 04.09.2017 in Class 5 w.e.f. 06.05.2014. By Ex.D1 dated 24.01.2014 also, there is an admission by the plaintiff that they are only interested in promoting “**Dr.JRK's 777 oil**” registered *vide* Ex.P8 Registration Certificate No.2731595 dated 04.09.2017 in Class 5.

32. Therefore, there is no case made out for grant any relief in



C.S.No.651 of 2008

favour of the plaintiff. Accordingly, this Suit filed by the plaintiff for the above relief is liable to be dismissed and is accordingly dismissed. Parties to bear their own cost.

10.02.2023

Internet : Yes/No

Index : Yes / No

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Plaintiff's witness:

Munusamy, the Deputy Manager of the plaintiff : P.W.1

Defendants' witness:

R.Gunasekaran, the Proprietor of the defendant : D.W.1

Documents exhibited by the Plaintiff:

<i>Sl. No.</i>	<i>Exhibits</i>	<i>Date</i>	<i>Particulars of Documents</i>
1	Ex.P1	09.08.2021	Board Resolution authorising the Plaintiff to be represented by PW1
2	Ex.P2	13.03.2007	Certificate of Renewal of License for Manufacture of Ayurvedic / Siddha / or Unani Drugs for sale in Form 26-D
3	Ex.P3	27.03.2007	Certificate of Good Manufacturing Practices (GMP) for manufacture of Siddha Drugs
4	Ex.P4	09.03.2017	Certificate of Renewal of License for manufacture of Ayurvedic / Siddha / or



C.S.No.651 of 2008

Sl. No.	Exhibits	Date	Particulars of Documents
			Unani Drugs for sale
5	Ex.P5	09.03.2017	Certificate of Good Manufacturing Practices (GMP) for manufacture of Ayurveda, Siddha or Unani Drugs (Form 26-E)
6	Ex.P6	03.06.2008	Bill of Product
7	Ex.P7	20.11.2001	Legal User Certificate of the trademark 777 Oil registered under No.1061418 in Class 5
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9	Ex.P9	23.08.2017	Trade Mark Registration Certificate No.2711297
10	Ex.P10	17.08.2018	Trade Mark Registration Certificate No.2731596
11	Ex.P11	15.08.2018	Trade Mark Registration Certificate No.2550953
12	Ex.P12	31.10.2016	Trade Mark Registration Certificate No.2550952
13	Ex.P13	16.08.2011	Certified Copy of the order passed by the Intellectual Property Appellate Board (IPAB)
14	Ex.P14	19.11.1990	License Agreement
15	Ex.P15	28.08.2000	License Agreement
16	Ex.P16	20.01.2003	Form TM-1 filed by the defendant

Documents exhibited by the Defendants :



C.S.No.651 of 2008

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<i>Sl. No.</i>	<i>Exhibits</i>	<i>Date</i>	<i>Particulars of Documents</i>
1	Ex.D1	24.01.2014	Email Communication addressed from the plaintiff to CCRAS and forwarding mail to the defendant's consultant.

Material Objects :

M.O.1 – Plaintiff Bottle

M.O.2 – Defendant Bottle

M.O.3 – Plaintiff Bottle

CSNJ



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C.S.No.651 of 2008

C.SARAVANAN, J.

Jen

Pre-Delivery Judgment
in
C.S.No.651 of 2008
(Comm. Suits)

10.02.2023