



C.S.No.61 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.09.2023

Delivered on : 21.12.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.S. (Comm Div). No. 61 of 2023

&

A.No. 1489 of 2023

N.Ranga Rao & Sons Private Ltd,
PB No.52, Vani Vilas Road, Mysore – 570 004
and also at
T.S. - 109, Block No.3, Poomagal,
5th Street, Ekkaduthangal, Chennai – 600 032.

...Plaintiff

Vs

MMC Healthcare Limited,
61, Kurinji Street, Fathima Nagar,
Valasaravakkam, Chennai – 600 087
and also at
No.34 – B, SIDCO Industrial Estate,
Thirumazhisai, Chennai – 600 124.
...Defendant



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Prayer: Suit filed under Order IV Rule 1 of O.S. Rules read with Order VII Rule 1 of CPC, along with Section 27, 28 and 29, 134 and 135 of the Trademarks Act, 1999,

(a) Granting a permanent injunction restraining the Defendant by themselves, their men, servants, agents or anyone claiming through or under them from in any manner infringing the Plaintiffs registered Trade Mark LIA through use of the mark LIA or any other mark or marks that are in anyway identical, deceptively similar to the Plaintiffs registered Trade Mark LIA, by manufacturing or selling or offering for sale or exporting or offering to export or advertising either in India or abroad, either online or offline or in any other manner whatsoever;

(b) Granting a permanent injunction restraining the Defendant by themselves, their men, servants, agents or anyone claiming through or under them from in any manner passing off their products, under the trademark LIA or any other mark or marks that are in anyway identical, deceptively similar to the Plaintiffs prior adopted trademark LIA, by manufacturing or



selling or offering for sale or exporting or offering to export or advertising either in India or abroad, either online or offline or in any other manner whatsoever;

(c) Directing the Defendant to render a true and faithful accounts of the profits earned by the Defendant through sale or export of products bearing the trademark LIA and direct payment of such profits to the Plaintiff for the acts of infringement and passing off committed by the Defendant;

(d) Directing the Defendant to surrender to the Plaintiff of all the goods, including the entire stock of unused offending labels, bearing the trademark LIA along with the blocks, dyes, or plates for destruction

(e) Directing the Defendant to pay to the Plaintiff the cost of the suit: and

(f) Pass such further order or orders as may be deemed fit and proper to the circumstances of the case.



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For Plaintiff : Ms.Antara Balaji
for Mr. Rajesh Ramanathan
Mr. S.Diwakar.

For Defendant : Set Ex parte on 04.07.2023.

JUDGMENT

The above suit is filed for the following reliefs:

“(a) Granting a permanent injunction restraining the Defendant by themselves, their men, servants, agents or anyone claiming through or under them from in any manner infringing the’ Plaintiffs registered Trade Mark LIA through use of the mark LIA or any other mark or marks that are in anyway identical, deceptively similar to the Plaintiffs registered Trade Mark LIA, by manufacturing or selling or offering for



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sale or exporting or offering to export or advertising either in India or abroad, either online or offline or in any other manner whatsoever;

(b) Granting a permanent injunction restraining the Defendant by themselves, their men, servants, agents or anyone claiming through or under them from in any manner passing off their products, under the trademark LIA or any other mark or marks that are in anyway identical, deceptively similar to the Plaintiffs prior adopted trademark LIA, by manufacturing or selling or offering for sale or exporting or offering to export or advertising either in India or abroad, either online or offline or in any other manner whatsoever;



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(c) Directing the Defendant to render a true and faithful accounts of the profits earned by the Defendant through sale or export of products bearing the trademark LIA and direct payment of such profits to the Plaintiff for the acts of infringement and passing off committed by the Defendant;

(d) Directing the Defendant to surrender to the Plaintiff of all the goods, including the entire stock of unused offending labels, bearing the trademark LIA along with the blocks, dyes, or plates for destruction

(e) Directing the Defendant to pay to the Plaintiff the cost of the suit: and

(f) Pass such further order or orders as may be



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deemed fit and proper to the circumstances of the case.”

Plaintiff's case:

2. The plaintiff is a leading manufacturer and supplier of incense sticks and other allied products. They have carved a niche for themselves in the field of incense sticks and dhoops not only within the country but have also made a mark in the international arena. Since 1948, the plaintiff which was then proprietary concern started by the grand father of the current Directors, Mr. N.Ranga Rao, was engaged in the manufacture of incense sticks, agarbathies and Dhoop. Later on, the proprietary concern was converted into a partnership business and on 23.12.2014, the plaintiff company came into existence whereunder the assets, business, good will of the partnership firm was transferred to the plaintiff company.

3. The plaintiff would contend that they have made a mark in



the market on account of the secret blending of perfumes which has been handed over from generations to the present Directors. The plaintiff is known for the following brands, Cycle, Cycle brand three in one, all of which have the device of a “Cycle”. The other brands are Woods, LIA, Yagna, Heritage, etc., The plaintiff is now the largest and leading manufacturer and exporter of incense sticks and exports to about 40 countries.

4. In the year 2001, the plaintiff's predecessors had adopted the trademark LIA and they have been using the same openly, continuously and extensively since then without any interruption from any quarters and consequently the trademark had become the exclusive property of the plaintiff herein. This mark is adopted for their flower and fruit scented incense sticks. Owing to the unique and distinctive fragrance, the plaintiff's product under this mark is well reputed and most sought after by the trade and public. The predecessors of the plaintiff in order to obtain statutory protection



with reference to this mark owing to its success applied and obtained registration for various variants of this mark under various classes including Class 3.

5. The applications have been made in the years 2001 and 2002 with reference to 14 variants and thereafter 2004, 2006, 2010, 2015, 2016 and 2017. These registrations are being renewed from time to time and are still valid and subsisting. When the plaintiff had taken over the business the registered trade mark has been changed in the name of the plaintiff company and the plaintiff company has been registered as owner of the mark.

6. The plaintiff would also submit that they possess copyright registration for various variants of the packaging labels marketed under the mark LIA and the plaintiff is the sole and exclusive registered user of this mark.



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7. The plaintiff would submit that they and their predecessor in title have been doing extensive business all over the country under the trademark LIA and the sales turnover for the goods under the mark LIA runs into several crores of rupees. Likewise, the plaintiff has also been spending several crores of rupees on its sales promotional activities. The plaintiff would submit that the name LIA has become synonymous with the name of the plaintiff's company and has become a well known trademark within the meaning of Section 2 (1) (zg) of the Trade Marks Act.

8. While so, in the month of May 2019, the plaintiff came to learn that the defendant was manufacturing and exporting cosmetic products such as body lotion and moisturiser under the tradename LIA in Sri Lanka. Further, the defendant was exporting the product under the identical infringing trademark LIA to a reseller in Sri Lanka. The adoption of the mark by the defendant is an infringement of the plaintiff's trademark. Therefore, the plaintiff had



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issued a cease and desist notice on 08.05.2019 to the defendant and its then manufacturer, SIDCO Pharma, requesting them not to infringe and pass off their goods as that of the plaintiff.

9. The defendant issued a reply dated 06.06.2019, wherein they had claimed that they were only exporting based on a job work order placed by the Sri Lankan concern and that this Sri Lankan concern owns the trademark LIA in Sri Lanka. They had further alleged that the defendant was dealing in cosmetics which is a totally different product from the plaintiff's incense sticks and therefore there was absolutely no possibility of confusion amongst trade and the public.

10. The plaintiff would submit that when they had carried out an investigation of the Sri Lankan concern, they came to know that one Hicare Pharma (Private) Limited having office at Piliyandala, Sri Lanka gives the order to the defendant with reference to the LIA



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branded cosmetic product. Immediately, the plaintiff had issued a cease and desist notice dated 17.05.2019 to Hicare Pharma (Private) Limited for infringing the trademark and passing off. They had sent a reply dated 06.06.2019 denying the statement of the plaintiff and final reminder was sent on 18.07.2019. Upon receipt of the plaintiff's notice and reminder, the said Sri Lankan concern approached the Hon'ble Commercial High Court of Western Province, Sri Lanka and sought for declaration of non-infringement against the plaintiff. The plaintiff has filed a counter claim and the proceedings are pending trial.

11. The plaintiff states that in the interregnum the defendant's product under the infringed mark were not available either in India or in Sri Lanka and the plaintiff was in genuine impression that the defendant have desisted from their infringing activities. However, in the month of September 2022, the plaintiff's representative once again came across the impugned products in the Sri Lankan markets.



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12. The plaintiff found that some bore the name of the defendant as exporter and one Syndy Pharma as the manufacturer, some of the products were also found bearing their name under the caption ***“under technical guidance from”***. The plaintiff would submit that this is nothing but an attempt to escape the clutches of law by shifting the burden on the Sri Lankan concern, when it is the defendant who is exporting the product.

13. On coming to know about the aforesaid infringement, the plaintiff had purchased the product under the impugned trademark LIA and caused notice dated 22.11.2022 to the defendant and the said Syndy Pharma. The plaintiff once again requested the defendant and the said Syndy Pharma to cease and desist from using this identical mark LIA. Syndy Pharma who received the notice had sent a reply dated 08.02.2023 undertaking not to manufacture product under this mark. The defendant failed to issue a reply and



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had not stopped using the mark. The plaintiff would also submit that they have applied and obtained registration of the mark LIA in Sri Lanka under No.164688 in class 3 in respect of incense sticks, incense cones and dhoops.

14. The plaintiff would submit that Sri Lankan concern is neither the owner of the trademark nor its proprietor. Therefore, the claim of the defendant that they are working for Sri Lankan concern is absolutely false. The plaintiff had therefore come forward with the suit in question.

15. The defendant though served had not entered appearance and was set ex parte on 04.07.2023.

16. The plaintiff was therefore directed to take evidence. The affidavit in lieu of chief examination was filed by Mr.V.Ramamoorthy, Associate Regional Manager of the plaintiff



company. The plaintiff had marked Ex.P.1 to Ex.P.19 to prove their case. Since the defendant was set ex parte no one has cross examined P.W.1.

17. From the pleadings, the following issues have been framed:

(i) Whether the Defendant's use of the mark LIA in respect of their products is in violation of the intellectual property rights vested with the Plaintiff qua the mark LIA?

(ii) Whether the Plaintiff is entitled to the relief of permanent injunction against the Defendant for infringement of registered trademark LIA and Whether the Plaintiff is entitled to the relief of permanent injunction against the Defendant for passing off their products under the Plaintiff's trademark LIA?



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(iii) Whether the Defendant is liable to render a true and faithful accounts of profits earned through the sale of its products bearing the impugned mark and further be liable to pay such profits to the Plaintiff for the acts of infringement and passing off committed by the Defendant?

(iv) Whether the Defendant is liable to surrender his entire stock of unused offending labels bearing the impugned mark along with the blocks, dyes, or plates for destruction?

(v) Whether the Plaintiff is entitled to any other reliefs?



Submissions:

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18. Apart from making oral submissions, the learned counsel had also submitted written arguments. The plaintiff's contention are as follows:

(a)The plaintiff is a prior user and a registered proprietor of trademark LIA in India as well as in abroad including Sri Lanka. They have registered the mark under Class 3 as well.

(b)The plaintiff has been openly, continuously and extensively using this mark since 2001 both in their domestic as well as international markets, thereby earning substantial reputation and the mark has become associated with the plaintiff.

(c)The defendant is using an identical mark LIA which is phonetically, structurally and visually similar to that of the plaintiff's mark.



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(d)The defendant is also dealing in the very same products as the plaintiff. This use is likely to cause confusion in the minds of the public as they are marketing it in the same area as the plaintiff.

(e)The usage of the mark by the defendant would dilute the plaintiff's reputation with reference to the mark.

(f)The defendant taking advantage of the reputation that the plaintiff has build on its mark LIA, is attempting to pass off their goods as that of the plaintiff.

19. It is the contention of the learned counsel for the plaintiff that the defendant having recognized the impact of the plaintiff's product LIA in the domestic and international market has adopted the very same mark with an intent to cash in on the fame and repute



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of the plaintiff. The intention of the defendant appears to be mala fide, particularly when not only has the defendant adopted the plaintiff's mark but the adoption is in regard to allied and similar products, that too, falling under Class 3.

20. Under Ex.P.7, reply notice dated 06.06.2019 issued to the cease and desist notice Ex.P.6, the defendant has alleged that they only manufacture and export the product under the mark LIA to a third party seller in Sri Lanka and therefore there is no infringement of the mark of the plaintiff. By making such a statement, the defendant has accepted the fact that they are manufacturing and exporting the product under LIA mark, which has been sold in Sri Lanka where also the plaintiff has a mark.

21. The learned counsel would rely upon the Judgement reported in **297 (2023) DLT 160 – New Bharat Overseas Vs. Kian Agro Processing Private Limited and others**, where in a similar



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case, the defendant had adopted trademark 'TAJ MAHAL', under which name he was exporting to the Kingdom of Saudi Arabia, the Delhi High Court had held that Section 29 (6) and 56 (1) of the Trademark would enure to the benefit of the plaintiff and since the mark is identical, the use of the same by the defendant with reference to the export of rice amounts to infringement of the mark.

22. The learned counsel would submit that Ex.P.12 series would clearly show that the defendant is manufacturing and exporting products under the identical mark LIA from India to Sri Lanka and this is a clear case of infringement. It is the contention of the counsel for the plaintiff that the defendant has dishonestly adopted the mark after coming to know that the plaintiff's product is doing extremely well. She would submit that not only is the defendant attempting to ride on the plaintiff's reputation but they are seeking to pass off the same product, namely, incense sticks and dhoop under this mark. The plaintiff is a pioneer and market leader



in the case of incense sticks and dhoop from the year 1948 itself. By adopting the plaintiff's mark in respect of the identical products and in places where the plaintiff is also marketing the product, the defendant by adopting the same mark has caused prejudice as well as loss to the plaintiff.

23. The learned counsel would also address arguments regarding the doctrine of dilution and passing off. The learned counsel would rely upon the Judgement of the Delhi High Court reported in **2008 SCC Online 1211 – Ford Motor Company and another Vs. C.R. Borman and another**, where the provisions of Section 29 (4) of the Act was interpreted, wherein the Delhi High Court had observed that if the plaintiff has made out a case that the offending trademark is identical to the registered trademark, the relief would be available even if the goods are not same and do not fall within the same category or class.



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24. However, in the instant case, the product of both the plaintiff and the defendant is same. By adopting the very same mark for the very same product, the defendant's intention appears to be to pass off their goods as that of the plaintiff taking advantage of the reputation that they had earned in the market. Therefore, she would submit that the suit be decreed as prayed for and the defendant also be directed to render true and faithful accounts for the profits earned and to surrender the unused offending labels along with blocks, dyes or plates for destruction.

25. Heard the learned counsel for the plaintiff.

26. The documents filed and exhibited by the plaintiff which is required to dispose of the suit is set out hereunder:

27. Ex.P.2 is the series of 30 certified copies of the certificates for use in legal proceedings for trademark registration of LIA.



Ex.P.3 is the photocopies of the copyright registration certificates issued for the artistic works in LIA. Ex.P.3 would clearly show that the plaintiff has obtained registration in respect of various brands of LIA. Ex.P.4 which are about 69 invoices evidences the use of the mark LIA in India and abroad. Ex.P.6 is the legal notice issued to the defendant dated 08.05.2019. Ex.P.9 is the legal notice issued by the plaintiff to Hicare Pharma (Private) Limited and Ex.P.14 is the notice issued to the defendant and Syndy Pharma

28. A perusal of Ex.P.3 and Ex.P.4 would show that the mark LIA has been registered in the name of the plaintiff. Ex.P.4 invoices would also prove the volume of the plaintiff's sales in the segment of incense sticks. Promotional materials have also been marked as Ex.P.5 series.

29. Ex.P.6 is the cease and desist notice that has been issued by the plaintiff to the defendant and its manufacturer. Ex.P.7 is the



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reply that has been issued by the defendant to the plaintiff on 06.06.2019. To this a re-joinder has been issued by the plaintiff on 16.12.2019. Simultaneously, on 10.05.2019, the plaintiff has issued a cease and desist notice to Hicare Pharma (Private) Limited for whom the defendant was manufacturing and marketing the offending product. On 06.06.2019, Hicare Pharma (Private) Limited has responded to this legal notice and on 18.07.2019 final reminder was sent by the plaintiff, which is marked as Ex.P.11.

30. To prove that the defendant's products under the mark LIA was being marketed in Sri Lanka, the plaintiff has marked invoices under Ex.P.12 series. Once again the plaintiff has issued a cease and desist notice to the defendant and Syndy Pharma under Ex.P.14, to which a reply dated 08.02.2023 was issued by Syndy Pharma under Ex.P.15. The Trademark registration certificate issued to the plaintiff for the mark LIA by the Sri Lankan National Intellectual Property Office has been marked as Ex.P.16 series and the



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Trademark Search Report issued by the Sri Lankan National Intellectual Property Office about status of the trademarks application on Hicare Pharma (Private) Limited has been marked as Ex.P.17. The plaintiff has given a pictorial depiction of both their product as well as the product of the defendant under Ex.P.18 and Ex.P.19 series.

31. The plaintiff by filing Ex.P.3 series have established that they have been using this mark since 2001 and the sales invoices which have been marked as Ex.P.4 series would show the steady increase in demand for the plaintiff's product LIA. From Ex.P.16, it is evident that the mark of the plaintiff has been registered in the name of the plaintiff at Sri Lanka. The product that is sold is also the same as in India. The plaintiff has made a search before the Sri Lankan National Intellectual Property Office regarding the status of the trademark applications of Hicare Pharma (Private) Limited. This document would show that the applications have been made only on



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15.08.2013 and 17.07.2017 and awaits registration.

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32. The plaintiff's mark, however, has been registered on 12.02.2013 at Sri Lanka and the plaintiff has applied and obtained the certificate of registration which shows that the application has been made and obtained prior to the application made by the defendant / manufacturer had applied for a trademark registration.

33. As rightly pointed out by the learned counsel for the plaintiff using of the mark for a similar / allied product would definitely lead to dilution of the plaintiff's mark. In this regard useful reference may be made to the Judgement reported in **2008 SCC Online Del 1211 – Ford Motor Company and another Vs. C.R.Borman and another.** The Court was considering a case, where the defendant had adopted the use of the word “Ford”. The defendant had sought to have proprietary right over the mark “Ford” and applied for its registration. The defendant's product, which was



footwear, did not fall within the same class as that of the plaintiff's.

The Single Judge had returned the plaint for filing before the Court of appropriate Jurisdiction. In this suit, the defendant had filed an application for rejecting the plaint on the ground that, (a) the trademark “Ford” is the sole trademark of the defendant since 1981; (b) the plaintiff were not residing or carrying on business in Delhi; and (3) The defendant is using the mark “Ford” in respect of foot wear and there cannot be a grievance of passing off. The learned Single Judge had rejected the plaint and one of the grounds for rejection was that the mark was being used for a totally different class of goods.

34. The Division bench after hearing the case had observed as follows:

“16. The learned Single Judge has interpreted Section 29(4) in a manner that would afford protection to a Plaintiff only in respect of the Class in respect of



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which registration of the trademark has been carried out. The learned Single Judge has opined that the primary objective of the Act is to restrict protection to trademarks in respect of the Class under which it has been applied and registered. The view of the learned Single Judge is that the intendment of the Act could not be for a blanket protection to be made available to a trademark in respect of the entire gamut of Classes. What should not be lost sight of is the fact that Section 29(4) is palpably an exception to the scheme of the Act and applies only to those trademarks which have earned a reputation in India. If it is, prima facie, clear or it is proved through evidence that the concerned trademark enjoys and commands a reputation in India, the Plaintiffs do not have to prove deception on the part of the Defendants or likelihood of the customer



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being misled because of the use of the challenged trademark. Once the Plaintiffs have made out a case that the offending trademark is identical with or similar to its registered trademark, relief would be available even if the purveyed goods are not similar and/or fall in the same category or class.”

35. In the case on hand the product of the defendant is in the same class as that of the plaintiff. Therefore, the mark requires to be protected. In the reply, Ex.P.7, the defendant have taken a stand that they are only manufacturing the product for their importer at Sri Lanka and that importer was not marketing the goods under this trademark in India. They had also stated that the trademark belonged to their importer and therefore the plaintiff cannot contend that the defendant had either infringed upon or pass off.



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36. In the Judgement reported in **297 (2023) DLT 160 – New**

Bharat Overseas Vs. Kian Agro Processing Private Limited and others, the Delhi High Court was considering the depiction of the mark 'TAJ MAHAL' by the defendant for marketing its products, namely, rice. The learned Judge observed that the only question to be determined was whether the affixation of the mark for the purpose of exporting would amount to use in the course of trade under Section 56 of the Act. The plaintiff is also doing business in the same product and the learned Judge has ultimately observed that there is an infringement. The learned Judge has observed as follows:

“To summarize the above, it is not disputed that the plaintiff is the registered proprietor of the mark 'TAJ MAHAL' in India, though such registration is in challenge by a third party to this suit, 'M/s KRBL'. As far the plaintiff and the defendant nos. 1 and 4, such



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registration, therefore, must operate unless cancelled on the action of 'M/s KRBL'. It is also not disputed that the defendant nos. 1 or 4 do not have any registration in the impugned mark in India. It is also not in dispute that the plaintiff is a prior adopter of the mark in India. Section 29(6) and Section 56(1) of the Act, would therefore, inure to the benefit of the plaintiff and against the defendant nos. 1 and 4. The mark being identical and the use of the same by the defendant no. 1 even for export of rice to the defendant no. 4, would amount to infringement of the mark."

37. In the instant case, the plaintiff is also marketing its product in Sri Lanka and Ex.P.16 series would clearly show that the plaintiff has applied and obtained registration of the mark at Sri Lanka. The defendant has applied for registration, however, the mark has not been registered in the name of the defendant.



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38. Considering the fact that the plaintiff has been using the mark LIA since the year 2001 and has also got the same registered as is evidenced by Ex.P.3 series and has also registered their mark LIA in Sri Lanka as evidenced in Ex.P.16 series, the plaintiff is entitled to protection and the defendant's use of the mark is in violation of the rights vested in the plaintiff. Therefore, the plaintiff is entitled to the relief of permanent injunction against the defendant both for infringement of the trademark LIA and also for passing off their products under the plaintiff's trademark LIA. Therefore, Issue Nos.1 and 2 are answered in favour of the plaintiff.

39. In the light of the fact that this Court has held that the defendant has infringed the mark of the plaintiff, the defendant is liable to render accounts and surrender the stocks to the plaintiff. Therefore, Issue Nos.3 and 4 are also answered in favour of the plaintiff.



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WEB COPY 40. Accordingly, the suit is decreed as prayed for with costs.

Consequently, the connected Application is closed.

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Internet : Yes/No

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List of witness on the side of the Plaintiff:

P.W.1 - Mr.V.Ramamoorthy

List of Exhibits marked on the plaintiff's side:

Ex.P.1 - Authorisation letter issued by the plaintiff in favour of the deponent.

Ex.P.2 - Certificate for use in legal proceedings for Trademark Registrations of LIA and its formatives

Ex.P.3 - Copyright Registration Certificates issued for artistic works in the LIA product packaging labels

Ex.P.4 - Copy of Sales Invoices evidencing use of the mark LIA in India and abroad

Ex.P.5 - Copy of promotional materials in respect of the mark LIA in India and abroad

Ex.P.6 - Cease and desist notice issued by Plaintiff to Defendant and its manufacturer

Ex.P.7 - Reply issued by Defendant to Plaintiff

Ex.P.8 - Rejoinder issued by Plaintiff to Defendant



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Ex.P.9 - Cease and desist notice issued by Plaintiff to Hicare Pharma (Private) Limited, Sri Lanka

Ex.P.10 - Reply issued by Hicare Pharma (Private) Limited, Sri Lanka to Plaintiff

Ex.P.11 - Final reminder issued by Plaintiff to Hicare Pharma (Private) Limited, Sri Lanka

Ex.P.12 - Invoices proving sale of Defendant's products under the mark LIA in Sri Lanka

Ex.P.13 - Cosmetic product list of Defendant

Ex.P.14 - Cease and desist notice issued by Plaintiff to Defendant and Syndy Pharma, Hyderabad

Ex.P.15 - Reply issued by Syndy Pharma, Hyderabad to Plaintiff

Ex.P.16 - Trademark Registration Certificates issued for the mark LIA by Sri Lankan National Intellectual Property Office

Ex.P.17 - Trademark Search Report issued by Sri Lankan National Intellectual Property Office about status of trademarks applications of Hicare Pharma (Private) Limited

Ex.P.18 - Photograph of Plaintiffs product

Ex.P.19 - Photographs of Defendant's products



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Pre-delivery Judgment in
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