



C.S.No.884 of 2016

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.S.No.884 of 2016

M/s.Apex Laboratories Private Limited,
Represented by its General Manager-Finance
N.Krishnan,
29, Third Floor, SIDCO Garment Complex,
Guindy, Chennai - 600 032.

... Plaintiff

Vs

1.Lucent & Torrent Healthcare Private Limited,
P-60, Omkar Marg,
Gandhi Nagar, Indore - 435 112.

2.Xylum Healthcare,
2-A, Parasram Marg,
Gandhi Nagar, Indore - 435 112.

... Defendants

Prayer: This Civil Suit is filed under Order VII Rule 1 of the Code of Civil Procedure, 1908 and Order IV Rule 1 of the Original Side 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, prayed for a Judgment and Decree:-



C.S.No.884 of 2016

WEB COPY

i) A Permanent Injunction restraining the defendants, by itself, its partners, men, servants, agents, distributors, stockiest, representatives or any one claiming through or under them from in any manner infringing the plaintiff's registered trademarks "ZINCOVIT" by using a deceptively similar trademark "ZYNCOVIT" or any other trademark deceptively similar to the plaintiff's registered trademark or in any other manner whatsoever;

ii) A Permanent Injunction restraining the defendants, by itself, its partners, 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 plaintiffs' registered copyright under Nos.A-54243/1997 and A-91339/2011 in colour scheme, get up and layout for their "ZYNCOVIT" syrup, drops, tablets etc., or in any other manner whatsoever;

iii) A Permanent Injunction restraining the defendants, by itself, its partners, 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 the defendants' products under the trademark "ZYNCOVIT" as and for the plaintiffs' products by manufacturing, selling or offering to sell, distributing,



C.S.No.884 of 2016

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;

iv) 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 "ZYNCOVIT" label or any mark deceptively similar to plaintiffs' trademark and artistic work "ZINCOVIT" label.

v) 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 "ZYNCOVIT" label and a Final Decree be passed in favour of the plaintiffs for the amount of profits thus found to have been made by the defendants after the latter have rendered accounts.

vi) For costs of the suit.

For Plaintiff : Mr.R.Sathish Kumar

For Defendants : Mr.Rajesh Ramanathan



C.S.No.884 of 2016

WEB COPY

JUDGMENT

On the previous occasion i.e., on 04.01.2023, this case was adjourned at the request of the learned Counsel for the parties hereto.

2. Today when the case is taken up for hearing, both the learned Counsel for the respective parties submitted that the dispute between the parties have been settled as early as July 2017. A copy of the Joint Memorandum of Compromise filed between the parties is said to have been filed before this Court vide SR.No.42655 of 2017 dated 24.11.2017.

3. The originals of the Joint Memorandum of Compromise is not available on file/is not available in the Court Bundle. However, the learned Counsel for the defendants confirms the photocopy to be the true copy of the originals of the Joint Memorandum of Compromise entered into between the parties, in which, the Authorized Signatory of the Plaintiff and the Director & Proprietor of the Defendants have signed.



4. The content of the Joint Memorandum of Compromise reads

as under:-

“1.The defendant hereby acknowledges and admits that the plaintiff is the proprietor of trademark and copyright in the artistic work ZINCOVIT and ZINCOVIT labels in relation to pharmaceutical, medical and nutraceutical food supplements and other such vitamin preparations.

2. The defendant acknowledges and admits and recognizes, undertake not to infringe the same by using an identical or a deceptively similar trademark or trademarks or copyright in the artistic works at any time in future.

3. The defendant has been using the trademark ZYNCOVIT for its nutritional supplements and hereby undertakes to this Hon'ble Court that they either by themselves or through their agents, representatives or heirs, successors etc., shall NOT manufacture, market or in any manner use the trademark ZINCOVIT, ZYNCOVIT or any other identical or similar to the plaintiff's trademark either phonetically, visually or structurally and further undertakes not to manufacture, market or in any manner use the trademarks ZINCOVIT or ZYNCOVIT or any other trademark identical or deceptively similar to the plaintiff's trademark.



C.S.No.884 of 2016

WEB COPY

4. *The defendant hereby undertakes to this Hon'ble Court that they either by themselves or through their agents, representatives or heirs, successors etc., shall NOT manufacture, market or in any manner use the copyright in the artistic work of the plaintiff in ZINCOVIT labels used presently or changed by the plaintiff at any point of time in future.*

5. *The defendants hereby undertake that there are no stocks available with them on this date and there are no stocks despatched by them or available in the market as of now.*

6. *The defendant submits to a decree as prayed for by the plaintiff in paragraph 32(a), (b) and (c) of the plaint. In view of the above terms of compromise, the plaintiff agrees to give up the reliefs claimed in paragraph 32(d), (e) and (f) of the plaint.*

7. *The above terms shall be binding on both parties and shall include their heirs, legal representatives, assigns or agents etc., and shall be strictly abided.*

8. *The parties shall bear their respective costs in respect of the suit and they shall have no further claims whatsoever against each other and the present compromise fully and finally settles all the disputes forming subject matter of the present suit. However, should the defendant be found violating the terms of the compromise, it shall be*



C.S.No.884 of 2016

WEB COPY

liable to pay damages to the plaintiff apart from such other legal proceedings as may be initiated against them.

9. The suit shall be decreed on the terms of the present Joint Memorandum of Compromise and the Joint Memorandum of Compromise shall form part of the decree."

5. In view of the above, this Civil Suit is decreed in terms of the Joint Memorandum of Compromise. No costs. The Joint Memo of Compromise shall form part of the decree.

06.01.2023

Index : Yes / No

Internet : Yes / No

Speaking Order/Non-Speaking Order

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C.S.No.884 of 2016

C.SARAVANAN, J.

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C.S.No.884 of 2016

06.01.2023