



C.S. (COMM.DIV.) No.133 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.11.2023

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.S. (COMM.DIV.) No.133 of 2022 and
O.A. Nos.394 to 398 of 2022 and A. No.2778 of 2022

TIL Healthcare Private Limited,
represented by its Authorised Representative
Shabeena Thahseen

.. Plaintiff

/versus/

1.M/s.Priya Life Sciences,
represented by its Partner
Hashmukhbai Chimanbhai Patel

2.M/s.Immunex Biotech LLP,
represented by its Partner Malay Mehta

3.Chandrakant Ratilal Mehta

4.M/s.Afroway Pharma
represented by its Partner
Hiteshkumar Ratilal Chauhan

5.Deero Drug Distributors Company,

6.Horn Star Pharmaceuticals Company

7.Hiteshkumar Ratilal Chauhan

8.Malay Mehta

.. Defendants



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Prayer: Civil Suit has been filed under Order VII, Rule 1 of the Code of Civil Procedure read with Order IV Rule 1 of the Original Side Rules of the Madras High Court, Section 2(1)(C)(xvii) read with Section 7 of the Commercial Courts Act, 2015 and Sections 11, 27, 29, 134, 135 Trade Marks Act, 1999 and Section 14, 51, 55 & 62 of the Copyright Act 1957 to pass a judgment and decree on the following terms:

a)a permanent injunction restraining the defendants, their partners, their employees, officers, servants, agents and all others acting for and on their behalf from manufacturing, selling, distributing, exporting, advertising, offering for sale, any products and in any other manner, directly or indirectly, dealing with any products in the name of 'APETAMIL' and 'APITAMUL' or any other similar mark which is deceptively similar to the plaintiff's registered trademarks 'APETAMIL' and 'APETAMIN' amounting to an infringement of the plaintiff's registered trademarks Nos.2931299, 511350 and 4145473 in Class 5;

b)a permanent injunction restraining the defendants, their partners, their employees, officers, servants, agents and all others acting for and on their behalf from manufacturing, selling, distributing, exporting, advertising, offering for sale and in any other manner, directly or indirectly, dealing with any products in the name of 'APETAMIL' and 'APITAMUL' amounting to passing off;

c)a permanent injunction restraining each of the defendants, its partners, directors, proprietors, subsidiaries, affiliates, franchisees, officers, servants, agents, distributors, stockists, representatives, licensees and anyone acting for or on their behalf directly or indirectly,



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as the case may be, from using the trade dress



and



or in any manner whatsoever and from selling, offering for sale, advertising, manufacturing, mentioning on their websites, dealing in any manner whatsoever or otherwise using the lay-out and/or color combination of the trade dress or get-up almost identical to the plaintiff's trade dress amounting to passing off of its trade dress;

d)a permanent injunction restraining each of the defendants, its partners, directors, proprietors, subsidiaries, affiliates, franchisees, officers, servants, agents, distributors, stockists, representatives, licensees and anyone acting for or on their behalf directly or indirectly, as the case may be from performing any actions, especially using artistic works identical to plaintiff's original artistic works amounting to infringement of copyright therein;



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e)a permanent injunction restraining the defendants, their partners, their employees, officers, servants, agents and all others acting for and on their behalf from using impugned mark 'APETAMIIL' and 'APITAMUL' and trade dress



and



in any of the websites, domain names, social media platforms, mobile application and other intermediaries in any language;

f)the defendants be ordered to pay the plaintiff a sum of Rs.1,00,00,000/- (Rupees One crore) as damages for having committing infringement of the plaintiff's registered trademark, passing off trademark and trade dress, infringement of copyright in respect of the plaintiff's artwork, dilution and tarnishment of both trademark and copyright in respect of the mark 'APETAMIN'.



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g)a preliminary decree be passed in favour of the plaintiff directing the defendants to render true and proper accounts of the profits arising out of the amount of sales generated by the defendant in respect of their alleged activities especially sale and export of products bearing the mark 'APETAMIL' and 'APITAMUL' for their business, after the latter have rendered accounts;

h)to grant order of delivery up of any brochures/printed material and/or any material which infringes plaintiff's registered trademarks 'APETAMIN'.

For Plaintiff : M.Reshma Rajagopal

For Defendants : Mr.R.Sathish Kumar
for D4 and D7

J U D G M E N T

The plaintiff and the defendants 2 to 4, 7 and 8 have arrived at a settlement before the Mediation Centre. A mediation report to that effect has also been filed. A Settlement Agreement dated 25.10.2023 has also been enclosed along with the Mediation report. The Settlement Agreement has been signed by the plaintiff, defendants 2 to 4, 7 and 8 and has been counter signed by the respective counsels. The defendants 1, 5 and 6 have already been set exparte by this Court and they have not signed the Settlement Agreement.

ABDUL QUDDHOSE, J.



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2.Interim injunction has also been granted in favour of the plaintiff against the respondents/defendants in O.A. Nos.394 to 398 of 2022 and is still in force.

3.In terms of the Settlement Agreement dated 25.10.2023, the Suit is disposed of. Interim injunction granted in favour of the applicant in O.A. Nos.394 to 398 of 2022 is made absolute. The Settlement Agreement dated 25.10.2023 shall form part of this judgment. Registry is directed to refund the entire Court Fees to the plaintiff. Consequently, connected applications are closed.

08.11.2023

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