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C.S.(Comm. Div.)No.4 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2023

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.S.(Comm. Div.)No.4 of 2023

and

O.A.No.17 of 2023

Athenese-DX (Pvt.) Ltd.,
Module No.407 and 408, IV Floor,
TICEL Bio Park - II,
No.5, CSIR Road, Taramani,
Chennai - 600 113.

... Plaintiff

Vs.

1.Medonica Healthcare Private Limited,
H.No.147, Maharishi Puram,
Behind Amar Ujala Press,
Agra, Uttar Pradesh - 282 007.

2.Dhiraj Gupta

... Defendants

PRAYER: Complaint filed under Order VII Rule 1 of C.P.C. read with Section 7 Commercial Courts Act, 2015 read with Section 27, 29 and 134 of Trade Marks Act, 1999 read with Section 51 and 55 of Copyright Act, 1957 read with Order IV Rule I of Madras High Court Original Side Rules to pass a judgment and decree against the defendants on the following terms:



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(a) a permanent injunction restraining the Defendants by themselves, their men, agents, heirs, legal representatives, successors-in-business, assigns, servants, distributors, retailers, stockists or any one claiming through them from in any manner infringing the Plaintiff's registered Logo Mark Trustline **TRUST**line[®] including trade dress by use of an almost identical and/or similar mark Onestep or its variants or any mark deceptively similar thereto on their goods, packaging, advertising or promotional material, stationery, website/s or any media whatsoever or in any other manner whatsoever;

(b) a permanent injunction restraining the Defendants by themselves, their men, agents, heirs, legal representatives, successors-in-business, assigns, servants, distributors, retailers, stockists or any one claiming through them from in any manner passing off or enabling others to pass off their goods and business as by using/adopting the trade dress and packaging format deceptively similar to that of the Plaintiff mark TRUSTline **TRUST**line[®] either on their goods packaging or in websites, internet domain name, corporate or films, e-publications, stationery and advertising materials or in any other manner whatsoever;

(c) a permanent injunction restraining the Defendants by themselves, their men, agents, heirs, legal representatives, successors-in-business, assigns, servants, distributors, retailers, stockists or any one claiming through them from in any manner infringing the copyright of the Plaintiff in their packaging, professional products photographs as well as content of



promotional/advertisement post with respect to its business or in any other manner whatsoever;

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(d) The Defendants be ordered to surrender to Plaintiff for the purpose of destruction all materials including all the existing stock of the Rapid Test kit cartons carrying the trade dress as set out in the Annexure I herein containing the trade dress or packaging format which is almost identical and/or deceptively similar to Plaintiff's logo mark Trustline **TRUST**line[®] including trade dress and packaging form;

(e) The Defendants be ordered to render true and faithful **accounts** of profits earned by them on account of adoption and use of the logo mark TRUSTline **TRUST**line[®] including the trade dress of the Plaintiff in relation to their goods and business and the Plaintiff undertakes to pay actual court fees after the Defendants rendered its accounts;

(f) The Defendants be directed to pay to the Plaintiff jointly and severally compensation for a sum of Rs.1,25,00,000/- (Rupees One crore and Twenty-Five Lakhs only) for the infringement activities and acts of passing off committed by them;

(g) Award of punitive damages;

(h) for costs of the suit.



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For Plaintiff : Ms.Pooja Jain
for Mr.Giridhar and Sai

For Defendants : D1 and D2 - Set *Ex-parte*

JUDGMENT

This Suit has been filed for infringement of Trade mark and copyright.

2. The plaintiff is the registered proprietor of the trade mark "Trustline". The registration was obtained in the year 2019 and even prior to the said registration, the plaintiff has been using the trade mark since 2016. The plaintiff has disclosed in the plaint, its turnover, which runs to several crores of rupees. The said disclosure is made in paragraph No.8 of the plaint. According to the plaintiff, they came to know in the month of February, 2022 that the defendants have been selling and marketing products in a rapid test kit box adopting the trade mark comprising trade dress and packaging style deceptively similar to that of the plaintiff. According to the plaintiff, the defendants have been stocking and selling the products, particularly "rapid test kit box" using a deceptively similar



trademark as that of the plaintiff and adopting packaging format and trade dress of the plaintiff.

3. The plaintiff has issued cease and desist notice on the defendants. According to the plaintiff, despite the same, the defendants, however, continue to sell and market the products in rapid test kit box adopting the trade mark comprising trade dress and packaging style deceptively similar to those of the plaintiff. In such circumstances, this Suit has been filed, seeking for the following reliefs:

(a) permanent injunction to restrain the defendants or any one claiming through them from in any manner infringing the Plaintiff's registered Logo Mark Trustline **TRUST**line[®] including trade dress by use of an almost identical and/or similar mark Onestep or its variants or any mark deceptively similar thereto;

(b) permanent injunction to restrain the Defendants or any one claiming through them from in any manner passing off or enabling others to pass off their goods and business as by using/adopting the trade dress and



packaging format deceptively similar to that of the Plaintiff mark

TRUSTline **TRUST**line®;

(c) permanent injunction to restrain the Defendants by themselves or any one claiming through them from in any manner infringing the copyright of the Plaintiff in their packaging, professional products photographs as well as content of promotional/advertisement post with respect to its business;

(d) To direct the Defendants to surrender to the Plaintiff for the purpose of destruction all materials including all the existing stock of the Rapid Test kit cartons carrying the trade dress as set out in the Annexure I herein containing the trade dress or packaging format which is almost identical and/or deceptively similar to Plaintiff's logo mark Trustline **TRUST**line® including trade dress and packaging form;

(e) The Defendants be directed to render true and faithful **accounts** of profits earned by them on account of adoption and use of the logo mark TRUSTline **TRUST**line® including the trade dress of the Plaintiff in relation



to their goods and business and the Plaintiff undertakes to pay actual court fees after the Defendants rendered its accounts;

(f) To direct the Defendants to pay the Plaintiff jointly and severally compensation for a sum of Rs.1,25,00,000/- (Rupees One crore and Twenty-Five Lakhs only) for the infringement activities and acts of passing off committed by them;

(g) for costs of the suit.

4. The learned counsel for the plaintiff on instructions would now submit that the plaintiff is not pressing for the relief of damages in the Suit. She has also made an endorsement to that effect in the Court bundle. However, she presses for the other reliefs sought for by the plaintiff in the plaint.

5. The defendants have been set ex-parte by this Court on 23.08.2023. Till date, no application has been filed to set aside the ex-parte order. Oral and documentary evidence has also been let in by the plaintiff before the



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learned Additional Master-III in support of the plaintiff's suit. The plaintiff's authorised representative, Mr.Rex, the Manager of the plaintiff, has been examined as PW.1. He has also filed his proof affidavit in support of the plaintiff's suit. Before the learned Additional Master-III, the plaintiff has filed the following documents which have been marked as Exs.P1 to P25:

<i>Exhibit No.</i>	<i>Nature of Documents</i>
P1	Printout of the certificate of Incorporation of the plaintiff company dated 24.02.2012.
P2	Printout of the fee rates given by Sai Sakthi Printers dated 31.08.2015
P3	Office copy of the purchase order issued by plaintiff to the Sai Sakthi Printers dated 12.10.2016.
P4	Printout of the certificate of Registration of Trademark of the plaintiff company under No.3266345 dated 30.03.2017.
P5	Printout of the certificate of Registration of Trademark of the plaintiff company under No.3266342 dated 16.02.2018.
P6	Printout of the certificate of registration of trademark (TRUSTline) of the plaintiff company under No.3266343 dated 13.05.2019.
P7	Printout of the certificate of registration of trademark of the plaintiff company under No.3266344 dated 30.05.2019.
P8	Original legal proceeding certificate issued by trademark registry dated 04.08.2022.
P9	Printout of the email from plaintiff to the 2nd defendant dated 03.02.2022.
P10	Screen shot of the Whatsapp.
P11	Screen shot of the Whatsapp.
P12	Office copy of the legal notice dated 22.09.2022 along with acknowledgment card and returned cover and also sent through email.



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<i>Exhibit No.</i>	<i>Nature of Documents</i>
P13	Printout of the total sales turn over of the plaintiff's TRUSTline for the years 2017-18, 2018-19, 2019-20, 2020-21, 2021-22.
P14	Printout of the details of expenses for the year 2019-2020.
P15	Printout of the details of expenses for the year 2020-2021.
P16	Printout of the details of expenses for the year 2021-2022.
P17	Certified copy of the auditor's certificate on sales turnover and expenditure dated 13.10.2022.
P18	Printouts of the photograph-Trade of plaintiff's TRUSTline HCV Rapid test kit carton.
P19	Printouts of the photograph-Trade of defendant's onestep HCV Rapid test kit carton.
P20	Printout of the comparison of plaintiff and defendant's trade dress.
P21	Printout of screenshot from Central Drugs Standard Control Organization website.
P22	Original authorization letter dated 05.09.2022.
P23	Original TRUSTline Rapid test kit box and Trustline HCV Ab Rapid test of the plaintiff.
P24	Certified copy of the financial statement of plaintiff for the 5 years 31.03.2017 to 31.03.2022 balance sheet.
P25	Printout of the manufacture authorization given by CTK to the plaintiff dated 07.01.2022. (Since Ex.P25 seems to be photocopy, the learned counsel for the plaintiff has undertaken to produce the original authorisation given by CTK to the plaintiff dated 07.01.2022 at the time of arguments)

6. As seen from the Exhibits marked on the side of the plaintiff, it is clear that the defendants have been selling and marketing products in rapid test kit box adopting the trade mark comprising trade dress and packaging style deceptively similar to those of the plaintiff. It is also seen that the defendants have been stocking and selling the products, particularly rapid



test kit box using a deceptively similar trademark as that of the plaintiff and adopting packaging format and trade dress of the plaintiff. It is also seen that the plaintiff is having a registered trademark, as seen from the certificate of registration which are marked as Exs.P4 to P7.

7. The legal proceedings sought for in terms of the statutory requirements dated 04.08.2022 has also been marked as Ex.P8. As seen from the exhibits, a prior warning was also given to the defendants by the plaintiff through Whatsapp / e-mail. Exs.P9 to P11 confirms the same. A legal notice was also issued by the plaintiff on 22.09.2022 which has been marked as Ex.P12 prior to the filing of the suit, requesting the defendants to cease and desist copying the plaintiff's trademark, logo and trade dress. As seen from the documents which have been marked as Exhibits on the side of the plaintiff, no reply has been sent by the defendants. The plaintiff has also pleaded in the plaint that the defendants did not send any reply to the legal notice dated 22.09.2022 (Ex.P12).

8. The plaintiff has also filed its total sales turnover in respect of its trademark TRUSTline for the years 2017-18, 2018-19, 2019-20, 2020-21,



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2021-22 which confirms that the plaintiff is having a huge turnover and the said printout is marked as Ex.P13. Exs.P14 to P16 are the details of the advertisement expenditure and other expenditures incurred by the plaintiff for marketing its products for the years 2019-20, 2020-21 and 2021-22. The auditor's certificate dated 13.10.2022 confirms the plaintiff's sales turnover and expenditure, which has also been marked as Ex.P17. Ex.P18 is the printout of the photograph-trade of plaintiff's TRUSTline HCV Rapid test kit carton and as seen from the same, the printout of the photograph-trade of defendant's onestep HCV rapid test kit carton is deceptively similar to that of the plaintiff's trademark TRUSTline HCV rapid test kit carton. The printout of the comparison of the defendant's and plaintiff's trade dress, which has been marked as Ex.P20, also confirms that the defendant has copied the plaintiff's trademark, logo and trade dress and the defendant's trademark is deceptively similar to that of the plaintiff. The comparison of plaintiff's and the defendant's trade dress is reproduced hereunder:



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S.No	Plaintiff's Mark	1 st Defendant's Mark
1		
2		
3		
4		



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9. As seen from the comparison table, the defendants have adopted the same colour scheme, combination or getup and the shape of the carton of the plaintiff. If the defendants are allowed to adopt the same colour scheme, combination or getup and the shape of the carton of the plaintiff, the plaintiff will be put to irreparable loss. The overall impression of the plaintiff's mark and the first defendant's mark make it clear that the first defendant has adopted the colour scheme, combination or getup and the shape of the carton of the plaintiff. Any customer will certainly get confused if the first defendant's mark, which is the subject matter of challenge in this Suit is allowed to be sold in the market.

10. Apart from the aforesaid documents, Ex.P21 is the printout of screenshot from Central Drugs Standard Control Organization website, Ex.P22 is the original authorisation letter dated 05.09.2022, Ex.P23 is the original TRUSTline Rapid test kit box and Trustline HCV Ab Rapid test of the plaintiff, Ex.P24 is the certificate copy of the financial statement of the plaintiff for five years from 31.03.2017 to 31.03.2022 and Ex.P25 is the printout of the manufacture authorisation given by CTK to the plaintiff dated 07.01.2022.



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11. The plaintiff has also produced Section 65B certificate in respect of Exs.P1, P2, P4 to P7, P9, P10, P11, P13, P14 to P16, P18 to P21 and P25.

12. The original of Ex.P25 viz., the printout of the manufacture authorisation given by CTK to the plaintiff dated 07.01.2022 has also been produced by the learned counsel for the plaintiff today in open Court and the same is taken on record. Before the learned Additional Master-III, photostat copy of Ex.P25 was filed and the plaintiff had undertaken to produce the original authorisation at the time of arguments. As undertaken by the plaintiff, the original has now been produced today.

13. As seen from the oral and documentary evidence, the plaintiff has proved the suit claim by establishing that the defendants have adopted the same colour scheme, combination or getup and the shape of the carton of the plaintiff. It is evident that the defendants have been selling and marketing products in rapid test kit box adopting the trade mark comprising trade dress and packaging style deceptively similar to those of the plaintiff.



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14. For the foregoing reasons, the relief sought for by the plaintiff except for the relief of damages has to be granted by this Court. Accordingly, the suit claim has to be partly decreed by granting all the reliefs except for the relief of damages, as the plaintiff is not pressing for the same. Therefore, the following reliefs sought for by the plaintiff are granted as prayed for:

(a) permanent injunction restraining the Defendants by themselves, their men, agents, heirs, legal representatives, successors-in-business, assigns, servants, distributors, retailers, stockists or any one claiming through them from in any manner infringing the Plaintiff's registered Logo Mark Trustline **TRUST**line[®] including trade dress by use of an almost identical and/or similar mark Onestep or its variants or any mark deceptively similar thereto on their goods, packaging, advertising or promotional material, stationery, website/s or any media whatsoever or in any other manner whatsoever;

(b) permanent injunction restraining the Defendants by themselves, their men, agents, heirs, legal representatives, successors-in-business,



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assigns, servants, distributors, retailers, stockists or any one claiming through them from in any manner passing off or enabling others to pass off their goods and business as by using/adopting the trade dress and packaging format deceptively similar to that of the Plaintiff mark TRUSTline **TRUST** line[®] either or their goods packaging or in websites, internet domain name, corporate or films, e-publications, stationery and advertising materials or in any other manner whatsoever;

(c) permanent injunction restraining the Defendants by themselves, their men, agents, heirs, legal representatives, successors-in-business, assigns, servants, distributors, retailers, stockists or any one claiming through them from in any manner infringing the copyright of the Plaintiff in their packaging, professional products photographs as well as content of promotional/advertisement post with respect to its business or in any other manner whatsoever;

(d) The Defendants be ordered to surrender to Plaintiff for the purpose of destruction all materials including all the existing stock of the Rapid Test kit cartons carrying the trade dress as set out in the Annexure I



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herein containing the trade dress or packaging format which is almost identical and/or deceptively similar to Plaintiff's logo mark Trustline **TRUST**line[®] including trade dress and packaging form;

(e) The Defendants be ordered to render true and faithful **accounts** of profits earned by them on account of adoption and use of the logo mark TRUSTline **TRUST**line[®] including the trade dress of the Plaintiff in relation to their goods and business.

15. In so far as the relief No.(f) for damages is concerned, the same is dismissed as not pressed.

16. The defendants are directed to pay the cost of the suit. Consequently, the connected application is closed.

17.10.2023

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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List of Witness examined on the side of the Plaintiff:-

Mr.Rex (PW1)

List of the Exhibits marked on the side of the Plaintiff:-

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