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C.S. (COMM. DIV.) No.106 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.S. (COMM. DIV.) No.106 of 2021

TIL. Healthcare Private Limited
Represented by its Authorised Representative
Mrs. Shabeena Thahseen ... Plaintiff

-Vs-

1. Nucrest Pharma Private Limited
Represented by its Director,
Vikram Ashok Panjwani
303, 3rd Floor, AHCL Homes,
Near Shimpoli Telephone Exchange,
New Link Road Borivali (W)
Mumbai- 400 092,
Maharashtra.

2. Sangeeta Pharma Private Limited
Represented by its Director,
Dilip Janardhan Kurangale
Plot No. A35, Malegon MIDC,
Sinmar, Nashik 422 103,
Maharashtra
Also, at SB-170, High Street Cum Corporate Centre,
Thane -400 607, Maharashtra.

3. Channel Pharmaceuticals Limited



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Represented by its Director,
Sir Nnamdi Henry Obi
No.1, Nimo Street, Fegge Onitsha,
Anambra-434232 Nigeria

4. Embassy Pharmaceuticals and Chemicals Ltd.

Rep. by its Director,
Nnamdi Henry Obi
19, Rosonwo St. R. Aguda,
Stleve, Lagoz

Also at

41, Ademola Street,
S/w Ikoyi

Lagos,

Nigeria *

* 4th defendant impleaded as per order dated 11.07.2022

in I.A. No.1585 of 2022.

...Defendants

PRAYER : PLAINT FILED UNDER ORDER VII RULE 1 CPC 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 TRADEMARKS ACT, 1999 AND SECTION 14, 51, 55 & 62 OF THE COPYRIGHT ACT 1957 to grant 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 'APETAMED' which is deceptively similar or any other similar mark to

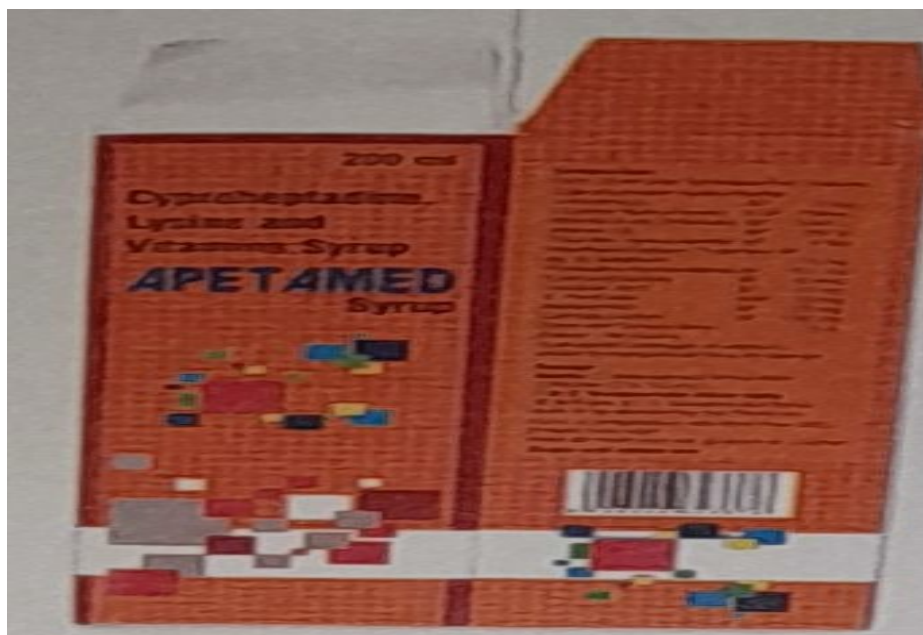


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the Plaintiff's registered trademark "APETAMIN" amounting to an infringement of the Plaintiff's registered trademarks Nos 511350 and 4145473 in Class 5,

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 'APETAMED' 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, as the case may be, from using the trade dress



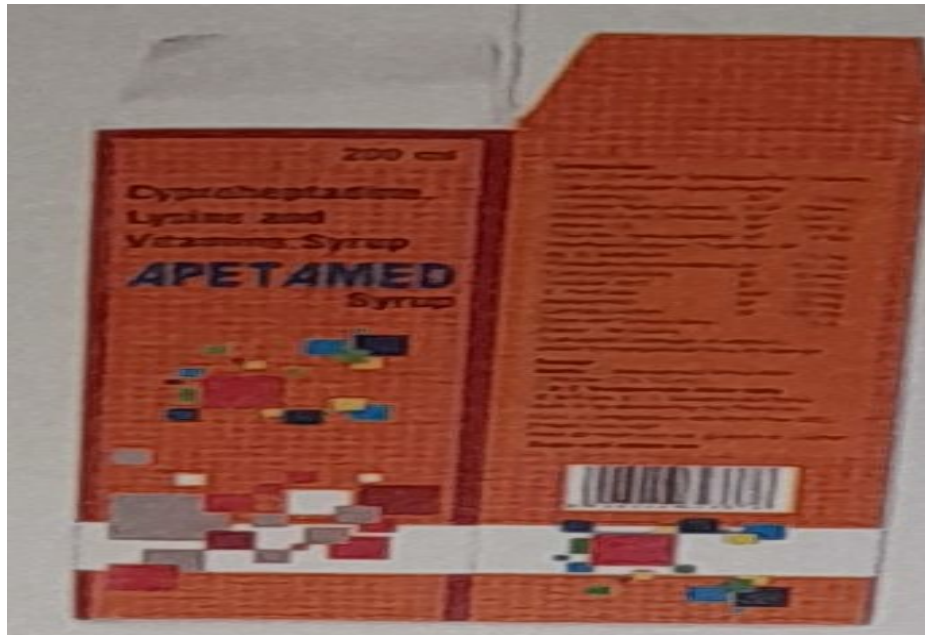


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or in any manner whatsoever, and from selling, offering for sale, advertising, manufacturing, mentioning on their websites, dealing in any manner whatsoever or otherwise using the lay-out and /or color combination of the trade dress or get-up almost 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.

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 "APETAMED" and trade dress 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 plaintiffs 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".

g. A preliminary decree be passed in favour of the Plaintiff directing the Defendant to render true and proper accounts of the profits arising out of the amount sales generated by the defendant in respect of



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their alleged activities especially sale and export of products bearing the mark 'APETAMED' for their business, after the latter have rendered accounts;

h. To grant order of delivery up of any brochures/ printed material and/or material which infringes Plaintiffs' registered trademarks 'APETAMIN'

i. Costs and such other relief as this Hon'ble Court may deem fit, in circumstances of the case, in the interests of justice and equity.

For Plaintiff : Mr.M.S. Bharath

For Defendants : Mr.Manish Saurastri for D1
Mr.R. Sathish Kumar for D2
D3 & D4 – Set exparte

JUDGMENT

The plaintiff and the 1st defendant have arrived at an amicable settlement, as seen from the Memorandum of Compromise, dated 08.02.2024 filed before this Court. The 2nd defendant is the Manufacturer of the subject product. The learned counsel for the 2nd defendant also submits that the 2nd defendant will bind themselves as per the Memorandum of Compromise, dated 08.02.2024 entered into between the plaintiff and the 1st defendant. The 3rd and 4th defendants have already



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been set exparte by this Court.

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2. After recording the undertaking given by the 2nd defendant as well as the Memorandum of Compromise, dated 08.02.2024 entered into between the plaintiff and the 1st defendant, this suit is decreed in terms of the said Memorandum of Compromise, by making it clear that the 2nd defendant is bound by the terms and conditions contained in the Memorandum of Compromise entered into between the plaintiff and the 1st defendant. The remaining defendants viz., defendants 3 and 4 are also bound by the Memorandum of Compromise, dated 08.02.2024. The Memorandum of Compromise has been signed by the plaintiff and the 1st defendant and counter signed by their respective counsels. The Memorandum of Compromise, dated 08.02.2024 entered into between the plaintiff and the 1st defendant shall form part of this judgment and decree.

12.02.2024

Index: Yes/ No
Speaking order / Non speaking order
Neutral citation : Yes / No
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ABDUL QUDDHOSE, J.

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