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C.S (Comm. Div.) No.331 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2024

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.S (Comm. Div.) No.331 of 2023

Apex Laboratories Pvt. Ltd.,
29, III Floor, SIDCO Garment Complex,
Guindy, Chennai - 600 032
Rep.by its Authorised Signatory,
D. Jude F.L.S. Durai Pandian

... Plaintiff

Versus

1. Antex Pharma Pvt., Ltd.,
Plot No.414, EPIP, Sector-53,
Phase-3, Industrial area, Kundli,
Sonipat, Haryana – 131028.

2.GEOFFREY MANNERS,
Plot No.414, First Floor,
EPIP, Phase-1, Sector-53,
HSIIDC, Kundli,
Sonipat, Haryana – 131028.

3.PROGRESSIVE LIFESCIENCES PVT. LTD.,
Latherdeva Hoon (Manglour Jhabrera Road),
Roorkee, Haridwar,
Uttarakhand – 247656.



C.S (Comm. Div.) No.331 of 2023

4.CASPIAN PHARMACEUTICALS,

Khasra No.932-933/726/86, Suketi Road,

Mauza Ogli, Kala AMB, Tehsil Nahan,

Srimaur, Himachal Pradesh – 173030.

... Defendants

Prayer: The plaint is filed under Order VII Rule 1 of the Code of Civil Procedure, and Order IV Rule 1 of the Original Side Rules r/w Sections 27, 28, 29, 134, 135 of the Trademarks Act, 1999 and Sections 51, 55 and 62 of the Copyrights Act, 1957, pleaded to grant a judgment and decree on the following terms:-

a) Permanent injunction restraining the Defendant, 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 under No.487453 in Class 5 and other registered Trademarks by using a deceptively similar Trademark GEO ZINCOVIT or any other trademark deceptively similar to the plaintiff's registered trademark or in any other manner whatsoever;

b) A permanent injunction restraining the Defendant, 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



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C.S (Comm. Div.) No.331 of 2023

Plaintiff's registered copyright under No.A54243/1997 in colour scheme, get up and layout for their GEO ZINCOVIT for any tablets, syrup, drops etc., or in any other manner whatsoever;

c) A permanent injunction restraining the Defendant, 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 Defendant' products under the Trademark GEO ZINCOVIT as and for the plaintiff's products by manufacturing, selling, or offering to sell, distributing, 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;

d) The Defendant 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 GEO ZINCOVIT label or any mark deceptively similar to plaintiffs' trademark and artistic work ZINCOVIT label;

e) A preliminary decree be passed in favour of the Plaintiffs directing the Defendant to render account of profits made by use of trademark and copyright in the artistic work GEO ZINCOVIT label and a final decree be passed in favour of the Plaintiffs for the amount of profits



C.S (Comm. Div.) No.331 of 2023

thus found to have been made by the Defendant after the latter have rendered accounts;

f) for costs of the suit;

For Plaintiff : Mr.R.Sathish Kumar

For Defendants : Set Ex-parte on 18.04.2024

JUDGMENT

This suit is filed for permanent injunction from infringing the plaintiff's registered Trademarks, committing acts of copyright infringement and from passing off and/or enabling others to pass off the Defendant' products; for ordering the Defendant to surrender to Plaintiff for destruction of all products, labels, cartons, dyes, blocks, moulds, screen prints, packing materials and other materials bearing the trademark GEO ZINCOVIT label or any mark deceptively similar to plaintiff's trademark and artistic work ZINCOVIT label; for preliminary decree in favour of the Plaintiff directing the Defendant to render account of profits made by use of trademark and copyright in the artistic work GEO ZINCOVIT label and



C.S (Comm. Div.) No.331 of 2023

for a final decree in favour of the Plaintiff for the amount of profits thus found to have been made by the Defendant after the latter have rendered accounts and also for costs of the suit.

2. The averments made in the plaint is that the Plaintiff is a company incorporated under the Companies Act in the year 1978 to carry on business of pharmaceutical and other allied businesses. In the course of their business, they have adopted several trademarks and applied the same to various pharmaceutical and nutraceutical products manufactured by them. One such trademark adopted by the plaintiff is ZINCOVIT in the year 1988 and used since 1990. The plaintiff has applied for registration of the trademark ZINCOVIT under No.487453 in Class 5. The said registration has been granted with effect from 16.3.1988 and the same is valid and subsisting till 16.3.2029. The trademark above was registered for medicinal and pharmaceutical preparations. Further, the plaintiff also has registrations for the trademark ZINCOVIT carton and ZINCOVIT inner



C.S (Comm. Div.) No.331 of 2023

WEB COPY

carton in Class 30 for Nutraceutical and Food Supplement. The plaintiff had also adopted a unique packaging for its products under the trademark ZINCOVIT with distinctive features. The said packaging qualifies as a copyright also and has also been registered by the Copyright office under No. A-54243/1997 for ZINCOVIT Syrup. The plaintiff was using the device of fruits and vegetables as their artistic work for its ZINCOVIT SYRUP and ZINCOVIT DROPS. The Plaintiff also has copyright registrations for the 7 colour strip labels also. The plaintiff has been phasing out their old fruits and vegetables label and has been using the 7 Colour strip label across all its products since 2014. However, the plaintiff still have a subsisting registered copyright over the said fruits and vegetables label/carton also. Since 1990, for the last 33 years, they have been using ZINCOVIT honestly, openly and continuously. The said trademark has also acquired tremendous reputation and goodwill in the market among the members of the trade and public. The product is



C.S (Comm. Div.) No.331 of 2023

WEB COPY

essentially a multi-vitamin supplement given to develop immunity. In fact, it may not be an exaggeration to state that every Indian household would be aware of the plaintiff's ZINCOVIT. Further, the plaintiff's product ZINCOVIT was one of the highest selling products in India during the COVID-19 Pandemic and has in fact become a well-known trademark. The Plaintiff company is doing extensive business and they are the market leaders in the particular segment. The plaintiff's ZINCOVIT products are sold as drops, syrups, tablets and capsules and that they have extended the product portfolio of ZINCOVIT brand into nutraceuticals and health supplements also in the year 2005 by obtaining necessary licenses from the appropriate authorities. The trademark ZINCOVIT has been etched in the memory of people of India so widely as to render the trademark ZINCOVIT a well-known trademark.

(ii) The Plaintiff company is also advertising their products under the trademark with the distinctive copyright for ZINCOVIT in several



C.S (Comm. Div.) No.331 of 2023

accepted means in the pharmacological and nutraceutical circles. The publications in pharma guides and other modes have generated tremendous amounts of goodwill and reputation in the market. The product reputation has increased tremendously by repeated recommendations by doctors and medical practitioners which also prove that the products are of good quality and that that they have a huge and dedicated sales team which constantly monitor for and send feedback regarding the availability of products with identical or similar names to that of ZINCOVIT. Several actions have been taken against manufacturers using trademarks identical or similar to the plaintiff's registered trademark ZINCOVIT. The trademark ZINCOVIT is one of the most popular and well-known trademarks and have been copied time and again by several unscrupulous manufacturers and the plaintiff have been taking action against them regularly.

(iii). While things stood thus in December 2023, they found that there were products with the trademark GEO ZINCOVIT which was being



C.S (Comm. Div.) No.331 of 2023

WEB COPY

manufactured and sold in several markets across India. Upon enquiries it was revealed that the 1st defendant markets and the 2nd defendant is the manufacturer of the said products under the trademark GEO ZINCOVIT tablets with the deceptively similar fruits label as that of the plaintiff. The malafide and illegal attempts of the defendants are further seen from the fact that the nearly identical packaging is also shown to be manufactured by the 3rd defendant and marketed by the 2nd defendant in some packagings. In cases of tablets, using the identical trademark GEO ZINCOVIT, the 4th defendant is shown as the manufacturer and the 1st defendant is shown as the marketer of the said products. interconnected and are jointly liable for all acts of infringement of Thus, all the four defendants are trademark, infringement of copyright and passing off. Apart from all these defendants, the common entity in all these product packaging is one "Elder Wellness", whose address or constitution is not found in the packaging at all nor the plaintiff was able to find an entity



C.S (Comm. Div.) No.331 of 2023

matching the said description upon their enquiries. The plaintiff states that their products bearing the trademark ZINCOVIT has been one of the best selling products for several years and hence the activities of the defendant would cause and is causing tremendous hardship and prejudice and thus, the plaintiff has no option but to approach this Court.

(iv). The product GEO ZINCOVIT is identical to the plaintiff's product viz., they are health supplements. The trademarks are phonetically identical with GEO ZINCOVIT and ZINCOVIT. The product carton of the defendant is also similar with the old fruits and vegetables label as used by the plaintiff. The plaintiff's product ZINCOVIT with the said fruits and vegetables label has been in the market for several years for more than two decades and has acquired tremendous reputation and goodwill. Further, the trade and public have always identified the product ZINCOVIT with the said labels. The defendants have clearly adopted the identical trademark GEO ZINCOVIT and the device of the fruits and vegetables label only



C.S (Comm. Div.) No.331 of 2023

with the malafide intention to copy the plaintiff and thereby sell their GEO ZINCOVIT products and earn profits by unjust means. It therefore becomes necessary and just to protect the plaintiff's intellectual property rights over their trademark ZINCOVIT and the labels. The defendants have deliberately and knowingly adopted an almost identical trademark GEO ZINCOVIT and has also adopted an identical label for their products which clearly shows that they are aware of the plaintiff's products and have deliberately chosen to copy the plaintiff's trademark and copyright in the artistic work. The clear and slavish imitation of the plaintiff's trademark and the label cannot be a mere coincidence. The defendants have adopted the classic means to copy their product by introducing cosmetic changes while retaining the overall similarity between the two products by deceptive means.

(v). The adoption of the fruits label as part of their artistic work was completely arbitrary. Thus, the identical adoption by the defendants for



C.S (Comm. Div.) No.331 of 2023

WEB COPY

their products is clearly based on the plaintiff's product packaging. The defendants have made deliberate but minor modifications to the label like the fruits device label and the trademark GEO ZINCOVIT with a view to set up a defence to their wrongful acts. The defendants have adopted their labels by keeping the plaintiff's labels in mind or their hand and are trying to sail as close as possible to the plaintiff's ZINCOVIT products. The trademark GEO ZINCOVIT of the defendant is phonetically and visually almost identical to the plaintiff's ZINCOVIT. The defendants have deliberately added a prefix GEO only to set up improbable defence and escape liability which is another indication of the fraudulent conduct of the defendant. However, the said change has no implication either in law or facts. The plaintiff is also advised to state that such minor changes to the essential features of the trademarks are not sufficient to distinguish the two trademarks when the essential feature is copied. The products involved are identical viz., health supplements. Further, the products are multivitamin



C.S (Comm. Div.) No.331 of 2023

preparations prescribed for people who are weak for their immunity development and is generally taken along with other medicines to reduce the effect of antibiotics and is recommended for immune deficiency.

(vi). The plaintiff's product ZINCOVIT was much sought after during the COVID-19 pandemic due to its ZINC content and has been one of the largest selling products in the segment throughout India. They have highly sophisticated manufacturing units for manufacturing their products whereas they are unaware of the quality of the ingredients and facilities that are used by the defendant. There is every possibility of confusion and deception in the mention loss of minds of the public not to reputation and goodwill to the plaintiff. To protect their trademark, copyright and also their market and the resultant confusion caused to the general public, the plaintiff has no other option but to file the instant suit and permanently restrain the defendant from continuing their illegal activities.

(vii). Any purchaser having a vague recollection of the features of



C.S (Comm. Div.) No.331 of 2023

the plaintiff would be misled and deceived when the defendant's products are offered/ available. The prominent use of fruits label in their label coupled with a deceptively similar trademark GEO ZINCOVIT would make confusion inevitable. The customers would not make a through scrutiny of the trademark when they see a familiar looking label and the initial interest on the defendant's products would wean away the plaintiff's customers to the defendant thereby causing monetary and customer loss to the plaintiff. Further, the members of the trade would assume that the fruits label and the trademark GEO ZINCOVIT also emanate from the plaintiff.

(viii). The defendants have deliberately and knowingly copied the colour scheme, get and layout of the plaintiff's copyright in the artistic work labels. The plaintiff has got both registered trademark as well as registered copyright besides common law rights of passing off based on their long prior user. Since the intention of the defendant is apparent as stated above, the plaintiff is filing the instant suit. The defendant who is



C.S (Comm. Div.) No.331 of 2023

well aware of the rights of the plaintiff is making a blatant and deliberate decision to copy the plaintiff's trademark and label. The defendant is using an identical trademark GEO ZINCOVIT which is phonetically, visually and structurally very similar to the plaintiff's registered trademark ZINCOVIT. The plaintiff being the registered proprietor of the trademarks under No.487453 in class 5 for pharmaceutical and medicinal preparations and in Class 30 for nutritional and food supplements under Nos.2158593, 2158594, 2158595 and is entitled to prevent the defendant from copying the same by using a deceptively similar trademark GEO ZINCOVIT. The defendant is liable to be permanently restrained from infringing the plaintiff's aforesaid registered trademark.

(ix). The plaintiff is the registered proprietor of the copyright in the artistic work over the fruits and vegetables label used in packaging of ZINCOVIT syrup products under No.A-54243/1997. The defendant has made a substantial reproduction of the said label by making minor



C.S (Comm. Div.) No.331 of 2023

WEB COPY

modifications in details to escape the liability. The adoption of identical white background for the label and the fruits and vegetables label and the use of the identical blue lettering for the trademarks clearly point to the fact that the adoption of the defendant is wilful and deliberate. The defendant has retained all the essential features of the plaintiff's labels and the intention of the defendant in trying to sail as close as possible to the defendant is crystal clear. The defendant is guilty of infringement of copyrights in the artistic work of the plaintiff and are liable to be permanently restrained by this Court.

(x). The defendants have no manner of right to continue using the said trademark or artistic work for their products. The plaintiff is the prior adopter and user of the trademark having used the same since 1990 whereas, the defendants have used their products only recently. The defendant is passing off his products as and for the products of the plaintiff and is also enabling others to do so. The defendant is trading upon the



C.S (Comm. Div.) No.331 of 2023

goodwill and reputation of the plaintiff which is very clear from the aforesaid illegal activities. The defendant is liable to be restrained from using any label which is identical or deceptively similar to the plaintiff's ZINCOVIT labels for their tablets or in any other form whatsoever along with their trademark GEO ZINCOVIT.

(xi). The plaintiffs have suffered and continue to suffer by the defendant's use of GEO ZINCOVIT labels, irreparable loss and damages to their reputation and goodwill, which cannot be compensated in pecuniary terms. The plaintiffs' sales have been affected adversely by the wrongful activities of the Defendant. Unless this Court restrain the Defendant by an order of permanent injunction from manufacturing, selling products under the trademark GEO ZINCOVIT and also the use of 7 colour label for their packaging which are identical to the Plaintiffs' trademark and Copyright in the artistic work ZINCOVIT, the Defendant would further continue with their wrongful activities and cause harm to the business, sale and



C.S (Comm. Div.) No.331 of 2023

reputation of the Plaintiff which cannot be compensated in pecuniary terms.

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(xii). The Plaintiffs have suffered substantial loss in their sales, in view of the Defendant illegal activities. On accounts being taken, the Defendant would be liable to pay damages to the tune of several lakhs of rupees. The plaintiffs undertake to pay the actual court fee upon determination of the profits made by the defendant by use of the trademark GEO ZINCOVIT and artistic work with the identical color combination, get up and layout.

(xiii). The Plaintiffs are entitled to delivery up and destruction of all products, labels, dyes, blocks, plates, moulds, screen prints, packing materials, advertising materials, and other materials bearing the infringing trademark and artistic work in the label for GEO ZINCOVIT products which are a substantial reproduction of Plaintiffs' trademark and copyright in the artistic work ZINCOVIT products. Therefore, the instant suit is for an injunction restraining the defendant from infringing the plaintiffs



C.S (Comm. Div.) No.331 of 2023

registered trademark ZINCOVIT, registered copyright in the artistic work ZINCOVIT and for passing off the defendant's products under the trademark GEO ZINCOVIT as and for the plaintiff's ZINCOVIT.

2. Since the defendants had not filed the written statement within the stipulated time, the defendants were set ex-parte by this Court on 18.04.2024.

3. In order to substantiate the case of the plaintiff, one N.Krishnan, Senior General Manager -Finance of the plaintiff company was examined as P.W.1 and he has reiterated the averments made in the plaint and marked 10 documents as Ex.P.1 to Ex.P.10 in which, Ex.P.1 is the Board resolution in favour of P.W.1, dated 08.04.2024; Ex.P.2 is the Photocopy of the Trademark Registration Certificate of the Plaintiff under 487453 in Class 5 for ZINCOVIT along with its latest renewal dated 16.03.1988, Ex.P.3 is



C.S (Comm. Div.) No.331 of 2023

the Photocopy of the Letter from the Director of Drugs Control Authority to the Plaintiff dated 26.04.2012; Ex.P4 is the Photocopy of the Food License obtained by the Plaintiff dated 04.08.2005; Ex.P5 is the Photocopy of the Copyright Registration Certificate in favour of the Plaintiff under No.A-54243/1997 dated 22.10.1997; Ex.P6 is the Photocopy of the Trademark Registration Certificate of the Plaintiff under No.2158593 in Class 30 for ZINCOVIT along with its latest renewal dated 13.06.2011; Ex.P7 is the Trademark Registration Certificate of the Plaintiff under No.2158594 in Class 30 for ZINCOVIT along with its latest renewal dated 13.06.2011; Ex.P8 is the Photocopy of the Sample invoices for the sale of ZINCOVIT Syrup, Drops, Tablets by the Plaintiff from 1995 onwards; Ex.P.9 is the photocopy of the Plaintiffs primary tablet carton with the fruits and vegetables and the present 7 coloured label; and Ex.P.10 is the Defendant GEO ZINCOVIT cartons with fruits label.



C.S (Comm. Div.) No.331 of 2023

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4. On a perusal of the averments made in the plaint, the proof affidavit filed by P.W.1 and also the documents marked on the side of the plaintiff, this Court finds that the plaintiff has proved its case. Therefore, the suit is decreed as prayed for with cost.

26.04.2024

(1/2)

List of witnesses examined on the side of the plaintiff -1 witness

N.Krishnan- P.W.1

List of documents marked on the side of the plaintiff- 10 documents

S.No.	Exhibits	Date	Description of Marked Documents
1	Ex.P.1	08.04.2024	the Board resolution in favour of P.W.1
2	Ex.P.2	16.03.1988	Photocopy of the Trademark Registration Certificate of the Plaintiff under 487453 in Class 5 for ZINCOVIT along with its latest renewal. (Original seen and returned, The learned counsel for the plaintiff undertakes to produce the original before the Court)



C.S (Comm. Div.) No.331 of 2023

S.No.	Exhibits	Date	Description of Marked Documents
3	Ex.P.3	26.04.2012	Photocopy of the Letter from the Director of Drugs Control Authority to the Plaintiff
4	Ex.P.4	04.08.2005	Photocopy of the Food License obtained by the Plaintiff. (Original seen and returned. The learned counsel for the plaintiff undertakes to produce the original before the Court)
5	Ex.P.5	22.10.1997	Photocopy of the Copyright Registration Certificate in favour of the Plaintiff under No.A-54243/1997. (Original seen and returned. The learned counsel for the plaintiff undertakes to produce the original before the Court)
6	Ex.P.6	13.06.2011	Photocopy of the Trademark Registration Certificate of the Plaintiff under No.2158593 in Class 30 for ZINCOVIT along with its latest renewal (The learned counsel for the plaintiff states that it is mentioned in the Trademark Registration Certificate is not to be used for any Legal Proceedings. Therefore, the Original Legal Use Certificate Produced).
7	Ex.P.7	13.06.2011	Trademark Registration Certificate of the Plaintiff under No.2158594 in Class 30 for ZINCOVIT along with its latest renewal (The learned counsel for the plaintiff states that it is mentioned in the Trademark Registration Certificate is not to be used for any Legal Proceedings. Therefore, the Original Legal Use Certificate Produced).



C.S (Comm. Div.) No.331 of 2023

S.No.	Exhibits	Date	Description of Marked Documents
8	Ex.P.8		Photocopy of the Sample invoices for the sale of ZINCOVIT Syrup, Drops, Tablets by the Plaintiff from 1995 onwards.
9	Ex.P.9		photocopy of the Plaintiffs primary tablet carton with the fruits and vegetables and the present 7 coloured label. (Original seen and returned, the learned counsel for the plaintiff undertakes to produce the original before the Court)
10	Ex.P.10		Defendant GEO ZINCOVIT cartons with fruits label.

List of witnesses examined on the side of the defendants-NIL

List of documents marked on the side of the defendants – NIL

26.04.2024

(2/2)

Index : Yes / No

Speaking Order : Yes / No

Neutral Case Citation : Yes/No

Ksa-2



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C.S (Comm. Div.) No.331 of 2023

P.VELMURUGAN. J.

Ksa-2

C.S (Comm. Div.) No.331 of 2023

26.04.2024