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C.S.No.737 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2024

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.S.No.737 of 2018

M/s.Indo French laboratories Ltd.,

No.12, 66th Street,

11th Sector, K.K.Nagar,

Chennai - 600 078.

Rep. by its Director Ms.Ianthy Fernandez

... Plaintiff

Vs.

M/s.Rescuers Life Sciences Ltd.,

131-132, EPIP, Phase - 1, Jharmajri.,

Baddi, Distt.Solan,

Himachal Pradesh - 173 205.

Rep. by its Director Mr.Paramjit Arora

... Defendant

PRAYER: Complaint filed under Order VII Rule 1 of C.P.C. read with Order IV Rule I of the High Court Original Side Rules read with Sections 27, 28, 29, 134 and 135 of the Trade marks Act, 1999, Sections 51, 54, 55 and 62 of the Copyrights Act, 1957 and Section 7 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, No.4 of 2016 for the following reliefs:

(a) A permanent injunction restraining the Defendant by itself, its Directors, affiliates, manufacturers, distributors, stockists, marketers, servants, agents, wholesalers, retailers, legal representatives, successor in business or any other person claiming under it from in any manner



manufacturing, selling, offering for sale, stocking, trading, advertising directly or indirectly dealing in medicinal and pharmaceutical preparations infringing Plaintiff's registered trademark REJUCALCIUM by use of an identical mark REJUCALCIUM or any mark deceptively similar to Plaintiff's registered trademark REJUCALCIUM or in any other manner whatsoever;

(b) A permanent injunction restraining the Defendant by itself, its Directors, affiliates, manufacturers, distributors, stockists, marketers, servants, agents, wholesalers, retailers, legal representatives, successor in business or any other person claiming under it from in any manner manufacturing, selling, offering for sale, stocking, trading, advertising directly or indirectly dealing in medicinal and pharmaceutical preparations under the REJUCLACIUM label/packaging that is identical to the label/packaging of the Plaintiff label/packaging thereby infringing the Plaintiff's copyright in their distinctive REJUCALCIUM label/packaging or any other label identical and/or deceptively similar as that of the Plaintiff's mark REJUCALCIUM label/packaging in any other manner whatsoever;

(c) A permanent injunction restraining the Defendant by itself, its Directors, affiliates, manufacturers, distributors, stockists, marketers, servants, agents, wholesalers, retailers, legal representatives, successor in business or any other person claiming under it from in any manner manufacturing, selling, offering for sale, stocking, trading, advertising directly or indirectly dealing in medicinal and pharmaceutical preparations under the trademark REJUCALCIUM and label/packaging or any other trademark and/or



label/packaging that is identical and/or deceptively similar as that of the Plaintiff's mark REJUCALCIUM and label/packaging so as to pass off the Defendant's medicinal preparations as and for the medicinal preparations of the Plaintiff and/or in any other manner whatsoever;

(d) the Defendant be ordered to pay to the Plaintiff a sum of Rs. 10,00,000/- as damages for committing acts of infringement against Plaintiff's registered trademark, infringement of copyright in label/packaging so as to pass off its products as and for the Plaintiff's products;

(e) The Defendant be ordered and decreed to deliver up for destruction to the Plaintiff all the preparations, dies, blocks, labels, packaging either filled or empty, brochures, leaflets, pamphlets, hand bills, hoardings, wall posters, calendars, carry bags, stationery items and such other sales promotional materials bearing and/or containing the impugned trademark REJUCALCIUM and label/packaging;

(f) A preliminary decree be passed in favour of the Plaintiff directing the Defendant to render accounts of profits made by it by use of the trademarks REJUCALCIUM and label/packaging which is identical and/or deceptively similar to the Plaintiff's mark and label/packaging and a final decree be passed in favour of the Plaintiff for the amount of profits found to have been made by the defendants after the latter has rendered accounts;

(g) For costs of the entire proceedings.



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For Plaintiff : Mr.S.Subashiny
for Mr.A.Ashok Sankar Karthikeyan

For Defendant : Set *ex-parte*

JUDGMENT

The suit has been filed for infringement of trademark, copyright and passing off. The plaintiff has also sued the defendant for damages. The defendant has already been set *ex-parte* by this Court's order dated 30.10.2023.

2. The plaintiff claims to be a leading manufacturer of pharmaceutical products. The plaintiff and the defendant are from the very same parent company who owes its origin in Dijon, France. According to the plaintiff, in the year 1950, the plaintiff's predecessor set up its own factory in India and went ahead in establishing Indo French Laboratories in the year 1962.

3. The plaintiff has been manufacturing and marketing medicinal products. In order to market its calcium supplements, the plaintiff's predecessor in title adopted the trademark 'REJUCALCIUM' which



according to the plaintiff is unique and arbitrary trademark.

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4. According to the plaintiff, the mark 'REJUCALCIUM' was adopted as early as in the year 1941 and has been associated with the plaintiff for time immemorial. According to the plaintiff, they have been using the same label for 'REJUCALCIUM' for the past several decades in respect of its export to Sri Lanka. The plaintiff has obtained registration for its trademark 'REJUCALCIUM' under registration No.518736 under Class 5 and the same is valid and subsisting till 20.10.2030.

5. According to the plaintiff, in the year 2004, the plaintiff and one of its divisions were involved in manufacture and marketing of medicinal products under the trademark 'REJUCALCIUM'. According to the plaintiff, difference of opinion arose between the Directors of plaintiff, who are brothers and they have decided to part ways.

6. The plaintiff and one of its divisions decided to demerge and the said division was incorporated as Indo French Healthcare Ltd. A demerger scheme was duly sanctioned by this Court vide its order dated 25.03.2004



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and by virtue of the said demerger scheme, the plaintiff is entitled to use the mark 'REJUCALCIUM' for liquid formulations in India and retain the right to export both tablet and liquid formulations to Sri Lanka.

7. According to the plaintiff, 'REJUCALCIUM' has come to be associated only with the plaintiff and their label has been generally regarded as unique and distinct label with a distinct colour combination and placement of feature. According to the plaintiff, their packaging is a unique packaging. The plaintiff claims that they spend huge amount of money for marketing their product under the trademark 'REJUCALCIUM'.

8. According to the plaintiff, their medical formulations under the trademark 'REJUCALCIUM' has been marketed and sold on an extensive scale, including in the city of Chennai.

9. According to the plaintiff, in August, 2018, the plaintiff came across products bearing an identical trademark 'REJUCALCIUM' and identical artistic work in the label / packaging as that of the label being exported to Sri Lanka from India. According to the plaintiff, on



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investigation, they came to know that it is the defendant, who is manufacturing and exporting calcium supplements to Sri Lanka.

10. According to the plaintiff, immediately after coming to know about the infringement act committed by the defendant, they had issued a cease and desist notice on the defendant dated 29.08.2018. According to the plaintiff, despite receipt of the cease and desist notice, the defendant neither chose to send a reply nor has stopped using the plaintiff's registered trademark 'REJUCALCIUM'.

11. The plaintiff claims that they are the prior user of the mark 'REJUCALCIUM' and the defendant is deliberately attempting to ride over the reputation and goodwill of the plaintiff and they sell the products and make unlawful gains. According to the plaintiff, the product sold under the trademark 'REJUCALCIUM' by the plaintiff are used by a large part of the population in India and Sri Lanka. Under the aforementioned circumstances, the suit has been filed.



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12. Before the learned Additional Master IV, the plaintiff's witness Mr.S.Raghunathan, who is the authorized representative of the plaintiff was examined. He has also filed a proof affidavit reiterating the contents of the plaint. Through PW1, the following documents were marked as exhibits:

"Ex.P1 is the original board resolution dated 01.02.2024.

Ex.P2 is the certified copy of the entry relating to the register concerning the registration under No.518736.

Ex.P3 is the photocopy of the order dated 25.03.2004 passed by this Court.

Ex.P4 is the photocopy of the invoices proving the use of the Mark REJUCALCIUM. (Original is produced, compared and returned to the plaintiff's counsel.)

Ex.P5 is the photocopy of the Import-Export code certificate under IEC No.0492014396. (Original is produced, compared and returned to the plaintiff's counsel.)



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Ex.P6 is the original legal notice dated 29.08.2018 issued to the defendant along with acknowledgment.

Ex.P7 is the scanned images of the plaintiff's product under the mark REJUCALCIUM.

Ex.P8 is the scanned images of the defendant's product under the mark REJUCALCIUM.

65B affidavit is filed for Ex.P7 and Ex.P8."

13. As seen from Ex.P2, the plaintiff has obtained trademark registration for its trademark 'REJUCALCIUM' on 20.10.1989 for the trademark 'REJUCALCIUM'. The demerger scheme (Ex.P3) also specifically states that the mark used by the plaintiff are entitled for liquid formulations in India and retained the right to export to Sri Lanka. The plaintiff has also categorically pleaded in the plaint that they have enjoyed a good reputation and goodwill from their consumers in respect of the product sold under the registered trademark 'REJUCALCIUM'. They have also stated that the public associate 'REJUCALCIUM' only with the plaintiff. They have also stated that only in the year 2018, they came to know that the defendant is using the



very same trademark 'REJUCALCIUM' and has adopted an identical label to that of the plaintiff and is attempting to ride over the reputation of the plaintiff and make unlawful gains.

14. The plaintiff also claims that they and their predecessors have been using the mark 'REJUCALCIUM' since the year 1941. According to them, the mark 'REJUCALCIUM' is unique and arbitrary trademark and was coined only by the plaintiff's predecessors. They also claim that they have attained immense goodwill and reputation for the product sold under the trademark 'REJUCALCIUM' both in Sri Lankan and Indian markets over several decades.

15. The plaintiff has also filed invoices raised by them, which have been marked as exhibit P4 to prove that they have been selling the product under the trademark 'REJUCALCIUM' for the past several years. The plaintiff has also filed a copy of the import-export code certificate under IEC No.0492014396, which has been marked as Ex.P5. On coming to know that the defendant is using an identical trademark viz., 'REJUCALCIUM' and is also using an identical label for packaging their product, the plaintiff has



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also issued a cease and desist notice to the defendant on 29.08.2018. The cease and desist notice dated 29.08.2018 as well as the acknowledgment card received from the defendant has been marked as Ex.P6. The scanned images of the plaintiff's products under the mark 'REJUCALCIUM' has been marked as Ex.P7. The scanned image of the defendant's products under the identical mark 'REJUCALCIUM' has been marked as Ex.P8. Section 65B affidavit has also been filed for both Ex.P7 and Ex.P8. As seen from the Exs.P7 and P8, it is clear that the defendant have exactly copied the plaintiff's trademark 'REJUCALCIUM' and has also copied the trade dress of the plaintiff in their packaging label.

16. After giving due consideration to the oral and documentary evidence available on record, this Court is of the considered view that the defendant has committed an act of trademark infringement, copyright infringement and has committed an act of passing off. The plaintiff has also claimed damages in the suit to the extent of Rs.10,00,000/-. However, as seen from the oral and documentary evidence placed on record, the plaintiff has not let in any evidence to enable them to get damages to the extent of Rs.10,00,000/- as claimed in the suit. However, since the plaintiff has



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proved through oral and documentary evidence that the defendant has committed an act of infringement of trademark, copyright and passing off, they are entitled for some nominal damages.

17. This Court, considering the nature of business of the plaintiff and after giving due consideration to the fact that the plaintiff has got a reputation and goodwill of its own in respect of the pharmaceutical product sold under the registered trademark 'REJUCALCIUM', awards nominal damages of Rs.1,00,000/- on account of the blatant infringement of trademark and copyright by the defendant.

18. For the foregoing reasons, this suit is partly decreed by granting judgment and decree in favour of the plaintiff by granting the following reliefs:

(a) A permanent injunction restraining the Defendant by itself, its Directors, affiliates, manufacturers, distributors, stockists, marketers, servants, agents, wholesalers, retailers, legal representatives, successor in business or any other person claiming under it from in any manner manufacturing, selling, offering for sale, stocking, trading, advertising



directly or indirectly dealing in medicinal and pharmaceutical preparations infringing Plaintiff's registered trademark REJUCALCIUM by use of an identical mark REJUCALCIUM or any mark deceptively similar to Plaintiff's registered trademark REJUCALCIUM or in any other manner whatsoever;

(b) A permanent injunction restraining the Defendant by itself, its Directors, affiliates, manufacturers, distributors, stockists, marketers, servants, agents, wholesalers, retailers, legal representatives, successor in business or any other person claiming under it from in any manner manufacturing, selling, offering for sale, stocking, trading, advertising directly or indirectly dealing in medicinal and pharmaceutical preparations under the REJUCALCIUM label/package that is identical to the label/package of the Plaintiff label/package thereby infringing the Plaintiff's copyright in their distinctive REJUCALCIUM label/package or any other label identical and/or deceptively similar as that of the Plaintiff's mark REJUCALCIUM label/package in any other manner whatsoever;

(c) A permanent injunction restraining the Defendant by itself, its Directors, affiliates, manufacturers, distributors, stockists, marketers,



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servants, agents, wholesalers, retailers, legal representatives, successor in business or any other person claiming under it from in any manner manufacturing, selling, offering for sale, stocking, trading, advertising directly or indirectly dealing in medicinal and pharmaceutical preparations under the trademark REJUCALCIUM and label/packaging or any other trademark and/or label/packaging that is identical and/or deceptively similar as that of the Plaintiff's mark REJUCALCIUM and label/packaging so as to pass off the Defendant's medicinal preparations as and for the medicinal preparations of the Plaintiff and/or in any other manner whatsoever;

d) The defendant is directed to pay the plaintiff a sum of Rs.1,00,000/- as nominal damages for committing acts of infringement against Plaintiff's registered trademark, infringement of copyright in label/packaging so as to pass off its products;

e) The relief sought for in prayer Nos.(e) and (f) in the plaint are dismissed as not pressed;

f) The defendant is directed to pay the cost of the suit to the plaintiff.

20.03.2024

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.S.Raghunathan (PW1)

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

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ABDUL QUDDHOSE. J.,

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