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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(COMM) 1123/2024 & I.A. Nos. 48738/2024, 48739/2024,
48380/2024**

CIPLA HEALTH LIMITED

.....Plaintiff

Through: Ms. Archana Sahadeva with
Mr. Harshit Bhoi, Advocates.

Email: archana@sahadevalawchambers.com

versus

AMICAL HEALTHCARE & ANR.

.....Defendants

Through: Mr. Hasmukh Pawar in person
(through VC) for defendant no. 1.
Mr. Mitesh Patel in person (through
VC) for defendant no. 2.

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

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16.12.2024

**CS(COMM) 1123/2024 & I.A. Nos. 48378/2024 (for stay), 48379/2024
(Application seeking permission to file copies/dim documents) &
48380/2024 (Application seeking exemption from Pre-Litigation
Mediation)**

1. The present suit has been instituted seeking to restrain the defendants from continuing *inter alia* with acts of infringement of the plaintiff's registered trademark 'CLOCIP', along with passing off its products, marketed under a nearly identical trade mark 'CLOMIC' as that of the plaintiff's 'CLOCIP', copyright infringement on account of adoption and



using a nearly identical trade dress viz.

as that of the plaintiff's



‘CLOCIP’ product sold under the trade dress

2. Learned counsel appearing for the plaintiff submits that both the products are used for identical purposes and cater to an identical class of customers. A comparison of the competing products, as given in the plaint, is reproduced as under:

	Plaintiff's Product	Defendant's Product
Trade Mark	CLOCIP	CLOMIC
Trade Dress		
Composition	Clotrimazole	Clotrimazole + Starch
Indication	Antifungal Powder	Antifungal/ Antibacterial Powder



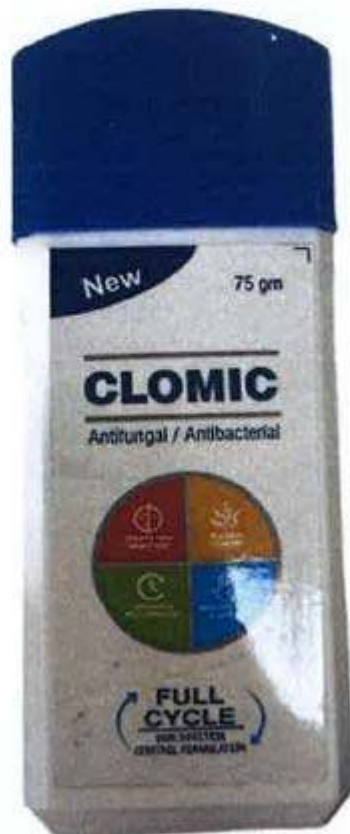
3. It is the case of the plaintiff that the plaintiff honestly and *bonafidely* conceived and adopted the unique and highly distinctive trade dress/label/packaging for its CLOCIP antifungal Powder range of products in the year 2021, in the following manner:



4. It is submitted that products under the trade mark CLOCIP are antifungal products, which are used to treat skin infections. The registrations in favour of the plaintiff, are reproduced as under:

Sl. No.	Trade Mark	Class	Application Number	Status
1	CLOCIP	5	988062	Registered
2	CLOCIP B	5	988063	Registered

5. It is submitted that the representatives of the plaintiff came across the defendant's products under the impugned trademark/trade dress in November, 2024. A pictorial representation of the impugned product that the representatives of the plaintiff came across, as given in the plaint, is reproduced as under:

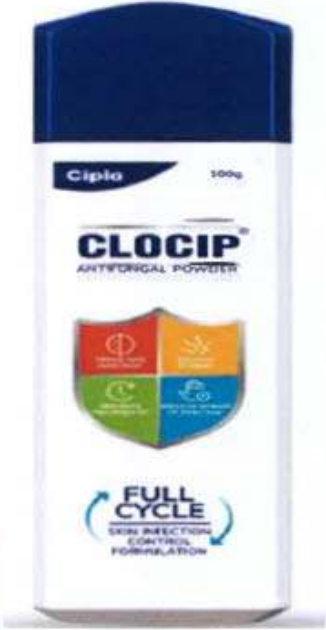
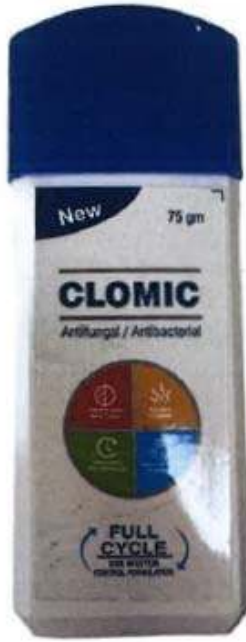


6. It is submitted that from a bare perusal of the competing products, it is amply evident that the defendants are attempting to systematically copy the plaintiff's trade mark/trade dress and various distinguishing features of the plaintiff's trade mark/trade dress/product packs/labels.

7. The table showing the visual description of the distinguishing features that the defendant has attempted to systematically copy from the plaintiff's trade mark/trade dress, as given in the plaint, is reproduced as follows:

PLAINTIFF'S TRADE MARK 'CLOCIP'	IMPUGNED TRADE MARK 'CLOMIC'
The Defendants have dishonestly adopted the Impugned Trade Mark "CLOMIC" which is deceptively similar to the Plaintiff's prior adopted, registered and well-known mark trade mark 'CLOCIP'. In fact, the Defendants have merely replaced the letters 'C' & 'P' with the letters 'M' and 'C' respectively. The competing marks are undoubtedly phonetically, structurally and visually similar.	



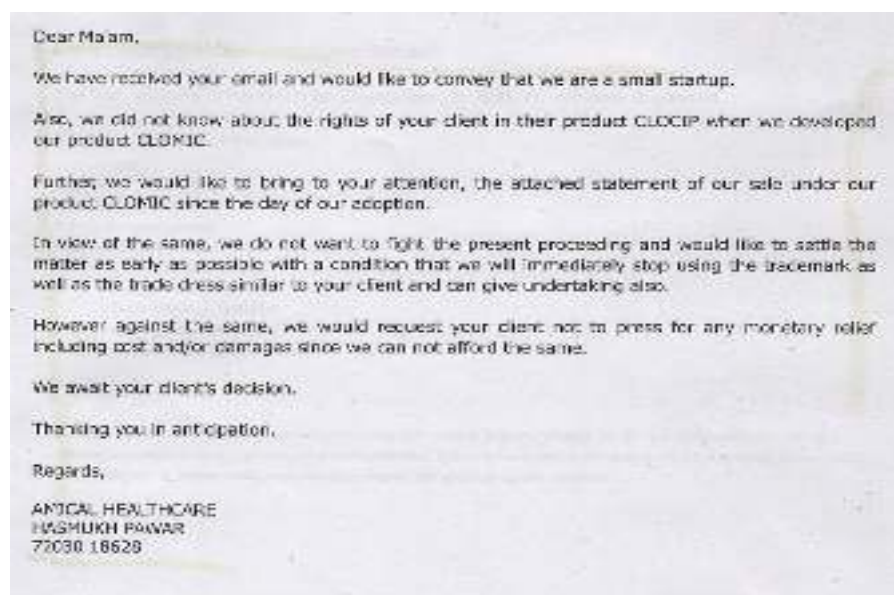
PLAINTIFF'S TRADE DRESS	IMPUGNED TRADE DRESS
	
The Defendants have slavishly and nefariously copied the entire packaging style of the Plaintiff including the unique and distinctive color combination of dark blue and white along with the colours red, green, light blue and orange arranged inside a shield. The Defendants have <i>mala fide</i>ly adopted the dark blue cap design of the Plaintiff in addition to the placement of brand and indication. Further, the house mark 'CIPLA' in the Plaintiff's product has been replaced with the term 'New' in the Defendants' product with an identical background in order to further deceive the public. Further, the writings inside the shield figure have been copied in its entirety along with the term 'Full Cycle' and 'Skin Infection Control Formulation' in its entirety, and the arrow devices.	
PLAINTIFF'S PRODUCT CAP	DEFENDANT'S PRODUCT CAP



 	
The Defendants have slavishly copied the shape and colour of the Plaintiff's product cap.	
<u>Plaintiff's Shield</u> 	<u>Defendants' Shield</u> 
The colours red, green, light blue and orange arranged inside a shield in a specific order have been slavishly copied by the Defendants. Further, the wordings of the indications inside the shield have been copied verbatim by the Defendants.	
<u>Plaintiff's Positioning of House Mark</u> 	<u>Identical Imitation by the Defendants</u> 
The house mark 'CIPLA' in the Plaintiff's product has been replaced with the term 'New' in the Defendants' product with an identical background in order to further deceive the public.	
<u>Plaintiff's Positioning of Brand Name and Indication</u>	<u>Defendant's Positioning of Brand Name and Indication</u>



8. Learned counsel appearing for the plaintiff submits that after advance service of the present plaint, the plaintiff received an email from the defendants, in the following manner:



9. Learned counsel appearing for the plaintiff submits that the plaintiff is

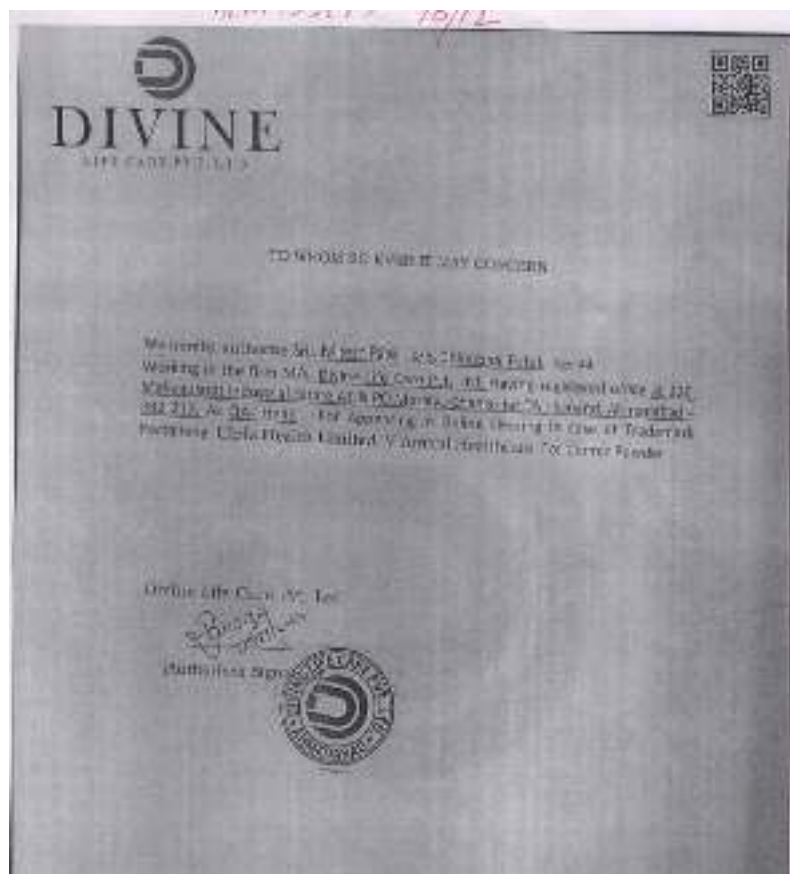


satisfied with the undertaking given by the defendants.

10. Mr. Hasmukh Pawar, representing the defendant no. 1, appears through Video Conference (“VC”) before this Court and confirms the fact of having written an email to the plaintiff. He further submits that he has no objection if the suit is decreed in favour of the plaintiff.

11. Similarly, Mr. Mitesh Patel, appearing for defendant no. 2, through VC, also confirms that he shall not manufacture any goods, which would infringe the plaintiff’s trademark/trade dress.

12. The authorisation in favour of Mr. Mitesh Patel by defendant no. 2, is reproduced as under:



13. Learned counsel appearing for the plaintiff submits that on account of the undertaking given by the defendants, the plaintiff gives up its prayer



towards cost and damages.

14. Accordingly, with the consent of the parties, the suit is decreed in favour of the plaintiff and against the defendants in terms of para 58(a), (b), (c) and (d) in the plaint.

15. In view of the fact that the present suit is being disposed of on the very first day and the plaintiff has accepted the undertaking of the defendants, the Registry of this Court is directed to issue a certificate of refund of full Court fees in favour of the plaintiff.

16. Decree sheet be drawn up.

17. The present suit, along with the pending applications, stands disposed of.

MINI PUSHKARNA, J

DECEMBER 16, 2024

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