



2025:DHC:3623



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

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*Date of decision: 7<sup>th</sup> May, 2025*

+ CS(COMM) 381/2020

SUN INDIA PHARMACY P LIMITED

.....Plaintiff

Through: Mr. Ranjan Narula, Mr. Shakti  
Priyam Nair and Mr. Parth Bajaj,  
Advocates

versus

HYETO HERBALS PRIVATE LIMITED

.....Defendant

Through:

**CORAM:**

**HON'BLE MR. JUSTICE AMIT BANSAL**

**AMIT BANSAL, J. (Oral)**

1. The present suit has been filed seeking relief of permanent injunction restraining the defendant from infringement of trade mark and copyright and passing off of its products as those of the plaintiff along with other ancillary reliefs.

**PROCEEDINGS IN THE SUIT**

2. Summons in the suit and notice in the application for interim injunction were issued to the defendant on 16<sup>th</sup> September, 2020. On the same date, an *ex-parte ad interim* injunction in favour of the plaintiff and against the defendant was granted.

3. As recorded in the order dated 25<sup>th</sup> February 2021, pleadings in the suit were completed. An application under Order XXXIX Rule 4 of the



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Code of Civil Procedure, 1908 (hereinafter ‘CPC’) was also filed on behalf of the defendant.

4. *Vide* order dated 24<sup>th</sup> August 2022, the parties were referred for mediation to Delhi High Court Mediation and Conciliation Centre. However, the mediation efforts were not fruitful.

5. *Vide* order dated 3<sup>rd</sup> May 2023, the *ad interim* injunction granted in favour of the plaintiff and against the defendant was made absolute.

6. The parties were again referred for mediation to Delhi High Court Mediation and Conciliation Centre *vide* order dated 29<sup>th</sup> January 2024, which was also unsuccessful.

7. On 1<sup>st</sup> August 2024, the defendant was proceeded against *ex-parte*. An affidavit dated 21<sup>st</sup> September 2024 of the plaintiff’s witness Mr. Rahul Shukla was filed, which was exhibited as **Exhibit PW-1/A**. On 21<sup>st</sup> February 2025, plaintiff’s evidence was recorded in the suit.

#### **CASE SET UP BY THE PLAINTIFF**

8. The brief facts of the present case are as follows:

8.1. The plaintiff is a diversified healthcare company and a leading manufacturer and supplier of pharmaceutical and ayurvedic products. The plaintiff is manufacturing, selling and supplying health supplement capsules (hereinafter ‘plaintiff’s products’) under the mark SWASTH VARDHAK (hereinafter ‘subject mark’).

8.2. The plaintiff, through its predecessor in business and title, adopted the subject mark in the year 1986 in relation to health supplements and has been manufacturing, marketing, supplying and selling the plaintiff’s products thereunder since the financial year 1988-89. The subject mark has been extensively used by the plaintiff since its launch more than three decades

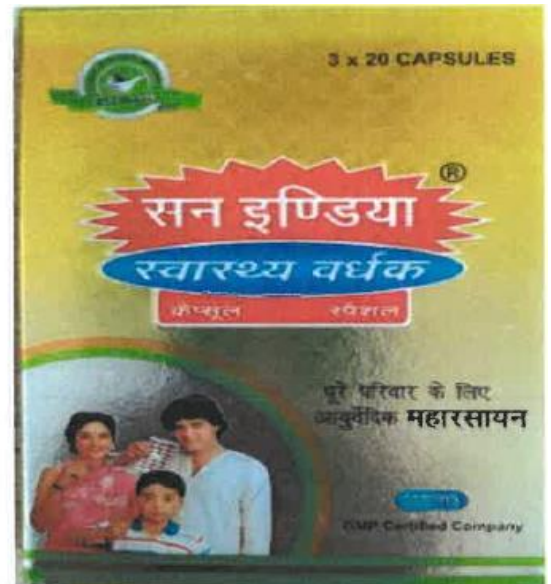


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ago. The plaintiff's registration certificate granting approval for manufacturing the plaintiff's products and evidencing the date of commencement of its production to be 1<sup>st</sup> April 1986 has been exhibited as **Exhibit PW-1/3**. The plaintiff's invoices showing sale of the plaintiff's products under the subject mark since 1995-96 have been exhibited as **Exhibit PW-1/6 (colly)**, **Exhibit PW-1/7 (colly)** and **Mark A**. The plaintiff's sales summary on a monthly basis from the year 2015 to 2020 has been exhibited as **Exhibit PW-1/10**.

8.3. In addition to using a distinct trade mark, the plaintiff also uses a unique packaging/ trade dress for the plaintiff's products under the subject mark since the year 2002 and the same shown below:



8.4. The aforesaid packaging/ trade dress constitutes original artistic work of the plaintiff within the meaning of Section of 2(c) of the Copyright Act, 1957 and is entitled to copyright protection. A representation of the aforesaid packaging/ trade dress has been exhibited as **Exhibit PW-1/9**.

8.5. The plaintiff has been supplying and selling the plaintiff's products



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across India including in Delhi through its distributors/ stockiest as well as through various interactive websites such as Amazon and Snapdeal. Internet extracts from various third-party websites showing the plaintiff's sale of the plaintiff's products under the subject mark in Delhi have been exhibited as **Exhibit PW-1/11 (colly)**. The plaintiff has also incurred substantial promotional expenditure towards establishing its goodwill and reputation in respect of the subject mark.

8.6. As a result of the long and continuous use of the subject mark, the same has become extremely popular across India. Google Search results for the subject mark showing the plaintiff's product have been exhibited as **Exhibit PW-1/5**. The subject mark is exclusively associated with the plaintiff and no one else. The goodwill and reputation of the plaintiff is evident from its sales figures for the year 2019, which were in excess of Rs. 3,00,00,000/-.

8.7. In addition to its common law rights over the subject mark, the plaintiff is also the registered proprietor of the trade mark



bearing no. 1297994 in class 5 with effect from 23<sup>rd</sup> July 2004 and with a user claim since 14<sup>th</sup> December 2002.



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The plaintiff's registration certificate for the aforesaid mark, along with E-Register extract with regard to the same, have been exhibited as **Exhibit PW-1/4**. The plaintiff has also filed trade mark application bearing no. 4531611 for the mark SUN INDIA SWASTH VARDHAK CAPSULE claiming use since 1989.

8.8. The defendant is engaged in the business of manufacturing, distributing and marketing pharmaceutical and ayurvedic products. The defendant is using an identical mark SWASTH VARDHAK and the below-mentioned deceptively similar packaging/ trade dress (hereinafter 'impugned marks'). Online extracts from the defendant's website [www.hyetoherbals.com](http://www.hyetoherbals.com) as well as third-party websites showing the listings of the impugned products have been exhibited as **Exhibit PW-1/13 (colly)**.



8.9. The plaintiff became aware about the defendant's use of the impugned marks in the course of its business in the first week of December 2019.

8.10. The plaintiff, through its counsel, on 10<sup>th</sup> October 2019, sent a cease-and-desist notice to the defendant to give up the use of the impugned marks. The defendant replied on 19<sup>th</sup> December 2019 informing the plaintiff that it



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has stopped manufacturing and selling ayurvedic capsules under the impugned marks and gave an undertaking to not use the same in future. The aforesaid cease-and-desist notice and the defendant's reply thereto have been exhibited as **Exhibit PW-1/14 (colly)**.

8.11. However, in the third week of August 2020, while carrying out an internet search, the plaintiff's representative came across the defendant's products under the impugned marks. It was also revealed to the plaintiff that the defendant had filed a trade mark application bearing no. 4608135 for the

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mark in class 5 on a 'proposed to be used' basis on 13<sup>th</sup> August 2020, *i.e.*, subsequent to giving the aforesaid undertaking to the plaintiff. E-Register extract with regard to the aforesaid trade mark application filed by the defendant from the website of the Trade Marks Registry has been exhibited as **Exhibit PW-1/15**.

8.12. The defendant has blatantly copied the subject mark and the plaintiff's trade dress used for its products thereunder with a *mala fide* intention to cash upon the plaintiff's goodwill and reputation.

9. The defendant, in its written statement, primarily pleaded that the impugned mark was honestly adopted, that the impugned packaging/ trade dress is different from that of the plaintiff, that the plaintiff does not have any registration for the subject mark and that it was forced to give the aforesaid undertaking on account of pressure from different trade unions.

#### **ANALYSIS AND FINDINGS**

10. I have heard the submissions of counsel for the plaintiff and perused the evidence on record.

11. A comparison between the plaintiff's products bearing the subject



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mark and the defendant's products under the impugned marks is set out below:

PLAINTIFF'S PRODUCTS	DEFENDANT'S PRODUCTS
 <p>The image shows the packaging for Sun India Swasth Vardhak capsules. The box is yellow and green, featuring a family photo. Text includes '3 x 20 CAPSULES', 'SUN INDIA SWASTH VARDHAK CAPSULES SPECIAL', and 'For You &amp; Your Family'. The Sun India logo is at the top left.</p>	 <p>The image shows the packaging for Hyeto Swasth Vardhak capsules. The box is yellow and blue, featuring a family photo. Text includes '500 mg', 'HYETO', 'SWASTH VARDHAK CAPSULES', 'For You and Your Family', and 'A HYETO PRODUCT'. The Hyeto logo is at the top left.</p>
 <p>The image shows the packaging for Sun India Swasth Vardhak capsules in Hindi. The box is yellow and green, featuring a family photo. Text includes '3 x 20 CAPSULES', 'सन इण्डिया SWASTH VARDHAK', and 'पूरे परिवार के लिए आयुर्वेदिक महारसायन'. The Sun India logo is at the top left.</p>	 <p>The image shows the packaging for Hyeto Swasth Vardhak capsules in Hindi. The box is yellow and blue, featuring a family photo. Text includes '500 mg', 'हाईटो', 'स्वास्थ्य वर्धक', 'पूरे परिवार के लिए आयुर्वेदिक महारसायन', and 'A HYETO PRODUCT'. The Hyeto logo is at the top left.</p>

12. Photographs of the competing products of the plaintiff and the defendant have been exhibited as **Exhibit PW-1/16**.

13. A bare perusal of the competing products makes it apparent that the defendant has *mala fidely* adopted and is using the impugned mark SWASTH VARDHAK, which is identical with the subject mark, in relation to the impugned products, which are also identical with the plaintiff's



products under the subject mark. The defendant’s dishonest adoption is further evident from the impugned packaging/ trade dress, which is deceptively similar to the plaintiff’s packaging/ trade dress, as well as the distinctive elements therein, which have been blatantly copied by the defendant.

14. The plaintiff has also been able to prove that it is the registered



proprietor of the mark in India in relation to goods in class 5 with effect from 23<sup>rd</sup> July 2004 and with a user claim since 14<sup>th</sup> December 2002.

15. In view of the above, a clear case of infringement of trade marks and copyright is made out in favour of the plaintiff and against the defendant.

16. The plaintiff, through its long, continuous and extensive use of the subject mark in India and significant sales made thereunder, has been able to establish its goodwill and reputation under the subject mark in India. The defendant has been taking unfair advantage of the plaintiff’s reputation and goodwill under the subject mark and has also deceived the unwary consumers of its association with the plaintiff by dishonestly and unauthorizedly adopting and using the identical impugned mark and



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deceptively similar packaging/ trade dress without any plausible explanation. Therefore, the plaintiff has established a case of passing off as well.

17. In view of the discussion above, the plaintiff would be entitled to a decree of permanent injunction against the defendant in terms of prayer clause contained in paragraph no.36(i), (ii), (iii) and (iv) of the plaint.

18. Counsel for the plaintiff also presses for the reliefs of damages and costs.

19. Insofar as the reliefs of damages and costs sought in prayer clause contained in paragraph no.36(vii) and (ix) are concerned, he relies on the judgments of this Court in *Jockey International Inc and Ors. v. R. Chandra Mohan and Ors.*, MANU/DE/1312/2014, and *Vior (International) Ltd. and Ors. v. Maxycon Health Care Private Limited and Ors.*, MANU/DE.1412/2018.

20. At this stage, it is pertinent to mention that prior to the institution of the present suit, the defendant had undertaken not to use the impugned mark and packaging/ trade dress. However, not only did it restarted selling the impugned products under the impugned mark and packaging/ trade dress in violation of the aforesaid undertaking, but also applied for registration of the

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deceptively similar mark

21. In light of the foregoing analysis, this Court concludes that the conduct of the defendant not only warrants but also necessitates the imposition of both costs and aggravated damages. Thus, in addition to the decree passed in the terms already mentioned above and taking into account the entire facts and circumstances of this case, this Court also awards



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damages and costs amounting to Rs. 5,00,000/- in favour of the plaintiff and against the defendant.

22. Counsel for the plaintiff does not press for the remaining reliefs claimed in the suit.

23. Let the decree sheet be drawn up accordingly.

24. All pending applications stand disposed of.

**AMIT BANSAL, J**

**MAY 7, 2025**

*Vivek/-*