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

% *Date of decision: 17th February, 2025*

I.A. 41329/2024
In
\+ CS(COMM) 336/2020

ABBOTT HEALTHCARE PRIVATE LIMITED .....Plaintiff
Through: Mr. Ranjan Narula, Mr. Shakti Priyan Nair and Mr. Parth Bajaj, Advocates.

versus

VINSAC PHARMA .....Defendant
Through: None.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

AMIT BANSAL, J. (Oral)

1. The present suit has been filed by the plaintiff seeking relief of permanent injunction restraining the defendants from infringing the trademark and copyright of the plaintiff, passing off along with other ancillary reliefs.

CASE SETUP IN THE PLAINT

2. Plaintiff [Abbott Healthcare Private Limited], a company organised and existing under the laws of India, is a subsidiary of Abbott Laboratories, Chicago, USA, which was founded in 1888. The plaintiff manufactures and markets pharmaceutical, diagnostic, nutritional and hospital products in

India. It is stated that the plaintiff employs more than 14,000 people and has a network of over five lakh retailers in the country.

3. Plaintiff offers a wide and diverse range of products, which are recognized for their efficacy, reliability, and superior quality. The plaintiff also maintains research and development centres dedicated to developing new products and enhancing its existing product range. It is stated that all products of the plaintiff undergo stringent quality testing to ensure their safety and efficacy.

4. In the year 1977, the plaintiff, through its predecessor-in-title, invented and coined the trademark "LIMCEE," which has no dictionary meaning, for its Vitamin-C chewable tablets. Subsequently, the said trademark was validly assigned in favour of the plaintiff.

5. It is stated that due to the extensive and continuous use of the said trademark for over four decades, the plaintiff's trademark has acquired substantial goodwill and reputation and has become well-known among the relevant sections of the public.

6. The plaintiff has obtained registration of its trademark 'LIMCEE' in Class 5 in respect of medicinal and pharmaceutical preparations in the year 2001, claiming user since 1977. It is stated that the said trademark has been consistently used by the plaintiff and has been renewed from time to time. The details of the registration obtained by the plaintiff are given below:

Trademark	**Registration No.**	**Date**	**User**
LIMCEE	1049892	5th October 2001	4th January 1977

7. In addition to using a distinctive trademark, the plaintiff has also

adopted a unique outer carton and strip packaging for its 'LIMCEE' products. It is averred that the distinctive packaging of the outer carton and strip packaging constitutes original artistic work within the meaning of Section 2(c) of the Copyright Act, 1957. It is stated that the aforesaid packaging was created by an employee of the plaintiff, and therefore, as per Section 17 of the Copyright Act, 1957, the plaintiff is the rightful owner of such packaging.

8. It is stated that the Vitamin C tablets sold under the plaintiff's trademark are highly popular and widely distributed throughout India. The plaintiff has extensively used its trademark since its launch over four decades ago, and owing to its prolonged and extensive use, the plaintiff has garnered formidable goodwill and reputation across the country. It is stated that in the year 2019, the plaintiff's sales turnover amounted to approximately Rs. 24.57 crores.

9. Defendant no.1 is engaged in the business of supplying, selling, advertising, and marketing the impugned product, namely, chewable Vitamin C tablets under the mark 'LIMEECEE'. Defendant no.2 is engaged in the business of manufacturing the impugned product under the mark 'LIMEECEE' and its packaging. Defendant no.2 has been supplying the said product to defendant no.1, who, in turn, sells the same throughout India *via* www.indiamart.com. It is stated that the defendants, acting in collusion with each other, are engaged in the manufacturing and distribution of the impugned products across India.

10. In the second week of July 2020, the plaintiff became aware of the infringing activities of the defendants, who were displaying, supplying,

selling, and marketing an identical product, namely, chewable Vitamin C tablets under the mark 'LIMEECEE'. Upon conducting an investigation, the plaintiff found that the defendants are wholesale distributors of various types of medicines and pharmaceutical preparations, including anti-diabetic medicines and pharmaceutical tablets. It is contended that the mark 'LIMEECEE' is structurally and phonetically similar to the plaintiff's mark 'LIMCEE'. Furthermore, the defendants have adopted a deceptively similar packaging as part of their product.

11. Being aggrieved by the aforesaid activities, the plaintiff filed the present suit for permanent injunction against the defendants.

PROCEEDINGS IN THE SUIT

12. The matter came up for hearing before this Court on 21st August 2020, wherein this Court issued summons to defendant no.1 and granted an *ex parte ad interim* injunction in favour of the plaintiff, restraining defendant no.1 from manufacturing, selling, trading, or marketing its Vitamin C chewable tablets under the impugned mark 'LIMEECEE'. Vide the said order, this Court appointed a Local Commissioner to visit the site of the defendant no.1 and seize the goods being sold under the impugned trademark and packaging.

13. *Vide* order dated 26th August 2020, the plaintiff sought impleadment of defendant no.2 as a party in the present proceedings.

14. Since defendant no.1 did not enter appearance despite service of summons, defendant no.1 was proceeded against ex-parte *vide* order dated 29th January 2021.

15. On 11th November 2021, defendant no. 2 was proceeded against ex-

parte.

16. On 10th February 2022, this Court allowed the application filed on behalf of defendant no.2 seeking setting aside of order dated 11th November 2021, as defendant no. 2 was proceeded against *ex-parte* before being impleaded as a defendant in the present suit.

17. As defendant no.2 had already filed a written statement, the Joint Registrar, *vide* order dated 7th March 2022, allowed the application for impleadment of defendant no.2 in the present suit.

18. Fresh notice was issued to the defendant no.2 on 14th March, 2024 as the defendant no.2 stopped appearing after 19th July 2023.

19. *Vide* order dated 4th October, 2024, notice was issued in I.A. 41329/2024, filed by the plaintiff under Order XIII-A of the Code of Civil Procedure, 1908 (hereinafter the 'CPC') seeking summary judgment in the present suit.

20. Despite service, none appeared on behalf of the defendant no.2

21. Counsel for the plaintiff submits that this is a fit case where a summary judgment in terms of Order XIII-A of the CPC as applicable to commercial disputes of a specified value, read with Rule 27 of the Delhi High Court Intellectual Property Rights Division Rules, 2022, deserves to be passed in favour of the plaintiff and against the defendants.

ANALYSIS AND FINDINGS

22. I have heard the submissions of the counsel for the plaintiff and perused the material on record.

23. The plaint has been duly verified and is supported by the affidavit of the plaintiff. In view of the fact that no written statement has been filed on

behalf of defendant no. 1, all averments made in the plaint are deemed to be admitted. Further, since no affidavit of admission/denial has been filed by defendant no. 1 in respect of the documents filed with the plaint, in terms of Rule 3 of the Delhi High Court (Original Side) Rules, 2018, the same are deemed to have been admitted.

24. Defendant no.2 has contested the present suit by filing a written statement. In its written statement, defendant no. 2 has taken defence that it was unaware of the plaintiff's trademark and packaging and, upon gaining knowledge of the plaintiff's rights, ceased using the impugned mark and packaging. Furthermore, defendant no. 2 has expressly undertaken not to use the said mark or any deceptively similar mark in the future.

25. Thus, defendant no. 2 has admitted to the use of the impugned mark and has voluntarily undertaken to refrain from using the impugned mark or any deceptively similar mark in the future. Moreover, despite service, the defendant no.2 stopped appearing before this court and did not file any reply to the application filed under Order XIII-A of CPC.

26. Therefore, I am of the opinion that no purpose would be served by directing the plaintiff to lead *ex parte* evidence by filing an affidavit of examination-in-chief, and the plaintiff is entitled to summary judgment.

27. From the averments made in the plaint and the evidence on record, the plaintiff has been able to establish that it is the registered proprietor of the mark "LIMCEE" and its formative marks and holds proprietary rights over its distinctive packaging.

28. A comparison of the plaintiff's mark and packaging and the impugned mark and packaging used by the defendants is provided below:

PLAINTIFF'S MARK AND PACKAGING	DEFENDANTS' IMPUGNED MARK AND PACKAGING
LIMCEE	LIMEECEE
 	

29. A perusal of the aforesaid comparison demonstrates that the defendants have blatantly copied the plaintiff's registered trademark 'LIMCEE'. The defendants are selling similar Vitamin C chewable tablets under the impugned mark 'LIMEECEE' in a deceptively similar packaging, incorporating the same colour combination of orange and yellow on a white

background. Additionally, the placement of the impugned mark on the top left of the outer carton box, just below the description, is similar to that of the plaintiff's product.

30. It is evident that the mark/packaging adopted by the defendants are deceptively similar to that of the plaintiff's mark/packaging. Clearly, the defendants are trying to ride on the goodwill of the plaintiff's product. Furthermore, the defendants have failed to provide any plausible explanation for the adoption of the impugned mark and packaging.

31. In ***Su-Kam Power Systems Ltd.*** **v.** ***Kunwer Sachdev***, 2019 SCC OnLine Del 10764, this Court has observed as under:

> *"**90**. To reiterate, the intent behind incorporating the summary judgment procedure in the Commercial Court Act, 2015 is to ensure disposal of commercial disputes in a time-bound manner. In fact, the applicability of Order XIIIA, CPC to commercial disputes, demonstrates that the trial is no longer the default procedure/norm.*
>
> ***91**. Rule 3 of Order XIIIA, CPC, as applicable to commercial disputes, empowers the Court to grant a summary judgement against the defendant where the Court considers that the defendant has no real prospects of successfully defending the claim and there is no other compelling reason why the claim should not be disposed of before recording of oral evidence. The expression "real" directs the Court to examine whether there is a "realistic" as opposed to "fanciful" prospects of success. This Court is of the view that the expression "no genuine issue requiring a trial" in Ontario Rules of Civil Procedure and "no other compelling reason…..for trial" in Commercial Courts Act can be read mutatis mutandis. Consequently, Order XIIIA, CPC would be attracted if the Court, while hearing such an application, can make the necessary finding of fact, apply the law to the facts and the same is a proportionate, more expeditious and less expensive means of achieving a fair and just result.*
>
> ***92**. Accordingly, unlike ordinary suits, Courts need not hold trial in commercial suits, even if there are disputed questions of fact as held by*

the Canadian Supreme Court in Robert Hryniak (supra), in the event, the Court comes to the conclusion that the defendant lacks a real prospect of successfully defending the claim."

32. The aforesaid principles are fully applicable in the facts and circumstances of the present case. As elaborated above, the defendants have no real prospect of successfully defending the claims in the present suit. Further, taking into account that the defendant no.1 has not set up any defence and defendant no.2 has admitted to not use the impugned, there is no compelling reason for the recording of oral evidence.

33. Therefore, this is a fit case where a summary judgment in terms of Order XIII-A of CPC can be passed in favour of the plaintiff and against the defendants no.1 and 2.

34. Based on the discussion above, a clear case of infringement of trademark/ packaging is made out. The plaintiff, through its annual turnover, has also been able to show its goodwill and reputation in respect of the aforesaid trademark/packaging among the members of the trade and public. The defendants have taken unfair advantage of the reputation and goodwill of the plaintiff's trademark/ packaging and have also deceived the unwary consumers of their association with the plaintiff by dishonestly adopting the plaintiff's registered marks/packaging without any plausible explanation. Therefore, the plaintiff has established a case of passing off as well. In light of the above, I am satisfied that the plaintiff is entitled to a relief of permanent injunction.

35. Counsel for the defendants presses for a decree on the aspect of damages and costs.

36. The Delhi High Court Intellectual Property Rights Division Rules,

2022 provides the manner in which the damages can be calculated in such cases. Rule 20 of the IPD Rules, 2022 is set out below:

> "*20. Damages/Account of profits A party seeking damages/account of profits, shall give a reasonable estimate of the amounts claimed and the foundational facts/account statements in respect thereof along with any evidence, documentary and/or oral led by the parties to support such a claim. In addition, the Court shall consider the following factors while determining the quantum of damages:*
> *(vi) Lost profits suffered by the injured party;*
> *(ii) Profits earned by the infringing party;*
> *(iii) Quantum of income which the injured party may have earned through royalties/license fees, had the use of the subject IPR been duly authorized;*
> *(iv) The duration of the infringement;*
> ***(v) Degree of intention/neglect underlying the infringement;***
> *(vi) Conduct of the infringing party to mitigate the damages being incurred by the injured party;*
> *In the computation of damages, the Court may take the assistance of an expert as provided for under Rule 31 of these Rules."*

[Emphasis is mine]

37. One of the factors that could be considered by the Court while considering the aspect of damages is the degree of intention of a party.

38. In the present case, it is clear that the defendants have been using a deceptively similar mark in respect of medical and pharmaceutical drugs. By adoption of the mark 'LIMEECEE' the defendants intended to mislead the members of the trade and the general public to buy its products by misrepresenting that the same was associated with that of the plaintiff. Moreover, the time of launch of the defendants' drugs was during the COVID-19 period when the doctors were regularly prescribing the vitamin C tablets to the patients to build immunity.

39. In my opinion, the defendants sought to capitalize on the public's fear stemming from the COVID-19 pandemic. It is evident that they intentionally adopted a deceptively similar mark and adopted packaging that closely resembled that of the plaintiff's packaging, with the sole purpose of unlawfully benefiting from the reputation associated with the 'LIMCEE' mark and passing off their goods as those of the plaintiff.

40. Furthermore, given that the product in question is a medicinal product, the likelihood of consumer confusion poses a significant risk to public health. The uncertainty surrounding the quality assurance of the defendants' product further exacerbates this risk, as consumers may inadvertently purchase the defendants' product under the mistaken belief that it originates from the plaintiff.

41. On the basis of the discussion above, I am of the view that in the present facts and circumstances, the plaintiff is entitled to a decree of damages and costs as well.

RELIEF

42. In view of the foregoing analysis, a decree of permanent injunction is passed in favour of the plaintiff and against the defendants no.1 and 2 in terms of prayer clauses 34 (i), (ii) and (iii) of the amended plaint.

43. A decree is passed in terms of prayer clause 34 (iv) in favour of the plaintiff and against the defendants no.1 and 2 for take down of the listings bearing the impugned mark 'LIMEECEE'.

44. Since the defendant no.2 has already been impleaded, the relief claimed in the prayer clause 34 (v) stands satisfied.

45. Insofar as the relief of damages as sought in prayer clause 34 (viii) is

concerned, this Court awards damages amounting to Rs. 2,00,000/- in favour of the plaintiff and against the defendants.

46. Insofar as relief of costs as sought in prayer clause 34 (x) is concerned, the plaintiff shall file its bill of costs in terms of Rule 5 of Chapter XXIII of the Delhi High Court (Original Side) Rules, 2018 within four weeks. For this purpose, the representatives of the plaintiff shall appear before the Joint Registrar, who shall determine the actual costs incurred by the plaintiff in the present litigation.

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

48. Let the decree sheet be drawn up.

49. All pending applications stand disposed of.

AMIT BANSAL, J

FEBRUARY 17, 2025
Vivek/-