

Dev Pharmacy Pvt. Ltd. Vs. Ozone Pharmaceuticals Ltd.

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Court : Delhi

Decided On : Sep-28-2006

Reported in : 2006(33)PTC681(Del)

Judge : Gita Mittal, J.

Acts : [Trade Marks Act, 1999](#) - Sections 135

Appeal No. : CS(OS) No. 1218/2004

Appellant : Dev Pharmacy Pvt. Ltd.

Respondent : Ozone Pharmaceuticals Ltd.

Advocate for Def. : Amjad Hussain, Adv.

Advocate for Pet/Ap. : Swaran Rajan, Adv

Judgement :

Gita Mittal, J.

1. This suit has been filed by the plaintiff who has asserted that its using the trade mark 'PERFECT' in respect of goods Manufactured by it and for which it has achieved a good reputation in the market. Alleging dishonest adoption of this trade mark by the defendant, who was stated to be trading under the trade mark 'PERFEKT', the plaintiff filed the present suit seeking the following prayers:

(a) For a decree of permanent injunction restraining the defendants by themselves as also through their directors, principal officers, agents, representatives, distributors, assigns, stockists and all other acting for and on behalf of the defendant from using, displaying, selling, advertising or by any other mode or manner dealing in the impugned goods and business of Medicinal Formulations and Medicinal and Pharmaceutical Preparations and other allied and cognate goods and business under the impugned trade mark PERFECT or any other trade mark or label bearing the same or identical with or deceptively similar to the plaintiffs said trade mark PERFECT LABEL or trade mark/labels bearing the said trade mark PERFECT and from doing any other acts or things likely or amounting to-

(i) passing off and violation of the plaintiffs rights in the plaintiffs said trade mark PERFECT;

(b) Restraining the defendant, in terms of Section 135 of the Trade mark Act from disposing of or dealing with its assets including his premises at Ozone House, 1, L.S.C, Block A-3, Janakpuri, New Delhi-11058 and its all other business assets including movable and immovable properties (which the plaintiff it not aware of and the defendants is called upon to disclose), as it would adversely effect the plaintiffs ability to recover damages, costs and other remedies prayed for herein.

(c) For an order for delivery up of all the impugned finished and un-finish material of the defendant bearing the impugned trade mark including trade marks identical with the deceptively similar to it including blocks and labels, display boards, sign boards, trade literature, advertisement material etc. to the plaintiff for purposes of destruction/erasure.

(d) for an order of rendition of accounts of the defendants by their aforesaid impugned trade activities and a decree to the plaintiff on the amount so ascertained.

(e) For an order for costs of the proceedings.

2. The defendants have appeared in receipt of the summons and have filed a written statement dated 24th January, 2005. Perusal of the written statement shows that in para 17, the defendant has stated thus:

17. Para No. 17 of the plaint is absolutely wrong, false, frivolous and thus denied. No confusion or deception shall be caused. However, it is submitted that to avoid any conflict of interest, the defendant is willing to stop manufacturing the medicinal preparations under the trademark 'VPERFEKT'. The defendant is willing to change the 'complained' of trademark by the plaintiff and is willing to amend the same to 'OSOPERFEKT'. The changed/amended trademark/label of the defendant is visually, phonetically and structurally different from the alleged trademark PERFECT (LABEL) of the plaintiff. Under the circumstances, the cause of action of plaintiff will not survive.

3. It is submitted by learned Counsel for defendant that it has 'already filed the amended label on record of this Court whereby its trademark has been mentioned as 'OZOPERFEKT'. It has been submitted that with such a change, the plaintiff can possibly have no objection to the mark and label which has been adopted by the defendant.

4. Learned Counsel for plaintiff submits that in view of the change which has been effected by the defendant, the suit of the plaintiff to the extent of para 21(a) is liable to be decreed.

5. Having regard to the submissions made on behalf of the defendant that in order to avoid the conflict of interest and even in the mind of the public, the defendant has stopped using the trademark PERFECT and has already adopted the mark 'OZOPERFEKT' which changes have been effected and implemented in its label as well, the suit of the plaintiff to the extent of prayer 21(a) deserves to be decreed.

6. Learned Counsel for plaintiff submits that if prayer 21(a) is granted, the plaintiff does not press prayers 2(b), (c), (d) and (e). In the light of the above, I hereby decree the suit in terms of prayer 21(a). The prayers 21(b), (c), (d) and (e) are dismissed as not pressed. The decree sheet be drawn accordingly.

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7. In view of the orders passed in the suit, this application does not survive for consideration. The same is accordingly disposed of.

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