
(2018) 09 DEL CK 0092

In the Delhi High Court

Case No : Civil Suit No. (Comm) 834 Of 2016

Mankind Pharma Ltd

APPELLANT

Vs

Ultrakind Health Care And Anr

RESPONDENT

Date of Decision : 07-09-2018

Acts Referred:

Citation : (2018) 09 DEL CK 0092

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Final Decision : Diposed Off

Judgement

Prathiba M. Singh, J. (Oral)

1. The present suit for infringement of registered trademark, passing of copyright, rendition of accounts has been filed by the Plaintiff "Mankind

Pharma Ltd. against two Defendants i.e. Ultrakind Health Care "Defendant No.1 and Atlanta Remedies "Defendant No.2. ".

2. The case of the Plaintiff is that it owns the trademark "MANKIND" as also the "M" logo, which is written in a distinctive form. The

Plaintiff also claims that the trademark "MANKIND" is registered in its name. The Plaintiff further claims that it has a series of marks with the

trademark "MANKIND" and the suffix "KIND". Ld Counsel for the Plaintiff, thus, submits that the Plaintiff's right extends over the

trademark "MANKIND" and the family of marks which bear the suffix ending with "KIND". The details of the registrations of the mark

"MANKIND" and the other family of marks with the suffix "KIND" as also the domain names are set out in paragraphs 7 to 10 of the

plaint.

3. The grievance of the Plaintiff in the present case is that the Defendants are using the trademark "ULTRAKIND" and also using the letter

"U" in a manner which is imitative of the Plaintiff's "M" logo. The two logos and the manner of depiction are set out herein below:

4. The Plaintiff states in the plaint that the use of the "U" logo, the manner of writing "ULTRAKIND" and also use of "KIND" as

a suffix is violative of its rights and goodwill and also dilutes its reputation. Accordingly, the Plaintiff is seeking an injunction against the use of trade

name "Ultrakind Health Care", deceptively similar "U" logo, the use of any mark with the suffix "KIND" as also in the get up of the

logo, which may be perceived to be an imitation of the Plaintiff's marks, logos and packaging. 5. The suit was listed on 8th July,

2014 on which date this Court had granted an ad interim injunction in the following terms.

11. Accordingly, the defendants, their dealers, agents, associates, directors, partners, employees, servants, assigns are restrained from trading,

selling, advertising, distributing and dealing in any manner under the trade name ULTRAKIND HEALTH CARE and from using the trade mark

MECOKIND or any other mark with the word element 'KIND', which are deceptively and phonetically similar to the plaintiffs well-known registered

trade name MANKIND and trademark METROKIND. The defendants are further restrained from infringing, passing off or causing to pass off

goods under an artwork, get up, label and symbol etc., which is deceptively similar to the plaintiffs corporate ID in relation to marketing of medicinal

and pharmaceutical goods in any manner whatsoever, till the next date of hearing. 6. Local Commissioners were also appointed to visit the premises of the

Defendants and prepare an inventory of the products containing the infringing

marks and labels. Subsequently, an application was moved by the Plaintiff submitting that the exact address of Defendant No.1 was not available and

that the commission may only be executed at Defendant No.2's premises. Accordingly, the local commission was duly executed only at the

premises of Defendant No.2. The reports of the Local Commissioners have also been filed on record. The said reports show that there were two

products, which were found at the premises of Defendant no.2. The Defendant No.2 at the time of execution of the commission stated to the

ULTRAKIND name as also other trademarks with the suffix

KIND. The packaging showing the use of the said mark by the Defendant No.1 has been placed on record. A perusal of the

MECOKIND plus cartons appearing at page 888 shows the use of the similar U logo, the name Ultrakind Health Care with the arrow

as also use of MECOKIND plus. These products were admittedly manufactured by Defendant No.2 for Defendant No.1. A

11. It is now the settled position that if a Defendant is proceeded ex-parte, the formality of filing ex-parte evidence can be dispensed with. In

Everstone Capital Advisors Pvt. Ltd. &Anr. v Akansha Sharma &Ors., [CS(COMM) 1028/2016, dated 17th July, 2018]this Court has held as under:

6. There being no defence filed the averments in the Plaint are unrebutted. Under the extant provisions of the CPC, the Plaint is supported by an

affidavit and in the absence of any rebuttal or challenge, the Court can take the averments in the Plaint to be correct. Moreover, the documents for

eg., registrations of trade marks being public documents, are easily verifiable and the so-called formality of filing affidavit in evidence for marking of

exhibits can be dispensed with.....A

12. The Court can accordingly peruse the documents on record to proceed for pronouncement of judgment. A

13. From the perusal of the documents placed on record, there is no doubt that the Plaintiff is the owner of the mark MANKIND and is using

the said mark in an extremely distinctive M logo. The Plaintiff has registrations for several trademarks with the suffix KIND. Copies

of the said registrations have been placed on record. The Defendant no.1's U logo bears a startling resemblance with the M logo.

Use of marks with the KIND suffix is also violative of the rights of the Plaintiff as the Plaintiff has a large family of marks ending with the

suffix `KIND. Such use would result in passing off and infringement of the Plaintiff's registered trademarks and also result in violation of

copyright in the logo. Accordingly, the Defendant No.1 being ex-parte no defence having been filed on record, judgment is pronounced and a decree

of permanent injunction in terms of paras 41(a), (b) & (c) is passed in favour of the Plaintiff and against the Defendant No.1 only. Since goods have

not been recovered from Defendant No.1, the decree of delivery up is not made

out. The Plaintiff does not press the relief of rendition of accounts or profits. Decree sheet be drawn up and the goods seized by the Local Commissioner at the premises of the Defendant No.2 be released to the Defendant No.2. Defendant no.2 shall however be bound by the statement recorded in paragraph 8 above.

14. The suit is decreed accordingly. The suit and all pending I.As. stand disposed of.