

(2013) 01 DEL CK 0061
In the Delhi High Court
Case No : CS (OS) 1202 of 2008

Merck KGaA and Another

APPELLANT

Vs

Mrs. Kusumben K. Bhagat et. al.

RESPONDENT

Date of Decision : 10-01-2013

Acts Referred:

Citation : (2013) 2 AD 111 : (2013) 134 DRJ 216 : (2013) 53 PTC 446

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : Anju Aggarwal, for the Appellant;

Judgement

Manmohan, J.—Present suit has been filed for permanent injunction to restrain infringement and passing off of plaintiffs' mark EMADINE as well as rendition of accounts, damages and delivery. The prayers in the plaint are reproduced hereinbelow:-

- a. a decree for permanent injunction restraining the defendants, by himself, his servants, agents assigns etc. from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in pharmaceutical preparations under the trademark ENAMIDE or any other trade mark identical, deceptively and/or confusingly similar thereto;
- b. A decree for permanent injunction restraining by himself his servants, agents, or otherwise from manufacturer, selling, offer for sale, advertising, directly or indirectly dealing in Pharmaceutical and Medical Preparation under the Trademark ENAMIDE or any other Trademark deceptively and or confusingly similar thereto, so as to cause act of passing off of their preparation and for those of the plaintiff.
- c. A decree for delivery of all the impugned goods as complained of herein and all blocks, dies and all such articles employed by Defendants in applying the trademark ENAMIDE and get up to the offending goods to an authorized representative of the plaintiffs for destruction/erasure.

d. An order for rendition of accounts of profit illegally earned by the defendant and a decree for an amount so found due or in the alternative, a decree of Rs. 20 lacs towards damages including conversion damages may be passed in favour of the plaintiffs and against the defendant.

e. An order for costs in the proceedings.

Learned counsel for the plaintiffs fairly states that she is confining her prayers only to prayers (a) and (b) of the plaint.

2. The relevant facts of the present case are that the plaintiff no. 1 is the registered proprietor for the trademark EMADINE vide registration no. 628838 dated 24th May, 1994 in class 5 for Pharmaceutical and Medicinal preparations. Plaintiff no. 2 is the Indian Subsidiary of plaintiff no. 1 which has been using the trademark EMADINE in India since 1998.

3. On 22nd August, 2005, defendant filed an application with the Trademark Registry for using the mark ENAMIDE with respect to pharmaceutical products.

4. It is stated that the plaintiffs came to know about the defendant's intention to use the trademark ENAMIDE through the defendant's advertisement in Trademark Journal no. 1383 regular dated 1st January, 2008 which has been filed along with list of documents at page no. 40.

5. Upon the present suit being filed, this Court on 3rd July, 2008 restrained the defendant, its partners, officers, agents and assigns from manufacturing or selling its product under the trademark ENAMIDE or any other name deceptively similar to the plaintiffs' trademark EMADINE.

6. On 4th May, 2009, the defendant was proceeded ex-parte as none had appeared for the defendant despite service. By the aforesaid order, ex-parte injunction order dated 3rd July, 2008 was made absolute.

7. Thereafter the plaintiffs filed evidence by way of affidavit of Mr. H.U. Shenoy who was working as Company Secretary with the plaintiff no. 2-company. In his evidence, the witness exhibited ten documents.

8. During the course of arguments, learned counsel for the plaintiffs relied upon the judgment of the Bombay High Court in Anglo-french Drugs and Industries Ltd. Vs. Eisen Pharmaceutical Company Pvt. Ltd. as well as this Court's judgment in Glaxo Group Ltd. and Another Vs. R.A.S. Mani Iyer and Another, .

9. Upon a perusal of the evidence on record including the documentary evidence, this Court is of the view that the plaintiffs have proved their case. It is pertinent to mention that whatever evidence has been led by the plaintiffs in the present case has gone unrebutted and unchallenged.

10. This Court has also perused judgments in Anglo-French Drugs and Industries Ltd. (supra) as well as Glaxo Group Ltd. & Anr. (supra) and is of the opinion that the ratio in the aforesaid decisions is squarely applicable to the facts of the

present case.

11. Consequently, a decree of permanent injunction is passed and the defendant, by herself, her servants, agents assigns etc. are restrained from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in trademark ENAMIDE or any other trade mark identical, deceptively and/or confusingly similar to EMADINE. The defendants are also restrained by a permanent injunction from passing off its preparation under the trademark ENAMIDE or EMADINE. The suit is decreed in terms of prayers (a) and (b) of the plaint. The Registry is directed to draw up the decree sheet accordingly.