

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

+ **CS(OS) 2079/2002**

% **Date of decision: 23.10.2008**

SMITHKLINE BEECHAM PLC & ANR Plaintiffs

Through: Mr Varun Meon, Advocate.

Versus

MR UMESHBHAI PATEL & ORS Defendants

Through: Ex parte

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? No
2. To be referred to the reporter or not? No
3. Whether the judgment should be reported in the Digest? No

RAJIV SAHAI ENDLAW, J.

1. The suit is instituted to restrain infringement and passing off of the trademark PANADOL and the copyright in the packaging as of in relation to the product CROCIN both belonging to plaintiffs. The suit was initially instituted against three defendants of which the plaintiffs settled with the defendant No.3 and the name of the defendant No.3 was ordered to be struck off from the array of defendants vide order dated 19th July, 2004. The defendants 1 and 2 could not be served at their address given by the plaintiffs, as were not found there, and were ultimately served by publication and ordered to be proceeded ex parte vide order dated 3rd October, 2005. The plaintiff has led ex parte evidence.

2. The plaintiffs have, by ex parte evidence, proved that the trademark PANADOL is registered in the name of M/s Winthrop Products Incorporated. The plaintiffs claim to be assignee of the said trademark from M/s Winthrop Products Incorporated and application for registration of the assignment has been deposed to be pending with the Registrar of Trademarks.

3. The defendants adopted the trademark PANAMOL in relation to same goods. It is further in evidence that the defendants have, for marketing the same goods under the trademark PANAMOL, used a blue blister strip packing and swirl device which the plaintiffs use for manufacturing and marketing CROCIN tablets and syrups.

4. As far as injunction restraining the defendants from using the mark PANAMOL for the same goods is concerned, this court in **SmithKline Beecham Plc v Sunil Singh** 2001 PTC 321 found that PARAMOL EXTRA and PAMACOL used by the defendants in that case infringed the trademark PANADOL of the plaintiff. Even otherwise I find the mark PANAMOL adopted by the defendants likely to create confusion. The Apex Court in **Cadila Health Care Ltd v Cadila Pharmaceuticals Ltd** AIR 2001 SC 1952 has laid down the principles in this regard in relation to pharmaceutical products. Even though the mark PANADOL is not registered in the name of plaintiffs but it has been held by this court in **M/s. Modi Threads Limited v. M/s. Som Soot Gola Factory and another** AIR 1992 (Delhi) 4, **Grandlay Electricals (India) Ltd v Vidya Batra** 1998 PTC (18) Delhi and **Astrazeneca UK Ltd. and Anr. v.**

Orchid Chemicals and Pharmaceuticals Ltd. (2006) PTC 733 DELHI that rights in the trademark accrue on the basis of assignment deeds and such rights cannot be denied on the ground that in the records of the Registrar of Trademark, the mark is still shown in the name of the assignor and that the assignee is entitled to protect the violation of the trademark at the hands of unscrupulous persons. The plaintiffs as assignees would thus be entitled to injunction.

5. As far as other relief claimed of restraining the defendants from using the swirl device as used by the plaintiffs in relation to CROCIN is concerned, the plaintiffs have failed to prove the said swirl device used by them in relation to CROCIN. The affidavit by way of ex parte evidence of the plaintiffs merely refers to the same without proving the same before the court. In the absence of any evidence, no relief can be granted to the plaintiffs.

6. As far as other reliefs claimed of accounts, delivery and damages are concerned, the plaintiffs having failed to even serve the defendants at the address given of the defendants and it being on record that the defendants are no longer at the said addresses, it is clear that the defendants are not marketing the products infringing rights of plaintiffs. If the defendants were still marketing the infringing products, the plaintiffs would have been able to locate the defendants and to serve the defendants. In any case, vide ex parte order dated 17th December, 2002, the defendants were restrained and there is no averment that the said injunction order has been violated. Thus, the present is not the case where the defendants by

remaining away from the court are seeking to avoid any enquiry into accounts or a decree for damages against them. I, therefore, do not find the plaintiffs entitled to the other reliefs.

7. Accordingly, a decree for permanent injunction is passed in favour of the plaintiffs and against the defendants restraining the defendants, their partners, proprietors, officers, servants, agents from manufacturing, marketing, offering for sale, advertising directly or indirectly or dealing in pharmaceutical preparations under the trademark PANAMOL or any other mark identical or deceptively similar to the trademark PANADOL, so as to infringe the plaintiff's registration No.396820 in class 5. They are also restrained from reproducing, printing or publishing any label or packaging which is a colourable imitation or substantial reproduction of the plaintiffs' PANADOL label and packaging as described in paragraph 11 of the plaint. The plaintiffs shall also be entitled to costs of the suit against the defendants.

The decree sheet be drawn up accordingly.

**RAJIV SAHAI ENDLAW
(JUDGE)**

October 23, 2008
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