
Sun Pharma v Psycoremedies

Acquiescence and delay leads to setting aside injunction

Madras High Court considers impact of twelve years of use and co-existence to set aside the *ex parte* interim injunction granted on the basis of prior registration. Sun Pharma Laboratories Ltd (Sun) had brought a suit for trademark infringement and passing off against Psycoremedies Ltd (PRL), for infringing its mark SIZOPIN by use of a nearly identical trademark SYZOPIN.

Sun Pharma in support of its case argued:

- a) They are engaged in the business of manufacturing and marketing of medicinal preparation for human consumption and their products are prescribed in chronic therapy areas like cardiology, psychiatry, neurology, gastroenterology, diabetology, respiratory etc.
- b) The mark SIZOPIN is their registered trademark in Class 5 which was adopted by their predecessor in the year 1995, in respect of pharmaceutical preparations for treatment of depression and schizophrenia and is valid and subsisting.
- c) Sun has spent substantial amount of money in popularizing its preparations under the trademark SIZOPIN and the sales and promotional expenses runs into several million rupees and therefore the mark has come to be identified with Sun alone.
- d) Sun came to know in 2014 that PRL is using the mark SYZOPIN which is phonetically, structurally and visually identical to their registered mark SIZOPIN, the only change being the letter 'Y' which is trivial.
- e) PRL had also applied for registration of the SYZOPIN mark which evidences the fact that their intention is to subvert the rights of Sun and ride on their goodwill and reputation.

The court granted an *ex parte* injunction in favour of Sun and ordered notice to the Defendant.

Psycoremedies (PRL) in support of its case contended as follows:

- a) PRL predecessor adopted the mark SYZOPIN in the year 2002 for the treatment of psychiatric disorders.
- b) The SYZOPIN mark was coined by taking the prefix SYZO from their similar sounding trade name PSYCO and suffix PIN from the generic drug name CLOZAPINE. Such adoption is prevalent among the pharmaceutical manufacturers/traders.
- c) PRL has coined and adopted other brand names for anti-psychotic medicines such as SYLONEX, SYCHOZINE, SYCONIL, SYZIRAL, SYNRAMINE, SYRAN, PSYDON, PSYDYL, which are duly registered under the Trade Marks Act, 1999.

- d) The main single ingredient of both parties drug is CLOZAPINE which is used to treat severe 'schizophrenia' and apparently the word SIZO is derived by Sun from SCHIZOPHRENIA.
- e) The packaging/s of rival products is also entirely different and the rival products are 'Schedule H Drug' dispensed only on a written prescription from the registered medical practitioner and therefore there is no possibility of confusion and deception.
- f) The trademark SYZOPIN has been used openly, continuously and without any interruption since the year 2002 and sales invoices have also been produced evidencing the same.
- g) There is acquiescence and laches on the part of Sun as they were well aware of the presence of the PRL's products and there are several medical journals from the year 2008 consistently featuring the rival products together.

Court Ruling

After detailed hearing and considering the documents and judgments relied on by the parties the court held as follows:

The main contention of PRL is that they have been using the mark SYZOPIN since 2002 and Sun is also aware of the same. Even though the Plaintiff denies knowledge of such use, the medical journals evidence the fact that the rival marks have been consistently featured in the same journals from the year 2008. Further, invoices also substantiate the use of the mark by PRL since the year 2002. The court therefore observed that having allowed PRL to use the mark SYZOPIN for the past 12 years, there is acquiescence and laches on the part of Sun and they must take the matter to trial and not entitled to interim injunction. The balance of convenience is in favour of PRL and on that basis the court set aside the interim injunction granted earlier in favour of Sun.

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