

# Zydus Wellness Limited vs Sungold Foods Industries & Ors on 21 March, 2018

**Author: Manmohan**

**Bench: Manmohan**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(COMM) 1247/2016 & I.A. 1968/2017

ZYDUS WELLNESS LIMITED . . . . . Plaintiff  
Through Ms. Deepshikha Malhora, Advocate

versus

SUNGOLD FOODS INDUSTRIES & ORS . . . . . Defendants  
Through None

CORAM:  
HON'BLE MR. JUSTICE MANMOHAN

ORDER

% 21.03.2018 Even at the pass over stage, none is present for the defendants. Consequently, this Court has no other option but to proceed ahead with the matter.

Learned counsel for the plaintiff states that the admission and denial affidavit filed by the defendants is not in accordance with the Order 11 Rule 4(3) of Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts, 2015.

This Court has perused the aforesaid admission and denial affidavit and finds that the contention advanced by learned counsel for the plaintiff is correct. Accordingly, the admission and denial affidavit filed by the defendants is directed not to be treated as denial of documents and proof of such documents is dispensed with.

Keeping in view the pleadings, following issues are framed:-

1. Whether the plaintiff is the first coiner, original adopter and prior user of the trademark NUTRALITE? OPP
2. Whether the use of the impugned mark NEAT-N-LITE or any other deceptively similar mark by the defendants amounts to passing off of the trademark NUTRALITE of the Plaintiff? OPP

3. Whether the defendants' act of copying the entire font style, get-up, colour combination and packaging of the plaintiff amounts to infringement of the plaintiff's copyright? OPP
4. Whether this Court has no jurisdiction to try and entertain the present suit? OPD
5. Whether the suit has been incorrectly valued and proper court fees not paid? OPD
6. Whether no cause of action has accrued in favour of the plaintiff in the present suit? OPD
7. Whether the plaintiff is guilty of concealment and suppression of material facts? OPD
8. Whether the impugned mark NEAT-N-LITE of the defendants is not deceptively or confusingly similar to the trademark NUTRALITE of the plaintiff and that the two marks are phonetically and structurally different? OPD
9. Whether the colour scheme and packaging of the plaintiff in relation to fat spread/butter are common to trade and adoption of the same by the defendants does not amount to infringement of copyright of the plaintiff? OPD
10. Whether the plaintiff is entitled for the costs as prayed for? OPP
11. Reliefs.

The parties are directed to file their list of witnesses within a period of two weeks.

The plaintiffs are directed to file their evidence by way of affidavits within a period of eight weeks.

List the matter before the Joint Registrar for recording of plaintiff's evidence on 21st August, 2018.

The Joint Registrar shall list the matter before the Court after the entire evidence has been recorded.

MANMOHAN, J MARCH 21, 2018 rn