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

+ **CS(COMM) 857/2024 & I.A. 41021-41025/2024**

TORRENT PHARMACEUTICALS LTD.Plaintiff
Through: **Mr Sachin Gupta and Ms Prashansa Singh, Advocates**

versus

M/S. ZYDILLAC DERMACEUTICALS & ANR.Defendants
Through:

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

% **01.10.2024**

I.A. 41021/2024 (u/S 12A of Commercial Courts Act)

1. As the present suit contemplates urgent interim relief, in light of the judgment of the Supreme Court in *Yamini Manohar v. T.K.D. Krithi*, 2023 SCC Online SC 1382, exemption from the requirement of pre-institution mediation is granted.

2. The application stands disposed of.

I.A. 41022/2024 (exemption from certified copies)

3. Allowed, subject to the plaintiff filing legible copies of the annexures within four weeks from today.

4. The application stands disposed of.

I.A. 41023/2024 (for exemption from advance service to defendants)

5. Plaintiff seeks urgent interim relief against infringing products and for this purpose, an *ex-parte* appointment of Local Commissioner is also sought



to confiscate the goods. Therefore, in the peculiar facts and circumstances of this case, exemption from effecting advance service upon the defendants is granted.

6. The application is disposed of.

CS(COMM) 857/2024

7. Let the plaint be registered as a suit.

8. Issue summons.

9. Summons be issued to the defendants through all modes. The summons shall state that the written statement(s) shall be filed by the defendants within thirty days from the date of the receipt of summons. Along with the written statement(s), the defendants shall also file affidavit of admission/denial of the documents of the plaintiff, without which the written statement(s) shall not be taken on record.

10. Liberty is given to the plaintiff to file replication(s), if any, within thirty days from the receipt of the written statement(s). Along with the replication(s) filed by the plaintiff, affidavit of admission/denial of the documents of the defendants be filed by the plaintiff.

11. The parties shall file all original documents in support of their respective claims along with their respective pleadings. In case parties are placing reliance on a document, which is not in their power and possession, its detail and source shall be mentioned in the list of reliance, which shall also be filed with the pleadings.

12. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

13. List before the Joint Registrar on 9th December, 2024 for completion of service and pleadings.



14. List before the Court on 24th February, 2025.

I.A. 41025/2024 (O-XXXIX Rule 1 & 2 of CPC)

15. The present suit has been filed seeking relief of permanent injunction restraining the defendants from infringing the copyright and trade dress of the plaintiff, passing off their goods as those of the plaintiff, along with other ancillary reliefs.

16. The plaintiff company is engaged in the business of manufacturing and selling pharmaceutical products. The plaintiff company has international presence in around 50 countries. One of the products manufactured by the plaintiff company is a facewash gel using the mark 'AHAGLOW'. The plaintiff has several trade mark registrations for the mark 'AHAGLOW' in classes 5 and 3, which are given in paragraph 9 of the plaint.

17. It is stated in the plaint that the plaintiff has no objection to the use of the impugned mark 'ZYDIGLOW' and the grievance of the plaintiff is limited to the adoption and use of the impugned label/trade dress/tube packaging.

18. The plaintiff currently uses a unique trade dress/lami tube and has been selling its products using this unique trade dress since May, 2023. The trade dress comprises of combination of colour and design elements which gives a distinct look to the product of the plaintiff.

19. The plaintiff had engaged an agency to develop the unique trade dress/ label and the copyright in the same was duly transferred in favour of the plaintiff through copyright assignment agreement dated 7th March, 2024 which came into effect on 6th December, 2022. A comparison of the packaging of the aforesaid products is given below:



20. The comparison above would show that the defendants had adopted almost identical trade dress/packaging in comparison with the plaintiff. The defendants have used identical droplet shaped design with a small blue circle with text on the front. Further, both the competing packaging have transparent sections at the bottom, through which the internal content is visible.

21. The plaintiff sent a legal notice dated 7th August, 2024 calling upon the defendants to cease and desist from using the impugned 'ZYDIGLOW' label / tube packaging / trade dress. However, the defendants replied to the aforesaid notice on 5th September, 2024 stating that there is no similarity between the two products.

22. Based on the averments made in the plaint and the submissions noted above, in my considered view, plaintiff has made a *prima facie* case of infringement of copyright as well as passing of.

23. Clearly, an attempt has been made by the defendants to create an impression that the products being sold by the defendants are connected to the plaintiff. Balance of convenience is in favour of the plaintiff and against



the defendants. Irreparable injury would be caused to the plaintiff if the defendants continue to use the impugned label/trade dress/tube packaging. Prejudice would also be caused to the public as the label/trade dress/tube packaging of the defendants are deceptively similar to that of the plaintiff and likely to cause confusion in the market.

24. Consequently, till the next date of hearing, the defendants, its agents, employees, assigns, representatives, heirs, servants, dealers, distributors, franchisees, and/or any person acting on their behalf are restrained from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in any product under the impugned label / tube packaging / trade dress/ artistic work as may be deceptively similar to the plaintiff's AHAGLOW label/ tube packaging / trade dress/ artistic work as referred to in paragraph 19 above.

25. Compliance of Order XXXIX Rule 3 of the Code of Civil Procedure, 1908 (CPC) shall be filed within two weeks from today.

26. Issue Notice.

27. Notice be issued to the defendants *via* all permissible modes, including e-mail.

28. Reply(ies) be filed within four (4) weeks.

29. Rejoinder(s) thereto, if any, be filed within two (2) weeks thereafter.

30. List before the Joint Registrar on 9th December, 2024 for completion of service and pleadings.

31. List before the Court on 24th February, 2025.

I.A. 41024/2024 (seeking appointment of Local Commissioner)

32. The present application has been filed under Order XXVI Rule 9 of the CPC seeking appointment of a Local Commissioner to visit the premises



of the defendant no.2, make an inventory of all the goods dealing in impugned trade dress/packaging/artistic work and seizure of the same.

33. In view of what is stated above, the plaintiff has made out a case for appointment of a Local Commissioner.

34. Accordingly, Mr. Aman Rewaria, Advocate (Mobile No. +91-7838669125) is appointed as the Local Commissioner to visit the premises of the defendant no. 2 given below:

Om Sai Pharma Pack, Plot No. 38 & 39, Sector 11,
SIDCUL, Integrated Industrial Estate, Haridwar-
249403.

35. The following directions are passed in this regard:

- i. The Local Commissioner, along with a representative of the plaintiff and its counsel, shall be permitted to enter upon the premises of the defendant mentioned above or any other location/premises that may be identified during the course of commission, in order to conduct the search and seizure.
- ii. The Local Commissioner shall make an inventory of all the infringing products including but not limited to label/packaging material (hereinafter referred to as 'infringing material').
- iii. The Local Commissioner shall conduct a search at the defendant no.2's premises and seize the infringing goods, including any packaging/ promotional material reflecting infringement.
- iv. After seizing infringing material, the same shall be inventoried, sealed and signed by the Local Commissioner, in the presence of the parties, and released on *superdari* to the defendant no.2 on its undertaking to produce the same as and when further directions are issued in this



regard.

- v. The Local Commissioner shall also be permitted to make copies of the books of accounts including ledgers, cash registers, stock registers, invoices, books, etc. insofar as they pertain to the infringing products.
- vi. The defendants and their representatives are directed to provide full assistance to the Local Commissioner for executing the present commission.
- vii. In case, the aforesaid premises of the defendant no.2 or any part thereof is found locked, the Local Commissioner is permitted to break open the locks and doors for execution of the commission.
- viii. To ensure an unhindered and effective resolution of this order, the SHO of the local police station having jurisdiction of the aforesaid premises and the DCP concerned are directed to render the necessary protection and assistance to the local commissioner, if and when sought.
- ix. The Local Commissioner shall have the liberty to take photographs and/or videos of the stock seized and to take a sample of the infringing products to be filed along with the Report.

36. The Local Commissioner shall file his Report within two (2) weeks of executing the commission, along with photographs taken and photocopies of the books of account and stock and the inventory procured pursuant thereto.

37. The fees of the Local Commissioner, to be borne by the plaintiff, is fixed at Rs.1,50,000/-. The plaintiff shall also bear expenses for travel and



lodging of the Local Commissioner and other miscellaneous out-of-pocket expenses for the execution of the commission.

38. The application stands disposed of in the above terms.

39. The order passed today shall not be uploaded for a period of two weeks from today.

40. *Dasti.*

AMIT BANSAL, J

OCTOBER 1, 2024/ds