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

+ **CS(COMM) 432/2024**

SUMIL CHEMICAL INDUSTRIES P LTD Plaintiff

Through: Mr. Sachin Gupta, Mr. Rohit Pradhan
and Ms. Prashansa Singh, Advocates.

versus

UK CROP SCIENCES P LTD Defendant

Through: None.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **24.05.2024**

I.A. 30246/2024 (*seeking exemption from filing certified clearer/ typed or translated copies of documents*)

1. Exemption is granted, subject to all just exceptions.
2. The Plaintiff shall file legible and clearer copies of exempted documents, compliant with practice rules, before the next date of hearing.
3. The application is disposed of.

I.A. 30245/2024 (*seeking exemption instituting pre-litigation mediation*)

4. As the present suit contemplates urgent interim relief, in light of the judgment of Supreme Court in *Yamini Manohar v. T.K.D. Krithi*,¹ exemption from attempting pre-institution mediation is granted.
5. Disposed of.

¹ 2023 SCC OnLine SC 1382.



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6. Let the plaint be registered as a suit.
7. Upon filing of process fee, issue summons to the Defendant by all permissible modes. Summons shall state that the written statement shall be filed by the Defendant within 30 days from the date of receipt of summons. Along with the written statement, the Defendant shall also file an affidavit of admission/denial of the documents of the Plaintiff, without which the written statement shall not be taken on record.
8. Liberty is given to the Plaintiff to file a replication within 15 days of the receipt of the written statement. Along with the replication, if any, filed by the Plaintiff, an affidavit of admission/denial of documents of the Defendant, be filed by the Plaintiff, without which the replication shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.
9. List before the Joint Registrar for marking of exhibits on 23rd August, 2024. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.
10. List before Court for framing of issues thereafter.

I.A. 30244/2024 (under Order XXXIX Rules 1 & 2 read with Section 151, CPC for ex-parte ad-interim injunction)

11. The Plaintiff has effected advance service of the paper-book on the Defendant on the e-mail addresses obtained from the information available on the website of Ministry of Corporate Affairs. Additionally, prior to the filing of this suit, the Plaintiff had issued cease-and-desist notices to the Defendant to which, there was no response. In the above circumstances, the Court has heard Mr. Sachin Gupta, counsel for the Plaintiff, on the issue of



grant of ad-interim *ex-parte* injunction.

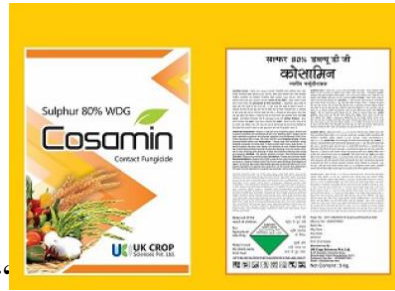
12. Mr. Gupta presents the following facts and contentions:


12.1. Plaintiff is engaged in the business of manufacturing and trading of agrochemical products such as, fungicides, herbicides, insecticides and acaricides. The present suit concerns the Plaintiff's trademarks "COSAMIL," "COSAMIL-DF," and "COSAMIL GOLD" used for the fungicides produced by them.

12.2. The Plaintiff possesses a portfolio of twenty statutory registrations in classes 01 and 05 for the trademark "COSAMIL" and its formative versions. Details of these registrations are mentioned in paragraph No. 6 of the plaint, which indicate that Plaintiff's first registration for the wordmark "COSAMIL GOLD" under No. 2513264 in class 05 has been operative *w.e.f.* 15th April, 2013. Although this application was filed on a proposed-to-be-used basis, the Plaintiff claims that the trademark "COSAMIL" was adopted by them in the year 2009 and has been in continuous use since then. In support, Mr. Gupta places reliance on the invoices filed with the suit that demonstrate use of "COSAMIL" since 2009.

12.3. The annual sales figure since the year 2009-2010 for the products sold under "COSAMIL-DF" and "COSAMIL GOLD" have been set out in paragraph No. 7 of the plaint. The trademark "COSAMIL" has acquired distinctiveness and significant goodwill and reputation. The unauthorized use of a similar trademark by any person in the agrochemical industry will constitute infringement of the Plaintiff's rights under Section 29 of the Trademarks Act, 1999 as well as their common law rights.

12.4. In January, 2024, the Plaintiff discovered the Defendant's application




for registration of the mark “” in class 05 for the goods “*insecticides, herbicides, fungicides*” filed on 15th March, 2021.² This mark is deceptively similar to Plaintiff’s “COSAMIL” trademarks and is used for identical goods.

12.5. The Plaintiff issued a legal notice to the Defendant on 01st February, 2024 and a reminder notice on 27th March, 2024, requiring them to cease their use of the impugned mark and withdrawal of their trademark application. However, none of the notices evoked any response.

12.6. In these circumstances, the Plaintiff has filed the present suit to restrain the use of the impugned mark by Defendant.

13. The Court has considered the aforementioned contentions. The prominent



feature of the Defendant’s mark “” is “COSAMIN.” The consumers are likely to remember their products by the name “COSAMIN” rather than by the accompanying elements appearing on the label, which may go unnoticed. Further, there is an apparent phonetic, visual, and structural similarity between the Plaintiff’s “COSAMIL” and Defendant’s “COSAMIN.” As the parties are dealing in identical products,

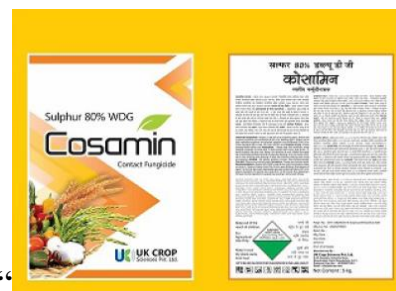
² “impugned mark”.



the points of similarity strengthen the possibility of consumers confusing the rival products and mistakenly purchasing the fungicides manufactured by Defendant, assuming it to be of the Plaintiff. Therefore, *prima facie*, the Defendant's mark "COSAMIN" is deceptively similar to the Plaintiff's registered "COSAMIL" trademarks, thereby constituting infringement of the Plaintiff's trademark as per Section 29(1) and (2)(b) of the Trademarks Act as also passing off of Defendant's products as that of the Plaintiff. Consideration must also be accorded to the nature of products involved in the present controversy namely, fungicides, that are used for treatment of crops and maintenance of crop health. Any confusion as to the source of goods could potentially impact the safety of the agricultural produce.

14. In view of the above, the Court is convinced that Plaintiff has made out a *prima facie* case in their favour and an *ex-parte* ad-interim injunction must follow to prevent irreparable loss to the Plaintiff; balance of convenience also lies in favour of the Plaintiff and against the Defendant.

15. Accordingly, till the next date of hearing, the Defendant or anybody acting on their behalf, is restrained from manufacturing, selling, offering for sale, advertising or directly or indirectly dealing in medicinal preparations



under the mark "COSAMIN"/ " " or any other mark which is deceptively similar to the Plaintiff's registered "COSAMIL" trademarks.

16. Upon filing of process fee, issue notice to the Defendant, by all



permissible modes, returnable on the next date of hearing.

17. Reply, if any, be filed within four weeks from the date of service.

Rejoinder thereto, if any, be filed within two weeks thereafter.

18. Compliance of Order XXXIX Rule 3 of the Code of Civil Procedure, 1908 be done within five days from today.

19. List on 25th October, 2024.

SANJEEV NARULA, J

MAY 24, 2024

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