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

+ CS(COMM) 452/2020

SUN PHARMA LABORATORIES LIMITED Plaintiff

Represented by: Mr. Sachin Gupta, Advocates.

versus

CIPLA LTD. Defendant

Represented by: Mr. C.M. Lall, Sr. Advocate with Ms.
Archana Sachdeva, Ms. Nancy Roy
and Ms. Neha Tandon, Advocates

**CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA**

ORDER

% **15.10.2020**

The hearing has been conducted through Video Conferencing.

I.A. 9382/2020 (exemption)

1. Exemption allowed, subject to all just exceptions.

CS(COMM) 452/2020 & I.A. 9383/2020 (under Order XXXIX Rule 1 and 2 CPC)

1. Complaint be registered as suit.

2. Issue summons in the suit and notice in the application. Ms. Archana Sachdeva, Advocate on behalf of the defendants accepts summons in the suit and notice in the application.

3. Written statement and reply affidavit along with affidavit of admission/denial be filed within 30 days. Replication and rejoinder affidavit along with affidavit of admission/denial be filed within three weeks thereafter.

4. List the suit and the application on 11th December, 2020.
5. The present suit has been filed by the plaintiff claiming that it has registrations of the device mark 'MAKING INDIA HEARTSTRONG DEVICE' under classes 16, 38, 41 & 44 for its campaign to spread the awareness about cardio-vascular diseases. The plaintiff had applied for these applications on 8th July, 2019 on proposed to be used basis and thereafter, according to the plaintiff, it has been using these taglines which are the device mark and duly registered in its favour on 13th September, 2020. As per the plaintiff, it got domain name registration www.makingindiaheartstrong.com on 20th November, 2019 whereas the defendant obtained its domain name registration www.makingheartsstronger.com on 22nd July, 2020 after finding the success of the plaintiff's campaign. Case of the plaintiff is that the plaintiff and the defendant, besides other leading pharmaceutical companies in India and abroad, participated in Cardiology Society of Indian Conference on December, 2019 when the plaintiff used this device mark and the tagline. The plaintiff is now using this device mark and the taglines for even commercial purposes like booking appointments of cardiologists and other commercial activities. On finding the defendant using the tagline 'MAKING HEARTS STRONGER' deceptively similar to the plaintiff's taglines, the plaintiff issued a notice to the defendant on 26th September, 2020 however the defendant did not stop using the tagline. Defendant sent a reply denying the averments of the plaintiff and is continuing to use the impugned mark and the domain name.
6. During the course of arguments, learned counsel for the plaintiff states that since the plaintiff has registrations of the device mark in various

classes, there is prima-facie evidence of validity in terms of Section 31 of the Trademark Act. Even though, the plaintiff's trademark on the date of application i.e. 8th July, 2019 was on proposed to be used basis but when the registration was granted on 13th September, 2020, the plaintiff acquired distinctiveness and thus, even if it is a descriptive mark, the defendant is liable to be enjoined in view of the distinctiveness associated with the plaintiff's mark.

7. Learned Senior counsel for the defendant rebutting the arguments of the learned counsel for the plaintiff states that the plaintiff's mark is not distinctive but descriptive. A perusal of the applications filed by the plaintiff before the Trademark Registry would show that it did not apply for the trademark on the tagline but claimed rights in the tagline in the manner in which it is written. Reference is also made to Section 35 of the Trademark Act and that the plaintiff's adoption of the words 'HEART STRONG' is not bonafide for the reason prior to the plaintiff there are number of entities who have domain name registrations or campaign running under the said name. Learned Senior counsel for the defendant states that in any case, the defendant is not using the tagline 'MAKING HEARTS STRONGER' for commercial activities or as a trademark.

8. Considering the fact that contentions of the parties are required to be heard at length before passing any order in the application, it would be appropriate that all the necessary documents of the plaintiff and the defendant are on record in this respect.

9. In view of the fact that the plaintiff has registrations in its favour which is prima-facie proof of validity, till the next date of hearing, the

defendant would be bound by the statement of its counsel that the tagline will not be used for the commercial purposes or as a trademark.

10. Order be uploaded on the website of this Court.

MUKTA GUPTA, J.

OCTOBER 15, 2020

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