

IN THE HIGH COURT OF DELHI AT NEW DELHI

No. 7074-Z.....DHC/Orgl./DA4

Dated 26-10-20.....

N.D.O.H: 16.02.2021 before Hon'ble Court

From:

The Registrar General
Delhi High Court
New Delhi.

To:

Counsel for Plaintiff
Mr. Sachin Gupta, Advocate
Email: info@sgassociate.com
Mob. no. : 9811180270

CS(COMM) No. 458/2020

Sun Pharma Laboratories Ltd.

....Plaintiff

Versus

Deccan Health Care Ltd.

....Defendant

Sir,

I am directed to forward herewith for information and necessary compliance a copy of order dated 20.10.2020 **passed by Hon'ble Ms. Justice Mukta Gupta**, of this Court. A copy of Memo of parties is also enclosed herewith.

Yours faithfully,



**Admn. Officer (Judl.) (O)
for Registrar General**

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Encl. : Copy of the order dated 20.10.2020 and memo of parties.

IN THE HIGH COURT OF DELHI
(ORIGINAL ORDINARY CIVIL JURISDICTION)

CS (COMM) No. 458 of 2020

Sun Pharma Laboratories Ltd. ...Plaintiff
VERSUS
Deccan Health Care Ltd. ...Defendant

MEMORANDUM OF PARTIES

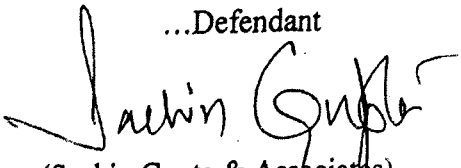
Sun Pharma Laboratories Ltd.
8C, 8th Floor
Hansalaya Buiding
15, Barakhamba Road
Connaught Place
New Delhi - 110 001
Email: prashant.mule@sunpharma.com

...Plaintiff

Versus

Deccan Health Care Ltd.
247, Dwarakapuri, Punjagutta
Hyderabad- 500082, Telangana

...Defendant



(Sachin Gupta & Associates)
Advocates for the Plaintiff
A-1 Vasant Kunj Enclave
New Delhi - 110 070
E: info@sgassociate.com
M: 98111 80270
T: 011-26121161

Place: New Delhi
Dated: 5th Oct, 2020

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(COMM) 458/2020

SUN PHARMA LABORATORIES LIMITED Plaintiff

Represented by: Mr. Sachin Gupta and Ms. Rajnandini
Mahajan, Advocates.

versus

DECCAN HEALTH CARE LTD, Defendant

Represented by: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **20.10.2020**

The hearing has been conducted through Video Conferencing.

I.A. 9439/2020 (Exemption)

1. Exemption allowed, subject to all just exceptions. Original documents, if any, be filed within two weeks of the resumption of the normal Court functioning.
2. Application is disposed of.

CS(COMM) 458/2020 & I.A. 9440/2020 (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 to the defendant on the plaintiff taking steps through e-mail, SMS, WhatsApp, speed post and courier returnable before this Court on 16th February, 2021.
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. Case of the plaintiff is that the predecessor of the plaintiff started using 'PANTOCID' for the pharmaceutical preparation 'PANTOPRAZOLE' and applied for the registration thereof which was granted on 19th February, 1998 in class 5. The plaintiff has since been recorded as subsequent proprietor of the trademark 'PANTOCID' with the Trade Mark Registry vide order dated 31st January, 2014. Thus, since then, the plaintiff is selling the drug 'PANTOPRAZOLE' under the trademark 'PANTOCID'. In the suit, the plaintiff has also given the sales turnover of its product which are growing steadily every year and in the year 2019-2020 was approximately Rs.35,225 lacs.

5. In the second week of September, 2020, the plaintiff came across defendant's medicine being sold under the mark 'PANTACID' for the same salt 'PANTOPRAZOLE' which is deceptively similar to the plaintiff's trademark 'PANTOCID'. The pharmaceutical formulation of the defendant is for the same salt and for the same ailment for which the plaintiff is using since 1998. On searching, the plaintiff could not find that the defendant has applied for registration of 'PANTACID'.

6. Considering the averments in the plaint as also the documents filed therewith, this Court finds that the plaintiff has made out a prima facie case in its favour and in case no ex-parte ad interim injunction is granted in favour of the plaintiff, the plaintiff would suffer an irreparable loss. Balance of convenience also lies in favour of the plaintiff and against the defendant.

7. Consequently, till the next date of hearing before this Court, an ex-parte ad interim injunction is granted in terms restraining the defendant, its

directors, assignees, distributors, dealer, stockists, retailers, chemists, servants and agents from manufacturing, selling, offering for sale, advertising directly or indirectly dealing in the medicinal preparation under the impugned mark 'PANTACID' or any other trademark which is deceptively similar to the plaintiff's trademark 'PANTOCID'.

8. Compliance under Order XXXIX Rule 3 CPC be done within two weeks.

I.A. 9441/2020 (under Order XXVI Rule 9 CPC)

1. In view of the facts noted above, the plaintiff has made out a case for appointment of a Local Commissioner. Mr. Narender Singh Bisht, Advocate (Mobile No. 9811630129) is appointed as Local Commissioner to perform the following functions:-

(a) visit the manufacturing plant of the Defendant at the address below where the Plaintiff presumes that the stock of medicinal preparations under the impugned mark PANTACID, its packaging, promotional materials, stationery, dyes, blocks etc. will be lying:

13/3, SIDCUL, IIE Pantnagar, U.S. Nagar-263153 Uttarakhand or any other premises where the infringing goods or packaging under the impugned mark PANTACID are stocked/stored as per the information received by the Learned Local Commissioner;

(b) On visiting the premises the learned Local Commissioner would prepare an inventory and take into custody all the products under the trademark 'PANTACID' promotional materials, stationery, dyes, blocks etc and hand over the same to the defendant or defendant's representative on superdari.

(c) The learned Local Commissioner will seize copies of books of

accounts, stock and excise registers maintained by the defendant and in case the accounts are in the form of E-records in the computers and laptops etc., the same will be taken on a hard drive.

(d) In case of the premises being locked, the Local Commissioner would break open the locks of the premises where the medicinal preparation under the impugned mark 'PANTACID' or its promotional materials or its dyes etc. are available.

(e) The concerned SHO is directed to give assistance to the learned Local Commissioner in execution of the local commission.

(f) The Local Commissioner will also take the photographs of the entire proceedings.

2. The fee of the learned Local Commissioner is fixed at ₹ 1,00,000/- plus out of pocket expenses to be borne by the plaintiff.

3. Order dasti.

4. Order be uploaded after two weeks on the website of this Court.


MUKTA GUPTA, J.

OCTOBER 20, 2020
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