

\$~29

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

+ CS(COMM) 58/2020

SUN PHARMA LABORATORIES LIMITED Plaintiff

Through: Mr. Sachin Gupta,
Ms. Rajnandini Mahajan,
Mr. Pratyush Rao, Ms. Jasleen
Kaur & Mr. Kartik Agarwal,
Advocates.

versus

M/S. GLOBEX HEALTHCARE & ORS. Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

%

05.02.2020

I.A. 1645/2020(exemption)

The application for exemption is allowed, subject to the plaintiff granting inspection of the documents filed, as and when required to do so, or filing the original documents at the stage of admission/denial.

I.A. 1644/2020(under Order XI Rule 1(4) seeking leave to file additional documents)

This is an application for filing of additional documents. The additional documents may be filed by the plaintiff, strictly in accordance with the provisions of the Commercial Courts Act, 2015.

The application is disposed of.

CS(COMM) 58/2020

1. The plaint be registered as a suit. Summons be issued to the

CS(COMM) 58/2020


7/2/20
Court Officer
High Court of Delhi
New Delhi

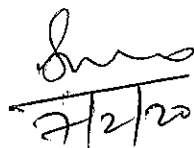
Page 1 of 7

defendants by all permissible modes on filing of process fee.

2. The summons shall indicate that the written statements must be filed within thirty days from the date of receipt of the summons. The defendants shall also file affidavits of admission/denial of the documents filed by the plaintiff, failing which the written statements shall not be taken on record.
3. The plaintiff is at liberty to file replications thereto within fifteen days after filing of the written statements. The replications shall be accompanied by affidavits of admission/denial in respect of the documents filed by the defendants, failing which the replications shall not be taken on record.
4. It is made clear that any unjustified denial of documents may lead to an order of costs against the concerned party.
5. Any party seeking inspection of documents may do so in accordance with the Delhi High Court (Original Side) Rules, 2018.
6. List before the Joint Registrar for marking of exhibits on 25.03.2020.
7. List before the Court on 08.07.2020.

I.A. 1646/2020 (Application under Order XXXIX Rules 1 and 2 of the CPC for ex-parte ad interim injunction) & I.A. 1647/2020 (Application for appointment of local commissioner)

1. Issue notice, returnable for 08.07.2020.
2. The plaintiff is a manufacturer of pharmaceutical products, including a formulation of "Montelukast Sodium", which is sold under the trademark "MONTEK" and various variants thereof, such as, MONTEK LC, MONTEK PLUS, MONTEK AB, MONTEK FX etc.


7/2/20

The said formulation is used for the treatment of allergies and asthma, and is sold in the form of tablets, as well as syrup. The plaintiff states that it has been using the mark "MONTEK" since 01.07.2003 and has a registered trademark in class 5 for medicinal and pharmaceutical preparations. The said mark was registered with effect from 29.05.2008. The plaintiff has reported sales of its products under the said trademark in excess of ₹100 crores in each financial year since 2016-17.

3. The plaintiff claims to have come across products containing the same active pharmaceutical formulation being sold under the name "MONTEX", only in January, 2020. From the packaging of the impugned products, which are also sold both in tablet and syrup form, the plaintiff has learnt that the products are marketed by defendant no.1. The MONTEX-LC tablets are manufactured by defendant no.2 and MONTEX-LC syrup by defendant no.3. The plaintiff states that it has checked the websites of the Registrar of Trademarks and that no application for registration of any mark appears to have been made by the defendants herein. Learned counsel for the plaintiff further states that the defendants' products do not feature on the record of Intercontinental Medical Statistics ["IMS"] which, according to the plaintiff, tracks brands and therapy areas in the Indian pharmaceutical market.

4. Mr. Sachin Gupta, learned counsel for the plaintiff, has also drawn my attention to orders passed by this Court and the Bombay High Court, in the suits instituted by the plaintiff in respect of other infringements of the same mark. Copies of an order dated 14.11.2008

and decree dated 13.04.2010, passed by this Court in CS(OS) 2347/2008 [*Sun Pharmaceutical Industries Ltd. vs. Mega Medicare P. Ltd.*], have been placed on record.

5. Having heard learned counsel for the plaintiff, I am of the view that the impugned mark bears phonetic, structural and visual similarity to the registered trademark of the plaintiff; the only difference between the two marks being that the letter "K" in the plaintiff's mark is replaced by the letter "X" in the defendants' impugned mark. The judgment of the Supreme Court in *Cadila Health Care Ltd. vs. Cadila Pharmaceutical Ltd.* (2001) 5 SCC 73, emphasises the particular caution required to be exercised to prevent any likelihood of confusion when dealing with pharmaceutical products.

6. Having regard to the above, I am of the view that the plaintiff has made out a good *prima facie* case for the grant of *ad interim* injunctive relief. The balance of convenience is also in favour of such relief being granted, particularly keeping in mind the public interest as laid down in *Cadila* (supra). I am satisfied that the plaintiff would suffer irreparable loss and injury if its intellectual property rights are not protected.

7. Consequently, the defendants are restrained, until the next date of hearing, from manufacturing, selling or otherwise dealing in medicinal preparations under the impugned mark "MONTEX" and its variants, or any other mark which is deceptively similar to that of the plaintiff's registered trademark "MONTEK".

8. The plaintiff has also sought appointment of local commissioners to carry out investigations at the premises of defendant

nos. 2 and 3. Mr. Gupta states that the locations mentioned are disclosed in the packaging of the impugned products, as the manufacturing addresses of the said defendants.

9. In my view, the appointment of local commissioners at this stage will assist the Court in determining the nature and extent of infringing activities, if any, being carried out by the defendants and would also be relevant in assessing the damages to be awarded, if any, in favour of the plaintiff at the stage of final adjudication of the suit.

10. The following persons are therefore appointed as local commissioners to visit the premises of defendant nos. 2 and 3 at the addresses mentioned against their names: -

S.No.	Name of the Local Commissioners & Contact numbers	Addresses of Commissions to the Executed
1.	Mr.Tushar Sannu Dahiya, Advocate. (M:- 9911991166)	Innova Captab Limited 1281/1, Hilltop Industrial Estate Near EPIP, Phase-I, Jharmajri Distt. Solan, Baddi Himachal Pradesh-174103
2.	Ms.Shreya Munoth, Advocate. (M:- 9958498446)	Apple Formulations Pvt. Ltd. Plot no. 208, Kh. No. 445 Pargana-Bhagwanpur Kishanpur Jamalpur Tehsil Roorkee, Distt. Haridwar Roorkee, Uttarakhand-247661

11. The local commissioners will inspect the said premises and make an inventory of any infringing goods, packaging, labels, promotional materials, stationary etc., lying at the said premises, bearing the impugned mark "MONTEX" or any other mark

deceptively similar to the plaintiff's registered trademark "MONTEK". Upon making the inventory, the local commissioners will retain samples of the materials and the balance will be returned to the concerned defendant on *superdari*, upon their undertaking that they will not deal with the same and will produce the said material before the Court as and when required to do so.

12. The local commissioners will also be entitled to inspect the books of accounts and records of the concerned defendants, lying at the said premises, whether maintained in physical and/or electronic form. The local commissioners are at liberty to take copies of the records for submission before the Court.

13. The proceedings of the commissions may be photographed/videographed under the directions of the local commissioners.

14. The local commissioners will be entitled to seek police assistance for the execution of the commissions and the officers-in-charge of the concerned police stations are directed to render such assistance as may be required for the due execution of the commissions. In the event the concerned premises are found to be locked, upon two consecutive visits by the concerned local commissioner, during business hours, the local commissioner(s) may seek police assistance to break open the lock and enter the premises. It is made clear that no forcible entry would be made by the local commissioners without the assistance of the police authorities.

15. The commissions will be executed within two weeks, and the local commissioners will file reports in this Court within two weeks

[Handwritten signature]
2/2/20
COMM. COMMISSIONER
1507, COURT HOUSE
LONDON

thereafter.

16. The local commissioners will be entitled to fees of ₹1 lakh each, in addition to out of pocket expenses. The expenses of the commissions, including fees payable to the local commissioners, will be borne by the plaintiff at the first instance, subject to final orders of costs to be passed in the suit.

17. At the time of execution of the commissions, the local commissioners will hand over a copy of the plaint and suit paper book, as well as a copy of this order, to the representative of the respective defendants present at the concerned premises. Such service will constitute due compliance with Order XXXIX Rule 3 of the Code of Civil Procedure, 1908 ["CPC"], as far as the defendant nos. 2 and 3 are concerned. As far as defendant no.1 is concerned, compliance with Order XXXIX Rule 3 of the CPC will be made by learned counsel for the plaintiff within 48 hours of execution of the first commission.

18. The defendants will be entitled to file replies to these applications within four weeks. Rejoinder, if any, be filed within two weeks thereafter.

19. The defendants will be at liberty to apply for vacation, variation and/or modification of this order, if required.

20. List on 08.07.2020.

21. A copy of this order be given *dasti* under the signature of the Court Master.

FEBRUARY 05, 2020/ 'pv' /s

Sd-
PRATEEK JALAN, J

True Copy

hms
7/2/20
Court Master
H.M. Jalani
10/2/20

