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

+ CS(COMM) 573/2019

SUN PHARMA LABORATORIES LIMITED Plaintiff

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

versus

M/S GLOBAL BIOLOGICS LLP & ORS. Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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14.10.2019

I.A. 14191/2019 (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. 14190/2019 (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) 573/2019

1. The plaint be registered as a suit. Summons be issued to the defendants by all permissible modes on filing of process fee.

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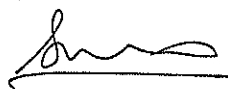
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2. The summons shall indicate that the written statements must be filed within thirty days from the date of receipt of the summons. The defendants shall also file affidavits of admission/denial of the documents filed by the plaintiff, failing which the written statements shall not be taken on record.
3. The plaintiff is at liberty to file a replication thereto within fifteen days after filing of the written statements. The replication shall be accompanied by affidavit of admission/denial in respect of the documents filed by the defendants, failing which the replication 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 03.12.2019.
7. List before the Court on 04.02.2020.

I.A. 14192/2019 (under Order XXXIX Rules 1 & 2 of the CPC for grant of ad-interim and ex-parte injunction) & **14193/2019** (under Order XXVI Rules 9 and Order XXXIX Rule 7 of the CPC for appointment of Local Commissioner)

1. Issue notice.
2. The plaintiff is a manufacturer of pharmaceutical products, and has a registered trademark "PANTOCID" in Class-5 [pharmaceutical and medical preparations in class-5]. The plaintiff claims to be using the said trademark since the year 1999 and its product is sold and marketed in India as well as overseas. The sales turnover of the said drug in the year 2018-2019 was over ₹352 crores.



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3. The plaintiff claims that it has recently come across a trademark application filed by defendant No.3 for registration of the mark "PANFACID" in Class-5. Market research undertaken by the plaintiff also revealed the availability of a medicinal preparation under the name "PANFRACID", although the plaintiff does not know of any registration of the said name as a trademark. The packaging of the marketed product reveals that the manufacturer is a company by the name Apco Pharma Ltd., which is impleaded in the present suit as defendant No.2. The marketing of the product is being undertaken by defendant No.1. Defendant No.3, who has applied for registration of the trademark "PANFACID", is one of the partners of defendant No.1 and a director of defendant No.4-company which, according to the plaintiff, is engaged in the sale of the impugned products. On the basis of the aforesaid, the plaintiff alleges infringement of its registered trademark, passing-off and unfair competition against the defendants.

4. Learned counsel for the plaintiff has drawn my attention to several orders including orders dated 13.03.2018 in CS(COMM) 723/2018 and 24.11.2017 in CS(COMM) 809/2017 by which this Court [and the Bombay High Court in COM I.P. (L) No. 1722/2018 and COM I.P.(L) 402/2019] have protected the plaintiff's registered trademark by granting orders of injunction against various defendants.

5. In view of the above, I am of the view that the plaintiff has made out a good *prima facie* case for the grant of injunctive relief at this stage. The defendant's product "PANFRACID" and the trademark applied for "PANFACID", both are substantially similar, phonetically and structurally, to the plaintiff's registered trademark



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“PANTOCID”.

6. Particularly in view of the fact that the products in question are pharmaceutical products, the balance of convenience is also against permitting the defendants to exploit the impugned mark, which may cause confusion in the mind of the customer. I am satisfied that the plaintiff would suffer irreparable prejudice if interim relief is refused at this stage.

7. The defendants are therefore restrained, until the next date of hearing, from manufacturing, selling or otherwise dealing in any medicinal preparations under the impugned mark “PANFRACID” or “PANFACID”, or any other mark similar to the plaintiff’s registered trademark “PANTOCID”.

8. The plaintiff has also sought appointment of a Local Commissioner to visit the premises of defendant No.2 at D-8, Industrial Area, Haridwar, Uttrakhand-249401 for the purpose of preparing an inventory and taking into custody the products under the mark “PANFACID” or “PANFRACID”, as well as any packaging, promotional material, stationery or advertising material related thereto.

9. The plaintiffs have made out a *prima facie* case as recorded above. I am of the view that appointment of a Local Commissioner will assist the Court to ascertain the quantum of infringement, if any, and will be of aid in the final adjudication of the suit.

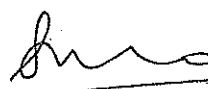
10. Ms.Roshni Namboodini, Advocate [Mob. 9818332885] is therefore appointed as the Local Commissioner to visit the aforementioned premises of defendant No.2, prepare the inventory and take into custody all products, packaging, material, promotional

materials, etc., bearing the impugned marks "PANFACID" or "PANFRACID". After making the inventory, the Local Commissioner may retain a few samples of the infringing products or materials. The rest of the material/products will be sealed and handed over to the representative(s) of defendant No.2 under *Superdari* on their undertaking that they shall not deal with the infringing products and shall produce the same before the Court when directed. The Local Commissioner will also inspect the books of accounts and any other relevant records maintained by defendant No.2 pertaining to the impugned product. Copies of the said books and records may be made, either physically or electronically, under the directions of the Local Commissioner.

11. The Local Commissioner will be entitled to seek police assistance from the concerned Police Station and the officer in-charge of the Police Station is directed to provide adequate assistance to the Local Commissioner to enable the Commission to be executed. If necessary, in the event the premises are found locked, the Local Commissioner shall be entitled to break open the locks in the presence of police authorities for the purpose of execution of the Commission.

12. Proceedings of the Commission may be photographed and/or videographed under the directions of the Local Commissioner.

13. The plaintiff will make all arrangements for execution of the Commission and bear the expenses for the said execution, subject to final orders in the suit. The Local Commissioner will be entitled to fees of Rs.1,00,000/- in addition to out of the pocket expenses, payable by the plaintiff in advance. The Commission may be executed within ten days from today and the Local Commissioner is


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directed to file a report before this Court within ten days thereafter.

14. The Local Commissioner is further directed to serve a copy of the plaint and entire suit record, as well as copy of this order, upon defendant No.2 at the time of execution of the Commission. Such service will constitute compliance with the provisions of Order XXXIX Rule 3 of the Code of Civil Procedure, 1908 ["CPC"]. The provisions of Order XXXIX Rule 3 of the CPC shall be complied with by the plaintiff in respect of other defendants within three days after the execution of the Commission. The other defendants shall also be served with copies of the plaint and the entire suit record. All the defendants will be entitled to file replies to the applications within four weeks from the receipt of the summons. Rejoinders thereto, if any, be filed within two weeks thereafter.
15. The defendants may apply for vacation, variation or modification of this order, if necessary.
16. List on 04.02.2020.
17. A copy of the order be given *dasti*, to learned counsel for the plaintiff, under the signature of the Court Master.

OCTOBER 14, 2019
'hkaur' /s



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PRATEEK JALAN, J

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