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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ CS(COMM) 339/2019 & IA No.8788/2019 (u/O XXXIX R-1&2  
CPC)

SUN PHARMA LABORATORIES LTD. .... Plaintiff

Through: Mr. Sachin Gupta, Adv.

Versus

NITIN JOSHI & ORS. .... Defendants

Through: Mr. Viraj R. Datar & Mr. Rajeev Sirohi,  
Adv. with Mr. Nitin Joshi, D-1 & Mr.  
Jayanta Pradhan, Director of D-2.  
Mr. S.N. Parashar & Mr. B. Singh,  
Adv., Adv. for D-3.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**ORDER**

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**15.07.2019**

1. This order is in continuation of the earlier orders dated 4<sup>th</sup> July, 2019 and 8<sup>th</sup> July, 2019.
2. The counsel for both the defendants no.1 and 2 states that affidavit on behalf of defendant no.1 Nitin Joshi in terms of earlier order has been filed and the defendant no.2 Vanmed Pharmaceuticals P. Ltd. is also bound by the said affidavit. The defendant no.1 Nitin Joshi and Jayanta Pradhan, Director of the defendant no.2, are also stated to be present in person. It is further stated that the defendants, in the documents filed along with the affidavit have shown the unsold stock of the medicine / food supplement under the impugned mark available with the defendants no.1 and 2 and their stockists and retailers and the defendants seek time till 15<sup>th</sup> August, 2019 to sell the medicine / food supplement under the impugned mark and whatever stocks remain unsold, whether in possession of the defendants or their distributors,

stockists and retailers, will thereafter be recalled and the medicine / food supplement under the impugned mark, after 15<sup>th</sup> August, 2019, will not be available anywhere.

3. The counsel for the plaintiff opposes, contending that (i) the defendants should be directed to immediately recall their medicine / food supplement under the impugned mark; (ii) the same is in public interest; (iii) while the medicine of the plaintiff is to prevent vomiting after chemotherapy, the medicine / food supplement of the defendant under the impugned mark is to supplement the iron deficiency in lactating and expecting mothers; (iv) it can play havoc with the lives of lactating or expecting mothers if consume the wrong medicine; and, (v) recall of medicines is a known and well-established practice of the trade and the defendants can always repackage and sell the medicine / food supplement.

4. On enquiry, it is informed that the expiry of the medicine / food supplement of the defendants is till 2020.

5. The proposal of the defendants no.1 and 2 is found to be reasonable, specially considering that the goods under the impugned mark have been available since the year 2017. The defendants are however cautioned, that if the medicine / food supplement under the impugned marked is found available anywhere post 15<sup>th</sup> August, 2019, stringent action shall follow.

6. None appears for defendant no.3 M/s Raghav Remedies. Though report of service of defendant no.3 is awaited, the counsel for plaintiff has filed affidavit of service and the defendant no.1 in his affidavit has stated that the defendant no.3 was manufacturing goods under the impugned mark under authority of defendant no.1.

7. The defendant no.3 is proceeded against *ex parte*.
8. Accordingly a decree is passed, in favour of the plaintiff and jointly and severally against the defendants viz. (i) Nitin Joshi, (ii) Vanmed Pharmaceuticals P. Ltd., and, (iii) Raghav Remedies, of permanent injunction in terms of prayer paragraph 30(a) of the plaint dated 1<sup>st</sup> July, 2019. However, the said decree for permanent injunction shall come into force with effect from 16<sup>th</sup> August, 2019.
9. The defendants having immediately on the first date agreed to suffer injunction, no costs.  
Decree sheet be drawn up.
10. The counsel for the plaintiff seeks refund of the court fees.
11. No case for refund of court fees is made out.

**RAJIV SAHAI ENDLAW, J**

**JULY 15, 2019**  
'gsr'..