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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **CS(COMM) 279/2019**

SUN PHARMA LABORATORIES LIMITED ..... Plaintiff  
Through: Mr. Sachin Gupta, Ms. Rajnandni  
Mahajan, Ms. Jasleen & Mr. Pratyush  
Rao (M-9811180270)

versus

TICOMA PHARMACIA ..... Defendant  
Through: None.

**CORAM:**  
**JUSTICE PRATHIBA M. SINGH**  
**ORDER**  
% **27.05.2019**

**I.A. 7811/2019 (for exemption)**

1. This is an application seeking exemption from filing original documents. Recording the Plaintiff's undertaking that the inspection of original documents shall be given, if demanded, or that the original documents shall be filed prior to the stage of admission/denial, the exemption is allowed. I.A. is disposed of.

**I.A. 7808/2019 (for additional documents)**

2. This is an application seeking leave to file additional documents under the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (*hereinafter, 'Commercial Courts Act'*). The Plaintiff, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act. I.A. is disposed of.

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3. Let the plaint be registered as a suit.
4. Issue summons to the Defendant through all modes upon filing of Process Fee including through email.
5. The summons to the Defendant shall indicate that a written statement to the plaint shall be positively filed within 30 days from date of receipt of summons. Along with the written statement, the Defendant shall also file an affidavit of admission/denial of the documents of the Plaintiff, without which the written statement shall not be taken on record.
6. Liberty is given to the Plaintiff to file a replication within 15 days of the receipt of the written statement. Along with the replication, if any, filed by the Plaintiff, an affidavit of admission/denial of documents of the Defendant, be filed by the Plaintiff, without which the replication shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines prescribed under the Delhi High Court (Original Side) Rules, 2018.
7. List before the Joint Registrar for marking of exhibits on 16<sup>th</sup> September, 2019. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.
8. List before Court on 9<sup>th</sup> August, 2019.

**I.A. 7811/2019 (u/O XXXIX Rule 1 and 2 CPC)**

9. The Plaintiff has filed the present suit seeking permanent injunction restraining infringement of trademark and passing off, etc. The Plaintiff claims to be the owner of the trademark 'PANTOCID' which is sold in various derivatives such as '*Pantocid*', '*Pantocid Fast*', '*Pantocid L*', '*Pantocid – Hp*', '*Pantocid – It*', and '*Pantocid – D*'.

10. The trademark 'PANTOCID', which is used in respect of pharmaceutical and medicinal preparations is registered since 1998 in favour of the Plaintiff. The Plaintiff also has registrations in various foreign countries for the said trademark. The Plaintiff relies upon similar orders that have been passed by various Courts protecting the trademark.

11. The grievance in the present suit is that the Defendant has commenced manufacturing and marketing pharmaceutical preparations under the trademark 'PANTACID – D'. The Plaintiff claims that it came across the Defendant's products sometime in May, 2019 and thereafter obtained a sample of the same. Ld. counsel for the Plaintiff has produced both the Plaintiff's and Defendant's products.

12. The 'PANTOCID' mark of the Plaintiff is used in respect of pharmaceutical preparations which contain the API (Active Pharmaceutical Ingredient) Pantoprazole. The Defendant is using the mark 'PANTACID' for Pantoprazole based medicinal preparations, which is deceptively similar to the mark of the Plaintiff both phonetically and visually. Owing to the near identity between the two marks and considering that the products are medicines, the Plaintiff has made out a *prima facie* case for injunction. Following the judgment of the Supreme Court in ***Cadila Healthcare Ltd. v Cadila Pharmaceuticals Ltd AIR 2001 SC 1952***, an *ex-parte ad-interim* injunction is liable to be granted. Accordingly, till the next date, the Defendant is restrained from manufacturing, selling, or marketing any pharmaceutical or medicinal preparations under the trademark 'PANTACID', 'PANTACID – D' or any other derivatives thereof.

13. Compliance of Order XXXIX Rule 3 be done within one week from execution of the Local Commission.

**I.A. 7810/2019 (u/o XXVI Rule 9 CPC)**

14. By the present application, Plaintiff prays for appointment of a Local Commissioner. Accordingly, **Mr. Yashu Khurana, Advocate (M:- 8860886078)** is appointed as a Local Commissioner to visit the premises of the Defendant at **E-17, Industrial Focal Point, Debrabassi, Punjab -140507**. The Local Commissioner shall:

- i) Make an inventory and take into custody all impugned products, including packaging, labels, stationery, hoardings and other materials bearing the mark PANTACID and any derivative marks;
- ii) Seal the impugned products and return the same on *superdari* after obtaining the undertakings of the Defendant.
- iii) The Defendant shall provide the Local Commissioner access to its account books whether in hard copy form or electronic form. If the accounts are maintained on a computer, password shall be provided by the Defendant. The data on the computer systems of the Defendant, if required, may be copied by the Local Commissioner, on a hard disk, the expense of which shall be duly reimbursed by the Plaintiff. After obtaining access to the computer systems, the same shall be released to the Defendant without too much delay. The commission shall be executed without much disruption to the working/business activities of the Defendant.

15. The Defendant shall render all cooperation to the Local Commissioner in the execution of the Commission. The Local Commissioner shall also be entitled to obtain police assistance from the local police stations. The SHO of the area concerned shall render all assistance if a request in that regard is made by the Local Commissioner.

One representative on behalf of the Plaintiff is permitted to accompany the Local Commissioner. The Local Commissioner shall be entitled to take photographs as well.

16. The fee of the Local Commissioner is fixed at Rs. 1 lakh to be borne by the Plaintiff. Let the report of the Local Commissioner be filed within four weeks after the execution of the Commission. The Local Commission shall be executed on or before 7<sup>th</sup> June 2019.

17. List on 9<sup>th</sup> August, 2019. *Dasti*.

**PRATHIBA M. SINGH, J**

**MAY 27, 2019**

*Rahul*