

IN THE HIGH COURT OF DELHI AT NEW DELHI

No.....No 2 F.....DHC/Orgl./DA4

Dated.....29/10/20

N.D.O.H: 15.02.2021 before Court

From:

The Registrar General
Delhi High Court
New Delhi.

To:

Counsel for Plaintiffs
Sh.Sachin Gupta, Advocate
A-1, Vasant Kunj Enclave, New Delhi-110070
Email: info@sgassociate.com
Mobile No: 9811180270

CS(COMM) No. 465/2020

Sun Pharmaceutical Industries Ltd. and Anr.

....Plaintiffs

Versus

Edeline Remedies and Ors

....Defendants

Sir,

I am directed to forward herewith for information and necessary compliance a copy of order dated **22.10.2020 passed by Hon'ble Ms Justice Mukta Gupta** of this Court. A copy of Memo of parties is also enclosed herewith.

Yours faithfully,



(Mohit Bisht, JJA)
for Registrar General

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Enclosure: As above

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(COMM) 465/2020

SUN PHARMACEUTICAL
INDUSTRIES LTD.. & ANR.

..... Plaintiff

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

versus

EDELIN REMEDIES
PARTNERSHIP FIRM

THROUGH ITS PARTNERS ILJEET KAUR & ORS..... Defendant

Represented by: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

22.10.2020

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The hearing has been conducted through Video Conferencing.

I.A. 9728/2020 (exemption)

1. Allowed, subject to just exceptions.
2. Application is disposed of.

CS(COMM) 465/2020

I.A. 9729/2020 (under Order XXXIX Rule 1 and 2 CPC)

1. Complaint be registered as a suit.
2. Issue summons in the suit and notice in the application to the defendants on the plaintiffs taking steps through email, SMS, whatsapp, Speed Post and Courier, returnable before this Court on 15th February, 2021.
3. Written statement and reply affidavit along with affidavit of admission/denial be filed within 30 days of the receipt of the summons in

the suit and notice in the application.

4. Replication and rejoinder affidavit, along with affidavit of admission/denial, be filed within three weeks thereafter.

5. According to the plaintiffs the mark 'ROSUVAS' was coined by the plaintiff No.1's predecessor and is in use since the year 2003. The drug under the mark 'ROSUVAS' is used to reduce the levels of bad cholesterol like LDL and triglycerides in the blood while increasing levels of good cholesterol, that is, high density lipoprotein or HDL in the blood. The drug contains the salt 'Rosuvastatin Calcium'. The trademark 'ROSUVAS' and

ROSUVAS EZ

were registered in favour of the plaintiff No.1's predecessor on 12th February, 2001 and 15th December, 2008 respectively in class-5. Around the year 2015, the rights in the trademark and the drug have been assigned to the plaintiff No.1 and since then the plaintiff No.1 is the recorded proprietor of the marks 'ROSUVAS' and

ROSUVAS EZ

in Class-5.

6. The plaintiff No.1 coined the trademark 'PANTOCID' in the year 1998 for the molecular preparation Pantoprazole which is used for short term treatment of erosive esophagitis associated with gastroesophageal reflux disease (GERD) and is using the said mark since the 1999. The plaintiff, was granted registration for the mark 'PANTOCID' on 19th February, 1998 and since then the plaintiffs have extended the said drug by using its various variants like Pantocid, Pantocid Fast, Pantocid L, Pantocid -HP, Pantocid- IT and Pantocid-D.

7. Due to the re-organization of the plaintiff No.1, the plaintiff No.2 is now the recorded proprietor of the two marks 'ROSUVAS' and 'PANTOCID'. The plaintiff has also given the sales figures of its products which shows that these drugs are being used commonly and the sales in the year 2018-19 was for the sum of ₹184.89 crores and ₹352.24 crores for 'ROSUVAS' and 'PANTOCID' respectively. The plaintiff also holds international registrations of these two trademarks and the drugs are extensively sold in various other countries. The plaintiffs mark 'ROSUVAS' and 'PANTOCID' have been protected by this Court in infringement claims filed by the plaintiffs before this Court against third parties.

8. Grievance of the plaintiff in the present suit is that the defendant No.1 Edeline Remedies, which is a partnership firm with two partners, i.e. Ms.Iljeet Kaur and Ms.Pupinder Kaur, who have been impleaded as defendant Nos.1 and 2 in the present suit, is infringing the two trademarks of the plaintiffs by selling drugs with the same chemical composition, that is, Rosuvastatin Calcium and Pantoprazole under the mark 'ROSOUAS' and 'PATNOCID/PANTOLED'. Defendant No.3 is the manufacturer of the drugs under the infringing marks for defendant Nos.1 and 2.

9. Defendant Nos.1 and 2 applied for registration of the mark 'ROSOUAS' in the year 2019 claiming user since 1st April, 2019 and in the affidavit filed along with the application for registration of the mark, no supporting documents showing user since 1st April, 2019 has been filed. Similarly defendant Nos.1 and 2 also applied for registration of the mark 'PATNOCID' in the year 2019 again claiming user since 1st April, 2019 where again along with the application, no supporting documents of the user

since 1st April, 2019 have been filed. Both these trademarks have been objected to by the Trademark Registry citing a prior and registered

ROSUVAS EZ

trademark of the plaintiff, that is, 'ROSUVAS'

10. The plaintiffs' investigator bought both the drugs and it was found that while supplying the PANTOLED 40 mg, the receipt given to the plaintiffs' investigator was for 'PATNOCID'.

11. Considering the claim in the plaint as also the documents filed therewith, the plaintiffs have made out a prima facie case in their favour and in case no ex-parte ad-interim injunction is granted, the plaintiffs would suffer an irreparable loss. Balance of convenience also lies in favour of the plaintiffs and against the defendants.

12. Consequently, till the next date of hearing before this Court, defendants, their agents, Directors, assignees, distributors, dealers, stockists, retailers etc are restrained from selling, offering for sale, advertising, directly or indirectly dealing in medicinal preparations under the impugned marks 'ROSOUAS' and 'PATNOCID/PANTOLED' or any other trademark which is deceptively similar to the plaintiffs' registered trademarks 'ROSUVAS' and 'PANTOCID'.

13. Compliance under Order XXXIX Rule 3 CPC be done within one week.

I.A. 9730/2020 (under Order XXVI Rule 9 CPC R/W Section 135 TM Act)

1. By this application the plaintiffs seek appointment of a Local Commissioner to search and seize the medicinal preparations by the

defendant Nos.1, 2 and 3 which are infringing the plaintiffs trademarks 'ROSUVAS' and 'PANTOCID' as also passing of the defendants goods as that of the plaintiffs.

2. Considering the facts noted above, the plaintiffs have made out a case for appointment of the Local Commissioner.

3. Accordingly, Mr.Mudit Gupta, Advocate (Mobile No. 9910687976) is appointed as the Local Commissioner. The learned Local Commissioner will:-

(a) visit the manufacturing plant of the defendants at the address below or any other premises where the infringing goods or packaging under the impugned mark ROSOUAS and PATNOCID/PANTOLED are stocked/stored as per the information received by the learned Local Commissioner, where the plaintiffs presume that the stock of medicinal preparations under the impugned mark ROSOUAS and PATNOCID/PANTOLED, its packaging, promotional materials, stationery, dyes, blocks etc. will be lying:

Magnus Biotech Pvt. Ltd.
Village Kunjpura, P.O. Bada Gaon,
Karnal, Haryana-132023.

(b) prepare an inventory and take in custody all the products under the mark ROSOUAS and PATNOCID/PANTOLED their packaging, promotional materials, stationery, dyes, blocks etc. and hand them over to the defendants' representative on *superdari*;

(c) record details of such other persons who, according to the information disclosed by the defendants, have role in manufacturing and sale of

medicinal preparations under the impugned mark ROSOUAS and PATNOCID/PANTOLED;

(d) obtain copies of the books of account, stock & excise registers maintained by the defendant pertaining to medicinal preparations under the impugned mark ROSOUAS and PATNOCID/PANTOLED; and in case the same is stored in a computer or laptop, copies thereof will be taken in hard drive.

4. Learned Local Commissioner would be at liberty to break open the locks if access to the premises is blocked. The learned Local Commissioner will also take photograph and videograph of the seized stocks during the course of execution of the commission.

5. The concerned SHO is directed to ensure that there is no hindrance caused in the smooth execution of the local commission.

6. The fee of the learned Local Commissioner is fixed at ₹1 lakh plus out of pocket expenses to be borne by the plaintiffs.

7. Order dasti.

8. Application is disposed of.

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

OCTOBER 22, 2020
'vn'



Sd/-
MUKTA GUPTA, J.

T.C
[Signature]

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

CS (COMM) No. 465 of 2020

Sun Pharmaceutical Industries Ltd. & Anr.

...Plaintiffs

Versus

Edeline Remedies & Ors.

...Defendants

MEMORANDUM OF PARTIES

Sun Pharmaceutical Industries Limited
8C, 8th Floor, Hansalaya Buiding
15, Barakhamba Road, Connaught Place,
New Delhi - 110 001
E: prashant.mule@sunpharma.com

...Plaintiff No. 1

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

...Plaintiff No. 2

Versus

Edeline Remedies
Partnership Firm through
Its partner Ms. Iljeet Kaur
B-224, Basement floor
Lajpat Nagar-I, New Delhi-110024

...Defendant No. 1

Ms. Pupinder Kaur
Partner of Edeline Remedies
B-224, Basement floor,
Lajpat Nagar-I, New Delhi-110024

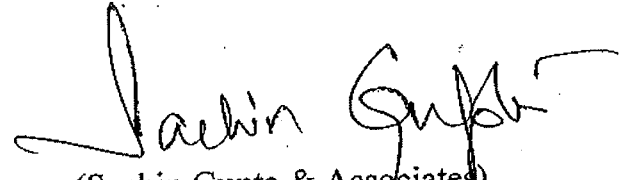
...Defendant No. 2

Magnus Biotech P. Ltd.
Registered office
Mugal Mazra Road,
P.O. Bada Gaon

Village Kunjpura
Karnal, Haryana-132023

...Defendant No. 3

Place: New Delhi
Dated: 15th October, 2020



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

NOTE: The email addresses of the Defendants are not provided as the same reflects in the cause list and the link of hearing may accidentally go to the Defendants thereby defeating the purpose of appointment of local commissioner as sought through an accompanying application. The exemption was sought and was allowed in the early hearing application.

