

रमेश कुमार-1
RAMESH KUMAR-1
जिला न्यायाधीश (आर्गुमेण्ट) - South
District Judge (Commercial)- South
रूम नं. 614, छठां फ्लोर
Room No. 614, Sixth Floor
साकेत कोर्ट परिसर, नई दिल्ली
Saket Court Complex, New Delhi

CS (Comm) No. 88/20

IN THE COURT OF SH. RAMESH KUMAR-I: DISTRICT JUDGE
(COMMERCIAL COURTS)-01, SOUTH DISTRICT, SAKET COURTS: NEW
DELHI

In the matter of

CS (Comm) No. 88/20

Sun Pharmaceutical Industries Limited

..... PLAINTIFF

VERSUS

Nukind Healthcare P. Ltd. & Anr.

..... DEFENDANTS

ORDER

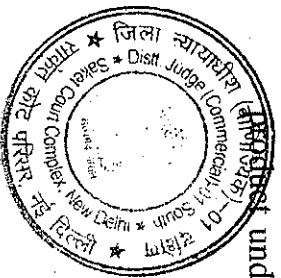
1. Present order deals with an application U/o XXXIX Rule 1 and 2 CPC, 1908, seeking temporary injunction restraining the defendants, its directors, partners, proprietors, assignees in business, its distributors, dealers, stockists, retailers, chemists, servants and agents from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in medicinal preparations under the impugned mark "ROSWAS" or any other trade mark as may be deceptively similar to the plaintiff's trade mark "ROSUVAS" amounting to infringement of registered trade mark or amounting to passing off their goods as those of the plaintiff. There is another application U/o XXVI Rule 9 r/w order XXXIX Rule 7 CPC and Section 135 of Trade Marks Act, 1999.



2. By way of instant application, plaintiff complains against the defendant for dealing in medicinal and pharmaceutical products under mark "ROSWAS", which is deceptively similar to plaintiff's well-known registered trade mark "ROSUVAS" amounting to infringement and passing off, of plaintiff's rights, in its trade mark, in an attempt, to follow the goodwill and reputation of the plaintiff.

3. It is argued by Ld. Counsel for the plaintiff that the mark "ROSUVAS" was coined by the plaintiff's predecessor namely, Ranbaxy Laboratories Limited, in the year 2001, and, has been in use, since the year 2003. The said product "ROSUVAS" reduces levels of "bad" cholesterol (low density lipoprotein, or LDL) and triglycerides in the blood, while increasing levels of "good" cholesterol (high density lipoprotein, or HDL) and it contains salt, namely Rosuvastatin. It is also averred that the said trade mark "ROSUVAS", is registered in India, under the trade mark "ROSUVAS", having registration no. 989525, dated 12.02.2001, and trade mark "ROSUVAS EZ", having registration no. 1763699, dated 15.12.2008. It is argued that, due to superior quality and high efficacy of its goods bearing trade mark "ROSUVAS", the plaintiff has acquired immense reputation and goodwill in the said trade mark as the result of efficacy of the drug "ROSUVAS", is apparent from its sales turnover, which is growing every year.

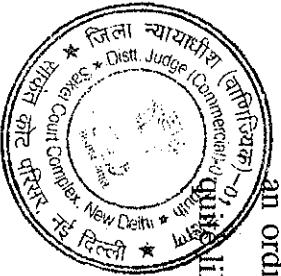
4. Ld. Counsel for the plaintiff has further argued that, in the first week of February, 2020, the plaintiff came to know from its source that a medicinal product under the impugned mark "ROSWAS", containing similar molecule



which is also used for the treatment of same ailment as plaintiff's "ROSUVAS" and is deceptively similar to the plaintiff's well-known registered mark "ROSUVAS". He has further argued that, from the packaging of the product, it was discovered that the same is marketed by defendant no.1 Nukind Healthcare P. Ltd., having registered address at 16A, Block N, Saket, New Delhi, and is manufactured by defendant no.2 Mascot Health Series Pvt. Ltd., at plot no. 79, 80, Sector-6A, IIE, Sidcul, Haridwar, Uttarakhand. It is also stated that, as per plaintiff's knowledge, no trade mark application has been filed for the impugned marks by the defendants. It is averred that defendant's products are not featuring in the records of the IMS, which is an organization that tracks brands and therapy areas, in the Indian Pharmaceutical Market.

5. Ld. Counsel for plaintiff states that defendants have dishonestly adopted the entire registered trade mark of the plaintiff and has dishonestly replaced the alphabets "UV" in "ROSUVAS" with the word "W" to make it "ROSWAS". It is averred that the defendants were aware of the plaintiff's trade mark and have unethically and unlawfully, adopted the impugned mark, which is infringement of trade mark and copyright, passing off, unfair trade practice, unfair competition and dilution.

6. A perusal of the registered trademark of the plaintiff "ROSUVAS" and its comparison with the impugned mark "ROSWAS" immediately brings to the fore, not only the phonetic but visual similarity between the two marks. To an ordinary unwary customer and the, use of the work/mark "ROSWAS" is quite likely to cause confusion, regarding the true source of the goods.



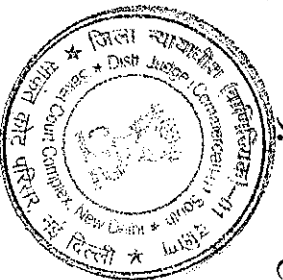
7. After considering the same, I am of the considered opinion that plaintiff has established a prima facie case to the extent that it will suffer irreparable loss, if the ex parte injunction is not granted to it. Balance of convenience is also in its favour as, defendants are not only causing loss to the plaintiff, but also, deceiving the public at large, by selling the goods, under a deceptive mark, which is identical to the trademark of plaintiff company.

8. In these circumstances, an ad-interim temporary injunction is granted in favour of plaintiff by restraining the defendants, its directors, partners, proprietors, assignees in business, its distributors, dealers, stockists, retailers, chemists, servants and agents from manufacturing, selling, offering for sale, advertising, directly or indirectly, dealing in medicinal preparations, under the impugned mark "ROSWAS" or any other trade mark as may be deceptively similar to the plaintiff's trade mark "ROSUVAS", amounting to infringement of registered trade mark or amounting to passing off their goods as those of the plaintiff. Plaintiff is directed to comply with the provisions of Order XXXIX Rule 3 of the Code of Civil Procedure, 1908, within 10 working days, from the date of receiving of this order.

APPLICATION UNDER ORDER XXVI RULE 9 r/w ORDER XXXIX RULE 7

CPC AND SECTION 135 OF TRADE MARKS ACT 1999

9. Coming to the second application for appointment of a Local



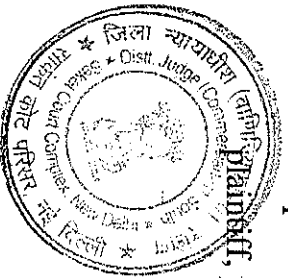
Commissioner, Learned counsel for the plaintiff has submitted that the defendant will flood the market with infringing goods without proper documents executed to show such sale. Defendant may also manipulate or tamper with its books of accounts, stock register, invoice books, receipt books, etc. which can be valuable evidence. If the defendants succeed, in doing the same, the plaintiff shall suffer irreparable loss and injury, in terms of its business reputation. In order to obviate the said possibility and in order to elucidate the matter, it is necessary that a Local Commissioner be appointed to visit the premises of the defendants i.e Mascot Health Series Pvt. Ltd, Plot No. 79, 80, Sector-6A, IIE, Sidcul, Haridwar, Uttarakhand-29403, or other premises, where the infringing goods or packaging under the impugned mark "ROSWAS" are stocked/stored and to take, in his/her custody, all the infringing goods, including, incriminating materials like stationary, dyes, blocks, etc., bearing any other trademark, identical with or, deceptively, similar to the plaintiff's said trademark/label "ROSUVVAS".

10. It has also been prayed that the Local Commissioner be permitted to visit the other premises, at the identification of the plaintiff, where the impugned activities are being carried on by or on behalf of the defendants or where the infringing goods/materials are expected to be found. It is further submitted that, unless the local commissioner is appointed and infringed goods are sealed, there is likelihood that the defendants may take away such infringing goods and sell the same from other premises, and, thus, will continue with the infringement of trademark and copyright of the plaintiff. It is prayed that it is necessary that the Local Commissioner be appointed to prepare the inventories of the infringing goods, and, also, to take into custody



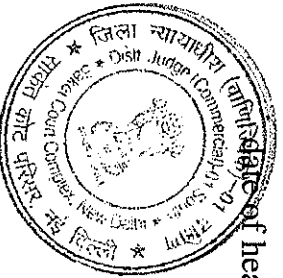
such infringing products/goods and further to take copies of the accounting records of the defendants, so as to ascertain the value of the goods, being copied, manufactured and marketed by the defendants. Hence, it is prayed that Local Commissioner may be appointed to seize and seal such goods, bearing deceptive trademark of plaintiff company, on such identification by plaintiff/his authorized representative.

11. In these circumstances, after considering the submissions of Learned counsel for the plaintiff, in order to seize the goods bearing falsified/deceptive trademark of plaintiff company, *Ms. Arti Bhatnagar, Advocate, Office at Chamber No. 329, IIIrd Floor, Lawyers Chamber, Rohini Courts, Delhi-110085, having mobile No.9899314054*, is appointed as Local Commissioner to visit the place as mentioned in the application i.e. Mascot Health Series Pvt. Ltd., Plot No. 79, 80, Sector-6A, III, Sidelul, Haridwar, Uttarakhand-29403, and to take in custody all the impugned goods, including, other incriminating materials like packing material, blocks, containers, dyes or blocks, semi-finished, packed and unpacked impugned goods or any other documents, wrapper etc., bearing the impugned trade mark/label or bearing any other trademark/name/label/identical with or deceptively similar to the plaintiff's said trademarks/labels. She is also directed to prepare details of persons, engaged in manufacturing and sale of medicinal preparations under the impugned mark "ROSWAS". The expenses of Local Commissioner including TA and DA, as well as suitable accommodation etc., will be paid by the plaintiff and the fees of the Local Commissioner shall be paid by the Plaintiff, prior to her visit, at the site, at the given address.



12. Upon the seizure of any infringing/counterfeit products, the Local Commissioner shall forthwith serve the defendant with a complete set of papers and a copy of the notice and summons.
13. The fees of the Local Commissioners is fixed as Rs.1,00,000/- without TDS. Local Commissioner can hand over such seized goods, on superdari, to the plaintiff, through its authorized representative.
14. Local Commissioner can take assistance from local police. SHO of the concerned Police Station is directed to provide police assistance, to the Local Commissioner, for carrying out her visit and for seizing infringing goods from the shop/showroom/godown of the defendants including, lady police. Local Commissioner can also get the site photographed/videographed, at the expense of plaintiff. She will also prepare inventory of the seized goods and copies of accounting record of the defendants. Local Commissioner shall visit the premises of the defendants, within two weeks from today, and, will file her report, within next 10 working days, after her visit.
15. Copy of this order be given, dasti, to Local Commissioner. Plaintiff is directed to supply copy of the plaint, alongwith, the documents, filed in this court, to the Local Commissioner for her assistance. Compliance of order XXXIX Rule 3 be done positively within 10 working days after inspection and affidavit in this regard be filed alongwith proof of service on or before next

signature of hearing.



16. Summons of the suit alongwith notice of the application under Order XXXIX Rule 1 & 2 of the Code of Civil Procedure, 1908 be issued to the defendants on filing of PF and RC, returnable on 24.04.2020. Copy of this order be given dasu to Learned counsel for the plaintiff.

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ANNOUNCED IN THE OPEN DISTRICT JUDGE (COMMERCIAL COURTS)
COURT ON 06.03.2020 SOUTH, ~~SECRET~~ COURTS,
NEW DELHI

