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

\+ CS(COMM) 11/2018

SUN PHARMACEUTICAL INDUSTRIES LIMITED ..... Petitioner
Through Mr. Sachin Gupta, Advocate

versus

M/S METROCRAFT & ANR ..... Respondents
Through None

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

ORDER

% **05.01.2018**

I.A.134/2018

Keeping in view the averments in the application, plaintiff is exempted from filing the originals/clear/typed/translated copies of documents at this stage and is also permitted to file additional documents within thirty days.

Needless to say, this order is without prejudice to the rights and contentions of the parties.

Accordingly, present application stands disposed of.

CS(COMM) 11/2018

Let the plaint be registered as a suit.

Issue summons in the suit to the defendants by all modes including *dasti*, returnable for 14th March, 2018 before the Joint Registrar for

completion of service and pleadings.

The summons to the defendants shall indicate that a written statement to the plaint shall be positively filed within four weeks of the receipt of the summons. Liberty is given to the plaintiff to file a replication within two weeks of the receipt of the advance copy of the written statement.

The parties shall file all original documents in support of their respective claims along with their respective pleadings. In case parties are placing reliance on a document which is not in their power and possession, its detail and source shall be mentioned in the list of reliance which shall be also filed with the pleadings.

Admission/denial of documents shall be filed on affidavit by the parties within two weeks of the completion of the pleadings. The affidavit shall include the list of the documents of the other party. The deponent shall indicate its position with regard to the documents against the particulars of each document.

List the matter before Court on 15th May, 2018.

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Issue notice to defendants by all modes including *dasti*, returnable for 14th March, 2018 before the Joint Registrar.

It is pertinent to mention that the present suit has been filed for permanent injunction restraining infringement of trademark, copyright, passing-off, unfair competition, rendition of accounts of profits, damages, delivery up, etc.

In the plaint, it is stated that the plaintiff is engaged in the business of marketing drugs and formulations in more than 150 countries worldwide under its extensive range of well known and distinctive trade marks/brand

names. It is stated that the plaintiff is known in the trade circles as SUN/SUN PHARMA and has a consolidated annual turnover of over Rs. 27,992 Crores globally.

It is further stated in the plaint that the plaintiff is the no.1 Pharma Company in India in a total of 11 specialities and is the world's fourth largest generic pharmaceutical company and has manufacturing sites in six continents and 10 world class research centres with over 30,000 strong multi-cultural workforce from over 50 different nationalities.

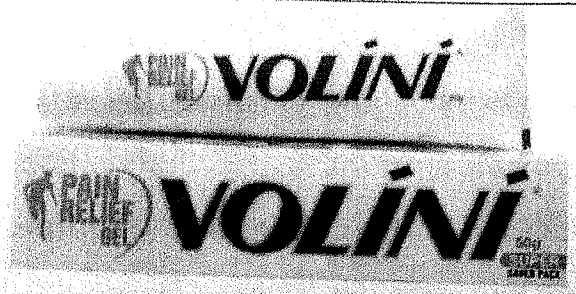
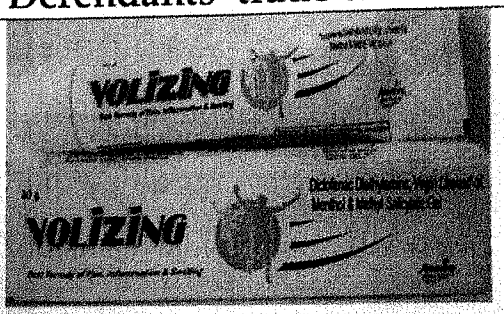
It is stated in the plaint that the plaintiff is the registered proprietor of the coined trade mark VOLINI and the plaintiff has also obtained trade mark registrations, earliest being 19th October, 1993, for various VOLINI formative marks, which are registered for goods, namely Pharmaceutical and Medical Preparations falling in class 5 of the Trade Marks Act, 1999. It is stated that VOLINI is being sold since 1994 and is used for the treatment of pain, back pain, pain due to soft tissue injuries, musculoskeletal aches and pains, back ache, delayed onset muscle soreness and other related conditions. It is stated that the term VOLINI is an arbitrary mark and has no reference to its composition or the ailment.

It is averred that the VOLINI label/trade dress/carton packaging including its overall and individual colour combination, get up, placement of features constitute singularly and collectively an "original artistic work" within the meaning of Section 2(c) of the Copyright Act, 1957 and is entitled to copyright protection under the provisions of Section 14 of the Copyright Act, 1957.

It is the case of the plaintiff that the annual revenue generated by the plaintiff from the sale of its products under the mark VOLINI in the

financial year 2016-17 was Rs. 1691.6 Million. The plaintiff incurred an expenditure of Rs. 518.3 Million on advertising and promotion of its VOLINI products respectively.

Learned counsel for the plaintiff states that in third week of December, 2017, the plaintiff through its field force came across the defendants' medicinal products being sold under the mark VOLIZING and in a label/trade dress/carton packaging, which is deceptively similar to the plaintiff's registered mark VOLINI and its label/trade dress/carton packaging. He states that the defendants have unlawfully adopted the impugned mark/trade dress for its pain relieving gel. A representation of the trade dress of the plaintiff and the defendants is reproduced hereinbelow:-

Plaintiff's trade dress	Defendants' trade dress
	

Learned counsel for the plaintiff states that the adoption of the impugned mark/packaging amounts to misrepresentation and misappropriation of the plaintiff's goodwill in its VOLINI trademarks and also amounts to unfair trade practice, unfair competition and dilution. He states that the use of the impugned trade mark and overall colour combination of the impugned trade dress/carton packaging by the defendants is likely to cause confusion and/or deception in the minds of the consumers.

Learned counsel for the plaintiff lastly states that the plaintiff has been vigilantly protecting its statutory and common law rights in the VOLINI trade marks/labels/packaging/trade dress and has secured injunction against various parties using marks deceptively similar to the plaintiff's trade mark VOLINI.

Keeping in view the aforesaid, this Court is of the opinion that a *prima facie* case of infringement and passing off is made out in favour of the plaintiff and balance of convenience is also in its favour. Further, irreparable harm or injury would be caused to the plaintiff if an interim injunction order is not passed.

Consequently, till further orders, the defendants, their directors, partners or proprietors, as the case may be, assignees in business, its distributors, dealers, stockists, retailers, chemists, servants and agents are restrained from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in medicinal preparations under the mark VOLIZING or any other mark/label/trade dress/carton packaging which may be deceptively similar to the plaintiff's trade mark/label/trade dress/carton packaging VOLINI in any manner whatsoever.

Let the provisions of Order 39 Rule 3 CPC shall be complied within a period of two weeks.

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The plaintiff seeks appointment of a Local Commissioner to visit the premises of the defendants. Accordingly, Ms.Roohehina Dua, Advocate, Mob. No.9899923180 is appointed as the Local Commissioner to visit the following site of the defendants:-

M/s Metrocraft
Khasra No. 1874/450/1/1 &
2091/451/1,
Bhatoli Kalan, Baddi
District Solan
Himachal Pradesh – 173 205

The Local Commissioner shall make an inventory and take into custody all infringing goods bearing the marks VOLIZING, label/carton packaging/trade dress or any other mark/label/trade dress/carton packaging which may be deceptively similar to the plaintiff's trade mark/label/trade dress/carton packaging VOLINI along with its packaging material, promotional materials, stationary, dyes, blocks etc. However, the Local Commissioner shall return the seized infringing goods to the defendants on Superdari upon their furnishing an undertaking that it will produce the goods as and when called upon to do so by this Court.

The Local Commissioner shall break open locks and shall also be entitled to obtain police assistance from the local police stations. The SHO of the concerned police station shall render all assistance if a request in that regard is made by the Local Commissioner. The Local Commissioner shall obtain extract from the books of accounts, stock and excise registers maintained by the defendants pertaining to medicinal preparations manufactured and sold by the defendants along with pending stock of packaging material with regard to the mark VOLIZING or any other mark/label/trade dress/carton packaging which may be deceptively similar to the plaintiff's trade mark/label/trade dress/carton packaging VOLINI.

The Local Commissioner shall be entitled to take photographs as well. The fees of the Local Commissioner is tentatively fixed at Rs.1,00,000/-

apart from all other out of pocket expenses.

Accordingly, the present application stands disposed of.

Order dasti under the signature of the Court Master.

MANMOHAN, J

JANUARY 05, 2018
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06/01/2018
Court Master
High Court of Delhi
New Delhi