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

+ **CS(COMM) 822/2024**

**SUN PHARMACEUTICAL INDUSTRIES LIMITED** .....Plaintiff

Through: Mr. Sachin Gupta, Mr. Rohit Pradhan, Mr. Ajay Kumar, Mr. Prashansa Singh, Ms. Archana and Mr. Adarsh Agarwal, Advs.

Versus

**MACLEODS PHARMACEUTICALS LIMITED  
& ANR.** .....Defendants

Through: Mr. Raj Shekhar Rao, Sr. Ms. Archana Sahadeva, Mr. Harshit Bhoi and Mr. Arsh Rampal, Advs. for D-1  
Mr. Praveen Singh, Mr. Sandip Kumar and Mr. Durgesh Nadini, Advs. for D-2

**CORAM:  
HON'BLE MR. JUSTICE SAURABH BANERJEE**

**ORDER**

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**23.09.2024**

**CAV 473/2024**

1. Since Mr. Praveen Singh, learned counsel enters appearance on behalf of defendant no.2, the caveat stands discharged.

**I.A. 40169/2024** (*pre-litigation mediation*)

2. The plaintiff vide the present application seeks exemption from instituting pre-litigation mediation.

3. Considering the averments made in the present application wherein the plaintiff seeks urgent ad-interim reliefs and in view of *Yamini Manohar vs. T.K.D. Krithi 2023 SCC OnLine 1382* and *Chandra Kishore*

*CS(COMM) 822/2024*

*Page 1 of 6*



*Chaurasia vs. R. A. Perfumery Works Private Limited* 2022:DHC:4454-DB, the plaintiff is exempted from instituting pre-litigation mediation.

4. Accordingly, the present application is allowed and disposed of.

**I.A. 40170/2024** (*exemption*)

5. Exemption allowed as sought, subject to all just exceptions.

6. The application stands disposed of.

**I.A. 40168/2024** (*stay*)

7. By the present application the plaintiff seeks an injunction restraining the defendants from using its registered trademark.

8. During the course of his arguments, learned counsel for the plaintiff relies upon *Nutrica Pusti Healthcare Pvt. Ltd. and others vs Morepen Laboratories Ltd.* 2021 SCC Online Del 2631 in support of case of the plaintiff that the impugned marks/ products are pharmaceutical preparation and furthermore, the two marks are too close.

9. Issue notice.

10. Learned counsels for the defendants accept notice.



11. On the first call, the learned counsel for defendant no.1, though not on caveat entered appearance and addressed submissions at length. Thereafter, she sought a pass over to seek instructions from the defendant no.1 qua the change of trademark, change of packaging and for apprising this Court about the details of all the registrations of various pharmaceutical products in their name.

12. Learned senior counsel for defendant no.1 appearing on the second call submits that the defendant no.1 adopted the trade mark RABERAFT since RABE is derived from the earlier existing trade marks RABEMAC and RABEMAC-DSR adopted since the year 2002 and 2004 respectively.



Strangely, this is even when as per the learned senior counsel for the defendant no.1, it is an established entity which is not a fly-by-night operator and has as many as 618 registered trade marks and as many as 825 active trade marks without RABE in them.

13. The packaging of the two competing products as reflected on pages 25 and 87 of the documents filed alongwith the present plaint are reproduced as under:-

Plaintiff	Defendants
 A photograph of a brown glass bottle of RACIRAFt oral suspension. The label is white with blue and green accents. It features the text 'Sodium Alginate, Sodium Bicarbonate & Calcium Carbonate Oral Suspension' and 'RACIRAFt' in large blue letters. Below this, it says 'Double Action Anti-reflux Aid for Heartburn & Indigestion'. There are three circular icons: a stomach, a clock, and a person. The text 'Relieves in just 3 Minutes', 'Long lasting relief upto 4 hours', and 'Safe even for pregnant & Breast feeding Women' is visible. At the bottom, it says '200 ml' and 'Sugar Free   Malt Based'.	 A photograph of a brown glass bottle of RabeRaft oral suspension. The label is white with blue and green accents. It features the text 'Sodium Alginate, Sodium Bicarbonate and Calcium Carbonate Oral Suspension' and 'RabeRaft' in large blue letters. Below this, it says 'राबेराफ्ट' in Hindi. There are three circular icons: a stomach, a clock, and a person. The text 'Relieves in just 3 minutes', 'Long lasting relief up to 4 hrs', and 'Safe for Pregnant & Breast feeding Women' is visible. At the bottom, it says '200 ml'.



14. Moreover, *admittedly*, the defendant no.1 knew about the trade mark RACIRRAFT of the plaintiff well before 22.12.2023 when it filed a response to the Examination Report issued by the Trade Mark Registry, wherein the registered trade mark RACIRRAFT of the plaintiff was cited.

15. The two competing products were also handed over in Court during the submissions. They reflect that the adoption of the mark RABERAFT by the defendant no.1 coupled with the aforesaid packaging raises a cause for concern as they are deceptively similar and too close to the trade mark RACIRRAFT of the plaintiff. This certainly calls for a deliberation.

16. However, since the impugned products are pharmaceutical preparations/ products, qua which this Court has to, undoubtedly, tread with utmost caution and care, it is felt appropriate in public interest to call



upon the defendant no.1 to come up with an alternate packaging within a period of one week.

17. Though, in the considered opinion of this Court, the plaintiff has been able to make out a *prima facie* case in its favour for the grant of an ad-interim injunction, however, it is deemed appropriate if the defendant no.1 is called upon to file a response to the present application within a period of two weeks. Rejoinder thereto, if any, be filed within a period of one week thereafter.

18. The defendant no.1 is also directed to file an affidavit setting out the details including batch number, quantity, date of manufacturing of the products manufactured by it under the trade mark RABERAFT since the inception of its product i.e. March, 2024.

19. Learned counsel appearing for the defendant no.2 on caveat seeks and is granted two weeks to file a reply. Rejoinder thereto, if any, be filed within a period of one week thereafter.

20. Accordingly, renotify before the Court on 24.10.2024.

21. List before Joint Registrar on 20.12.2024.

**CS(COMM) 822/2024**

22. Let the plaint be registered as a suit.

23. Issue summons of the suit.

24. The learned counsel(s) for the defendant nos.1&2 accept summons. They seek and are granted a period of *thirty days* to file their written statement(s). The written statement(s) be filed by the defendants along with affidavit(s) of admission/ denial of documents of the plaintiff, without which the written statement(s) shall not be taken on record.

25. Replication(s) thereto, if any, be filed by the plaintiff within a



period of *fifteen days* from the date of receipt of written statement(s). The said replication(s), if any, shall be accompanied by with affidavit(s) of admission/ denial of documents filed by the defendants, without which the replication(s) shall not be taken on record within the aforesaid period of *fifteen days*.

26. If any of the parties wish to seek inspection of any document(s), the same shall be sought and given within the requisite timelines.

27. List before the Joint Registrar for completion of pleadings on 20.12.2024. It is made clear that if any party unjustifiably denies any document(s), then it would be liable to be burdened with costs.

28. List before the Court on 24.10.2024.

**SAURABH BANERJEE, J**

**SEPTEMBER 23, 2024/Ab**