

TM No.27/2017

IN THE COURT OF SH. AJAY GULATI: ADDL. DISTRICT JUDGE-02,
ROOM NO.606, SOUTH DISTRICT, SAKET COURTS: NEW DELHI

In the matter of

TM No.27/2017

Sun Pharmaceuticals Industries Ltd.

..... Plaintiff

VERSUS

RPG Life Sciences Ltd. & Anr.

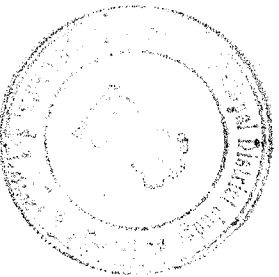
.....Defendants

06.12.2017

Present: counsel for the plaintiff.

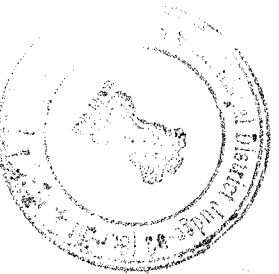
ORDER

1. This is a suit for permanent injunction for restraining the infringement of trademark, passing off, unfair competition, rendition of accounts of profits/damages, and delivery up.
2. Along with the present suit, an application under Order XXXIX Rule 1 & 2 of the Code of Civil Procedure, 1908 for grant of interim injunction has also been filed.



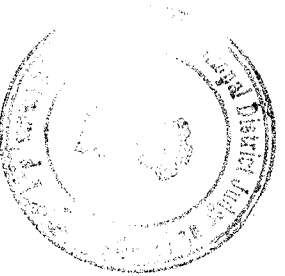
APPLICATION UNDER ORDER XXXIX RULE 1 & 2 CPC

3. Learned counsel for the plaintiff has contended that plaintiff is a duly incorporated company which has authorized Sh. Narinder Kumar Ahuja to prosecute the present suit.
4. The plaintiff has been engaged in the business of pharmaceuticals since the year 1978 and markets drugs and medicinal formulations in more than 150 countries. It has been ranked as No.1 Pharma Company in India and is world's 4th largest Generic Pharmaceuticals Company. Plaintiff's manufacturing operations are focused on producing generics, branded generics, specialty, over-the-counter (OTC) products, anti-retrovirals (ARVs), Active Pharmaceuticals Ingredients (APIs) and intermediates in the full range of dosage forms including tablets, capsules, injectables, ointments, creams and liquids. It has manufacturing sites spread over many countries and spanning different continents. Besides, its manufacturing process is subject to vigorous checks and audits by various regulatory authorities in different national jurisdictions.
5. It has been averred in the plaint that one of the medicinal preparations sold by the plaintiff is under the trademark of **TRAPIC, TRAPIC MF** and **TRAPIC E** having being coined by plaintiff and registered in India in the year 2002 and as such, it has the statutory right of exclusive use of the same i.e. Trademark **TRAPIC**. Plaintiff has acquired goodwill, reputation and distinctiveness in respect of the said Trademark, and the use



of the same or a deceptively similar trademark by an unauthorized person or trader would constitute infringement of the plaintiff's statutory right.

6. It was averred that defendant No.1 and defendant No.2, companies duly registered under the Companies Act, 2013, are engaged in the business of manufacturing and marketing pharmaceuticals preparations. In November, 2017, plaintiff came to know about the product of defendants under the impugned mark TRAMIC, which is deceptively similar to TRAPIC. TRAMIC MF, manufactured by defendant No.2 and marketed by defendant No.1, contains the same salt, used for same ailment, and sold in the same form i.e. tablets. On query from the websites of Trade Mark Registry, plaintiff came to know that defendants have filed the application of the impugned mark TRAMIC MF on 03.05.2016 as a proposed user, and which application is still pending. It has further been submitted that the defendant's mark 'TRAMIC' is visually, structurally and phonetically similar to the plaintiff's registered trademark "TRAPIC" and is being used to market a product which has the same chemicals as used in plaintiff's product which greatly increases the scope of deception of the ordinary consumers qua the plaintiff's registered trademark. The plaintiff has highlighted that both the products, apart from bearing phonetic and visual similarities, have the same consumer aggregate because of the use of common chemical and medicinal use. This further



enhances the scope of consumers getting deceived. It is prayed that an ad-interim injunction be granted restraining the defendants, their directors, their 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 trademark "TRAMIC/TRAMIC MF" or any other trade mark/trade name/domain name/corporate name as may be deceptively similar to the plaintiff's trade mark "TRAPIC".

7. Id. Counsel for plaintiff has placed reliance on a judgment delivered by the Hon'ble High Court of Delhi, titled as *Cadila Healthcare Ltd. vs. Aureate Healthcare Pvt Ltd & Anr. I. A. No.800/2011 and I. A. No.4580/2011 in CS (OS) NO.123 of 2011 decided on 30.07.2012* to contend that in the pharmaceutical cases, Court should take liberal approach for grant of injunction in favour of the plaintiff in case a prima facie infringement of trademark is established against the defendants for using a deceptively similar trademark. The judgment cited by Id. Counsel is undoubtedly relevant to the facts of the present case, since the plaintiff started commercially using the registered trade mark "TRAPIC" since 2002 and has been selling the product under the brand "TRAPIC/TRAPIC E/TRAPIC MF" ever since. In support of this assertion, cartons of medicines bearing brand names "TRAPIC E/TRAPIC MF" have been appended by plaintiff alongwith plaint. In addition, plaintiff also has priority

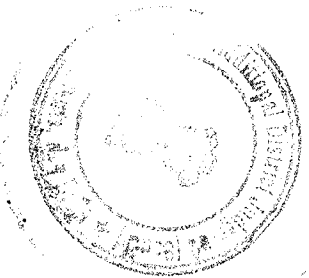


in so far as the registration of trade mark is concerned since the mark "TRAPIC/TRAPIC E/TRAPIC MF" was registered on 16.10.2002 through registration No.1143455. On the other hand, defendants have only moved an application for registration of the trade mark "TRAMIC MF" under No.3248906 dated 03.05.2016.

8. I have carefully considered the submissions raised in the court and have gone through the accompanying application as well as the documents filed along with the plaint.

9. A visual appreciation of the trademark/name used by the plaintiff and the one adopted by the defendants shows that though the packaging of both products is a little different but there is a high degree of phonetic similarity and which can very easily create confusion in the minds of members of the general public as to the true source of the product.

10. In addition, it is important to highlight that chemicals/salts in the product of plaintiff as also of the product of defendants are almost similar. Most importantly since the product is related to the health of the general public, there is a need to tread cautiously since the public can easily get confused with the product name of defendants. It is common experience at the chemist shops in India where dispensing chemists or even their unqualified assistants offer an alternative medicine with similar salts in case they don't stock the prescribed medicine. This factor has to be kept in mind while dealing with



applications for interim injunction in respect of pharmaceutical preparations bearing deceptive trademark or tradename. The plaintiff being prior user of the trademark "TRAPIC/TRAPIC E/TRAPIC MF" has made out a case for grant of exparte injunction. Consequently, I deem it appropriate to issue exparte interim injunction against defendants restraining them from using the trademark/trade-name "TRAPIC/TRAPIC E/TRAPIC MF" to manufacture and market any of its product till the next date of hearing.

11. Let the provisions of Order XXXIX Rule 3 of the Code of Civil Procedure, 1908 be complied with within 7 working days from the date of receiving of this order.
12. Summons of the suit and notice of the application under Order XXXIX Rule 1 & 2 of the Code of Civil Procedure, 1908 be issued to the defendant on filing of PF and RC, returnable on 23.02.2018. Copy of this order be given dasti to Learned counsel for the plaintiff.



ANNOUNCED IN THE OPEN
COURT ON 06.12.2017

(DR. AJAY GULATI)
ADDL. DISTRICT JUDGE-02
SOUTH, SAKET COURTS,
NEW DELHI

*Attested Digital Imp. 02 (South)
Saket District Courts, New Delhi*

