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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(COMM) 809/2017

SUN PHARMACEUTICAL
INDUSTRIES LIMITED & ANR

..... Plaintiffs

Through: Mr. Sachin Gupta, Advocate.

versus

RIDLEY LIFE-SCIENCE
PRIVATE LIMITED & ORS

..... Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

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24.11.2017

I.A.13852/2017 in CS(COMM) 809/2017

Keeping in view the averments in the application, plaintiffs are exempted from filing the originals/clear/typed/translated/certified copies of documents at this stage and are 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) 809/2017

Let the plaint be registered as a suit.

Issue summons in the suit to the defendants by all modes including *dasti*, returnable for 02nd February, 2018 before the Joint Registrar for completion of

service and pleadings.

The summons to the defendants shall indicate that a written statement to the plaintiff shall be positively filed within four weeks of the receipt of the summons. Liberty is given to the plaintiffs 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 09th April, 2018.

I.A.13853/2017 in CS(COMM) 809/2017

Issue notice to defendants by all modes including *dasti*, returnable for 02nd February, 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 and delivery up etc.

In the plaint, it is stated that the plaintiffs are 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 plaintiffs are known in the trade circles as SUN/SUN PHARMA

having a consolidated annual turnover of over Rs. 27,992 Crores globally.

It is further stated in the plaint that the plaintiff No. 1 is the world's fourth largest generic pharmaceutical company and the plaintiffs have 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 plaintiffs are the registered proprietors of the coined trade marks REVITAL, VOLINI, VOLINI PLUS and PANTOCID in various Classes. It is averred that the REVITAL trade dress/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. The details of the plaintiffs' trademark registrations are reproduced hereinbelow:-

Trade Mark	Reg. No. & Date	Ailment
REVITAL	447372 DT. 26.12.85	To prevent stress, fatigue and improve physical and mental performance and for overall health and vitality.
	2090755 Dt. 28.01.2011	
VOLINI	609904 Dt. 19.10.93	for treatment of pain, back pain, pain due to soft tissue injuries, musculoskeletal aches and pains, back ache,
VOLIN PLUS	1720588 Dt. 12.08.08	

		delayed onset muscle soreness and other conditions
PANTOCID	791979 Dt. 19.02.98	Treatment of erosive esophagitis associated with gastroesophageal reflux disease.

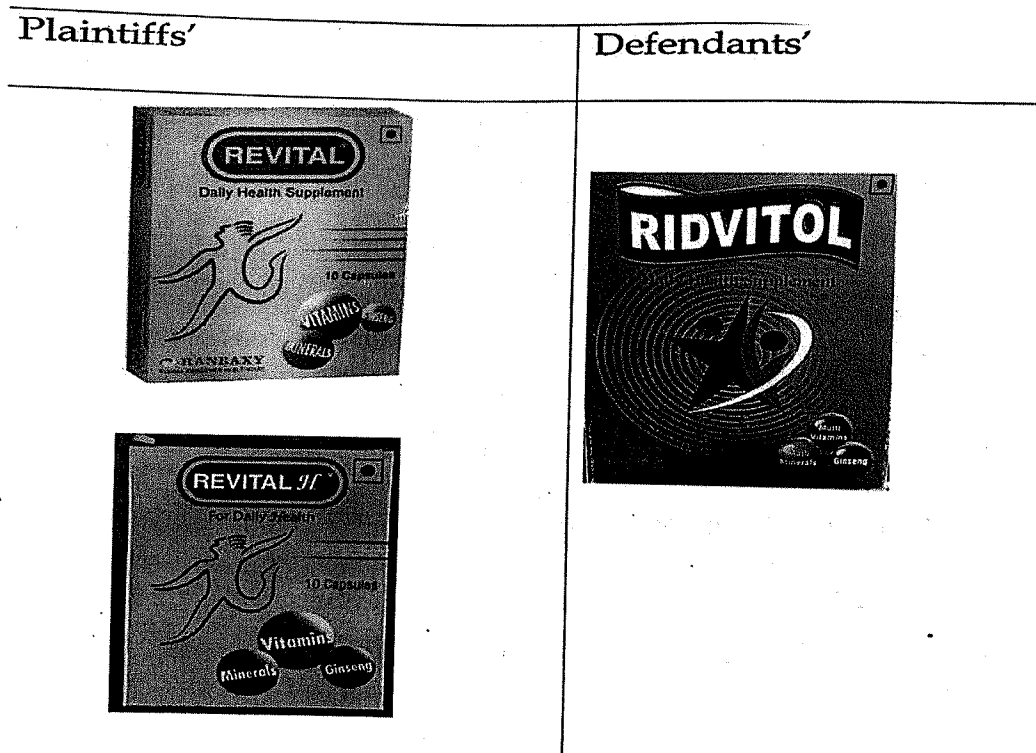
It is the case of the plaintiffs that the annual revenue generated by the plaintiffs from the sale of its products under the marks REVITAL, VOLINI and PANTOCID in the financial year 2016-17 was Rs. 2269 Million, 1691.6 Million and Rs. 2268.7 Million respectively. The plaintiffs incurred an expenditure of Rs. 578.3 Million, 518.3 Million and Rs. 578.3 Million on advertising and promotion of its REVITAL, VOLINI and PANTOCID products respectively.

Learned counsel for the plaintiffs states that in second week of November, 2017, the plaintiffs through their field force came across the defendants' medicinal products being sold under the mark VOLIN-PLUS. He states that further investigation conducted by the plaintiffs revealed that the defendants have also adopted marks PANTORID and RIDVITOL which are deceptively similar to the plaintiffs' registered trade marks VOLINI/VOLINI PLUS, PANTOCID and REVITAL. The competing marks of the plaintiffs as well as the defendants are reproduced hereinbelow:-

S.N	Plaintiffs' Marks	Defendants' Marks
1.	VOLINI/VOLINI PLUS	VOLIN-PLUS
2.	REVITAL	RIDVITOL
3.	PANTOCID	PANTORID

Learned counsel for the plaintiffs states that the plaintiffs thereafter conducted an electronic search of the official website of the Trade Marks Registry and found that the defendant No. 1 has filed an application for registration of the mark PANTORID but the same has been objected to by the Registrar, Trade Marks Registry.

He states that the packaging/trade dress of the medicine being sold by the defendants under the mark RIDVITOL is deceptively similar to the plaintiffs' distinctive REVITAL trade dress/carton packaging. The trade dress of the plaintiffs and the defendants are reproduced hereinbelow:-



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 plaintiffs and balance of convenience is also in its favour. Further, irreparable harm or

injury would be caused to the plaintiffs 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, 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 marks RIDVITOL, VOLIN PLUS, PANTORID or any other mark/trade dress which may be deceptively similar to the plaintiffs' trade marks/trade dress REVITAL/VOLINI/VOLIN PLUS and PANTOCID.

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

I.A. 13854/2017 in CS(COMM) 809/2017

The plaintiffs seek appointment of two Local Commissioners to visit the premises of the defendants. The following persons are appointed as the Local Commissioners to visit the sites of the defendants mentioned against their respective names: -

S.No.	Name and Mobile Number of Local Commissioner	Location to be Visited
1	Ms. Manmeet Arora, Advocate Mobile No. 9811333871	Ridley Life-Science Private Limited, D-1651, DSIDC Industrial Complex, Narela, Delhi-110040
2	Mr. Karan Luthra, Advocate Mobile No. 9810259213	Mod Hike Private Limited Pharma City, Plot No.24, Sealqui Dehradun, Uttarakhand

The Local Commissioners shall make an inventory and take into custody all infringing goods bearing the marks RIDVITOL, VOLIN PLUS, PANTORID, its packaging, promotional materials, stationary, dyes, blocks etc.

However, the Local Commissioners 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 Commissioners 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 Commissioners. The Local Commissioners shall sign all books of accounts including ledgers, cash books, purchase and sale records etc. of the defendants.

The Local Commissioners shall be entitled to take photographs as well. The fees of the Local Commissioners is tentatively fixed at Rs.1,00,000/- each apart from all other out of pocket expenses.

Accordingly, the present application stands disposed of.

Order dasti under the signature of the Court Master.

NOVEMBER 24, 2017
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25/11/2017
Court Master
High Court of Delhi
New Delhi

sd/-
MANMOHAN, J