

IN THE HIGH COURT OF DELHI
(ORIGINAL ORDINARY CIVIL JURISDICTION)

CS (COMM) No. 994 of 2018

Sun Pharmaceutical Industries Ltd.

...Plaintiff

Versus

Brexsun Pharma P. Ltd.

...Defendant

MEMORANDUM OF PARTIES

For Private Use

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High Court of Delhi

Sun Pharmaceutical Industries Limited
8C, 8th Floor, Hansalaya Buiding
15, Barakhamba Road
Connaught Place
New Delhi - 110 001
prashant.mule@sunpharma.com

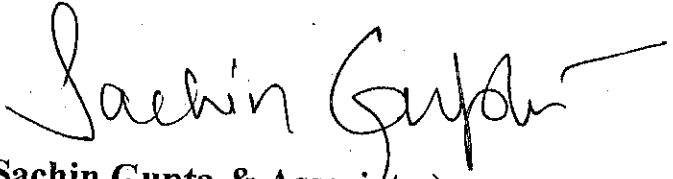
Versus

...Plaintiff

Brexsun Pharma Private Limited
41, Guru Nanak Nagar
Baltana, Mohali
Punjab - 140 604
kaushalpharmacist2@gmail.com

...Defendant

Place: New Delhi
Date: 5th July, 2018


(Sachin Gupta & Associates)
Advocates for the Plaintiff
A-1, Vasant Kunj Enclave
New Delhi 110 070
E: info@sgassociate.com
M: 98111 80270 T: 6565 7889

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High Court of Delhi of
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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(COMM) 994/2018 & I.As.8573-8574/2018

SUN PHARMACEUTICAL
INDUSTRIES LIMITED

..... Plaintiff

Through: Mr. Sachin Gupta, Advocate

versus

BREXSUN PHARMA PRIVATE LIMITED Defendants

Through None

% Date of Decision: 13th December, 2018

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present suit has been filed for permanent injunction restraining infringement of trademark, passing-off, unfair competition, rendition of accounts of profits/damages and delivery up. The prayer clause is reproduced hereinbelow:-

"30. It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to grant the following reliefs in favour of the Plaintiff and against the Defendant:

(a) A decree for permanent injunction restraining the Defendant, its directors, assignees in business, its distributors, dealers, stockists, retailers/chemists, servants and agents from manufacturing, selling,

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offering for sale, advertising, directly or indirectly dealing in medicinal preparations/services related to the pharmaceutical business under the impugned trade names/trade mark/domain name/corporate name, name as may be deceptively similar to the Plaintiff's trade name/mark/domain name/corporate name SUN/SUN PHARMA/SUN PHARMACEUTICALS amounting to infringement of registered trade mark Nos. 408870, 1564369, 1822656 of the Plaintiff;

(b) A decree for permanent injunction restraining the Defendant, its directors, 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/services related to the pharmaceutical business under impugned trade names/trade mark/domain name/corporate name, namely Brexsun Pharma, www.brexsun.com or using any other trade name/trade mark/domain name/corporate name as may be deceptively similar to the Plaintiff's trade name/mark/domain name/corporate name SUN/SUN PHARMA/SUN PHARMACEUTICALS amounting to passing off of the Defendant's goods and business for those of the Plaintiff;

(c) An order for rendition of accounts of profit illegally earned by the Defendant and a decree for an amount so found due, or in the alternative, a decree for Rupees One Crore Five Thousand only (Rs.1,00,05,000/-) towards token damages may be passed in favour of the Plaintiff and against the Defendant.

(d) An order for delivery of the infringing goods of the Defendant including impugned promotional materials, stationery, dyes, blocks etc. bearing the impugned trade names/trade mark/domain name/corporate

name, namely Brexsun Pharma, www.brexsun.com and/or any other trade name/trade mark/domain name/corporate name as may be deceptively similar to the Plaintiff's trade name/mark/domain name/corporate name SUN/SUN PHARMA/SUN PHARMACEUTICALS to an authorised representative of the Plaintiff for destruction/erasure. The Defendant may also be directed to withdraw contents in respect of impugned mark from domain/website names, email IDs, trade journals, e-journals etc.;

(e) An order for costs in the proceedings

(f) Any further orders as this Hon'ble Court may deem fit and proper under the facts and circumstances of the present case."

2. Today learned counsel for the plaintiff has handed over his personal affidavit dated 13th December, 2018 and the same is taken on record. The relevant portion of the said affidavit is reproduced hereinbelow:-

"1. I say that I am the counsel for the Plaintiff in the matter.

2. I say that Advocate Amit Tomar, claiming to have been appointed by the Defendant Company called the undersigned on 11.07.2018 from mobile No.8800442587 and asked me to email him in suit papers at his email address amit@tomarassociates.com . The scanned copy of the complete suit papers being bulky files were emailed to Advocate Amit Tomar on 11.07.2018 through a website, namely WeTransfer.com, which files were downloaded by him on the same date.

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Copy of the emails both dated 11.07.2018 is attached as Annexure P-1(Colly).

3. I say that Advocate Amit Tomar showed interest in negotiating a settlement. Accordingly, a compromise application was prepared and sent to him by me on 19.07.2018. Copy of email dated 19.07.2018 is attached herewith as Annexure P-2.
4. I say that Advocate Amit Tomar also requested that the suit papers and compromise application be sent to his client Sh. Puneet Kauhhal, Director of the Defendant Company directly, which was sent by me on 20.07.2018 to email address puneets.pharma@gmail.com. The email dated 20.07.2018 is attached as Annexure P-3.
5. I say that I received a phone call from Sh. Puneet Kaushal from phone no.+971566134441 and +971526161004. Sh. Kaushal informed me that he is in employment in Dubai and he has no plans to run the Defendant Company. He stated that he had no interest and hence has asked his agent to wind up the company.
6. I say that I requested Sh. Puneet Kaushal to appear in the matter through counsel but my request was turned down on the grounds that he would not like to incur any expenditure.
7. I say that complete set of suit papers along with the summons were dispatched by me through Speed post on 20.07.2018 to the Defendant Company as its registered office address recorded with the Registrar of Companies which is duly uploaded on the official website of the Ministry of Company Affairs. However, the summons were received back with the endorsement "insufficient address". Copy

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of affidavit of service dated 16.08.2018 containing Speed Post receipt dated 20.07.2018 and tracking report is attached herewith as Annexure P-4 (Colly).

8. I say that complete set of suit papers along with the summons were also e-mail by me to the Defendant Company at email address Kaushalpharmacist2@gmail.com recorded with the Registrar of Companies, which is duly uploaded on the official website of the Ministry of Company Affairs. Copy of e-mail dated 14.08.2018 is enclosed with Annexure P-4 (Colly).
 9. I say that the registry of this Hon'ble Court, pursuant to the orders dated 28.09.2018 also emailed the summons to the Defendant Company.
 10. I say that the Defendant has complete knowledge about the present proceedings through its director, Sh. Puneet Kaushal."
3. Keeping in view the averments in the affidavit, and that the defendant has not appeared till date, it is proceeded *ex-parte*.
 4. At the outset, learned counsel for plaintiff gives up prayers in para 30(c) and (d) of the plaint. The statement made by learned counsel for plaintiff is accepted by this Court and the plaintiff is held bound by the same.
 5. This Court is of the view that the present suit can be disposed of without any further delay. A Coordinate Bench of this Court in *Satya Infrastructure Ltd. and Ors. Vs. Satya Infra & Estates Pvt. Ltd., 2013 SCC OnLine Del 508* has held as under:-

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"I am of the opinion that no purpose will be served in such cases by directing the plaintiffs to lead ex parte evidence in the form of affidavit by way of examination-in-chief and which invariably is a repetition of the contents of the plaint. The plaint otherwise, as per the amended CPC, besides being verified, is also supported by affidavits of the plaintiffs. I fail to fathom any reason for according any additional sanctity to the affidavit by way of examination-in-chief than to the affidavit in support of the plaint or to any exhibit marks being put on the documents which have been filed by the plaintiffs and are already on record. I have therefore heard the counsel for the plaintiffs on merits qua the relief of injunction."

6. The relevant facts of the present case as set out in the plaint are:-

- i. The plaintiff originally started marketing pharma products as a proprietary firm in the year 1978 and in 1982 formed a partnership firm and continued its business under the name and style of M/s Sun Pharmaceutical Industries. 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. The plaintiff is known in the trade circles as SUN/SUN PHARMA and has a consolidated annual turnover of over Rs.30,000/- Crores globally.
- ii. The plaintiff is the no.1 Pharma Company in India in a total of 11 specialties and is the world's fourth largest generic pharmaceutical company and has manufacturing sites in six continents and ten world class research centres with over

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30,000 strong multi-cultural workforce from over 50 different nationalities.

- iii. The plaintiff is the registered proprietor of the various trademarks containing SUN (both as a word and device mark), SUN PHARMA and SUN PHARMACEUTICAL INDUSTRIES LTD. in various Classes under the Trade Marks Act, 1999. By virtue of continuous and extensive use since 1978, the words SUN and/or SUN PHARMA are exclusively associated with the plaintiff.
- iv. The plaintiff has been using the trademark SUN PHARMA as a part of its domain names since 1997. Furthermore, the plaintiff has various subsidiaries across the globe, whose names include the words 'Sun Pharma / Sun Pharmaceuticals / Sun Pharmaceutical Industries'. The plaintiff's stock code i.e. stock symbol in the Stock Market in NSE is SUNPHARMA.
- v. The plaintiff's annual turnover in the financial year 2017-18 was Rs. 30,00,000 lakhs, approximately and the plaintiff incurred an expenditure of not less than Rs. 54,668 lakhs on advertisement and promotion.
- vi. In the fourth week of June, 2018, the plaintiff came across the defendant's trademark application dated 07th March, 2018 for registration of the trademark BREXSUN under Class 5 of the Trade Marks Act, 1999, which was advertised on 12th June, 2018 in Delhi. According to the defendant's website, www.brexsun.com, the defendant is registered

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company engaged in the business of pharmaceutical marketing and regulatory consulting.

vii. The defendant has adopted the whole of the plaintiff's mark SUN PHARMA and simply added the prefix 'Brex', making it 'Brexsun Pharma'. The defendants have adopted a mark/name which is visually, structurally and phonetically deceptively similar to the plaintiff's trade mark SUN PHARMA.

7. Learned counsel for the plaintiff states that the defendant has unethically and unlawfully adopted the impugned mark/trade name with the intent to ride upon the goodwill and reputation of the plaintiff. He states that the adoption of the impugned trademark/trade name amounts to misrepresentation and misappropriation of the plaintiff's goodwill in its trade mark/trade name SUN/SUN PHARMA and also amounts to unfair trade practice, unfair competition and dilution.

8. He further states that the use of the impugned trademark/trade name by the defendant is likely to cause confusion and/or deception in the minds of the consumers, as the defendants are in the same business as that of the plaintiff.

9. Learned counsel for the plaintiff lastly states that the plaintiff has been vigilantly protecting its statutory and common law rights in the trademark/trade name SUN/SUN PHARMA and has secured injunction against various parties using trademarks/trade names deceptively similar to the plaintiff's trade mark/trade name SUN/SUN

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PHARMA like SUNMAY PHARMAA, SHREESON PHARMACEUTICALS. He states that vide order dated 12th October, 2018 passed in *CS(COMM) No. 922 of 2018, Sun Pharmaceutical Industries Ltd. Vs. Infocom Network Limited & Ors.*, this Court passed a decree restraining the defendants from using the marks JBK Sun Pharma India P. Ltd., M/s Sun Shine Pharma, M/s New Sun Pharma, M/s Sun World Pharma, M/s Sun Pharma Agency, M/s Raising Sun Pharma, M/s God Sun Pharma Science, M/s Sun Pharma Equipments, M/s Sun Pharma Drug Distributors and M/s Sun Pharma Sales & Services.

10. A Division Bench of this Court in *Intel v. Corporation vs. Dinakaran Nai and Ors. 129 (2006) DLT 634* has held as under:-

"12. The defendants have failed to appear and to point out any significance why word ARTINTEL was used for the business of the defendants. There is force in the contention of the learned Counsel for the plaintiff that though word ARTINTEL is one word while pronouncing the same it gets broken up into two parts ART and INTEL. The mark INTEL of the plaintiff is well known and obviously the use of the word INTEL is with the object of showing some connection with the mark of the plaintiff INTEL and to take advantage of the goodwill and reputation of the plaintiff. Needless to say that the chances of such deception increase when the product range is same or similar. In view thereof, I am of the considered view that the plaintiff is entitled to a decree of permanent injunction and delivery up as prayed for in Para 48 (i) to (iii) of the plaint."

11. In view of the position explained above, this Court is of the opinion that the defendant has no real prospect of defending the claim, as it has neither entered appearance nor filed its written statement.

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Further, the plaintiff is the registered and prior user of the trade marks in question.

12. Consequently, the present suit is decreed in favour of the plaintiff and against the defendants in accordance with paragraph 30 (a) and (b) of the prayer clause of the plaint along with actual cost. The cost shall amongst others include the lawyers' fees, as well as the amounts spent on purchasing the court fees.

13. With the aforesaid observations, present suit and pending applications stand disposed of.

Sd/-
MANMOHAN, J

DECEMBER 13, 2018
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*An office note
for taxation*

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Judicial Department
Court of Delhi of
under Section 17
Evidence Act

(DECREE IN A SUIT FOR PERMANENT INJUNCTION ETC.)

IN THE HIGH COURT OF DELHI AT NEW DELHI
(ORDINARY ORIGINAL CIVIL JURISDICTION)

CS(COMM) No.994/2018

Sun Pharmaceutical Industries Limited
8C, 8th Floor, Hansalaya Building
15, Barakhamba Road,
Connaught Place
New Delhi – 110001
Prashant.mule@sunpharma.com

...Plaintiff

Versus

Brexsun Pharma Private Limited
41, Guru Nanak Nagar,
Baltana, Mohali,
Punjab – 140604
kaushalpharmacist2@gmail.com

ex-parte vide order
dated 13.12.2018

...Defendant

Value of suit for
purpose of jurisdiction : Rs. 1,00,08,000/-

Court fee paid : Rs. 1,01,000/-

Plaint presented on : 05.07.2018

CLAIM: FOR PERMANENT INJUNCTION RESTRAINING
INFRINGEMENT OF TRADE MARK, PASSING OFF, UNFAIR
COMPETITION, RENDITION OF ACCOUNTS OF
PROFITS/DAMAGES AND DELIVERY UP.

THIS THE 13TH DAY OF DECEMBER, 2018

CORAM: HON'BLE MR. JUSTICE MANMOHAN.

FOR THE PLAINTIFF: Mr. Sachin Gupta, Advocate.

FOR THE DEFENDANTS: None.

[Handwritten Signature]
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Examiner, Judicial Department
High Court of Delhi of
Authorisation Section
Kodlag, Vidyanagar, New Delhi

This suit coming on this day for final disposal before this Court in the presence of counsel for the plaintiff while defendant is proceeded ex-parte vide order dated 13.12.2018 as aforesaid; it is ordered that a decree of permanent injunction be and the same is hereby passed in favour of the plaintiff and against the defendant restraining the Defendant, its directors, assignees in business, its distributors, dealers, stockists, retailers/chemists, servants and agents from:

- (a) manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in medicinal preparations/services related to the pharmaceutical business under the impugned trade names/trade mark/domain name/ corporate name, namely Brexsun Pharma, www.brexsun.com or using any other trade name/trade mark /domain name/ corporate name as may be deceptively similar to the Plaintiff's trade name/mark/domain name/ corporate name **SUN/SUN PHARMA/SUN PHARMACEUTICALS** amounting to infringement of registered trade mark Nos. 408870, 1564369, 1822656 of the Plaintiff;
- (b) manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in medicinal preparations/services related to the pharmaceutical business under the impugned trade names/trade

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mark/domain name/ corporate name, namely Brexsun Pharma, www.brexsun.com or using any other trade name/trade mark /domain name/ corporate name as may be deceptively similar to the Plaintiff's trade name/mark/domain name/ corporate name **SUN/SUN PHARMA/SUN PHARMACEUTICALS** amounting to passing off of the Defendant's goods and business for those of the Plaintiff.

It is further ordered that the plaintiff gives up prayers in para 30 (c) and (d) of the plaint. The statement made by learned counsel for the plaintiff is accepted by this Court and the plaintiff is held bound by the same.

It is lastly ordered that the defendant herein do pay to the plaintiff herein the costs of Rs. 3,38,185/- (Rupees Three Lakh Thirty Eight Thousand One Hundred Eighty Five only) of the suit incurred by the latter as taxed by the Taxing Officer of this Court.

Given under the hand and seal of **Hon'ble Mr. Justice Rejendra Menon, Chief Justice** of the High Court of Delhi at New Delhi, this the 13th day of December, 2018.

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Member, Judicial Department
High Court of Delhi of
Authority Under Section 77
Cr.P.C. Evidence Act


DEPUTY REGISTRAR (O)