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

+ CS(COMM) 922/2018

SUN PHARMACEUTICAL INDUSTRIES LTD. .... Plaintiff  
Through Mr. Sachin Gupta, Advocate

versus

INFOCOM NETWORK LIMITED & ORS. .... Defendants  
Through None

**CORAM:  
HON'BLE MR. JUSTICE MANMOHAN**

**ORDER**  
**30.05.2018**

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**I.A.7703/2018 in CS(COMM) 922/2018**

Keeping in view the averments in the application, plaintiff is 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) 922/2018**

Let the plaint be registered as a suit.

Issue summons in the suit to the defendants by all modes including *dasti*, returnable for 30<sup>th</sup> July, 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 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 11<sup>th</sup> September, 2018.

**I.A.7704/2018 in CS(COMM) 922/2018**

Issue notice to defendants by all modes including *dasti*, returnable for 30<sup>th</sup> July, 2018 before the Joint Registrar.

It is pertinent to mention that the 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.

In the plaint, it is stated that 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. 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.30,000/- 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 that the plaintiff is the registered proprietor of the various trademarks containing SUN, SUN PHARMA and SUN PHARMACEUTICAL INDUSTRIES LTD. in various Classes under the Trade Marks Act, 1999. It is stated that by virtue of continuous and extensive use since 1978, the words SUN and/or SUN PHARMA are exclusively associated with the plaintiff.

It is stated that the plaintiff has been using the trademark SUN PHARMA as a part of its domain names since 1997. It is further stated that the plaintiff has various subsidiaries across the globe, whose names include the words 'Sun Pharma / Sun Pharmaceuticals / Sun Pharmaceutical Industries'. It is also stated that the plaintiff's stock code i.e. stock symbol in the Stock Market in NSE is SUNPHARMA and the plaintiff has 59,386 shareholders.

It is the case of the plaintiff that the annual turnover of the plaintiff 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 advertising and promotion.

Learned counsel for the plaintiff states that in the third week of May, 2018, the plaintiff came across the defendant no.1's platform [www.tradeindia.com](http://www.tradeindia.com), where it discovered multiple sellers selling products under names that were deceptively similar to the plaintiff's registered trademark and trade name. He states the defendants have adopted the whole of the plaintiff's mark SUN PHARMA and added extra words to it. He states the defendants are trading under the trade names Sun Pharma Chem, New Sun Pharma, Sun Pharma Equipments, Sun Pharma Agency, Raising Sun Pharma etc.

He states, defendant nos. 2 to 16 are online sellers using the website of defendant no. 1 and defendant nos. 17 to 19 are the domain name registrars and web hosting companies responsible for the websites of defendant nos. 11 i.e. [www.raising.sunpharma.com](http://www.raising.sunpharma.com), defendant no. 12 i.e. [www.godsun.in](http://www.godsun.in), and defendant no. 3 i.e. [www.sunpharmachem.com](http://www.sunpharmachem.com), respectively. He further states, the defendant no. 1's platform Trade India is also the technical contact for the website of defendant nos. 3 i.e. [www.sunpharmachem.com](http://www.sunpharmachem.com). Learned counsel for the plaintiff states that defendant no.1 is encouraging the defendant nos.2 to 16 to adopt a trade name similar to the plaintiff.

Learned counsel for the plaintiff states the impugned marks and trade names are visually, structurally as well as phonetically deceptively similar to the plaintiff's trademark/trade name SUN PHARMA. He states the defendants have unethically and unlawfully adopted the impugned marks/trade names or facilitated the adoption and propagation of the same with the intent to ride upon the goodwill and reputation of the plaintiff. He states, the adoption of the impugned trademarks/trade names 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.

Learned counsel for the plaintiff states that the use of the impugned trademarks/trade names by the defendants 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.

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 PHARMA like SUNMAY PHARMAA and SHREESON.

In the opinion of this Court, Section 29 (5) of the Trade Marks Act, 1999 is attracted to the facts of the present case as the said Section stipulates that a registered trade mark is infringed by a person if he uses such registered trade mark, as his trade name or part of his trade name, or name of his business concern or part of the name, of his business concern dealing in goods or services in respect of which the trade mark is registered.

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, their assignee in business, its

distributors, dealers, stockists, retailers, servants and agents are restrained from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in medicinal and pharmaceutical preparations under the trademark/trade name/domain name/corporate name, inter alia comprising the words, SUN/SUN PHARMA/ SUN PHARMACEUTICALS and/or using any other trademark/trade name/domain name/corporate name, which may be deceptively similar to the plaintiff's trademark/trade name/domain name/corporate name, SUN/SUN PHARMA/ SUN PHARMACEUTICALS, in any manner whatsoever.

Defendant nos. 17 to 19 are also directed to suspend/freeze the impugned domain names, namely www.sunpharmachem.com, www.raising.sunpharma.com and www.godsun.in.

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

**I.A. 7705/2018 in CS(COMM) 922/2018**

The plaintiff seeks appointment of a Local Commissioner to visit the premises of the defendants. Accordingly, Mr. Ramesh Chandra, Advocate, Mobile No. 9891167962 is appointed as the Local Commissioner to visit the following site of the defendants:-

**Infocom Network Limited  
C-1, 2<sup>nd</sup> Floor  
Main Shopping Centre  
Vasant Vihar  
New Delhi – 110057**

The Local Commissioner shall make an inventory and take into custody any literature, promotional materials, stationery, dyes, blocks etc. infringing the trademarks/trade names of the plaintiff. However, the Local

Commissioner shall return the seized infringing materials 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 defendant no. 1 pertaining to their operations of Trade India, with regard to other defendants whether electronic or physical.

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.

MAY 30, 2018  
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*Manmohan*  
31/05/2018  
Court Master  
High Court of Delhi  
New Delhi

MANMOHAN, J