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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 723/2018**
SUN PHARMACEUTICAL INDUSTRIES LIMITED & ANR

..... Plaintiffs

Through : Mr.Sachin Gupta and Ms.Surabhi
Grover, Advocates.

versus

NAVEEN KUMAR JINDAL & ANR

..... Defendants

Through : None.

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **13.03.2018**

IA No.3466/2018

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

CS(COMM) 723/2018 & IA No.3467/2018


The plaintiffs have filed this suit for permanent injunction restraining infringement of trade mark, passing off, rendition of accounts of profits, delivery up, etc. against the defendants. It is stated the plaintiff is a registered trademark holder of the pharmaceutical and medical preparations in respect of trade names - **LULIFIN** with registration No.1677854 dated 21.04.2008 used for antifungal cream and lotion; **VOLINI** with registration No.609904 dated 19.10.1993 used for treatment of pain due to soft tissue injuries, aches and muscle soreness and other conditions; and **PANTOCID** with registration No.791979 dated 19.02.1998 used for treatment of erosive

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esophagitis associated with gastroesophageal reflux disease. It is also submitted the plaintiff have been taking actions against various parties in order to protect its subject matter trade marks and instituted the Civil Suits in respect of various impugned marks before District Courts, Saket New Delhi, High Court of Bombay and this Court as well including the CS (Comm) Nos.809/2017, 860/2017, 11/2018, 12/2018 and 34/2018.

In the second week of February, 2018 the plaintiff came to know about the application of the defendant No.1 for the mark LULYF when the same was published in the trade mark journal under No.3619510 dated 24.08.2017, which mark is deceptively similar to the plaintiffs' mark LULIFIN. The plaintiff also accessed the website of the manufacturer, viz www.careformulationlabs.com and also discovered three more products apart from the aforementioned LULYF whose marks were deceptively similar to the plaintiffs', namely VOLIFITZ, VOLIEF and ANTOSID. The plaintiff also conducted an electronic search on the official website of the Trade Mark Registry, namely www.ipindia.nic.in, for the defendants' impugned trade marks and discovered there are two other applications before the Trade Mark Registry for VOLIFITZ and VOLIEF, which marks are deceptively similar to the plaintiff's well known registered trade mark, namely VOLINI. The plaintiffs also found an application for the mark ANTOSID, which is deceptively similar to the plaintiffs' well-known trade mark PANTOCID. The plaintiffs undertake to file oppositions against the impugned trade mark applications as and when the same are published in the trade mark journal.

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It is alleged the application for trade mark VOLIFITZ under no. 2982575 has been filed on 10.06.2015 as proposed to be used. The application for trade mark LULYF under no. 3619510 has been filed on 24.08.2017 and a false user date of 01.08.2017 has been claimed therein. The application for trade mark VOLIEF under no. 2982575 has been filed on 10.06.2015 and false user date of 01.09.2015 has been claimed therein. The application for trade mark ANTOSID under no. 3167397 has been filed on 21.01.2016 claiming a false user date of 01.12.2016. However, no products under any of the impugned marks have been found selling in the market. The plaintiffs have checked the Industry reports namely IMS and ORO and there is no detail about these products. The Plaintiffs have not come across the products LULYF, VOLIFITZ, VOLIEF and ANTOSID. It is pertinent to note that there is no photograph of the physical product shown on the website of defendant No.2 save ANTOSID and what is shown on the website is only an artistic impression. In all probability the defendants have never sold LULYF, VOLIFITZ, va LIEF.

It is submitted the defendants have unethically and unlawfully adopted the impugned marks being in pharmaceutical business, the defendants were well aware of the plaintiffs' trade marks and having seen the success of the plaintiffs' medicine, the defendants adopted the impugned marks, which amounts to infringement of trade mark, passing off, unfair trade practice, unfair competition and dilution and it amounts to misrepresentation and misappropriation of goodwill of the plaintiff in their trade marks. Thus the petitioner has a prima facie case and balance of convenience in its favour and if interim stay is not

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granted it shall suffer irreparable loss and inquiry.

Issue summons of the suit and notice of the miscellaneous application to the defendants through all modes before the learned Joint Registrar, returnable on 06.07.2018 and in the meanwhile the defendants, their directors, partners or proprietors, as the case may be, assignees in business, its 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 impugned marks LULYF, VOLIFITZ, VOLIEF and ANTOSID or any other trade mark as may be deceptively similar to the plaintiffs' trademarks LULIFIN, VOLINI and PANTOCID amounting to infringement of registered trademarks under No.1677854, 609904 and 791979 respectively and/or amounting to passing off their goods as those of the plaintiffs. The defendants are also directed to withdraw contents in respect of impugned trade marks from all trade webpages that it has directly/indirectly subscribed, including from its own domain/ website till the next date of hearing.

Compliance of Order 39 Rule 3 of the CPC be made within ten days today.

Upon completion of the service/pleadings matter be placed in the Court.

Order *dasti* under signature of the Court master.

IA No.3468/2018

In the circumstances and above order, Mr. Anas Ali, Advocate (Mobile No.9718617198) is hereby appointed as Local Commissioner

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to visit the premises of defendants at 673, Block E, First Floor, DSIDC Industrial Area, New Delhi-110040 and to execute the commission in following terms:-

- a) prepare an inventory and take in custody all the products under the LULYF, VOLIFITZ, VOLIEF and ANTOSID, their packaging, promotional materials, stationery, dyes, blocks etc. and hand them over to the defendants representative on superdari;
- b) procure copies of the books of account, stock & excise registers maintained by the defendants pertaining to medicinal preparations under the above impugned mark and also put signatures thereon;
- c) be given police assistance by the local Police Station House Officer, if required for execution of the learned local commissioner;
- d) take photographs of the seized stock as well as the execution of commission; and
- e) obtain the copies of the stock register and sale record of the above impugned trademark and file with the report.

The local commissioner is authorized to take samples of the offending goods, to be filed along with the report. The fee of the Local Commissioner is fixed at ₹1,00,000/-, excluding expenses. The report be filed within four weeks upon execution of the commission.

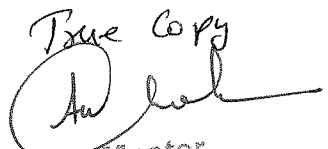
The application stands disposed of.

Copy of this order be also sent to the Local Commissioner.

sd-
YOGESH KHANNA, J

MARCH 13, 2018

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