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

+ CS(COMM) 30/2020, IAs 874-877/2020

SUN PHARMACEUTICAL INDUSTRIES

LIMITED

..... Plaintiff

Through: Mr. Sachin Gupta, Mr. Kartik
Aggarwal, Mr. Pratyush Rao,
Ms. Jasleen Kaur and Ms. Rajnandini
Mahajan, Advs.

versus

GALPHA LABORATORIES LIMITED & ORS. Defendants

Through:

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

% **22.01.2020**

IA. 875/2020 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

IA. 874/2020 (Under Order XI Rule 1(4) CPC)

This is an application filed by the applicant / plaintiff seeking permission to file additional documents. For the reasons stated in the application, the same is allowed. Additional documents, if any, shall be filed within four weeks.

Application stands disposed of.

IA. 877/2020 (Under Order XXVI Rule 9 read with Order XXXIX Rule 7 CPC and Section 135 of Trade Marks Act.)

Learned counsel for the plaintiff does not press this application and seeks to withdraw the same.

The application is dismissed as withdrawn.

CS(COMM) 30/2020

Summons be issued in the suit to the defendants, returnable before Joint Registrar on April 14, 2020.

Summons shall state that the written statement shall be filed by the defendants within 30 days from the date of receipt of summons. The defendants shall file their affidavit of admission and denial of documents filed by the plaintiff.

Replication shall be filed within 30 days of the receipt of the written statement / documents. The replication shall be accompanied by the affidavit of admission denial of documents filed on behalf of the defendants. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the time lines.

IA 876/2020 (Under Order XXXIX Rule 1 and 2 CPC)

1. It is the submission of the learned counsel for the plaintiff that plaintiff started its business of marketing pharma products as a proprietary firm in the year 1978. In the year 1982, a partnership firm under the name and style of M/s. Sun Pharmaceutical Industries was formed to manufacture, deal in and trade into pharmaceutical goods, preparation and allied goods and services. On March 1, 1993 it was converted into a Joint Stock Company and was incorporated under the Companies Act, 1956 under the name and style of Sun Pharmaceutical Industries Ltd.

2. According to the learned counsel for the plaintiff, plaintiff is among the largest and highly reputed pharmaceutical companies in India which manufactures and markets drugs and formulations thereof in India and to more than 150 other countries in the world under its extensive range of well known and distinctive trademarks/brand names since last several years. The consolidated turnover since the year 1983 is Rs.27,856.6 Crores globally. The plaintiff has 45 manufacturing facilities in 6 continents and 10 world-

class research Centres over 30,000 strong multi-cultural work force from over 50 different nationalities.

3. According to the learned counsel for the plaintiff, the plaintiff's predecessor, namely Ranbaxy Laboratories Ltd. coined and adopted the trade mark STORVAS in the year 1999 and has been selling it since then. The medicinal preparation under the trade mark STORVAS has many variants such as STORVAS CV 10, STORVAS CV 20 etc. The mark STORVAS is registered in the name of plaintiff under registration no. 868513 dated July 29, 1999 under class 5 for medicinal and pharmaceutical preparations. Reference is also made that pursuant to Scheme of Arrangement, the plaintiff acquired all the assets along with the intellectual property of Ranbaxy Laboratories Limited.

4. By virtue of clause 12 of the Scheme of Arrangement, all intellectual property along with the goodwill, including the trade mark STORVAS, subject matter of the present proceedings, stood transferred from Ranbaxy Laboratories Limited in favour of the plaintiff. Reference is also made to the total sales turnover with regard to this medicine in the year 2018-2019 which is Rs.7254.54 Lacs. In substance, it is the submission of the learned counsel for the plaintiff that on account of long and continuous and exclusive use and painstaking quality control, the plaintiff's trade mark STORVAS has acquired enviable goodwill and reputation amongst the members of trade and public at large and has acquired a status of well-known mark under Section 2(zb) of the Trade Marks Act, 1999, which entitles itself to be granted statutory protection by the legislature against any form of misappropriation and dilution of distinctiveness irrespective of whatever goods or business they are used for.

5. According to the learned counsel for the plaintiff, defendant No. 1, Galpha Laboratories Limited is a company registered under the Companies Act having its registered office in Patna, Bihar and is marketing the impugned product through office situated in Mumbai. According to the website of defendant no.1 it is also situated in Sarita Vihar, Delhi. As per the packaging of the impugned product, ASTORVAS-10 is manufactured by defendant No.2, M/s. Signature Phytochemical Industries situated in Dehradun. As per the packaging of the impugned product, ASTORVAS-20 is also manufactured by defendant No.3 having its registered office in Kolkata and manufacturing in District Solan, Himachal Pradesh.

6. It is the submission of the learned counsel for the plaintiff that the plaintiff had checked the official website of the Trade Mark Registry and to the best of plaintiff's knowledge no trade mark application has been filed for the impugned mark by the defendants. The defendants' product under the impugned mark ASTORVAS contains the same salt and is used for same ailment. The defendants have conveniently adopted the mark of the plaintiff and merely prefixed alphabet "A" to the registered trade mark STROVAS of the Plaintiff. The adoption of deceptively similar mark by the defendants is dishonest and the same is evident from the fact that the defendants have subsumed the entire registered trade mark of the plaintiff in its impugned mark. He has also placed before me the product of the plaintiff and the impugned product of defendants to show the similarity in the products.

7. Having heard the learned counsel for the plaintiff, this court is of the view that plaintiff has made out a prima facie case for grant of interim injunction. Even the balance of convenience is in favour of the plaintiff as it

is the submission of the learned counsel for the plaintiff that the registered trademark of the plaintiff has been subsumed in the impugned product.

8. Accordingly, defendants, its 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 mark ASTROVAS or any other trade mark as may be deceptively similar to the plaintiff's trade mark STORVAS amounting to infringement of registered trade mark and/or amounting to passing off their goods as those of the plaintiff till the next date of hearing.

9. Let notice be issued the defendants returnable before court on February 24, 2020.

10. The provisions of Order XXXIX Rule 3 CPC be complied within 10 days.

V. KAMESWAR RAO, J

JANUARY 22, 2020/jg