

\$~2

*

+

IN THE HIGH COURT OF DELHI AT NEW DELHI
CS(COMM) 724/2019, I.As. 18333/2019, 18334/2019, 18335/2019 &
18336/2019
SUN PHARMACEUTICAL INDUSTRIES LIMITED

..... Plaintiff

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

versus

NIPUN VINODKUMAR & ORS.

..... Defendants

Through:

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

%

07.01.2020

I.A. 18334/2019 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

I.A. 18333/2019 (for additional documents)

Learned counsel for the plaintiff does not press this application. The same is dismissed as withdrawn.

CS(COMM) 724/2019

1. Summons be issued in the suit to the defendants, returnable on March 24, 2020.
2. 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

Accepted

[Signature]
08-01-2020

**Court Master
High Court of Delhi
New Delhi**

filed by the plaintiff.

3. 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.

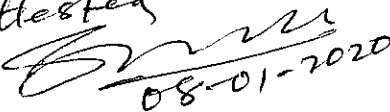
4. List on March 24, 2020 before Joint Registrar for marking exhibits.

I.A. 18335/2019

5. Issue notice on this application to the defendants, returnable before Court on May 04, 2020.

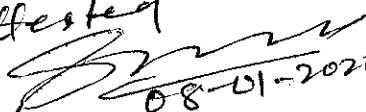
6. It is the submission of the learned counsel for the plaintiff that the plaintiff started business of marketing pharma products as a proprietary firm in the year 1978. In 1982, a partnership firm under the name and style of M/s. Sun Pharmaceutical Industries was formed to manufacture, deal in and trade into pharmaceutical goods, preparation and allied goods and services. On March 01, 1993, M/s. Sun Pharmaceutical Industries, the Partnership firm, 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.

7. It is his submission that the plaintiff is among the largest and highly reputed pharmaceutical companies in India which manufacture 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 plaintiff is now ranked No. 1 Pharma Company in India in a total of 11 specialties and is the world's 5th largest specialty generic pharmaceutical company. The plaintiff

Attested

08-01-2020
Court Master
High Court of Delhi
New Delhi

has multiple factory sites which have been granted US Food and Drug Administration approval. The plaintiff has 45 manufacturing sites in 5 continents and 10 world class research centres with a total work force of over 30,000 employees. The plaintiff is an international speciality pharma company, with a strong presence in the US, India, Asia, Europe, South Africa, CIS, Russia and Latin America totalling a footprint across more than 150 markets. The plaintiff's manufacturing operations are focused on producing generics, branded generics, specialty, Over-the-Counter products, Anti-Retrovirals, Active Pharmaceutical Ingredients and intermediates in the full range of dosage forms, including tablets, capsules, injectables, ointments, creams and liquids. The plaintiff has a highly skilled team of regulatory affairs specialists who are well versed with regulatory policies and procedures around the world.

8. It is stated that M/s. Ranbaxy Laboratories Limited got merged with the plaintiff Company in the year 2014. It is the case of the plaintiff and so stated by its counsel that one of the Pharmaceutical preparations sold by the plaintiff's predecessor, namely Ranbaxy Laboratories Ltd. is under the trademark ROSUVAS. The mark ROSUVAS was coined by the plaintiff's predecessor in the year 2001 and has been in use since the year 2003. The plaintiff's product under the mark ROSUVAS reduces levels of "bad" cholesterol and triglycerides in the blood, while increasing levels of "good" cholesterol. Under the Scheme of Arrangement, the plaintiff acquired all the assets along with the intellectual property of Ranbaxy Laboratories Limited. The trademark ROSUVAS being a coined mark enjoys inherent distinctiveness indicating trade origin and source of the goods bearing the said trademark ROSUVAS, which is registered in India. The said

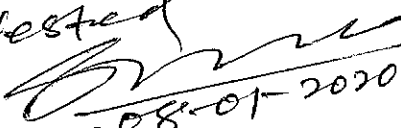
Attested

08-01-2020
Court Master
High Court of Delhi
New Delhi

registration is valid and subsisting. The name of the plaintiff has been entered in the trade mark register as subsequent proprietor on account of the merger. Hence, the plaintiff has a statutory right to the exclusive use of the registered trademark ROSUVAS.

9. Learned counsel for the plaintiff has drawn my attention to paragraph 15 of the plaint to show the sales qua ROSUVAS for the period 2009-2010 to 2018-2019. It is his submission that the trademark ROSUVAS has acquired formidable goodwill, reputation and distinctiveness vis-à-vis such goods. He stated that in the third week of December 2019, the plaintiff through its field force came across a medicinal product under the impugned mark ROSOVAS. The impugned medicine contains the same molecule and is used for the treatment of same ailment as plaintiff's medicine ROSUVAS. It was discovered from packaging of the product that the same is marketed by one M/s. Maxford Healthcare having address at G-2, Vireshwar Chhaya, V.S Khandekar Marg, Vile Parle (E)- Mumbai- 400 057 and is manufactured by defendant No.6 and defendant No.7.

10. He also states that the defendant No.6 is a company under the Companies Act, 2013 whose registered office is situated at 10, Community Centre No. 2 Ashok Vihar Phase II, New Delhi. He also refers to the fact that the plaintiff had opposed the trademark application No. 3129908 for the mark ROSOVAS-5 on account of it being deceptively similar to plaintiff's medicine ROSUVAS. He states that the opposition was served on the defendant Nos.1 to 4 to the said application on April 07, 2017. However, no counter-statement was filed for the same and the application will be abandoned in due course.

11. In substance, it is his submission that the defendants have unethically


Attested

08-01-2020
Court Master
High Court of Delhi
New Delhi

and unlawfully adopted the new mark being pharmaceutical business, the defendants are well aware of the plaintiff adoption and use of the trade mark ROSUVAS and its variations such as ROSUVAS 40 MG, ROSUVAS D5, ROSUVAS DIO, ROSUVAS EZ 10MG, ROSUVAS F20 etc. Having seen the success of the plaintiff's product under the mark ROSUVAS, the defendants adopted the impugned mark. Such adoption also amounts of unfair trade practice, unfair competition and dilution. Such act also amounts to misrepresentation and misappropriation of plaintiff's goodwill in the trademark ROSUVAS.

12. Learned counsel for the plaintiff has drawn my attention to pages 5 and 6 of the documents to contend that the impugned mark is being sold with mark ROSOVAS-20 and Rosovas Gold-10.

13. Having heard the learned counsel for the plaintiff, from the above, it is clear that the plaintiff has made out a prima facie case in its favour and the balance of convenience is also in its favour for grant of ad-interim injunction in favour of the plaintiff and against the defendants. Accordingly, the 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 ROSOVAS or any other trade mark as may be deceptively similar to the plaintiff's trade mark ROSUVAS which shall amount to infringement of registered trademark and / or amounting to passing off their goods as those of the plaintiff till the next date of hearing.

14. Let the provisions of Order XXXIX Rule 3 be complied with within a period of two weeks from today.

Attested

08-01-2020
Court Master
High Court of Delhi
New Delhi

I.A. 18336/2019

15. This is an application filed by the plaintiff under Order XXVI Rule 9 read with Order XXXIX Rule 7 CPC and Section 135 of the Trademarks Act, 1999 for appointment of Local Commissioner.


16. Having heard the learned counsel for the plaintiff and perused the application, this Court is of the view that the prayer as made in the application need to be granted and the Court appoints Ms. Kanika Tandon, Advocate (Mob: 9818278689), who is present in the Court, as Local Commissioner, who shall visit the following two places for carrying out the following acts:

Following two Places:

- (i) MEDICAMEN ORGANICS LIMITED
61, Sector- 6A, HE, SIDCUL
Haridwar, 249403.
- (ii) M/S LIFE MAX CANCER LABORATORIES
Plot No. i06 & 106A, Sector-6A IIE
SIDCUL, Haridwar-249403.

Following Acts:

- (a) Prepare an inventory and take in custody all the products under the mark ROSOVAS, their packaging, promotional materials, stationery, dyes, blocks etc. and hand them over to the defendants representative on *superdari*;
- (b) Record details of such other persons who, according to the information disclosed by the Defendants, have role in manufacturing and sale of medicinal preparations under the impugned mark ROSOVAS;

Attested

08-01-2020

Court Master
High Court of Delhi
New Delhi

- (c) Procure copies of the books of account, stock & excise registers maintained by the defendants pertaining to medicinal preparations under the impugned mark ROSOVAS;
- (d) break open the locks, if access to the premises where medicinal preparations under the impugned mark ROSOVAS, their promotional materials, stationery, dyes, blocks etc. are stocked, is denied to the learned Local Commissioner.

17. While doing the aforesaid acts, the Local Commissioner shall be within her rights to photograph / videograph the commission. She shall also be at liberty to take assistance of the local police.

18. The Local Commissioner shall be paid an amount of ₹1 Lac excluding any out of pocket expenses and travelling expenses, which shall be paid as per actuals. The Local Commissioner shall execute the commission within a period of two weeks from today. She shall also file her report within two weeks thereafter.

19. The Local Commissioner shall be at liberty to be accompanied by the counsel (s) / representative (s) of the plaintiff Company.

20. The application stands disposed of.

21. *Dasti* under the signatures of the Court Master.

22. A copy of this order be sent to Ms. Kanika Tandon, Advocate, who is appointed as Local Commissioner.

V. KAMESWAR RAO, J

JANUARY 07, 2020/aky

Attested
[Signature]
08-01-2020
Court Master
High Court of Delhi
New Delhi