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

+ CS(COMM) 1041/2024 & I.A. Nos. 45871/2024, 45872/2024,
45873/2024, 45874/2024 & 45875/2024

SUN PHARMACEUTICAL INDUSTRIES LTD.Plaintiff

Through: Mr. Sachin Gupta with Ms. Prashansa
Singh, Mr. Rohit Pradhan,
Mr. Adarsh Agarwal, Mr. Yashveer
Singh, Mr. Ajay Kumar, Mr. Tanmay
Sharma and Mr. Ajay, Advocates.
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versus

OZIEL PHARMACEUTICALS P. LTD. & ANR.Defendants

Through: None.

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

% **22.11.2024**

I.A. 45872/2024 (Exemption from filing certified and clearer copies of documents)

1. The present is an application under Section 151 of the Code of Civil Procedure, 1908 ("CPC"), on behalf of the plaintiff, seeking exemption from filing certified clearer/typed or translated copies of documents.
2. Exemption is granted, subject to all just exceptions.
3. Plaintiff shall file legible, clear, and translated copies of the documents, on which the plaintiff may seek to place reliance, before the next date of hearing.

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4. Accordingly, the present application is disposed of.

I.A. 45871/2024 (Exemption from instituting Pre-Institution Mediation)

5. The present is an application under Section 12A of the Commercial Courts Act, 2015, read with Section 151 of CPC, seeking exemption from undergoing Pre-Institution Mediation.

6. Having regard to the facts of the present case and in the light of the judgment of Supreme Court in the case of *Yamini Manohar Versus T.K.D. Keerthi, 2023 SCC OnLine SC 1382*, and Division Bench of this Court in *Chandra Kishore Chaurasia Versus RA Perfumery Works Private Ltd., 2022 SCC OnLine Del 3529*, exemption from attempting Pre-Institution Mediation, is granted.

7. Accordingly, the application stands disposed of.

I.A. 45873/2024 (Exemption from advance service to the defendants)

8. The present is an application under Section 151 CPC, seeking exemption from advance service to the defendants.

9. The plaintiff seeks urgent interim relief, and has also sought appointment of Local Commissioners. Therefore, in the peculiar facts and circumstances of this case, exemption from effecting advance service upon the defendants, is granted.

10. For the reasons stated in the application, the same is allowed and disposed of.

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11. Let the plaint be registered as suit.

12. Upon filing of the process fee, issue summons to the defendants by all permissible modes. Summons shall state that the written statement be filed by the defendants within thirty days from the date of receipt of summons.

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Along with the written statement, the defendants shall also file affidavit of admission/denial of the plaintiff's documents, without which, the written statement shall not be taken on record.

13. Liberty is given to the plaintiff to file replication within thirty days from the date of receipt of the written statement. Further, along with the replication, if any, filed by the plaintiff, an affidavit of admission/denial of documents of the defendants, be filed by the plaintiff, without which, the replication shall not be taken on record. If any of the parties wish to seek inspection of the documents, the same shall be sought and given within the timelines.

14. List before the Joint Registrar (Judicial) for marking of exhibits, on 20th January, 2025.

15. List before the Court on 08th April, 2025.

I.A. 45875/2024 (Application under Order XXXIX Rules 1 and 2 CPC)

16. The present suit has been filed seeking permanent injunction restraining infringement of trade marks, passing off, unfair competition, damages/rendition of accounts of profits and delivery up, etc.

17. Learned counsel appearing for the plaintiff submits that by way of the present suit, the plaintiff complains against the defendants for using the impugned marks, which are deceptively similar to the plaintiff's registered and prior used trademarks, as follows:-

| S. No | Plaintiff's Trade Mark | Defendant's Mark |
|-------|--|---|
| 1. | PEPFIZ Molecule: Papain, Fungal Diastase And Simethicone Use: Antacid Sold in the form: Effervescent tablets and sachets. TM Registration under No. 555726 dt. 02.08.1991 in Class- 5. Renewed and subsisting. | PEPFIK-DSR Molecule: Rabeprazole, Sodium and Domperidone Use: same Sold in the form: Capsules No TM appl. filed |

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| | | |
|----|--|---|
| 2. | <p>MINOZ</p> <p>Proprietor: Plaintiff</p> <p>Molecule: Minocycline</p> <p>Use: antibiotic to treat infections, severe acne</p> <p>Sold in the form: capsules, tablets, and gel formulations</p> <p>Earliest TM registration under no. 1171648 dt. 04.02.2003. Renewed and subsisting.</p> | <p>MINOZIL</p> <p>Proprietor: Defendant No. 1</p> <p>Molecule: Minoxidil</p> <p>Use: to promote hair growth after hereditary hair loss</p> <p>Sold in the form: Liquid Solution</p> <p>Impugned trade mark application under no. 4759191 dated 27.11.2020, on proposed to be used basis, has been opposed by the Plaintiff on 27.06.2024 vide opposition no. 1332204. Opposite party did not file a counter statement and the impugned mark shall be declared abandoned.</p> |
|----|--|---|

18. It is submitted that the plaintiff coined and adopted the trademarks PEPFIZ and MINOZ in the years 1991 and 2003, and has been continuously, openly and extensively using them since the years 2004 and 2003, respectively. The said trademarks had annual sales of ₹ 22.6 million and ₹ 216 million, respectively in the FY 2023-24.

19. It is further submitted that recently, in the second week of November, 2024, the plaintiff became aware that the defendant no. 1 is marketing products under the impugned marks PEPFIX-DSR and MINOZIL. The defendant no. 1 has filed an application for registration of the mark MINOZIL under no. 4759191 dated 27th November, 2020, which shall soon be declared abandoned. Further, there is no application for registration of PEPFIX-DSR.

20. It is submitted that the competing marks are deceptively similar, which is evident from the fact that the impugned mark PEPFIX-DSR is almost identical to the plaintiff's trade mark PEPFIZ, with the 'Z' being replaced with 'X' in PEPFIX, and mere addition of generic suffix DSR,

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which stands for Delayed-Release System or Dual-Release System, and is commonly mentioned in pharmaceutical products.

21. It is further submitted that the impugned mark MINOZIL is phonetically, visually, and structurally similar to the plaintiff's registered and prior used trade mark MINOZ, with an addition of "IL" to the plaintiff's mark. He submits that the same is causing confusion among consumers.

22. It is submitted that the adoption and use of the impugned marks amount to infringement of plaintiff's registered trademarks, passing off and unfair competition, which is in turn causing confusion and deception amongst the public and loss to the plaintiff. Therefore, the defendants ought to be restrained by way of an *ex-parte ad interim* injunction.

23. It is further submitted that the trade mark PEPFIZ was coined by the plaintiff in 1991 and has been in use since 2004. PEPFIZ contains the molecule, namely, Papain, Fungal Diastase and Simethicone. It is used as an antacid, for the treatment of Heartburn, gas and indigestion, and is sold in the form of effervescent tablets and sachets. The plaintiff's product under the mark PEPFIZ antacid is a natural remedy for acidity that is enriched with the benefits of Ayurveda and is safe to use. It contains Ayurvedic ingredients Svarjiksara and Nimbukamlam; while Svarjiksara neutralizes acidity, Nimbukamlam gives relief in indigestion. It is submitted that the mark PEPFIZ is duly registered, renewed, valid and subsisting. The registration details for the same are as follows:

| Trade Mark | Registration No. & Date | Class / goods |
|------------------|--------------------------|--|
| PEPFIZ (word) | 555726 dt. 02.08.1991 | Class 5- Pharmaceutical and Medical Preparations for Human and Veterinary use. |

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24. It is submitted that the trade mark MINOZ was coined by the plaintiff in 2003 and has been in use, since then. He submits that MINOZ is a Schedule H drug containing the molecule Minocycline. It is an antibiotic used to treat bacterial infections in the body and is effective in some infections of the lungs, urinary tract, eyes, and others. It kills bacteria, which helps to improve the symptoms and cure the infection. It may also be used for the treatment of severe acne. It is sold in the form of capsules, tablets, and gel formulations. It is submitted that the marks MINOZ are duly registered, renewed, valid and subsisting. The registration details for the same are as follows:

| Trade Mark | Registration No. & Date | User | Class / goods |
|-----------------|-------------------------|---------------------|--|
| MINOZ (word) | 1171648 Dt. 04.02.2003 | Proposed to be used | Class 5- Medicinal and pharmaceutical preparations for human and veterinary use. |
| MINOZ (word) | 3283907 dt. 13.06.2016 | 04.02.2003 | Class 3- Cosmetics; Beauty Care & Skin Care Preparations And Products; Toiletries; Essential Oils; Creams; Lotions; Shampoo & Conditioners; Deodorant; Perfumes; Face Wash; Soap; Talcum Powder. |
| MINOZ ER (word) | 2908598 dt. 24.02.2015 | 20.02.2015 | Class 5- Medicinal and pharmaceutical preparations for human and veterinary use. |

25. It is further submitted that the trademarks of the plaintiff, namely PEPFIZ and MINOZ, have acquired distinctiveness and enviable goodwill and reputation due to their extensive, long and continuous use. The products bearing the said trademarks identify plaintiff as the source or origin and none else. The plaintiff has the statutory and common law right to the

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exclusive use of the trade marks PEPFIZ and MINOZ. The use of the same or a deceptively similar trade marks by any unauthorised person or trader in relation to the similar kind of goods will constitute infringement of the plaintiff's right of the exclusive use as well as passing off under Section 29 and Section 27 of the Trade Marks Act, 1999.

26. It is submitted that the defendants have deliberately adopted the impugned mark PEPFIX-DSR, which is identical to the plaintiff's trade mark PEPFIZ, with just the letter "Z" replaced by "X", and adding a generic suffix DSR, in order to create confusion in the minds of the general public, and making the defendants' mark almost indistinguishable from the plaintiff's mark. Furthermore, the plaintiff's well known and prior used and registered trade mark MINOZ has been modified into MINOZIL, with a mere addition of "IL" as suffix, which is still visually, structurally, and phonetically similar to the plaintiff's trade mark MINOZ. These intentional resemblances result in a high likelihood of deception and misrepresentation, infringing upon the plaintiff's established trade mark rights.

27. It is further submitted that such inept adoption and coinage on the part of the defendants is not a mere coincidence and has clearly been done by the defendants to sail close to the plaintiff's well-known trade mark. The impugned adoption clearly shows a *mala fide* intention on the part of the defendants to slavishly imitate the trademarks used by the plaintiff.

28. It is submitted that the unauthorized use of the impugned marks PEPFIX-DSR and MINOZIL by the defendants is likely to cause confusion and/or deception in the minds of the consumers. Such impugned use by the defendants constitutes acts of misrepresentation, misappropriation and passing off of the defendants' medicine for those of the plaintiff's. The

plaintiff has also filed an application for the mark PEPFIX, under no. 6640762 dated 25th September, 2024, which is pending for registration, in pursuance of the plaintiff's right of business expansion.

29. It is further submitted that the use of the impugned marks by the defendants, therefore, being an actionable tort, is liable to be enjoined under the provisions of Section 135 of the Trade Marks Act, 1999.

30. In the above circumstances, the plaintiff has demonstrated a *prima facie* case for grant of injunction and, in case, no *ex parte ad interim* injunction is granted, the plaintiff will suffer an irreparable loss. Further, balance of convenience also lies in favour of the plaintiff, and against the defendant.

31. It is to be noted that Supreme Court in *Mahadeo Savlaram Shelke ad Others Versus Pune Municipal Corporation and Another*, (1995) 3 SCC 33, has clearly laid down that if *prima facie* case of infringement is established, then, injunction shall follow.

32. Accordingly, till the next date of hearing, the defendants, their directors, assignees, affiliates, associates, predecessors, successors in business, their distributors, dealers, stockists, super-stockist, wholesalers, retailers/chemists, custodians, franchisees, licensees, importers, exporters, servants, agents, e-commerce and warehouse aggregators and all persons claiming through and/or under them or acting on their behalf are restrained from selling, offering for sale, advertising, distributing, marketing, exhibiting for sale, trading in or otherwise directly or indirectly dealing in medicinal preparations or similar or like or allied goods under the impugned marks PEPFIX-DSR and MINOZIL, or any other extensions and/or any other trademarks containing the words PEPFIX and MINOZIL, and/or any

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other trademarks that may be identical with and/or deceptively similar to the plaintiff's registered trademarks PEPFIZ and MINOZ, amounting to infringement of the plaintiff's registrations, as well as passing off the defendants' goods and business, for those of the plaintiff's goods and business.

33. It is clarified that the defendants are at liberty to carry out manufacturing and marketing of their products and medicinal preparations under a name, which is not similar or deceptively similar to the plaintiff's registered trademarks PEPFIZ and MINOZ.

34. Issue notice to the defendants by all permissible modes upon filing of the Process Fee, returnable on the next date of hearing.

35. Let reply be filed within a period of four weeks.

36. Rejoinder thereto, if any, be filed within two weeks, thereafter.

37. Compliance of Order XXXIX Rule 3 CPC, be done, within a period of two weeks.

38. List before the Court on 08th April, 2025.

I.A. 45874/2024 (Application for appointment of Local Commissioner)

39. The present application has been filed on behalf of the plaintiff under Order XXVI Rule 9 read with Order XXXIX Rule 7 CPC read with Section 135 of the Trade Marks Act, 1999, seeking appointment of Local Commissioners.

40. Learned counsel appearing for the plaintiff submits that the plaintiff apprehends that on being served with the *ad interim* injunction order, the defendants will flood the market with infringing products, without proper documents executed to show such sale, thereby, frustrating the very purpose of this Court granting an *ad-interim* injunction order. It is further submitted

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that the defendants may also manipulate or tamper with its books of accounts, stock register, invoice books, receipt books, etc., which are valuable evidence and necessary for proper adjudication of the matter in dispute.

41. It is submitted that in order to preserve evidence of infringement, it is necessary that Local Commissioners be appointed to visit the premises of the defendants.

42. Accordingly, the following directions are issued:

I. Mr. Arjun Mohan, Advocate, (Mob. No. 7907303789), is appointed as Local Commissioner, with a direction to visit the following premises of the defendant no. 1:

***PK 75 Sector 122, Gautam Buddha Nagar,
Noida, Uttar Pradesh-201301
India***

II. Mr. Sameer Sharma, Advocate, (Mob. No. 9213857759), is appointed as Local Commissioner, with a direction to visit the following premises of the defendant no. 2:

***Vill. Saini Majara, Nalagarh Ropar Road,
Nalagarh, District Solan,
Himachal Pradesh-174101,
India***

III. The learned Local Commissioners, along with a representative of the plaintiff and its counsel, shall be permitted to enter upon the premises of the defendants mentioned hereinabove, or any other location/premises, that may be identified, during the course of commission, in order to conduct the search, and seize the infringing goods or packaging of the goods under the impugned marks PEPFIX-DSR and MINOZIL.

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IV. After seizing the infringing material, the same shall be inventoried, sealed, and signed by the learned Local Commissioners, in the presence of the parties, and released on *superdari* to the defendants, on their undertaking to produce the same, as and when further directions are issued, in this regard.

V. The learned Local Commissioners shall also be permitted to make copies of the books of accounts, including ledgers, cash books, stock registers, invoices, books, etc., in so far as they pertain to the infringing products.

VI. Further, the learned Local Commissioners shall be permitted to undertake/arrange for photography/videography of the execution of the commission.

VII. Both the parties shall provide assistance to the learned Local Commissioners, for carrying out the aforesaid directions.

VIII. In case, any of the premises are found locked, the learned Local Commissioners shall be permitted to break open the lock(s). To ensure an unhindered and effective execution of this order, the Station House Officer (“SHOs”) of the respective local Police Stations, are directed to render all assistance and protection to the Local Commissioners, as and when, sought.

IX. The fee of the learned Local Commissioners, to be borne out by the plaintiff, is fixed at ₹ 1,50,000/- (Rupees One Lakh Fifty Thousand). The plaintiff shall also bear all the expenses for travel/lodging of the Local Commissioners and other miscellaneous out-of-pocket expenses, for the execution of the commission. The fee of the Local Commissioners shall be paid in advance by the plaintiff.

IX. The Local Commission shall be executed within a period of two

weeks from today. The Local Commissioners shall file the report within a period of two weeks from the date, on which the commission is executed.

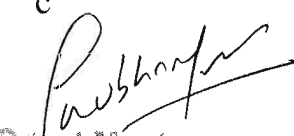
43. The order passed today, shall not be uploaded for a period of two weeks.

44. In terms of the foregoing, the present application stands disposed of.

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


MINI PUSHKARNA, J

NOVEMBER 22, 2024

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