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

+ CS(COMM) 6/2023

SUN PHARMA LABORATORIES LTD. .... Plaintiff

Through: Mr. Sachin Gupta with Ms. Swati  
Meena, Mr. Rohit Pradhan, Ms. Yashi  
Agarwal and Mr. Manan, Advocates.

versus

REKIN PHAMA P. LTD. & ANR. .... Defendants

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE AMIT BANSAL**

**ORDER**

**10.01.2023**

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**I.A. 343/2023 (for exemption)**

1. Subject to the plaintiff filing documents with proper margins and the original, clear and legible copies of the documents on which the plaintiff may seek to place reliance, within four weeks from today, exemption is granted for the present.

2. The application is disposed of.

**I.A. 340/2023 (exemption from advance service)**

3. The present application has been filed on behalf of the plaintiff seeking exemption from advance service to the defendants no.1 and 2.

4. In view of the fact that the plaintiff is seeking appointment of Local Commissioners to visit the premises of the defendants to inventorize and seize the stocks bearing the impugned mark, the application is allowed and plaintiff is exempted from advanced service.



**I.A. 344/2023 (u/S 12A of Commercial Courts Act)**

5. In view of the urgent interim relief sought, the plaintiff is granted exemption from the requirement of pre-institution mediation in terms of Section 12A of the Commercial Courts Act, 2015.

6. Accordingly, the application stands disposed of.

**CS(COMM) 6/2023**

7. Let the plaint be registered as a suit.

8. Issue summons.

9. Summons be issued to the defendants through all modes. The summons shall state that the written statement(s) shall be filed by the defendants within thirty days from the date of the receipt of summons. Along with the written statement(s), the defendants shall also file affidavit of admission/denial of the documents of the plaintiff, without which the written statement(s) shall not be taken on record.

10. Liberty is given to the plaintiff to file replication(s), if any, within thirty days from the receipt of the written statement(s). Along with the replication(s) filed by the plaintiff, affidavit of admission/denial of the documents of the defendants be filed by the plaintiff.

11. 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 also be filed with the pleadings.

12. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

13. List before the Joint Registrar on 11<sup>th</sup> April, 2023 for completion of

service and pleadings.

14. List before the Court on 15<sup>th</sup> May, 2023.

**I.A. 341/2023 (O-XXXIX R-1 & 2 of CPC)**

15. The present suit has been filed seeking relief of permanent injunction restraining the defendants from infringing the trademarks of the plaintiff, passing off their products as that of the plaintiff and other ancillary reliefs.

16. It has been averred in the plaint that the plaintiff company is engaged in the business of manufacturing and trading in pharmaceuticals and other allied products since 1982. The plaintiff is the registered proprietor of the trademarks 'OXYTAL' and 'OXETOL' in Class 5 for medicinal and pharmaceutical preparations with effect from 1988 and 2001 respectively. The details of the registrations of the aforesaid word marks in favour of the plaintiff are provided in paragraph 12 and 15 of the plaint. The drug of the plaintiff, bearing the trademark 'OXETOL', has been used as an anti-epileptic medicine used to treat and prevent seizures in epilepsy.

17. The plaintiff has placed on record documents from the year 2001-02 to 2021-22 reflecting its sales figures in relation to the trademark 'OXETOL' to demonstrate that the said mark has acquired considerable goodwill and reputation in the market. In the year 2021-22, the plaintiff had a turnover of approximately Rs.87,12,75,000/-.

18. The case set up by the plaintiff is that in December, 2022 the plaintiff came to know that the defendants have adopted the impugned mark 'OXYTAL-45' for a medicine to treat nausea and vomiting during pregnancy. Further, the defendant no.1 had also filed an application, being TM Application No. 4934375 for registration of the aforesaid impugned mark on 6<sup>th</sup> April, 2021 in Class 5 on a proposed to be used basis. However,

the Trademark Registry had objected to the said application by citing the plaintiff's registered trademark 'OXYTAL'. Despite this, the defendants have proceeded to sell their medicine/product under the impugned trademark and the same is available on the e-commerce website '1mg' and the website of the defendant no. 1, being '<https://www.rekinpharma.in>'.

19. A comparison of the aforementioned marks would show that the defendant is using a mark which is deceptively similar to the trademark of the plaintiff in respect of identical goods, which amounts to infringement as well as passing off. There is a likelihood of confusion and deception in the market as both the medicines/products have similar names but are for treatment of different conditions.

20. Issue notice.

21. Notice be issued to the defendants through all modes.

22. Reply(ies) be filed within four weeks.

23. Rejoinder(s) thereto, if any, be filed within two weeks thereafter.

24. Based on the averments in the plaint and submissions made on behalf of the plaintiff, a *prima facie* case has been made out on behalf of the plaintiff. Balance of convenience is in favour of the plaintiff. Irreparable harm would be caused not only to the plaintiff but also to the public if an *ex parte* ad interim injunction as prayed for is not granted in favour of the plaintiff.

25. Consequently, till the next date of hearing, the defendants, their directors, partners or proprietors, as the case may be, their assigns in business, licensees, franchisee, distributors, dealers, stockists, retailers/chemists are restrained from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in medicinal & pharmaceutical preparations under the

impugned mark 'OXYTAL-45' or any other trademark which may be deceptively similar to the plaintiff's trademarks 'OXETOL' and 'OXYTAL'.

26. Compliance under Order XXXIX Rule 3 of the Code of Civil Procedure, 1908 (CPC) be done within two weeks.

27. List before the Joint Registrar on 11<sup>th</sup> April, 2023 for completion of service and pleadings.

28. List before the Court on 15<sup>th</sup> May, 2023.

**I.A. 342/2023 (O-XXVI R-9 of CPC)**

29. This application has been filed seeking appointment of Local Commissioners to visit the premises of the defendants and make an inventory of the infringing material found therein.

30. For the reasons stated in the application, the application is allowed. Ms. Shweta Kumar, Advocate (Mobile No. 9899884743) and Mr. Vinay Singh Bist, Advocate (Mobile No. 9711670192) are appointed as Local Commissioners.

31. Ms. Shweta Kumar, Advocate shall visit the premises of the defendant no.1 at:

Rekin Pharma P. Ltd, WZ- 32-33, Sadh Nagar, Palam Colony, Delhi – 110045 .

32. Mr. Vinay Singh Bist, Advocate shall visit the premises of the defendant no.2 at:

M/s Moon Marks Pharmaceuticals 1, Industrial Area, Raja Ka Bagh, Kangra, Tehsil, Nurpur, Himachal Pradesh- 176201.

33. The following directions are passed in this regard:

I. The Local Commissioners shall visit the respective premises of

the defendants, prepare an inventory of all the products and take into custody all the products bearing the impugned mark 'OXYTAL-45' and/or any other mark/label/packaging/artistic works either identical or deceptively similar to that of the plaintiff's aforesaid marks/labels, located in the aforesaid premises of the defendants.

- II. The Local Commissioners shall handover the products using the impugned marks/labels on *supardari* basis to the defendants' representative upon their furnishing an undertaking to produce the same as and when directed by this Court.
- III. The Local Commissioners shall also procure photocopies of the books of account and stock and excise registers maintained by the defendants concerning the products using the impugned marks/labels.
- IV. The Local Commissioners shall be accompanied by a representative of the plaintiff to the respective premises of the defendants.
- V. The defendants and their representatives are directed to provide full assistance to the Local Commissioners for executing the present commission.
- VI. In case the aforesaid premises of the defendants or any part thereof are found locked, the Local Commissioners are permitted to break open the locks and doors for execution of the commission.
- VII. The concerned Station House Officer of the Police Station having jurisdiction over the aforesaid premises to be visited by

the Local Commissioners shall render necessary assistance, if required, to the Local Commissioners.

VIII. The Local Commissioners shall also take photographs of the seized stock and file the same along with their reports.

IX. The Local Commissioners shall file their reports within two weeks of execution of the commission along with the photographs taken pursuant thereto.

X. The fees of Mr. Vinay Singh Bist, Advocate and Ms. Shweta Kumar, Advocate is fixed at Rs.1,50,000/- and Rs. 1,00,000/- respectively, plus out of pocket expenses, to be paid by the plaintiff.

34. The application stands disposed of in above terms.

35. This order shall not be uploaded till the execution of the commission.

36. Copy of this order be given to the counsel for the plaintiff *dasti* under signatures of the Court Master.

**AMIT BANSAL, J.**

**JANUARY 10, 2023**

*at*

**Court Master  
Delhi High Court  
New Delhi**