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

+ **CS(COMM) 269/2022**

SUN PHARMA LABORATORIES LTD Plaintiff

Through: Mr. Sachin Gupta, Mr. Pratyush Rao,
Ms. Jasleen Kaur, Mr. Snehal Singh and Ms. Swati
Meena, Advocates.

versus

AMPS BIOTECH P LTD & ANR. Defendants

Through:

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

28.04.2022

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I.A. 6493/2022 (Exemption)

1. Subject to the Plaintiff filing originals, clearer copies and documents with proper margins, which it may seek to place reliance on, within four weeks from today, exemption is granted.
2. Application is allowed and disposed of.

CS(COMM) 269/2022

3. Let plaint be registered as a suit.
4. Upon filing of process fee, issue summons to the Defendants, through all permissible modes, returnable on 21.07.2022. Summons shall state that the written statement shall be filed by the Defendants within 30 days from the receipt of summons. Along with the written statement, Defendants shall also file an affidavit of admission/denial of the documents of the Plaintiff.
5. Replication be filed by the Plaintiff within 15 days of the receipt of

the written statement. Along with the replication, an affidavit of admission/denial of documents filed by the Defendants, shall be filed by the Plaintiff.

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

7. List before the learned Joint Registrar on 21.07.2022.

8. List before the Court on 06.10.2022.

I.A. 6491/2022 (under Order 39 Rules 1 and 2 of CPC)

9. Present application has been preferred by the Plaintiff under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure 1908 for grant of *ex-parte ad-interim* injunction.

10. Issue notice to the Defendants through all prescribed modes, returnable on 06.10.2022.

11. It is averred that the Plaintiff is a company incorporated under the Companies Act, 2013 and is a wholly owned subsidiary of Sun Pharmaceutical Industries Ltd. (hereinafter referred to as "SPIL"). SPIL 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.

12. It is averred that Plaintiff markets drugs and formulations in more than 150 countries of the world under its extensive range of well-known and distinctive trademarks/brand names and has been referred in that trade circle as SUN/SUN PHARMA. It has a consolidated annual turnover of over INR 33,139 Crores, globally. Plaintiff is now ranked as No. 1 Pharma Company in India in a total of 11 specialties and is the world's 4th largest Generic

Pharmaceutical Company.

13. It is averred that the trademark LENVENIB was coined and adopted by the Plaintiff in the year 2019 and the same has been in use since May, 2020. Plaintiff's medicine under the trademark LENVENIB is an anti-cancer drug containing the salt Lenvatinib. LENVENIB works by blocking the oxygen and nutrient supply to cancer cells due to which they stop growing.

14. It is averred that in order to obtain statutory protection, Plaintiff filed and obtained registration for the trademark LENVENIB under no. 4123246 dated 20.03.2019, in class 5 for the goods, namely "*medicinal, pharmaceutical preparations...*", on 'Proposed to be Used' basis. The said registration is valid and subsisting.

15. It is averred that the trademark LENVENIB has acquired distinctiveness and enviable goodwill and reputation due to its extensive, and continuous use since the year 2020. Plaintiff has a statutory and a common law right to the exclusive use of the trademark LENVENIB and use of the same or a deceptively similar trademark by an unauthorised person or trader in relation to similar goods shall constitute infringement of the Plaintiff's right of the exclusive use under Section 29 of the Trade Marks Act, 1999.

16. It is averred that the trademark LENVENIB being a coined trademark enjoys inherent distinctiveness indicating trade origin and source of the goods bearing the said trademark as that of the Plaintiff. Due to superior quality and high efficacy of the medicine bearing the said trademark and continuous and extensive use as well as large sales of the medicine, Plaintiff has acquired immense reputation, formidable goodwill and distinctiveness vis-a-vis the medicines and the trademark. The goodwill and the efficacy of

the medicinal preparation under the trademark LENVENIB is evident from the sales turnover, which is growing steadily and is to the tune of INR 388.13 Lakhs in the year 2021-22 (April to August).

17. The trademark according to the Plaintiff has acquired status of a well-known mark under Section 2(1)(zg) of the Trade Marks Act, 1999 which entitles it to the highest degree of protection.

18. It is further averred that in the third week of April, 2022, Plaintiff came across the Defendant's medicine under the impugned mark LENVANIB, which contains the same molecule Lenvatinib and is an anti-cancer drug, sold in the form of capsules. It was revealed on conducting a further search that Defendant No.1 has filed an application for registration of the impugned mark LENVANIB on 05.02.2021 in Class-5 on 'Proposed to be Used' basis and the same is under opposition by the Plaintiff.

19. It is averred that Defendants' medicine under the impugned mark is listed and/or is being sold on various e-pharmacies and on interactive trade/e-commerce websites, such as Tata1MG, Indiamart and 24 buyonline.

20. Learned counsel for the Plaintiff submits that the Defendants have unethically and unlawfully adopted the impugned mark LENVANIB. The mischief is evident from the fact that Defendants have deliberately substituted the alphabet "E" in Plaintiff's trademark LENVENIB with an "A" with an intent to create confusion in the mind of general public and this is a clear dishonest adoption to ride over the reputation and goodwill of the Plaintiff.

21. It is contended that the impugned mark is visually, structurally as well as phonetically similar to the Plaintiff's registered and well-known trademark LENVENIB. The impugned mark is used by the Defendants with

respect to a medicine which treats cancer and therefore the trade channels and the consumer base is also similar. The contention is that use of the impugned mark would cause confusion and deception amongst the members of the public and being a pharmaceutical product, the threshold of determining confusion is much lower. The action of the Defendants clearly constitutes infringement of Plaintiff's registered trademark LENVENIB. Plaintiff's product under the mark LENVENIB is one of the leading medicinal products and the said mark has been extensively and commercially used by the Plaintiff in the course of trade since the year 2020. It has acquired formidable goodwill and reputation as a badge of quality products originating from the Plaintiff and dishonest adoption of the impugned mark by the Defendants is with an intent to ride over the goodwill of the Plaintiff and clearly amounts to passing off as also unfair competition.

22. Having heard learned counsel for the Plaintiff, this Court is of the view that Plaintiff has made out a *prima facie* case for grant of *ex parte ad-interim* injunction. Balance of convenience lies in favour of the Plaintiff and it is likely to suffer irreparable harm in case the injunction, as prayed for, is not granted.

23. Accordingly, Defendants, their directors, their assignees in business, as the case may be, their distributors, dealers, stockists, retailers/ chemists, servants and agents are hereby restrained from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in medicinal preparations under the impugned mark LENVANIB and/or any other trademark as may be deceptively similar to the Plaintiff's trademark LENVENIB, amounting to infringement of its registered trademark and passing off of the Defendants' goods and business for those of the

Plaintiff's, till the next date of hearing.

24. Plaintiff shall comply with the provisions of Order 39 Rule 3 CPC within 5 days from the date of execution of the Commission.

I.A. 6492/2022 (for appointment of local commissioners)

25. Present application has been preferred by the Plaintiff under Order 26 Rules 9 & 10 CPC and Order 39 Rule 7 read with Section 151 CPC, seeking appointment of Local Commissioners.

26. Upon hearing, the application is allowed.

27. Accordingly, Mr. Sandeep Kumar, Advocate (Mobile No.8899592346) and Mr. Shahid Khan, Advocate (Mobile No.8745060713) are appointed as Local Commissioners.

(a) Mr. Sandeep Kumar, Advocate shall visit the premises at the following address :-
210, Crescent Business Park,
Sakinaka, Telephone Exchange Lane,
Andheri-East,
Mumbai-400072.

(b) Mr. Shahid Khan, Advocate shall visit the premises at the following address:-
R.S. NO. 578,
Near Effluent Channel Road,
VII Luna, Tal Padra,
Distt. Vadodara – 391440
Gujarat.

28. Local Commissioners shall visit the aforesaid premises, search and take into custody, all the offending/infringing material and/or any other incriminating material relating to the goods in question.

29. Local Commissioners along with the Representative of the Plaintiff

and/or its counsel shall be permitted to enter the premises of the Defendants, as aforementioned.

30. Local Commissioners shall seize the infringing products and hand over the same to the Defendants on superdari, upon the Defendants furnishing an undertaking that they shall produce the goods, so seized, before the Court, as and when further directions are issued in this regard.

31. Local Commissioners shall be permitted to take photographs/videos of the execution of the Commission. They shall also be entitled to seek police assistance or protection of the Local Police Station, if so required, for the purpose of execution of the order of this Court. The SHO of the concerned Police Station is directed to provide necessary assistance to the Local Commissioners, if sought for.

32. In case the premises as aforementioned are found locked, the Local Commissioners are at liberty to break open the locks.

33. Plaintiff shall serve a copy of this order upon the Defendants along with paper book of the suit at the time of execution of the proceedings.

34. Fee of the Local Commissioners is fixed as Rs.1,50,000/- each in addition to travel, boarding and lodging expenses as well as other miscellaneous out-of-pocket expenses for the execution of the Commission. Fee of the Local Commissioners shall be paid in advance by the Plaintiff.

35. Report of the Local Commissioners shall be filed within two weeks of the execution of the Commission.

36. Plaintiff shall inform the Registry about the execution of the proceedings by the Local Commissioners and only thereafter Registry shall issue summons of the suit to the Defendants.

37. This order shall not be uploaded on the website of this Court till

execution of the Commission by the Local Commissioner.

38. Application is disposed of.

39. Copy of this order be given to the learned counsel for the Plaintiff *dasti* under the signatures of the Court Master.

JYOTI SINGH, J

APRIL 28, 2022/rk