

\$~OS-10

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

+ CS(COMM) 358/2021

SUN PHARMA LABORATORIES LTD Plaintiff
Through Mr. Sachin Gupta, Ms. Jasleen Kaur
and Mr. Pratyush Rao, Advs.

Versus

AERAS PHARMA & ANR. Defendants
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

%

06.08.2021

This hearing is conducted through video-conferencing.

IA No.9766/2021 (exemption)

The application is allowed subject to all just exceptions.

CS(COMM) 358/2021

Let the plaint be registered as suit.

Issue summons to the defendants through speed post, courier and email, returnable for 12.10.2021.

IA No.9764/2021

1. Issue notice to the defendants through speed post, courier and email, returnable for 12.10.2021.
2. This application is filed under Order 39 Rules 1 & 2 CPC seeking an ex parte injunction to restrain the defendants, their agents, etc. from manufacturing, selling, offering for sale, advertising or in any manner dealing in medicinal or pharmaceutical preparations under the impugned

mark AXITOL or any other trade mark that may be deceptively similar to the plaintiff's trade mark OXETOL thereby amounting to infringement of the plaintiff's registered trade mark and passing off.

3. The case of the plaintiff is that the trade mark OXETOL was coined by the plaintiff's predecessor in 2001 and has been in use ever since. The plaintiff has also been using the trademarks OXETOL XR, OXETOL 150, OXETOL 300, etc. It is stated that OXETOL is a 'Schedule H' drug and is an anti-epileptic medicine used to treat and prevent seizures in epilepsy. It is stated that the plaintiff's predecessor had filed applications for registration of the OXETOL trade mark in 2001 under class 5 and also in 2003

4. It is stated that in the second week of July 2021, the plaintiff came to know about the medicinal product under the impugned mark AXITOL which is deceptively similar to the plaintiff's trade mark OXETOL and is being used for identical goods i.e. medicines to treat and prevent seizures in epilepsy. It is also pointed out that the medicinal product under the impugned mark AXITOL also contains the same salt as that of the plaintiff namely, 'Oxcarbazepine'.

5. It is clear that the impugned mark being used by the defendants is prima facie deceptively similar to the plaintiff's trade mark OXETOL. The plaintiff has made out a prima facie case.

6. The defendants, their agents, etc. are restrained from manufacturing, selling and advertising or in any manner dealing with a product under the impugned mark AXITOL or any other product using a mark which is deceptively similar to the plaintiff's trade mark OXETOL till further orders.

7. The plaintiff to comply with provisions of Order 39 Rule 3 CPC within three weeks from today.

IA No. 9765/2021

1. This application is filed under Order 26 Rule 9 read with Order 39 Rule 7 CPC seeking appointment of local commissioners to visit the following premises of the defendants:-

- (i) A-228/A, First Floor,
Chattarpur Extension
New Delhi -110074
- (ii) Adwin Pharma
Village Rampur Jattan,
Near Saboo Ispat Ltd.
Trilokpur Road
Kala Amb-173030
Himachal Pradesh.

to prepare an inventory of the goods in question and seize the same.

2. It is pleaded that unless such an order is passed, the defendants may breach the interim orders passed by this court today and render the same infructuous. There is merit in the said plea. The application is allowed.

3. Ms.Suditi Batra, Advocate (Mobile No.9953908812) is appointed as the Local Commissioner to visit the following premises of the defendants.

A-228/A, First Floor,
Chattarpur Extension
New Delhi -110074

4. Mr.K.M Singh, Advocate (Mobile No.9818333616) is appointed as the Local Commissioner to visit the following -noted premises of the defendants.

Adwin Pharma
Village Rampur Jattan,
Near Saboo Ispat Ltd.

Trilokpur Road
Kala Amb-173030
Himachal Pradesh.

5. The Local Commissioners will make an inventory of all infringing products including packaging material, stationery etc. bearing the impugned trade mark/label, business cards, stationery, seal/rubber stamps, cash memos, bill books, printed matter, catalogues, pamphlets, brochures, letterheads, labels or any other material bearing the mark AXITOL or any other mark which is identical or deceptively similar to the plaintiff's trade mark OXETOL.
6. After making the above inventory, the Local Commissioners shall confiscate and take into custody the infringing products. Thereafter, the products may be released to the defendant on *superdari*, retaining a few samples for deposit in Court;
7. The Local Commissioners need not give any advance notice to the defendants. The representative of the plaintiff and their counsel will assist the Local Commissioners in carrying out the necessary work. The Local Commissioners are also permitted to take photographs of the infringing products at the site. The fee of the Local Commissioners is fixed at Rs.1,00,000/- each plus out of pocket expenses which shall be borne by the plaintiff.
8. The SHO of the concerned Police Station where the above premises is located will ensure that appropriate police protection is granted to the local commissioners to enable them to execute the necessary work.
9. The Local Commissioners will file their reports within two weeks of the commission.

10. The application stands disposed of.
11. This order will not be uploaded till the lapse of a period of three weeks from today.
12. A copy of this order be sent through email to the learned counsel for the plaintiff and to the learned Local Commissioners and under signatures of the Court Master.

JAYANT NATH, J

AUGUST 6, 2021

rb