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

+ CS(COMM) 542/2022 & I.A. 12548/2022

SUN PHARMA LABORATORIES LTD. Plaintiff

Through: Mr. Sachin Gupta, Ms. Jasleen Kaur
and Ms. Yashi Agrawal, Advocates.

versus

CIAN HEALTHCARE LTD. Defendant

Through: None.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

28.09.2022

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CS(COMM) 542/2022

1. Perusal of the order dated 14.09.2022 shows that affidavit of service dated 02.09.2022 had been filed by the Plaintiff, wherein it was stated that summons along with the suit papers were dispatched to the Defendant through Courier on 31.08.2022. Postal vouchers along with the tracking report were also placed on record. Additionally, the summons were also served on the Defendant through e-mail dated 31.08.2022 and the same has not bounced back. However, despite service none had appeared on behalf of the Defendant. Court deferred adverse orders and directed learned counsel for the Plaintiff to apprise the Defendant of the order passed as well as the next date of hearing.

2. In compliance of order dated 14.09.2022, an affidavit has been filed by the Plaintiff on 20.09.2022, wherein it is stated that computer generated copy of the order dated 14.09.2022 had been served on the Defendant through e-mail and the same has not bounced back. Copy of the email is

annexed as Document 1 with the affidavit. The order was also dispatched through courier and speed-post on 16.09.2022, which have been returned with the endorsement 'refused', as stated in para 5 of the affidavit.

3. There is no appearance on behalf of the Defendant even today, who has been served not once but twice, after issuance of summons by this Court.

4. It appears that the Defendant is not interested in contesting the matter and is accordingly proceeded *ex parte*.

5. List on 08.12.2022 for further proceedings.

I.A. 12547/2022 (under Order 39 Rules 1 and 2 CPC, by Plaintiff)

6. 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 an *ex-parte ad-interim* injunction.

7. It is averred in the plaint that Plaintiff is a wholly owned subsidiary of Sun Pharma Industries Limited and markets drugs and formulations in more than 150 countries of the world under its extensive range of distinctive trademarks/brand names SUN/SUN PHARMA. It has a consolidated annual turnover of over Rs. 33,139 crores, globally and is ranked as No. 1 pharma company in India in a total of eleven specialities and is world's fourth largest Generic Pharmaceutical Company. Plaintiff has 45 manufacturing sites in 6 Continents and 10 world class research centres with over 37,000 strong multi-cultural work force.

8. It is further averred that one of the pharmaceutical preparations marketed by the Plaintiff is under the trademark MAXGALIN, which was coined and adopted by the Plaintiff in the year 2005. The trademark enjoys inherent distinctiveness and is also registered in India along with its variants in class 05. The trademarks are valid and subsisting without any disclaimer.

9. It is stated that due to superior quality and high efficacy of the medicine sold under the trademark MAXGALIN and continuous and extensive use of the trademark, Plaintiff has acquired immense reputation and goodwill which is evident from the sales turnover which is steadily growing every year from 2007-08 and is to the tune of Rs. 5,232.23 lacs for the year 2020-21 alone. Plaintiff has been vigilant in enforcing its rights for protection of the trademark against infringement and passing off by third parties.

10. It is averred that in the third week of July, 2022, Plaintiff came across the impugned medicine under the impugned mark 'MGALIN' being sold on MedPlus mart, TATA 1Mg, PharmEasy, which is deceptively similar to the Plaintiff's trademark. Defendant has adopted the whole of Plaintiff's trademark and has merely deleted AX, despite which the impugned trademark is visually, phonetically and structurally similar to the Plaintiff's trademark MAXGALIN and is used to cure the same ailment. Defendant is selling the medicine under the impugned mark on various interactive websites which are easily accessible to consumers and the confusion caused thereby is not in public interest.

11. It is averred that Defendant has wrongfully shown itself as a prior user before the Trade Marks Registry and has obtained registration of the mark MGALIN *vide* trademark application No. 3956223, the date of application being 26.09.2018. The affidavit filed in support of user has no supporting documents and is false since the date of incorporation of the company is 07.01.2003 which is the same as the date of its user claim.

12. Learned counsel for the Plaintiff contends that being a registered proprietor of the trademark MAXGALIN, Plaintiff is entitled to its exclusive

use and protection against infringement by the Defendant. The impugned mark being deceptively similar, use of the mark by the Defendant, is likely to cause confusion and/or association of the medicine sold under the impugned mark as being a product emanating from the Plaintiff. Unauthorized use of the identical impugned mark by the Defendant constitutes violation of Plaintiff's statutory rights and amounts to infringement under Section 29 of the Trade Marks Act, 1999.

13. It is further urged that on account of the extensive and continuous user in the course of trade, Plaintiff has acquired formidable goodwill and reputation as a badge of quality products originating from the Plaintiff under the trademark MAXGALIN which is substantiated by the sales turnover and expenditure on promotion and advertisement. Use of the impugned mark by the Defendant amounts to acts of misrepresentation and passing off. Plaintiff has no control or supervision over the mode of manufacture and sale of the medicinal preparation under the impugned mark. Any deficiency in the efficacy of the product will be a health hazard to the consumer. Courts have been repeatedly holding that in medicinal preparations, threshold of confusion is low.

14. I have heard learned counsel for the Plaintiff and examined the contentions raised.

15. From the averments in the suit, it is evident that the Defendant has registration in the impugned mark and confronted with this, at this stage, learned counsel submits that he would be satisfied if the arguments on Plaintiff's claim with respect to passing off are considered.

16. Accordingly, the Defendant, its Directors, assignees in business, licensees, franchisee, distributors, dealers, stockists, retailers, chemists,

servants and agents are restrained from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in medicinal & pharmaceutical preparations, under the impugned mark 'MGALIN' or any other trade mark, deceptively similar to the Plaintiff's registered trademark MAXGALIN, amounting to passing off, till the next date of hearing.

17. List on 08.12.2022.

JYOTI SINGH, J

SEPTEMBER 28, 2022/rk/sn/shivam