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

\+ CS(COMM) 553/2021

SUN PHARMA LABORATORIES LTD. ..... Plaintiff

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

versus

GLEE BIOTECH LTD. & ANR. ..... Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% 29.10.2021

[VIA HYBRID MODE]

I.A. No. 14302/2021 ***(under Section 151 of the Code of Civil Procedure seeking exemption from filing certified clearer/ typed of translated copies of documents and exemption from advance services to the Defendants)***

1. Allowed, subject to just exceptions.

2. The Plaintiff shall file legible copies of exempted documents, compliant with practice rules, before the next date of hearing.

3. For the grounds and reasons stated therein, advance services to the Defendants are exempted.

4. Accordingly, the application stands disposed.

I.A. No. 14303/2021 ***(under Section 12A of the Commercial Courts Act & Section 151 of the Code of Civil Procedure, 1908 seeking instituting pre-litigation mediation)***

5. For the grounds and reasons stated therein, the application is allowed.

6. Accordingly, the application stands disposed of.

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7. Let the plaint be registered as a suit.

8. Upon filing of process fee, issue summons to the Defendants by all permissible modes. Summons shall state that the written statement shall be filed by the Defendants within 30 days from the date of receipt of summons. Along with the written statement, the Defendants shall also file an affidavit of admission/ denial of the documents of the Plaintiff, without which the written statement shall not be taken on record.

9. Liberty is given to the Plaintiff to file a replication within 15 days of the receipt of the written statement. 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 any documents, the same shall be sought and given within the timelines.

10. List before the Joint Registrar for marking of exhibits on 07th January, 2022. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

11. List before the Court on 11th March, 2022 for framing of issues thereafter.

I.A. No. 14300/2021 *(under Order XXXIX, Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908)* **and I.A. No. 14301/2021** *(u/O XXVI Rule 9 read with Order XXXIX Rule 7 Code of Civil Procedure and Section 135 of the Trademarks Act, 1999)*

12. The above captioned suit has been filed by the Plaintiff for permanent injunction, restraining trademark, passing off, unfair competition, delivery up, rendition of accounts of profits/ damages among other ancillary reliefs.

13. The case as set out in the Plaint is as follows: the 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. The Plaintiff has been using the trade mark "LEVIPIL" since April, 2005 and have achieved annual sales of around Rs. 27604.84 lakhs in the year 2020-2021.

14. The Plaintiff has filed applications for registration of the trade mark "LEVIPIL" and "LEVIPIL XR". The applications are pending consideration.

15. In 2005, the Plaintiff's predecessor coined the trade mark "LEVIPIL". In the same year, the Plaintiff's predecessor obtained the manufacturing license for the said drug "LEVIPIL". The said trade mark "LEVIPIL" has been in use since April, 2005. The drug "LEVIPIL" has various extensions in the market namely, "LEVIPIL", "LEVIPIL 500", "LEVIPIL XR", etc.

16. "LEVIPIL" is a Schedule 'H' drug comprising of the molecule Levetiracetam and is used to treat anxiety and seizures. It is sold in the form of Tablets, Syrups and Injections.

17. The trademark "LEVIPIL" has acquired distinctiveness and enviable goodwill and reputation due to its extensive, long and continuous use since 2005. The drugs bearing the said trademark identify Plaintiff as the source or origin and none else. The Plaintiff has the common law right to the

exclusive use of the trademark "LEVIPIL". The use of the same or a deceptively similar trade mark by an unauthorised person or trader in relation to the similar kind of goods will constitute passing off of the Plaintiff's right of the exclusive use under the provisions of the Trade Marks Act, 1999.

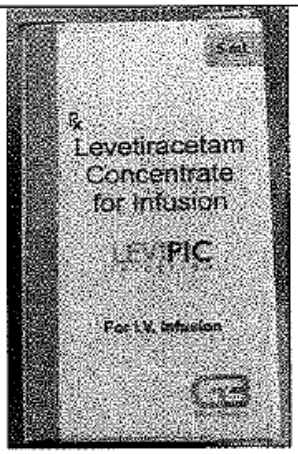
18. Defendant No. 2 *viz.* Protech Telelinks is the manufacturer of the medicinal product under the impugned mark of "LEVIPIC". Defendant No. 1 *viz.* Glee Biotech Ltd. is marketing the same.

19. Mr. Sachin Gupta, counsel for the Plaintiff, states that sometime in the last week of October, 2021, the Plaintiff found the medicinal product under the impugned mark "LEVIPIC" [*hereinafter*, ***"impugned mark"***] being sold in Delhi. The said product was purchased *vide* invoice dated 23rd October, 2021 from Plus Pharmacy, Jaipur Golden Hospital, Rohini, Delhi.

20. He argued that the impugned medicine "LEVIPIC" contains the same salt *viz.* 'Levetiracetam' and is used to treat anxiety and seizures. It is sold in the form of injections, and to the best of the Plaintiff's knowledge, the Defendants seems to have very recently adopted the impugned mark as the same is not reflected in any medical journals. The earliest manufacturing date of the Defendants' product being sold with the impugned mark, is as recent as January, 2021. Further, he states that to the best of the Plaintiff's knowledge, the Defendants have not filed any application for registration of the impugned mark "LEVIPIC".

21. The adoption of the impugned mark by the Defendants amounts to trademark passing off and unfair competition, which is causing confusion and deception amongst the public and loss to the Plaintiff.

22. The competing medicines under the competing trademarks "LEVIPIL" and "LEVIPIC" is depicted in the plaint in para 23, which is reproduced as under: -

Plaintiff's product	Defendant's product
	

23. The above comparison, shows that the Defendants have adopted a deceptively similar use of the Plaintiff's mark "LEVIPIL". This adoption by the Defendants, *prima facie* appears to be dishonest and amounts to passing off, unfair trade practices, unfair competition and dilution.

24. The Plaintiff has established a *prima facie* case in its favour. The balance of convenience also lies in favour of the Plaintiff, and an irreparable loss would be caused to it, in case an *ex-parte* injunction is not granted.

Accordingly, till the next date of hearing, an *ex-parte* ad-interim injunction is granted, thereby, restraining the Defendants, their directors, proprietors, partners, their assignees in business, distributors, dealers, stockists, retailers/ chemists, servants and agents from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in pharmaceutical and medicinal preparations under the impugned mark "LEVIPIC" or any other trade mark as may be deceptively similar to the Plaintiff's trade mark "LEVIPIL" amounting to passing off of the Defendants' goods and business for those of the Plaintiff's.

25. The provisions of Order XXXIX, Rule 3 of the Code of Civil Procedure, 1908 to be complied with within a period of two weeks from today.

26. Mr. Gupta, prays for the appointment of two Local Commissioners stating that the Defendants are likely to remove all the physical evidence and deny involvement in the infringing activities. Therefore, in order to preserve evidence of infringement, it is necessary that two Local Commissioners be appointed to visit the two different premises of the Defendants.

27. Accordingly, the following are appointed as Local Commissioners with a direction to visit the premises of the Defendants, as detailed hereinbelow:

(a) Mr. Ramesh Chander, Advocate [Contact No.: +91 9868789789] to visit the premise of the Defendants located at - Glee Biotech Ltd. Plot No. 597, Sector-29, Part II, Industrial Area, Panipat, Haryana - 132103; and

(b) Mr. Raveesh Thukral, Advocate [Contact No.: +91 9810166390] to visit the premise of the Defendants located at - Protech Telelinks, Village Mouza Ogli, Suketi Road, Tehsil-Nahan, Kala Amb., District Sirmour, Himachal Pradesh - 173030.

28. The Local Commissioners, along with a representative of the Plaintiff and its counsel, shall be permitted to enter upon the premises of the Defendants mentioned above or any other location/ premises that may be identified during the course of commission, in order to conduct the search and seizure, where the Plaintiff presumes that the stock of medicinal and pharmaceutical preparations under the impugned mark "LEVIPIC", its packaging, promotional materials, stationery, dyes, blocks, etc, will be lying. After seizing the infringing material, the Local Commissioners will prepare an inventory and take into custody all products bearing the impugning mark – "LEVIPIC". The same shall be handed over to the Defendants on *superdari* upon them furnishing an undertaking that the Defendants will produce the products before the Court as and when further directions are issued in this regard. The Local Commissioners shall also be permitted to make copies of the books of accounts including ledgers, cash registers, stock registers, invoices, books, etc. insofar as they pertain to the infringing products. Further, the Local Commissioners shall be permitted to undertake/ arrange for photography/ videography of the execution of the commission. They shall also be entitled to seek Police assistance or protection of the Local Police Station, if required for the purpose of execution of the order of this Court. The SHOs of the aforesaid areas are directed to provide the necessary assistance to the Local Commissioners. In case any of the

premises are found locked, the Local Commissioners shall be permitted to break open the locks.

29. The fee of the Local Commissioners, to be borne by the Plaintiff, is fixed Rs. 1 lakh each. The Plaintiff shall also bear expenses for travel, lodging (for outstation), and other miscellaneous out of pocket expenses of the Local Commissioner for the purpose of the execution of the commission. The Local Commissioner and Plaintiff's representatives visiting the premises shall comply with all the travel restrictions and protocols that have been put in place by the respective Government of Haryana and Himachal Pradesh, as the case may be, and the commission shall be executed by strictly following social distancing and such COVID-19 related guidelines that are in force.

30. The order passed today shall be uploaded after the Local Commissioners execute the commissions as directed by this Court.

31. Order *dasti* under the signatures of the learned Court Master.

SANJEEV NARULA, J

OCTOBER 29, 2021
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