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

+ **CS (COMM) 184/2022**

SUN PHARMA LABORATORIES LTD. Plaintiff

Through: Mr. Sachin Gupta, Mr. Pratyush Rao,
and Ms. Jasleen Kaur, Advocates
(M. 9582471490).

versus

INTERIO INTERNATIONAL P. LTD. & ORS. Defendants

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **28.03.2022**

1. This hearing has been done through hybrid mode.

I.A. 4717/2022 (for exemption)

2. This is an application filed by the Plaintiff seeking exemption from filing certified/cleared/typed or translated copies of documents.

3. Exemption is allowed, subject to all just exceptions. *I.A. 4717/2022* is disposed of.

CS (COMM) 184/2022

4. Let the plaint be registered as a suit.

5. Issue summons to the Defendants through all modes upon filing of Process Fee.

6. The summons to the Defendants shall indicate that a written statement(s) to the plaint shall be positively filed within 30 days from date of receipt of summons. Along with the written statement(s), 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.

7. Liberty is given to the Plaintiff to file the replication(s) within 15 days of the receipt of the written statement(s). Along with the replication(s), 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(s) 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.

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

9. List before Court on 22nd July, 2022.

I.A.4715/2022 (u/O XXXIX Rules 1 & 2 CPC)

10. The present suit has been filed by the Plaintiff – Sun Pharma Laboratories Ltd., seeking permanent injunction restraining the Defendants from passing off, unfair competition, delivery up, and rendition of accounts of profits/damages, etc. The Plaintiff itself is stated to be ranked as the No.1 Pharma Company in India in a total of 11 specialities and is the world's 4th largest generic pharmaceutical company. The Plaintiff markets drugs and formulations in more than 150 countries of the world. The Plaintiff seeks protection of the marks 'OXRA' and 'OXRAMET' used by it for pharmaceutical preparations of *Dapagliflozin*, which is used to treat diabetes. The case of the Plaintiff is that the marks 'OXRA' and 'OXRAMET' are fanciful marks, adopted by the Plaintiff in May, 2021 and their products have achieved sales of approx. Rs.50 crores and Rs.40 crores respectively since then.

11. The grievance of the Plaintiff is that recently the Plaintiff has come across the Defendants' use of the trademark 'OMRA' for the same medicinal

preparation of *dapagliflozin* for treating the same illness of diabetes, in the same form i.e., as tablets.

12. Mr. Sachin Gupta, Id. counsel appearing for the Plaintiff, submits that there is no application for registration of the trademark 'OMRA' by the Defendant and the adoption of the marks by the products of the Defendants appears to be recent, as the same are not reflected in any medical journals, which report on the monthly data of medicinal products being sold in the market.

13. He submits that the constitution of the Defendants is also not clear, inasmuch as, in one strip, the names of Interio International P. Ltd. – Defendant No.1 and Algen Health Series P. Ltd. – Defendant No.3 are shown as two manufacturer entities and in the other product, the names of M/s. MedNich Pharmaceuticals- Defendant No.2 and Mascot Health Series P. Ltd. – Defendant No.4 are shown as two manufacturers. However, he points out that the addresses of these companies are almost identical and hence they seem connected in some manner.

14. A perusal of the strips of tablets, which have been handed over in the Court, shows clearly that these medical preparations have been sold for the same medical preparation of *Dapagliflozin*. Further, the marks 'OXRA' and 'OMRA' are, in the opinion of this Court, phonetically, ocularly, and deceptively similar to each other, which is bound to cause confusion in the market, especially amongst chemists, as also diabetic patients, who may have to take these medicines in a recurring manner. Since the knowledge of the Plaintiff regarding the Defendants' products, is also stated to be recent and there is no trademark application filed for the mark 'OMRA', this Court is *prima facie* convinced that the Defendants' use of this mark is recent.

Moreover, the sales of the Plaintiff in just a year or so, have reached almost Rs.90 crores. Thus, in the opinion of the Court, the Plaintiff's mark deserves protection. Applying the test in *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd., (2001) 5 SCC 73*, whereby a strict test for determining confusion is to be applied in respect of drugs, the balance of convenience also lies in favour of the Plaintiff as irreparable harm and injury would be caused to the Plaintiff as also to the consumers of such medicine, if the Defendants are allowed to continue the use of the mark 'OMRA'.

15. Accordingly, till the next date of hearing, the Defendants, their directors, agents, partners, proprietors and any other parties acting for and, on their behalf, are restrained from using the mark 'OMRA', or any other marks which are deceptively similar to the trademarks of the Plaintiff being 'OXRA' and 'OXRAMET', for pharmaceutical medicinal preparations.

16. Compliance of Order XXXIX Rule 3 CPC be made within two weeks.

17. Reply to the present application be filed within four weeks from the service of the present order along with the paper book.

18. List *I.A.4715/2022* before the Court on 22nd July, 2022.

I.A. 4716/2022 (u/O XXVI Rule 9 CPC)

19. This is an application filed by the Plaintiff seeking appointment of Local Commissioners to visit the premises of the Defendants and to conduct investigation into the Defendants' products.

20. The Court has considered the merits of the Plaintiff's case and has granted an *ex parte* injunction as recorded above in *I.A.4715/2022*, restraining the Defendants, their directors, agents, partners, proprietors and any other parties acting for and, on their behalf, from using the mark 'OMRA' for pharmaceutical medicinal preparation, which is deceptively

similar to the trademarks of the Plaintiff being 'OXRA' and 'OXRAMET'.

21. Ld. counsel for the Plaintiff has also submitted that there is no company which exists on the website of the Registrar of Companies, with the name Interio International P. Ltd. The addresses of the Defendant-companies also seem to be identical.

22. Taking the overall facts and circumstances into consideration, this is a fit case for appoint of Local Commissioners. Accordingly, the following advocates present in court, are appointed as Local Commissioners to visit the Defendants' premises, as below:

S. No.	Local Commissioner	Defendant's Premises	Fees
1.	Mr. Shubhankar Choudhary, Advocate [M:8800429179; Email: shubhankar.choudhary96@gmail.com]	Mascot Health Series P. Ltd. Address: Plot No.79, 80, Sec-6A, IIE, Sidcul, Haridwar, Uttrakhand – 249403.	Rs. 1 lakh
2.	Ms. Charu Aneja, Advocate [M:9717976711, Email: charuanejaadv@gmail.com]	1. Interio International P. Ltd. 2. M/s. MedNich Pharmaceuticals Address: G82 & G81A, Old No. G23.A G23, Third Floor, Pvt. Office No.304 & 308, Vijay Chowk, Laxmi Nagar, Delhi-110092.	Rs. 75,000/-
3.	Ms. Aastha Kakkar, Advocate [M:9654200224;	Algen Healthcare Ltd. Address: 134/2, Mouza Ogli, Village	Rs. 1 lakh

	Email: adv. aasthakakkar@gmail.com , aasthakakkar2@gmail.com	Khari, Sidhoura Road, Kala Amb., Dist. Sirmour, Himachal Pradesh – 173030.	
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23. The Local Commissioners shall visit the premises of the Defendants and undertake the following tasks:

- (i) Upon reaching the premises of the Defendants, the Local Commissioners shall serve upon the Defendants, copies of today's order along with the complete paper books, pleadings and documents, which shall also be deemed to be compliance of Order XXXIX Rule 3 CPC.
- (ii) The Local Commissioners shall prepare complete inventories of the infringing stock of products either being manufactured, fully manufactured, or packed, and also of all evidence related to the said products, including the packing material, brochures, pamphlets, etc. bearing the impugned trademark 'OMRA'. After preparing the inventories, the products and material shall be handed over on *superdari* to the Defendants, who shall give undertakings that they shall not sell or dispose of the said products/materials in any manner, without the permission of this Court.
- (iii) The Local Commissioners shall also take into custody all other material bearing the impugned mark 'OMRA', including moulds, dyes, blocks, machines, etc., associated therewith.
- (iv) On spot proceedings shall be prepared, signed by all the parties and copies thereof be given to the parties.

- (v) The Local Commissioners are permitted to take photographs or videography of the proceedings, if it is deemed appropriate.
- (vi) Access to the accounts of the Defendants shall also be given by the Defendants. If required, the Defendants shall cooperate and give to the Local Commissioners, the password to the computer files containing the accounts, if the same is on a computerised software. The said accounts shall be copied by the Local Commissioners onto hard drives and shall be placed before the Court. At this stage, the accounts of the Defendants shall not be given to the Plaintiff.
- (vii) Two representatives of the Plaintiff, along with a lawyer, are permitted to accompany each Local Commissioner.
- (viii) The Local Commissioner would take assistance from the Local SHO in executing the Commission. The SHO of the concerned area shall also serve a copy of this order upon the Defendants.
- (ix) The Local Commissioners, while executing the local commission, shall ensure that there is no disruption to the business of the Defendants except for the purposes of the execution of the commissions. The commissions shall be executed in a peaceful manner and the Defendants shall cooperate with the Local Commissioners.

24. The fees of the Local Commissioners are fixed as above. The local commissions shall be executed within ten days. The reports of these commissions be filed within two weeks thereafter.

25. List this application before Court on 22nd July, 2022.

26. The present order shall not be uploaded till 15th April 2022 for

enabling the execution of the commissions.

27. Order *Dasti*.

PRATHIBA M. SINGH, J.

MARCH 28, 2022/dk/ms