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

+ **CS(COMM) 424/2021 & I.A. 11524/2021**

SUN PHARMA LABORATORIES LIMITED Plaintiff

Through: Mr. Sachin Gupta, Ms. Jasleen Gupta,
Mr. Pratyush Rao, Mr. Snehal Singh
and Ms. Swati Meena, Advocates.
(M:9811180270)

versus

NARENDER KUMAR & ORS. Defendants

Through: Ms. Vasvi Tapriya, Advocate for D-1
& 2. (M:9725088853)
Ms. Niyati Patwardhan and Mr. Ashim
Shridhar, Advocates.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **02.08.2022**

1. The present suit has been filed on behalf of the Plaintiff for permanent injunction restraining passing off, unfair competition, rendition of account of profits and delivery up, etc. The mark 'CAFTA' was coined by the Plaintiff - Sun Pharma Laboratories Ltd. in December, 2019 and has been in use since then for Antihistaminic medication, which comes in the form of liquid eye drops containing the salt/molecule Alcaftadine. Plaintiff filed an application dated 3rd December 2019 for registration of the trade mark 'CAFTA' under no. 4313518 in Class 5.

2. The grievance of the Plaintiff in the present suit is that the Defendants' impugned mark 'CAFTADAY', is deceptively similar to Plaintiff's trade mark 'CAFTA'. The Defendants have adopted 'CAFTADAY' in March, 2021. The competing products are eye drops containing the same

salt/molecule Alcaftadine.

3. In the present case, an *ex-parte* ad interim injunction was granted by this Court vide order dated 9th September, 2021, by which the Defendants were restrained from using the mark 'CAFTADAY' for their pharmaceutical and medical preparations. *IA No. 16787/2021* has been filled on behalf of the Defendant No.1-Narendra Kumar seeking setting aside of the said *ex parte* ad interim injunction.

4. At the time when the *ex parte* injunction was granted on 9th September, 2021 the Defendants had some stock of products. Considering the fact that the expiry date of these vials is in March, 2023, this Court had, vide its order dated 30th March, 2022, permitted the Defendants to sell the said products within three months. The relevant portion of the said order reads as under:

“6. The matter would be required to be heard on the issue as to whether the injunction deserves to be continued or not. In the meantime, this Court is of the opinion that the ophthalmic solution products of the Defendants, manufactured under the mark 'CAFTADAY' ought not to be wasted. Accordingly, without prejudice to the rights of the parties, Defendant Nos.1 & 2 are permitted to dispose of the 'CAFTADAT eye drops, within a period of three months from now. Let an affidavit be filed by the Defendant Nos.1 & 2 giving the quantity of products disposed of, their batch numbers & their monetary value by 20th July, 2022.”

5. Pursuant to said order, Defendant No.1 filed an affidavit dated 20th July, 2022. As per the said affidavit, the Defendant No.1 and his proprietorship concern - Defendant No.2 state that they had manufactured a total of 8,000 vials out of which 4915 vials are stated to have been disposed of by the Defendants pursuant to the order dated 30th March, 2022

6. Today the matter has been heard on the applications for interim injunction and for vacation of injunction. The Court has also perused the products. The question that arises is whether the Defendants should be allowed to manufacture further under the mark CAFTADAY. Considering that these are Alcaftadine Ophthalmic solution products, and the prominent feature of the mark would be CAFTA this Court feels that confusion ought to be avoided. The Defendants' case is that the mark CAFTA having been derived from Alcaftadine, no monopoly can be granted. The said issue would need to be adjudicated by the Court.

7. However, since the launch by the Defendants is very recent and only a small stock of products was manufactured, ld. counsel appearing for the Defendants may seek instructions as to whether the Defendants would be willing to change the mark from 'CAFTADAY' to DAYCAFTA or ALCAFTADAY. Ld. Counsel for the Plaintiff submits that the Plaintiff would not have any objection to these two suggested marks. Ld. counsel appearing for the Defendant Nos. 1 and 2 submits that he would seek instructions and revert.

8. Insofar Defendant No.3 is concerned, since it was manufacturing at the behest of Defendant Nos.1 and 2, it is directed that Defendant No.3 shall be bound by whatever orders would be passed against Defendant Nos.1 and 2 and that Defendant No.3 would not use or manufacture any medicinal preparations under the impugned mark 'CAFTADAY' until further orders of this Court.

9. This order is accepted by the Defendant No.3. In view of the fact that Defendant No.3 has agreed to abide by the orders that would be passed against Defendant Nos.1 and 2 and would not claim any independent right in the mark

today, Defendant No.3 is deleted from the array of parties. As and when final orders are passed, Defendant Nos.1 and 2 shall communicate the same to Defendant Nos. 3.

10. List on 11th October, 2022.

PRATHIBA M. SINGH, J

AUGUST 2, 2022

dj/kt