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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS (COMM) 302/2022**

SUN PHARMA LABORATORIES LTD. Plaintiff

Through: Mr. Sachin Gupta, Ms. Swati Meena,
Mr. Snehal Singh and Ms. Jasleen
Kaur, Advocates. (M:9582471490)

versus

WINDLAS BIOTECH LTD & ANR. Defendants

Through: Ms. Rajeshwari & Mr. Deepanshu
Nagar, Advocate for D-1.
(M:8826968200)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **19.05.2022**

1. This hearing has been done through hybrid mode.

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2. Let the plaint be registered as a suit.

3. Issue summons to the Defendants through all modes upon filing of Process Fee. Ld. Counsel for Defendant No.1 accepts summons.

4. The summons to Defendant No.2 shall indicate that a written statement to the plaint shall be positively filed within 30 days from 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.

5. Liberty is given to the Plaintiff to file a replication within 15 days of the receipt of the written statement(s). 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.

6. List before the Joint Registrar for marking of exhibits on 3rd August, 2022. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

7. List before Court on 26th July, 2022.

I.A. 7290/2022 & 7291/2022

8. The present suit has been filed by the Plaintiff- Sun Pharma Laboratories Ltd. seeking permanent injunction restraining infringement of trademark, copyright, as also reliefs for passing off, unfair competition, delivery up, damages/rendition of accounts of profits, etc., in respect of its trademark 'PANTOCID' and its related marks. The said mark is used by the Plaintiff for formulations of Pantoprazole and Domperidone. The Plaintiff markets drugs and formulations in more than 150 countries and is stated to be India's No.1 pharmaceutical company. The Plaintiff's earliest registration for the said trademarks dates back to 1998 for the mark 'PANTOCID', with the most recent registration being in 2020, for the mark 'PANTOCID DSR'. The annual sales of the Plaintiff under the mark 'PANTOCID' are stated to be over Rs.350 crores in the year 2020-21. The Plaintiff also has various international registrations and it has obtained injunctions in respect of its marks 'PANTOCID', 'PANTORID', 'PANTACID', etc. from various courts in India, including from this Court in *CS(COMM) 465 of 2020* titled *Sun Pharmaceuticals Industries Ltd. & Anr. v. Edeline Remedies & Ors.*, vide decision dated 22nd October, 2020. The case of the Plaintiff is that Defendant No.1- Windlas Biotech Ltd is selling pharmaceutical preparations of an identical formulation under the mark 'PANTRACID', 'PANTRACID

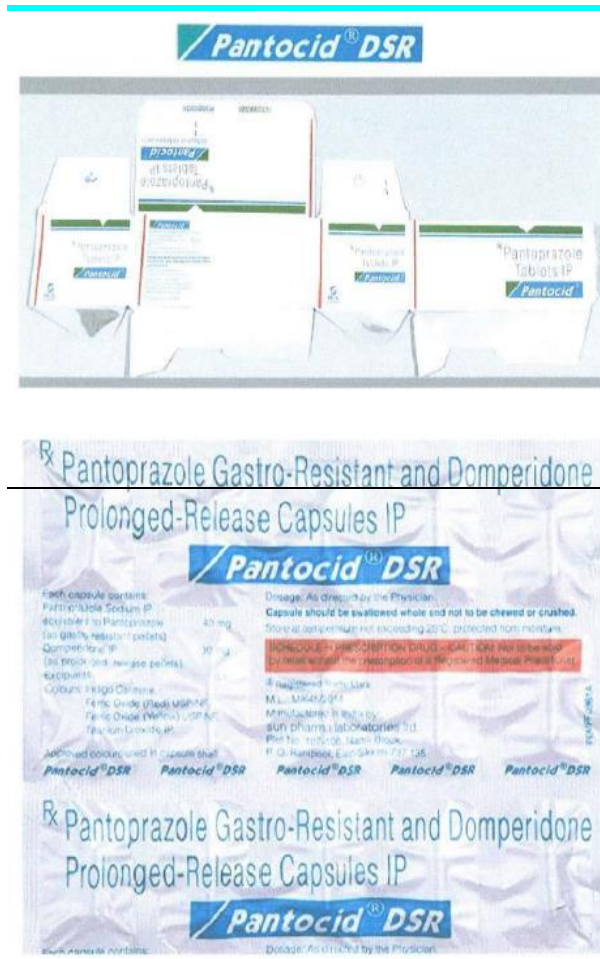
DSR', etc.

9. Today, the physical products have been produced by Mr. Gupta, Id. Counsel for the Plaintiff. In some of the impugned products of Defendant No.1, the manufacturer is shown as M/s Bon Heur Pharmaceutical Pvt. Ltd./Defendant No.2.

10. Ms. Rajeshwari, Id. Counsel has appeared for Defendant No.1- Windlas Biotech Ltd. She submits upon instructions, that Defendant No.1 is willing to give up the use of the mark 'PANTRACID' and 'PANTRACID' related marks, for medicinal and pharmaceutical preparations, in view of the Plaintiff's trademark 'PANTOCID'. However, insofar as Defendant No.2 is concerned, she submits that she does not have instructions.

11. Heard and perused. This Court is clearly of the opinion that the mark 'PANTOCID' and 'PANTRACID' are identical/similar to each other. They are used for the same medicinal products. The marks are phonetically, structurally and ocularly similar. Especially in medical prescriptions, there is high chances of the said marks being confused. Applying the decision 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, it is clear that in this case there is a high chance of doctors, medicinal practitioners, chemists, etc., being confused between the two marks. The two products are as under:

Plaintiff's Product



Defendant's Product



12. Thus, the Plaintiff has made out a *prima facie* case for the grant of an interim injunction in its favour. The balance of convenience lies in the favour of the Plaintiff. If the interim relief is not granted at this stage, irreparable injury would be caused to the Plaintiff. Accordingly, till the next date of hearing, Defendant No.2 shall stand restrained from manufacturing, selling, offering for sale any medicinal preparations under the mark 'PANTRACID' in any dosage form and other variants. Insofar as Defendant No.1 is concerned, since Defendant No.1 is willing to give up use of the impugned mark, let a stock statement be filed by Defendant No.1 by the next date of hearing, along with the batch numbers and the value of all the

impugned products which are currently lying with Defendant No.1, as also the value of the total sales made of the impugned product since the date of adoption of the impugned mark. The said documents be filed and placed before the Court, on the next date of hearing, upon perusal of which further orders shall be passed. Defendant No.1 shall also cease further manufacture of the products under the mark 'PANTRACID'.

13. Insofar as the packaging of 'PANTRACID' is concerned, Id. Counsel for Defendant No.1 agrees to seek instructions in respect of alternate packaging and produce the same in Court on the next date. Physical packagings of the Plaintiff and Defendants' products shall also be produced in the Court on the next date of hearing.

14. Compliance of Order XXXIX Rule 3 CPC, with respect to Defendant No.2 be effected within one week.

15. List before Joint Registrar on 3rd August, 2022.

16. List before Court on 26th July, 2022.

PRATHIBA M. SINGH, J.

MAY 19, 2022

dj/ms