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

+ CS(COMM) 913/2024 & I.A. Nos. 42699/2024, 42700/2024,
42701/2024, 42702/2024 & 42703/2024

TORRENT PHARMACEUTICALS LTDPlaintiff

Through: Mr. Sachin Gupta with Mr. Rohit
Pradhan, Ms. Prashansa Singh,
Mr. Ajay and Ms. Archana, Advocates.
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versus

AHAMAD FARAZ & ORS.Defendants

Through: None.

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER
21.10.2024

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I.A. 42700/2024 (Exemption from filing certified copies of documents)

1. The present is an application under Section 151 of the Code of Civil Procedure, 1908 ("CPC"), on behalf of the plaintiff, seeking exemption from filing certified clearer/typed or translated copies of documents.
2. Exemption is granted, subject to all just exceptions.
3. Plaintiff shall file legible, clear, and translated copies of the documents, on which the plaintiff may seek to place reliance, before the next date of hearing.
4. Accordingly, the present application is disposed of.



I.A. 42699/2024 (Exemption from instituting Pre-Institution Mediation)

5. The present is an application under Section 12A of the Commercial Courts Act, 2015, read with Section 151 of CPC, seeking exemption from undergoing Pre-Institution Mediation.

6. Having regard to the facts of the present case and in the light of the judgment of Supreme Court in the case of *Yamini Manohar Versus T.K.D. Keerthi*, 2023 SCC OnLine SC 1382, and Division Bench of this Court in *Chandra Kishore Chaurasia Versus RA Perfumery Works Private Ltd.*, 2022 SCC OnLine Del 3529, exemption from attempting Pre-Institution Mediation, is granted.

7. Accordingly, the application stands disposed of.

I.A. 42701/2024 (Exemption from advance service to the defendants)

8. The present is an application under Section 151 CPC, seeking exemption from advance service to the defendants.

9. The plaintiff seeks urgent interim relief, and has also sought appointment of Local Commissioner. Therefore, in the peculiar facts and circumstances of this case, exemption from effecting advance service upon the defendants, is granted.

10. For the reasons stated in the application, the same is allowed and disposed of.

I.A. 42702/2024 (Application for appointment of Local Commissioner)

11. The present is an application under Order XXVI Rule 9 read with Order XXXIX Rule 7 CPC read with Section 135 of the Trade Marks Act, 1999.

12. After some arguments, learned counsel appearing for the plaintiff does not press the present application for the time being.



13. Accordingly, the present application is disposed of.

CS(COMM) 913/2024

14. Let the plaint be registered as suit.

15. Upon filing of the process fee, issue summons to the defendants by all permissible modes. Summons shall state that the written statement be filed by the defendants within thirty days from the date of receipt of summons. Along with the written statement, the defendants shall also file affidavit of admission/denial of the plaintiff's documents, without which, the written statement shall not be taken on record.

16. Liberty is given to the plaintiff to file replication within thirty days from the date of receipt of the written statement. Further, 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 the documents, the same shall be sought and given within the timelines.

17. List before the Joint Registrar (Judicial) for marking of exhibits, on 12th December, 2024.

18. List before the Court on 04th March, 2025.

I.A. 42703/2024 (Application under Order XXXIX Rules 1 and 2 CPC)

19. The present suit has been filed for permanent injunction, restraining infringement of registered trademark, passing off, unfair competition, delivery up, rendition of accounts of profits/damages etc.

20. Learned counsel appearing for the plaintiff submits that by way of the present suit, the plaintiff is aggrieved against the defendants for dealing in medicine under the impugned mark UNIZYME PLUS, which is identical



and deceptively similar to the plaintiff's registered trademarks UNIZYME and UNIENZYME and its several variations.

21. It is submitted that plaintiff has several trade mark registrations for 'UNIENZYME/UNIZYME' in Class 5, details of which, as given in the plaint, are reproduced below:

REGISTERED TRADE MARKS IN CLASS 5

S. No	Trade Mark	App. No. and date	Goods	Status
1.	UNIENZYM E	254185 dt. 18.1.1969	[CLASS : 5] Medicinal Tablets Containing Enzymes For Abdominal Troubles.	Registered
2.	UNIZYME	276978 dt. 17.12.1971	[CLASS : 5] Pharmaceutical And Veterinary Preparations.	Registered
3.	UNIENZYM E	781594 dt. 9.12.1997	[CLASS : 5] Medicinal And Pharmaceutical Preparations.	Registered
4.	UNIZYME	781595 dt. 9.12.1997		Registered
5.	10 UNIENZYM E	2901374 dt. 13.2.2015		Registered
6.	UNIENZYM E GOLD	3053986 dt. 14.9.2015		Registered
7.	UNI-ZYME	3337798 dt. 16.8.2016	[CLASS : 5] Medicinal And Pharmaceutical Preparations, Multivitamins And Dietary And Food Supplement	Registered
8.	UNIENZYM E PRO	3996908 dt. 13.11.2018	[CLASS : 5] Nutritional Supplement, Dietary Supplement.	Registered
9.	NEW UNIENZYM E PRO	4080033 dt. 7.2.2019	[CLASS : 5] Pharmaceutical and Medical Preparations, Dietary and Nutritional Supplements, etc	Registered
10.	UNIENZYM E	4125943 dt. 23.3.2019		Registered
11.	UNIENZYM E PLUS LIQUID	5061390 dt. 27.7.2021		Registered
12.	UNIENZYM E PLUS	5061391 dt. 27.7.2021		Registered

22. It is further submitted that the trade mark in question was originally



applied by Unichem Laboratories Ltd., and was taken over by the plaintiff in 2017 by way of an Assignment Deed. The name of the plaintiff has been brought on record as subsequent proprietors. There is no disclaimer to the aforesaid registrations.

23. It is submitted that the plaintiff's medicine under the trade mark UNIENZYME is being sold since 1955. The said medicine is sold in the form of tablet, drops and syrup, and is used to treat digestive disorders. The same is beneficial in relieving digestive issues such as indigestion, acidity, gas, and abdominal discomfort.

24. It is further submitted that although plaintiff has registration for UNIZYME, but the same is currently not in use. It is settled that there is no requirement under the Act to use the mark prior to enforcing the rights under the Act to prevent the use of the rival mark. Further, what is required to sue for infringement under the Act is the registration of the mark, and once the mark is registered under the Act, then a suit for infringement will certainly lie under the Act without requiring the registered proprietor to show the actual commercial use of the mark. The principle of deemed public user of the mark by virtue of prior registration will also apply in the present scenario and the suit for infringement of trade mark will be maintainable.

25. It is submitted that the plaintiff has been manufacturing and marketing its medicines under the trade mark UNIENZYME as an Over the Counter ("OTC") product. Furthermore, once a product is marketed as an OTC product, it is promoted extensively in a manner to gain consumer awareness. OTC products can be purchased over the counter without prescription of medical practitioners, hence, are primarily purchased by consumers who make informed decisions of their own. In such a case, the burden falls upon



the brand owner to reach out to the consumers on its own by way of marketing, promotion, quality consistency and control, goodwill and distinctiveness of the brand for identification of source and origin of the product, like any other consumer non-durable product. Based upon the market reach, brand recollection and quality maintained by the product, the consumer makes a choice amongst several other similar products available in the market. In such cases, the distinctiveness of their packaging acquires great significance as a source identifier of such goods and constitutes valuable trade mark rights for the proprietor. Hence, OTC products and preparations are altogether a different and distinct segment category as compared to prescription drugs or scheduled drugs, and hence ought to be treated differently for purposes of likelihood of consumer confusion.

26. It is further submitted that the trademarks UNIENZYME and its formative extensions have acquired distinctiveness and enviable goodwill and reputation due to its extensive, long and continuous use since the year 1955. The OTC bearing the said trade mark identify plaintiff as the source or origin and none else. The plaintiff has the common law rights to the exclusive use of the trade mark of UNIENZYME and its formative extensions. 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.

27. It is submitted that the plaintiff is the registered proprietor of the trade mark UNIENZYME/UNIZYME. The plaintiff, therefore, has the exclusive right to use the said trade mark and ought to be protected by this Court against infringement, imitation, confusion, deception, dilution and unfair



competition by competitors in trade.

28. It is further submitted that the plaintiff, vide legal notice dated 09th April, 2024, demanded that the defendants immediately cease and desist from using the impugned mark. In its reply dated 04th June, 2024, the defendants stated that they have filed Trade Mark Application No. 6458289 dated 30th May, 2024, and refused to comply with the plaintiff's demands. Furthermore, it is submitted that the defendant's trade mark application was filed after the legal notice was sent to the defendants, further evidencing the defendants' *mala fide* intentions.

29. It is submitted that in April 2024, the plaintiff discovered that the defendants were manufacturing and selling medicinal products under the impugned mark. The cause of action arose when the medicine under the impugned mark UNIZYME PLUS was found selling in the markets of Delhi in clandestine manner, without issuance of invoice. The cause of action also arose when on 04th June, 2024, defendants chose to not comply with the terms of the legal notice. The said cause of action is continuous one and continues to subsist.

30. It is submitted that the defendants have unethically and unlawfully adopted the impugned trade mark UNIZYME PLUS. Being in pharmaceutical business, the defendants are well aware of the plaintiff's adoption and use of its trade mark UNIZYME/UNIZYME or its formative marks. Having seen the success of the plaintiff's product, the defendants adopted the impugned mark. Such dishonest adoption amounts to infringement of plaintiff's registered trade mark, passing off, unfair trade practice, unfair competition and dilution. Such act also amounts to misrepresentation and misappropriation of plaintiff's goodwill in its trade



dress.

31. It is submitted that the defendant has adopted the entirety of the plaintiff's well-established mark UNIZYME and merely added the term "PLUS", which is also identical to one of the plaintiff's registration. This deliberate adoption is clearly planned to cause confusion and mislead consumers into believing that the defendants' product is associated with or endorsed by the plaintiff. This form of imitation inevitably leads to the erosion of distinctiveness of the plaintiff's registered trademarks UNIENZYME and UNIZYME, or its formative marks. Therefore, it constitutes a violation of the plaintiff's statutory right of exclusive use and amounts to infringement under Section 29 of the Trade Marks Act, 1999.

32. It is submitted that the plaintiff's registered trademarks UNIENZYME, or its formative marks have been extensively and commercially used by the plaintiff in the course of trade since the year 1955 on account of which it has acquired formidable goodwill and reputation as a badge of quality products originating from the plaintiff. The plaintiff's product under its Trade Mark is the leading Indian OTC brand qua the digestive disorder medicine. On account of prior adoption, extensive use, voluminous sales and substantial promotional expenses, coupled with extreme quality control maintained by the plaintiff, the trade marks UNIENZYME or its formative marks, have acquired substantial goodwill and reputation in the trade and amongst consumers at large. Therefore, the use of the impugned mark UNIZYME PLUS by the defendants are likely to cause confusion and/or deception in the minds of the consumers on account of imperfect recollection and the overall similarity and idea conveyed by the trade dress and packaging of both the parties. The use of the impugned mark



by the defendants constitutes acts of misrepresentation, misappropriation and passing off of the defendants' goods for those of the plaintiff. The use of the impugned mark by the defendants, therefore, being an actionable tort, is liable to be enjoined under the provision of Section 135 of the Trade Marks Act.

33. It is further submitted that the defendants are further competing with the plaintiff in the same field of activities and selling similar products taking advantage of brand equity and goodwill built up by the plaintiff in the trade mark UNIENZYME, UNIENZYME PLUS, UNIZYME and other formative marks. Further, the use of the impugned mark UNIZYME PLUS by the defendants is *mala fide*, constitutes acts of misrepresentation as well as misappropriation of goodwill and reputation built-up by the plaintiff by their own effort and investment amounting to passing off of the defendant's goods for those of the plaintiff. It also amounts to unfair competition.

34. It is further submitted that the plaintiff has no control, access, or supervision over the mode of manufacture, working conditions, technical expertise, plant and machinery, hygienic conditions, or the raw materials used by the defendants for the manufacture, packaging, and sale of the product under the impugned mark UNIZYME PLUS. Any deficiency in the efficacy of the defendants' product, or worse, any adverse reactions caused by the consumption of the defendants' product, particularly, given that it is a medicinal product intended to aid in digestion-could lead to severe health risks such as gastrointestinal issues, allergic reactions, or other harmful side effects. These risks not only jeopardize consumer safety but also pose a significant threat to the hard-earned goodwill and reputation that the plaintiff's UNIENZYME or its formative marks have garnered over the



years. Therefore, any damage by the defendants' product, cannot be quantified in monetary terms, and without an immediate injunction, the plaintiff will suffer irreparable harm, particularly, as medicinal products carry a heightened risk due to their direct impact on health.

35. In the above circumstances, the plaintiff has demonstrated a *prima facie* case for grant of injunction and, in case, no *ex parte ad interim* injunction is granted, the plaintiff will suffer an irreparable loss. Further, balance of convenience also lies in favour of the plaintiff, and against the defendants.

36. Accordingly, till the next date of hearing, the defendants their partners, proprietors, or directors, as the case may be, their assignees in business, distributors, dealers, stockists, retailers/chemists, servants and agents, are restrained from selling, offering for sale, advertising, directly or indirectly dealing in any medicinal, pharmaceutical or nutraceuticals product under the impugned mark UNIZYME PLUS or any other marks, which may be deceptively similar to the plaintiff's registered trademarks UNIENZYME and UNIZYME or/and other of its variants thereof, amounting to infringement or passing off of the registered trademarks of the plaintiff.

37. It is clarified that the order passed today shall come into effect after a period of two months from today. The defendants shall be at liberty to exhaust its stock with the impugned mark UNIZYME PLUS.

38. It is further clarified that the defendants can use the mark ENZYME, however, without use the prefix 'UNI'. The defendants are at liberty to adopt any mark without the prefix UNI. However, there is no bar to use of the mark ENZYME by the defendants.

39. The defendants are directed to file their details of the stock, including



the date of manufacture and the batch number of their product with the mark UNIZYME PLUS.

40. Issue notice to the defendants by all permissible modes upon filing of the Process Fee, returnable on the next date of hearing.
41. Let reply be filed within a period of four weeks.
42. Rejoinder thereto, if any, be filed within two weeks, thereafter.
43. Compliance of Order XXXIX Rule 3 CPC, be done, within a period of one week.
44. List before the Court on 04th March, 2025.

MINI PUSHKARNA, J

OCTOBER 21, 2024

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