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

+ CS(COMM) 51/2023 & I.A. 1794/2023, I.A. 1795/2023, I.A. 1796/2023, I.A. 1797/2023, I.A. 1798/2023

WINGS PHARMACEUTICALS PVT. LTD. .... Plaintiff  
Through: Mr. Sachin Gupta, Mr. Rohit  
Pradhan and Ms. Swati Meena, Advs.

versus

GENFORD DRUGS PVT. LTD. & ORS. .... Defendants  
Through: None

**CORAM:**

**HON'BLE MR. JUSTICE C.HARI SHANKAR**

**ORDER**

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**31.01.2023**

**I.A. 1794/2023 (under Section 151 of CPC)**

1. For the reasons stated in the application, the plaintiff is exempted from the requirement of serving an advance notice on the defendants.

2. This application stands allowed accordingly

**I.A. 1795/2023 (under Section 151 of CPC)**

3. Subject to the plaintiff filing legible copies of any dim or illegible documents on which it may seek to place reliance within four weeks from today, exemption is granted for the present.

4. The application is disposed of.

**I.A. 1798/2023 (under Section 12A of the Commercial Courts Act r/w Section 151 of CPC)**

5. This application seeks exemption from pre-institution mediation

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under Section 12A of the Commercial Courts Act.



6. In view of the judgment of the Division Bench of this Court in *Chandra Kishore Chaurasia v R A Perfumery Works Private Ltd*<sup>1</sup>, exemption is granted from the requirement of compliance with the pre-institution mediation under Section 12A of the Commercial Courts Act, 2015.

7. The application is allowed.

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8. The plaintiff manufactures and sells mouth ulcer gel under the registered trademark ORASORE. The plaintiff possesses registrations in the following marks:

TRADE MARK REGISTRATIONS

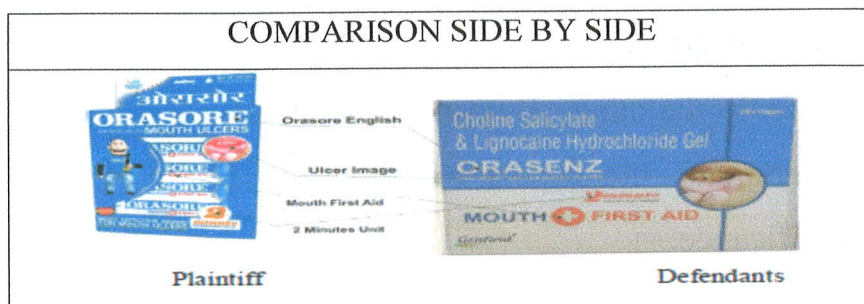
S. No.	Trade Mark	No. & Date	Class/goods
1.	ORASORE	787554 Dt. 14/01/1998	Pharmaceuticals and medical preparations in class 5
2.	ORASORE MOUTH + FIRST AID (Word)	3506438 Dt. 04/03/2017	Pharmaceuticals and medical preparations in class 5
3.		3506440 Dt. 04/03/2017	Dentifrices in class 3
4.		3506442 Dt. 04/03/2017	Dentifrices in class 3

9. The plaintiff is aggrieved by the use, by the defendant, of the

mark ORASENZ, for mouth ulcer gels. The plaintiff has provided a tabular depiction plaintiff's and the defendants' products, thus, in the plaint, to emphasise their similarity:

Plaintiff's mark	Defendant's mark
ORASORE	ORASENZ
	

10. The common features between the packings of the plaintiff and the defendants have also been emphasised thus, in the plaint:





11. Thus, alleges the plaintiff, the defendants have consciously adopted a trade dress which is nearly identical to that of the plaintiff, as is apparent from the common features emphasised hereinabove. The mark ORASENZ is also, it is submitted, phonetically similar to the mark ORASORE. The plaintiff also asserts that the defendants have commenced manufacturing of the impugned product only recently, whereas the plaintiff has obtained registration for its marks as far back as in January 1998.

12. The plaintiff asserts that, if the plaintiff's and the defendants' products are kept side by side on a shelf, an unwary customer is likely to confuse one for the other. Both the products being over the counter (OTC) preparations, the aspect of initial interest confusion is of primary significance.

13. In these circumstances, the plaintiff has instituted the present

suit against the defendants, seeking a decree that the defendants be restrained from using the impugned mark ORASENZ or the trade dress used by the defendants which is deceptively similar to the trade dress of the plaintiff. Pending the suit, the plaintiff has also sought interlocutory reliefs by way of IA 1796/2023.

14. I have heard Mr. Sachin Gupta, learned Counsel for the petitioner.

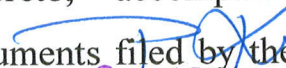
15. The plaintiff has clearly made out a *prima facie* case. The features of similarity between the plaintiff's and the defendants' packing and trade dress make it clear that the defendants have consciously adopted the trade dress to approach as close to the plaintiff as possible, for identical products. The products in question are mouth ulcer gels and are not products which are life saving or otherwise of critical importance.

16. In these circumstances, *prima facie*, a case for grant of interlocutory injunction is made out.

17. Accordingly, let the plaint be registered as a suit.

18. Issue summons.

19. Written statement, accompanied by affidavit of admission/denial of the documents filed by the plaintiff be filed within 30 days with advance copy to learned Counsel for the plaintiff who may file replication thereto, accompanied by affidavit of admission/denial of the documents filed by the defendants within 30 days thereof.

  
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20. List before the learned Joint Registrar (Judicial) for completion of pleadings, admission/denial of the documents and marking of exhibits on 16<sup>th</sup> March 2023, whereafter the matter would be placed before the Court for case management hearing and further proceedings.

**I.A. 1796/2023 ((under Order XXXIX Rules 1 and 2 of CPC)**

21. By this application, the plaintiff has sought interlocutory reliefs pending disposal of the suit.

22. The plaintiff has made out a clear *prima facie* case in its favour. The defendants are, *prima facie*, guilty of infringement and as well as passing off their products as that of the plaintiff. There is every likelihood or confusion in the minds of an unwary customer especially as the products of the plaintiff and defendants, in respect of which the competing marks are used, are over the counter products. As such, the considerations of balance of convenience and irreparable loss would also justify grant of interlocutory relief.

23. In view thereof, issue notice.

24. Reply, if any, be filed within a period of four weeks with advance copy to learned Counsel for the plaintiff, who may file rejoinder thereto, if any, within a period of four weeks thereof.

25. Till the next date of hearing, the defendants and all others acting on their behalf shall stand restrained from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in mouth ulcer gels or any other product under the impugned ORASENZ mark

or the impugned trade dress.

26. Re-notify on 6<sup>th</sup> April 2023.

**I.A. 1796/2023 (under Order XXVI Rule 9 of the CPC)**

27. By this application, the plaintiff seeks appointment of a Local Commissioner to visit the premises of the defendants and seize the infringing goods.

28. Given the aforesaid facts, the prayer has merit.

29. Accordingly, this Court appoints Mr. Tummala Mohan Sri Sailender Reddy, Advocate (Mob: 8790982848) as the Local Commissioner to visit the premises of the defendants situated at “Joshi Drugs Pvt. Ltd., S-7, Hall No. 3, Second, Floor, Okhla Industrial Area,, Phase 2, New Delhi – 110020” and execute the commission. The learned Local Commissioner would

(a) prepare an inventory of all infringing goods/products found in the aforesaid premises which bear the name/mark logo ORASENZ in any form whatsoever and any other material bearing the plaintiff’s trade mark/label and take photographs thereof,

(b) take custody of all evidence, including infringing goods/products, and/or any other goods/products and any other material bearing the infringing trademark ORASENZ, and, after marking and sealing, therein, release them on *superdari* to the defendants,

(c) inspect all books of accounts including ledgers, stock registers, invoice books, receipt books, cash books, purchase and sale records and any other books of records or commercial transactions kept at the premises of the defendants that pertain to goods bearing the infringing mark 'ORASENZ', and mark all such transactions,

(d) visit any other premise(s) disclosed by the defendants at the time of execution to be the location of the impugned products where such evidence has been stocked / stored / hidden by the defendants, and

(e) record details of any such other person/entity/enterprise who, according to the information disclosed by the defendants, has a role in manufacture, supply and sale of the impugned products.

These directions would apply to all products or material which bears the impugned mark 'ORASENZ' whether as a word mark or as a logo, and all material used to manufacture and produce such goods.

**30.** The execution of the commission would take place on 4<sup>th</sup> February 2023 at 11:00 a.m., without advance notice to the defendants.

**31.** The learned Local Commissioner shall execute the commission in a peaceful manner without disrupting the business of the defendants. The defendants are also directed to cooperate with the execution of the commission and not to obstruct it in any fashion.



32. Nonetheless, should the need arise, the jurisdictional police/SHO/ACP authorities are also directed to provide all assistance in execution of the commission as directed by this Court. It shall be the duty of the Police authorities to ensure that the learned local Commissioner is not harassed, intimidated or impeded in the execution of the aforesaid commission as directed by this Court.

33. Two representatives of the plaintiffs' are permitted to accompany the learned Local Commissioner, who would guide the learned Local Commissioner to the concerned location.

34. In execution of the commission, should it be necessary to break open any locks or forcibly enter any premises, the learned Local Commissioner is entitled to do so.

35. The learned local Commissioner shall be entitled, for the present, to a consolidated fee of ₹ 1 lakh for executing the commission, apart from out-of-pocket expenses at actuals as well as travel to and fro. The fees of the learned local Commissioner shall be paid in advance of the execution of the commission.

36. Consequent on execution of the commission, the learned Local Commissioner shall file a report regarding execution of the commission within one week thereof with the learned Registrar General of this Court.

37. The registry is directed to upload this order on the website of this Court only after the commission is executed and after filing of a report by the learned Local Commissioner.

38. The application stands allowed accordingly.

39. As this order has been passed *ex parte*, the plaintiff is directed to comply with the provision of Order XXXIX Rule 3 of the CPC within one week from the date of filing of a report by the learned Local Commissioner.

40. Let a copy of this order be given *dasti* to learned Counsel for the plaintiff under the signature of the Court Master.

  
C. HARI SHANKAR, J.

**JANUARY 31, 2023**

*dsn*

  
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High Court of Delhi  
New Delhi