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

+ CS(COMM) 443/2023 & I.A.11980/2023, I.A.11981/2023,
I.A.11982/2023

SUN PHARMACEUTICAL INDUSTRIES LTD. Plaintiff
Through: Mr.Sachin Gupta, Ms.Yashi
Agrawal and Mr.Rohit Pradhan, Advs.

versus

M/S. ORISON PHARMACEUTICALS Defendant
Through: None

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

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06.07.2023

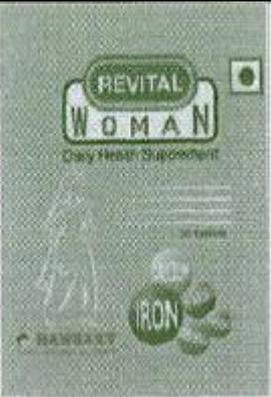
1. By this plaint, the plaintiff alleges infringement, by the defendant, of the plaintiff's registered trademarks (i) SUN/SUN PHARMA/SUN PHARMACEUTICALS, (ii) REVITAL and (iii) CEROXIM, by use of the defendant's marks (i) ORISON/ORISON PHARMACEUTICALS/ORISON GOLD, (ii) ORIVITAL and (iii) OXIM. The details of the registrations held by the plaintiff in respect of the marks asserted in the plaint are as under:

S.NO.	TRADEMARK	CLASS	DATE
1.		5	04.08.83
2.		1	12.03.90
3.		3	12.03.90
4.	SUN	1	02.11.92



5.		9	24.06.93
6.	SUN	10	24.06.93
7.		1, 5	02.07.93
8.	SUN PHARMA	5	01.06.07
9.	SUNPHARMA	5	28.06.07
10.	SUN	5	27.05.09
11.		10	12.09.11
12.	SUN	1	12.09.11
13.		1, 3, 5, 9, 10	19.09.11
14.		16	24.08.12
15.		2, 4, 6, 7, 8, 11, 12, 13, 14, 15, 17, 19, 20, 21, 22, 23, 24, 26, 27, 28, 32, 33, 34, 35, 36, 37, 38, 39, 40, 42, 43, 44, 45	31.03.15



S. No.	Application No. & Date	Trade Mark	Goods
1.	447372 dt. 26.12.1985	REVITAL	Class 5: Pharmaceutical and medical preparations
2.	2090755 dt. 28.01.2011	 REVITAL Daily Health Supplement 30 Capsules KANSARY	Class 5: Pharmaceutical and medical preparations for human and veterinary use
3.	2575070 dt. 02.08.2013	 REVITAL Capsule (Device)	Class 5: Dietic and nutritional food supplements
4	2090785 dt. 28.01.2011	 REVITAL WOMAN Daily Health Supplement 30 Tablets KANSARY IRON	Class 5: Pharmaceutical & medicinal preparations for human & veterinary use

OTHER INDIAN TRADE MARK REGISTRATIONS

S.No	Trade Mark	Cl.	Date
1.	REVITAL	31	26.12.2002
2.	REVITALITE	5	28.08.2006
3.	Revital ActEVE	5	08.10.2008
4.	REVITAL+	5	22.10.2008
5.	REVITAL PLUS	5	22.10.2008
6.	REVITAL-VGM	5	22.10.2008



7.	REVITAL (Label)	31	28.01.2011
8.	REVITAL WOMEN (Label)	31	28.01.2011
9.	REVITAL G+	5	24.02.2012
10.	REVITAL LISTENING TO MY BODY & MIND (label)	41	29.08.2013
11.	25 YEARS – REVITAL	5	04.07.2014
12.	REVITAL H	5	22.12.2014
13.	REVITAL	5, 30	20.11.2020
14.	REVITAL	29	16.12.2020
15.	REVITAL H ENERGY NXT	5	23.12.2021
16.	REVITAL H POPVITS	5, 29, 30	01.09.2021
17.	REVITAL H. PROTEIN NXT	5	23.12.2021
18..	REVITAL H PROTEIN NXT CHOCO ALMOND BAR (Device)	5	15.02.2022
19.	REVITAL H PROTEIN NXT COFEE HAZELNUT BAR (Device)	5 & 30	15.02.2022
21.	REVITAL H PROTEIN NXT CHOCO ALMOND BAR (Device)	30	15.02.2022
22.	REVITAL H ENERGY NXT CHOCO ALMOND BAR (Device)	5	15.02.2022
23.	REVITAL H ENERGY NXT YUGHURT BERRY BAR (Device)	5 & 30	15.02.2022
25.	REVITAL H ENERGY NXT CHOCO ALMOND BAR (Device)	30	15.02.2022
26.	REVITAL H ENERGY NXT	30	15.02.2022
27	REVITAL H PROTEIN NXT	30	15.02.2022
27.	REVITAL NXT	5	01.02.2022
28.	REVITAL NXT	30	10.02.2022
29.	REVITAL SENIOR (LABEL)	5 and 31	28.01.2011
30.	KIDDI -REVITAL	5	27.12.2011
31.	REVITAL H	5 and 30	18.02.2022

S.No	Trade Mark	Class	Date
1.	CEROXIM	5	08.11.1993



2. The plaintiff sets out, in detail, the reputation and goodwill stated to have been earned by the plaintiff over a period of time, as well as the revenue earned and the expenses incurred in promotion and advertising of the marks asserted in the plaint. At this stage, it is not necessary to refer to all such particulars.

3. The plaintiff alleges that the impugned marks of the defendant are phonetically and otherwise deceptively similar to the registered trademarks of the plaintiff and, on that basis, seeks an injunction restraining the defendant from using the impugned marks.

4. Let the plaint be registered as a suit.

5. Issue summons in the suit.

6. Written statement, accompanied by an affidavit of admission/denial of the documents filed by the plaintiff be filed within 30 days with an 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 defendant within 30 days thereof. Alongwith its written statement, the defendant shall also provide the details of the stock of the products bearing the impugned marks (i) ORISON/ORISON PHARMACEUTICALS/ORISON GOLD , (ii) ORIVITAL and (iii) OXIM as are present with them on the date of execution of the local commission as well as figures of the amounts earned by the defendant by sales of products bearing the said marks since the time the marks have been in use by them.

7. List before the learned Joint Registrar (Judicial) for completion of pleadings, admission and denial of the documents and marking of



exhibits on 8 September 2023, ~~where~~ after the matter would be placed before the Court for case management hearing and further proceedings.

I.A. 11980/2023 (under Section 151 of the CPC)

8. 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.

9. The application is disposed of.

I.A. 11981/2023 (under Order XXXIX Rules 1 and 2 of the CPC)

10. This is an application by the plaintiff under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (CPC), seeking interlocutory injunctive reliefs.

11. Insofar as the mark ORISON/ORISON Pharmaceuticals/ORISON Gold are concerned, similar impugned marks already formed subject matter of challenge in CS(COMM)459/2022 (*Sun Pharmaceutical Industries Ltd. v. Vensat Bio*) in which case the impugned marks were ORISON/ORISON Pharma/ORISON Pharmaceuticals. An interlocutory injunction was granted by a learned Single Judge of this Court, in favour of the plaintiff and against the defendants in that case on 23 May 2023, which was challenged by the defendants in that case by way of FAO(OS)(COMM) 127/2023. The said FAO came up before a Vacation Bench of this Court which, in its order dated 14 June 2023, expressed a *prima facie* opinion that the trade names (ORISON/ORISON PHARMA AND ORISON PHARMACEUTICALS) could



not be said to be deceptively similar to SUN, SUN PHARMA AND SUN PHARMACEUTICALS phonetically, visually or structurally and that there was no likelihood of confusion between the names.

12. The said FAO subsequently came to be disposed of, by a Division Bench of this Court *vide* order dated 3 July 2023, remanding the matter to the learned Single Judge for *de novo* consideration, uninfluenced by the observations contained in the order dated 14 June 2023, passed by the Vacation Bench.

13. As such, the issue of whether the marks ORISON, ORISON PHARMACEUTICALS and ORISON GOLD can be treated as deceptively similar to SUN, SUN PHARMA and SUN PHARMACEUTICALS is already *sub-judice* before this Court in CS(Comm) 459/2022.

14. To my mind, on a comparison of these marks, the issue of deceptive similarity is debatable. It would be appropriate that, before any injunctive orders are passed restraining the defendant from using the marks ORISON/ORISON PHARMACEUTICALS and ORISON GOLD, an opportunity to respond is granted to the defendant.

15. However, when one adverts to other marks asserted in the present plaint, *vis-a-vis* the corresponding marks of the defendant, the plaintiff appears to have a better *prima facie* case. In one case, the mark of the plaintiff is REVITAL, and the corresponding mark of the defendant is ORIVITAL. The third mark asserted in the plaint is CEROXIM, whereas the corresponding mark of the defendant is OXIM.

16. Insofar as the marks REVITAL and ORIVITAL are concerned,



prima facie there is hardly any difference in phonetic intonation of the two marks, the only difference being that there is an initial “O” in ORIVITAL. The two marks are, *prima facie*, deceptively similar if not nearly identical.

17. Insofar as the marks CEROXIM, of the plaintiff and OXIM of the defendant are concerned, it is significant that the plaintiff uses the marks CEROXIM for the antibiotic Cefuroxime, whereas the defendant uses the mark OXIM for cefixime. While, therefore, the use of the mark CEROXIM by the plaintiff, is understandable, as CEROXIM appears to be coined from the API name Cefuroxime, it is difficult to understand why the defendant is using OXIM as the trade name for a product which contains Cefixime. The Court is, therefore, *prima facie* convinced that the use of the mark OXIM, by the defendant, is intended to be confusingly similar to the plaintiff’s mark CEROXIM. Even otherwise, as the defendant’s mark OXIM is nothing but the second half of the plaintiff’s mark CEROXIM, there is clear phonetic similarity between the two marks.

18. As such, the plaintiff has succeeded in making out a *prima facie* case of infringement and passing off, by the defendant, of the registered trade marks REVITAL and CEROXIM, by using ORIVITAL and OXIM respectively.

19. Issue notice, returnable on 4 October 2023 before the Court.

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

21. Till the next date of hearing, the defendant, as well as all others



acting on its behalf shall stand restrained from using the marks ORIVITAL and OXIM, in respect of any pharmaceutical products manufactured, cleared or dealt with, by them.

22. Let compliance with Order XXXIX Rule 3 be effected within a period of one week from today.

I.A. 11982/2023 (Order XXVI Rule 9 and 10 of the CPC)

23. This is an application seeking appointment of a local commissioner to visit the premises of the defendant situated at 51, Industrial Estate, Ambala Cantt, Haryana, 133006. As the products in question are pharmaceutical products, Mr. Sachin Gupta, learned Counsel for the plaintiff restricts his prayer to a direction to the Local Commissioner to inventorise any infringing goods which may be found to be in the defendant's premises.

24. In view thereof, this Court appoints Mr. R. Gowrishankar, Advocate (Cell: 9999046948) as the Local Commissioner to visit the premises of the defendant situated at 51, Industrial Estate, Ambala Cantt, Haryana, 133006. The terms of the commission shall be as under:

(i) The learned Local Commissioner shall inventorise and take into custody any goods found in the premises of the defendant, bearing the marks ORIVITAL or OXIM.

(ii) The learned Local Commissioner shall also take into custody any printing material or any other material which is used for printing or manufacturing goods bearing the marks ORIVITAL or OXIM.



(iii) All such goods and material, after being inventorised, shall be handed over to the defendant under *superdari* for safe custody, pending further orders to be passed by the Court.

(iv) The execution of the Commission shall take place peacefully and without disturbing the legitimate business activities of the defendant. The defendant is also directed to cooperate with execution of the Commission.

(v) Should it become necessary, in order to execute the Commission, for the plaintiff to effect force ingress into any premises, the plaintiff would be at liberty to do so.

(vi) The plaintiff is also permitted to depute one representative to accompany the Local Commissioner during the execution of the Commission.

(vii) Should it become necessary, the learned Local Commissioner would also be at liberty to seek the assistance of the jurisdictional police authorities to execute the Commission. In that event, this order shall operate as a direction to the jurisdictional police authorities to extend all cooperation and assistance necessary in order to ensure that the execution of the Commission as directed by this Court takes place in an unhindered fashion.

(viii) The execution of the Commission shall also be videographed at the expense of the plaintiff, so as to satisfy this Court that the Commission has been executed satisfactorily.

(ix) The commission shall be executed on 10 July 2023 at 11 am.



(x) The learned Local Commissioner shall, consequent to execution of the Commission, file a report regarding execution with the Registry of this Court within one week from execution of the Commission.

(xi) The learned Local Commissioner shall be entitled to consolidated fees of ₹ 1,00,000/- for execution of the commission apart from travel to and fro and lodging, if necessary as well as incidental expenses. The fees would be payable in advance of execution of the commission.

(xii) In case the learned Local Commissioner comes to learn of any other premises where similar infringing goods are stocked, the learned Local Commissioner would be at liberty to execute the Commission, in the aforesaid terms, at such other premises as well.

(xiii) The Registry is directed not to upload this order on the website of this Court till the Commission is executed and a report in that regard is filed by the learned Local Commissioner.

25. The application stands disposed of accordingly.

26. *Dasti.*

C.HARI SHANKAR, J

JULY 6, 2023/kr