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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **CS(COMM) 583/2021**

**SUN PHARMACEUTICAL INDUSTRIES LTD** ..... Plaintiff

Through Mr. Pratyush Rao, Ms. Jasleen  
Kaur, Ms. Senhal Singh and Ms.  
Namrata Tripathi, Advs.

versus

**NUKEM HEALTHCARE & ANR.** ..... Defendants

Through Nemo

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KUMAR KAIT**

**ORDER**

**18.11.2021**

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**IA No. 15036/2021 (u/S 151 CPC)**

1. The prayer made in the present application is to dispense with the service of defendant.
2. Since the application for appointment of Local Commissioner is taken up for hearing and disposal today, the application is allowed and is accordingly disposed of.

**IA No. 15037/2021 (u/S 12A of the Commercial Courts Act, 2015 r/w Sec. 151 CPC)**

3. Allowed subject to all just exceptions.
4. Application is disposed of.

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5. The plaint be registered as a suit.

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6. Upon plaintiff taking steps, summons of the suit in the prescribed form be issued to the defendants, returnable on 04.03.2022.

**I.A. 15034/2021 (u/O XXXIX R 1 & 2 CPC r/w Sec. 151 CPC)**

7. Upon plaintiff taking steps, notice of the application be issued to the defendants for the date fixed i.e. 04.03.2022.

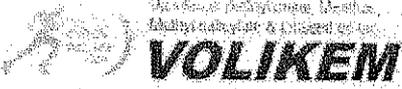
8. Heard learned counsel for the plaintiff on *ex-parte ad interim injunction*.

9. Plaintiff has filed the present application for restraining the defendants, their proprietors, their assignees in business, its distributors, dealers, stockists, retailers/chemists, servants and agents from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in medicinal preparations under the impugned VOLIKEM label or any other label as may be colourable imitation or substantial reproduction of the plaintiff's VOLINI label amounting to infringement of copyright of the plaintiff and also under the impugned mark VOLIKEM and its trade dress thereof or any other trade mark/ trade dress as may be deceptively similar to the plaintiff's trade mark VOLINI and its trade dress, amounting to infringement of its registered trade mark/ trade dress as tabulated in para 8 of the present application.

10. According to plaintiff, defendant Nos.1 & 2 are engaged in the marketing and manufacturing of impugned medicine under the impugned mark/ trade dress VOLIKEM.

11. Learned counsel for plaintiff submits that the defendants are dealing in medicinal and pharmaceutical products under impugned mark VOLIKEM and its trade dress thereof, which is deceptively similar to

plaintiff's prior used and registered trade mark VOLINI and its trade dress thereof. The competing medicines of plaintiff and defendants are reproduced herein below:

Sr. No.	Plaintiff's product/trade dress/packaging	Defendant's product/trade dress/packaging
1.		

12. In October, 2021, plaintiff came across defendants running a business of manufacturing and marketing impugned mark/ trade dress VOLIKEM. which is deceptively similar to the plaintiff's medicinal preparation under the trade mark/ trade dress VOLINI.

13. Lastly, learned counsel for plaintiff submits that such dishonest adoption amounts of infringement of the copyright, trade marks/ trade dress, passing off, unfair trade practice, unfair competition and dilution which amounts to misrepresentation and misappropriation of plaintiff's goodwill in its trademarks and prays that defendants ought to be restrained from using the impugned mark.

14. Upon hearing, this Court finds that a *prima facie* case to grant *ex-parte ad-interim injunction* relief in favour of plaintiff against the defendants, is made out. Accordingly, till further orders, defendants, their proprietors, their assignees in business, their distributors, dealers, stockists, retailers/chemists, servants and agents are restrained from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in medicinal preparations under the impugned VOLIKEM label

or any other label as may be colourable imitation or substantial reproduction of the plaintiff's VOLINI label amounting to infringement of copyright of the plaintiff and also under the impugned mark VOLIKEM and its trade dress thereof or any other trade mark/ trade dress as may be deceptively similar to the plaintiff's trade mark VOLINI and its trade dress, amounting to infringement of its registered trade mark/ trade dress as tabulated in para 8 of the present application.

15. Provisions of Order XXXIX Rule 3 of the Code of Civil Procedure be complied within three days from the execution of proceedings by the Local Commissioner/Court Commissioner.

**IA No. 15035/2021 (u/O XXVI R 9 r/w Order XXXIX R 7 CPC and Section 135 of Trade Marks Act)**

16. Vide the present application, learned counsel for the plaintiff submits that though in the present application he sought appointment of Local Commissioner(s)/Court Commissioner(s) for two locations, however, he now only wants appointment of a Local Commissioner / Court Commissioner to visit at one location which is at Faridabad, Haryana.

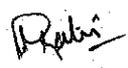
17. Upon hearing, the application is allowed.

18. Accordingly, **Mr. Manjit Singh, Advocate (Mobile: 9971060783)** is appointed as Court Commissioner/ Local Commissioner in this case, who shall visit the premises of defendants, i.e.

“M/s. Alco Formulation (India)  
14/5, Near Mewala Maharajpur Metro Station,  
Mathura Road, Faridabad – 121003, Haryana”

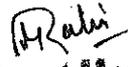
19. The Local Commissioner/ Court Commissioner shall:-

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- i. Visit the aforesaid premises, make an inventory and take into custody the stock of medicinal and pharmaceutical preparations under the impugned mark VOLIKEM & its trade dress, its packaging, promotional materials, stationery, dyes, blocks or any other mark deceptively similar/identical to plaintiff's trade mark and hand them over to the representative of the defendants on *superdari*;
- ii. Demand the disclosure of the whereabouts of any other place where impugned products are kept/stored or sold and of other persons who are involved pharmaceutical preparations under the impugned mark VOLIKEM & its trade dress;
- iii. Inspect and sign all books of accounts including ledgers, cash books, purchases and sales records etc of the defendants and take a photocopy (physical form) and/or electronic form;
- iv. The proceedings shall be conducted by the Court Commissioner/Local Commissioner on a working day when the premises of the defendants are supposed to be opened;
- v. If the Court Commissioner/Local Commissioner finds that the defendants have deliberately locked the premises on a working day during working hours to obstruct or defeat the proceedings, he/she shall inform the SHO of concerned police station, who shall direct the defendants to open the premise. However, in the event of failure or refusal of defendant to open the premise, the concerned SHO shall be authorized to break open the lock.
- vi. The SHO of the concerned police station shall provide all the

  
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necessary police assistance to the Local Commissioner for execution of the commission.

- vii. It is expected that the Court Commissioner/Local Commissioner/ plaintiff's counsel shall make a request for police protection to the SHO concerned prior to execution of the commission;
- viii. The plaintiff's representatives are directed to accompany the Court Commissioner/Local Commissioner and enter the premises of defendants along with him.

20. The fee of the Court Commissioner/Local Commissioner is fixed at Rs.1,00,000/-. It is also made clear if the Court Commissioner/Local Commissioner has to visit any other premises other than the address mentioned hereinabove, the plaintiff shall pay additional fee of Rs.50,000/- for visiting each premises.

21. The fee of the Court Commissioner/Local Commissioner shall be paid in advance.

22. The plaintiff is directed not to give any publicity in the electronic or print media without the permission of this Court.

23. The report of the Court Commissioner/Local Commissioner shall be placed on record within three weeks of executing the commission.

24. Plaintiff shall serve a copy of this order upon the defendants along with paper book at the time of execution of proceedings by the Court Commissioner/Local Commissioner.

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25. Plaintiff shall inform the Registry about execution of proceedings by the Court Commissioner/Local Commissioner and only thereafter, Registry shall issue summons of the suit to the defendant.

26. This order shall not be uploaded on the website of this Court till execution of proceedings by the Court Commissioner/ Local Commissioner.

27. A copy of this order be given to the learned counsel for plaintiff and to Court Commissioner/Local Commissioner under the signatures of the Court Master for information and compliance.

*Sd/-*

SURESH KUMAR KAIT, J

NOVEMBER 18, 2021

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