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

+ **CS(COMM) 209/2021**

SUN PHARMACEUTICAL INDUSTRIES LTD. Plaintiff

Through: **Mr. Sachin Gupta and Ms. Rajnandini Mahajan, Advocates.**

versus

NUKIND HEALTHCARE P. LTD. & ANR. Defendants

Through: **None.**

**CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA**

**ORDER
28.04.2021**

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[VIA VIDEO CONFERENCING]

I.A. 5987/2021 (for exemption)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

I.A. 5988/2021 (for seeking leave to file additional documents)

3. This is an application seeking leave to file additional documents under the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (*hereinafter, 'Commercial Courts Act'*).
4. The Plaintiffs, if they wish to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act.



5. Accordingly, the application stands disposed of.

CS(COMM) 209/2021

6. Let the plaint be registered as a suit.

7. Upon filing of process fee, issue summons to the Defendant by all permissible modes. Summons shall state that the written statement shall be filed by the Defendant within 30 days from the date of receipt of summons. Along with the written statement, the Defendant shall also file an affidavit of admission/denial of the documents of the Plaintiffs, without which the written statement shall not be taken on record.

8. Liberty is given to the Plaintiffs to file a replication within 15 days of the receipt of the written statement. Along with the replication, if any, filed by the Plaintiffs, an affidavit of admission/denial of documents of the Defendant, 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.

9. List before the Joint Registrar for marking of exhibits on 16th July, 2021. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

10. List before Court for framing of issues thereafter on 27th August, 2021.

I.A. 5990/2021 (under Order 26 Rule 9 r/w Order 29 Rule 7 CPC and Section 135 of Trade Marks Act, 1999)

11. Mr. Sachin Gupta, learned counsel for the Plaintiff on instructions, submits that considering the prevailing situation in the country on account of COVID-19 pandemic and the lockdown restrictions, he would not like to



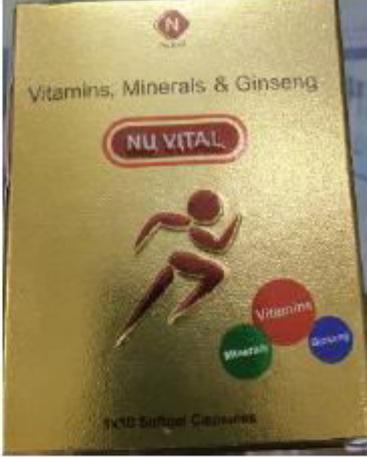
press the present application.

12. Accordingly, the same is dismissed as not pressed.

I.A. 5989/2021 (under Order 39 Rule 1 & 2 r/w Section 151 CPC)

13. The Plaintiff has filed the present suit for permanent injunction restraining infringement of trademark & copyright, passing off, unfair competition, damages, delivery up, etc. against the Defendants. The case of the Plaintiff pertains to the impugned mark 'NUVITAL' which is deceptively similar to Plaintiff's prior registered and used trademark 'REVITAL' for identical goods. The Plaintiff contends that the impugned mark is phonetically, structurally and visually similar to the Plaintiff's trademark and therefore amounts to infringement of Plaintiff's trademark. The Defendants are using a similar color combination for the carton packing and for the circles displaying the contents of the product i.e., Mineral (in Green color), Vitamins (in Red color) & Ginseng (in Blue color) which is very prominent and a blatant copy of the placement of the said words on the Plaintiff's product. The entire Red, Brown and Golden Label/Packaging/Trade Dress of Defendant is deceptively similar to the Plaintiff's well known and registered REVITAL Red, Brown and Golden Label/Carton Packaging/Trade Dress. The use of the "Capsule Device" label in which the word 'NUVITAL' is mentioned also amounts to infringement of Plaintiff's registered "REVITAL Capsule Device" label. The competing trade dress/marks are reproduced below:

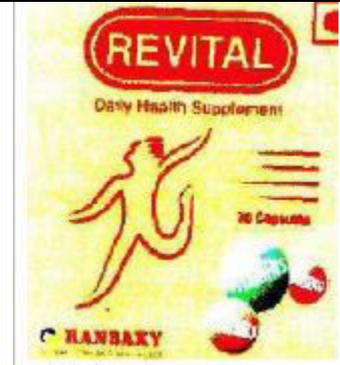


Plaintiff's	Defendants'
	
	

14. The Plaintiff contends that it has been using their trademark 'REVITAL' since 1988 and as such has acquired immense goodwill and reputation in the same which is evident from its sales which was recorded as INR 17,142 lacs in the financial year 2018-19. The Plaintiff has registrations for its 'REVITAL' trademark/label/carton packaging and trade dress under nos. 447372, 1746828, 1746829, 2090755, 2575070, 2866846 etc. To the best of the Plaintiff's knowledge, the Defendants do not hold any registration for the impugned mark 'NUVITAL' or its label/trade dress/packaging till date. The packaging of the Defendants' product procured by the Plaintiff reveals that the same was manufactured recently (February 2021) which indicates that the Defendants have only recently adopted the impugned mark.



15. The mark 'REVITAL' was coined by the Plaintiff's predecessor, Ranbaxy Laboratories Ltd. in the year 1985 and has been in use as a daily health supplement since the year 1988. The mark being coined enjoys inherent distinctiveness indicating trade origin and source of the goods bearing the said trademark. 'REVITAL' is also registered in India, the details of which is as under:

Trade Mark	Class	Registration no. & Date	Goods
REVITAL	5	447372 dated 26.12.1985	Pharmaceutical and Medical Preparations
	5	2090755 dated 28.01.2011	Pharmaceutical and Medical Preparations for human and veterinary use
	5	2575070 dated 02.08.2013	Dietic and nutritional food supplements

16. The aforementioned 'REVITAL' Label/Trade Dress/ Carton Packaging including their overall colour combination, get up, placement of features constitutes "original artistic work" within the meaning of Section 2(c) of the Copyright Act, 1957 (in short "the Act") thereby being entitled to copyright protection under the provisions of Section 14 of the Act. The above artistic works have been designed and created at the instance of the Plaintiff for consideration paid. The Plaintiff is, therefore, the owner of the copyright in the said artistic work thereby having exclusive right to use or reproduce the



same in any material form. Any unauthorized reproduction or imitation or use of such imitation by any unauthorized person would constitute infringement of copyright under Section 51 of the Act, which is liable to be enjoined under Section 55 of the Act.

17. The Plaintiff has made out a *prima facie* case in its favour and the balance of convenience also lies in its favour. In case *ex-parte* injunction is not granted, the Plaintiff is likely to suffer irreparable loss. Further considering the fact that the product in question is a health supplement, the *ex-parte* injunction prayed for is warranted in the facts of the present case. Accordingly, the Defendants, their directors, partners, its assignees in business, its distributors, dealers, stockists, retailers/chemists, servants and agents are restrained from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in medicinal preparations/health supplements under the impugned mark 'NUVITAL' its label/carton packaging/trade dress or any other trade mark/label/carton packaging/trade dress as may be deceptively similar to the Plaintiff's trade mark 'REVITAL' its label/carton packaging/trade dress thereby amounting to infringement of trade mark & copyright and passing off of the Plaintiff's well-known mark 'REVITAL'.

18. The Defendant Nos. 1 and 2 are further directed to file an affidavit within a period of two weeks from the date of receipt of the present order, indicating the steps taken by them to implement the aforesaid order by issuing necessary directions to the chemist/stockists for recall of the product in question from the market. The affidavit should also disclose the quantities and the last batch number manufactured by them of the product bearing the impugned mark 'NUVITAL'.



19. Compliance of Order XXXIX Rule 3 to be done within one week from today.
20. Issue notice, upon filing of process fee, to the Defendants by all possible modes, returnable on the next date of hearing.
21. List before the Joint Registrar on 16th July, 2021.
22. List before the Court on 27th August, 2021.

SANJEEV NARULA, J

APRIL 28, 2021

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