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

+ CS(COMM) 796/2024

SUN PHARMACEUTICALS INDUSTRIES LIMITED .....Plaintiff

Through: Mr. Sachin Gupta, Ms. Prashansa Singh, Mr. Rohit Pradhan, Mr. Ajay Kumar and Mr. Adarsh Agarwal, Adv.

Versus

GODDRES PHARMACEUTICALS PRIVATE LIMITED

& ANR.

.....Defendants

Through: None

**CORAM:**

**HON'BLE MR. JUSTICE SAURABH BANERJEE**

**ORDER**

% **17.09.2024**

**I.A. 39535/2024** (*pre-litigation mediation*)

1. The plaintiff vide the present application seeks exemption from instituting pre-litigation mediation.

2. Considering the averments made in the present application wherein the plaintiff seeks urgent ad-interim reliefs as also appointment of Local Commissioner and in view of *Yamini Manohar vs. T.K.D. Krithi 2023 SCC OnLine 1382* and *Chandra Kishore Chaurasia vs. R. A. Perfumery Works Private Limited 2022:DHC:4454-DB*, the plaintiff is exempted from instituting pre-litigation mediation.

3. Accordingly, the present application is allowed and disposed of.

**I.A. 39536/2024**(*exemption*)

4. Exemption allowed as sought, subject to all just exceptions.

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5. The application stands disposed of.

**I.A. 39537/2024** (*exemption from advance service*)

6. The plaintiff vide the present application seeks exemption from advance service upon the defendants.

7. Learned counsel for the plaintiff submits that considering the position involved, particularly since appointment of Local Commissioner for search and seizure at the premises of the defendants are being sought, there is a likelihood that the apprehensions of the plaintiff that evidence might be disposed will become a reality in case advance service is affected and therefore, an exemption from effecting advance service is necessary.

8. For the reasons stated in the application as also taking into account the aforesaid factors and in the interest of justice, the plaintiff is granted exemption from effecting advance service upon the defendants.

9. Accordingly, the present application is allowed and disposed of.

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10. The plaintiff by way of the present suit seeks permanent injunction restraining infringement of trade mark, passing off, infringement of copyright, delivery and rendition of accounts against the defendants.

11. Let the plaint be registered as a suit.

12. Upon filing of the process fee, issue summons of the suit to the defendants through all permissible modes returnable before the Joint Registrar on 16.12.2024.

13. The summons shall state that the written statement(s) be filed by the defendants within a period of *thirty days* from the date of the receipt of the



summons. Written statement(s) be filed by the defendants along with affidavit(s) of admission/ denial of documents of the plaintiffs, without which the written statement(s) shall not be taken on record.

14. Replication thereto, if any, be filed by the plaintiff within a period of *fifteen days* from the date of receipt of written statement(s). The said replication, if any, shall be accompanied by with affidavit(s) of admission/ denial of documents filed by the defendants, without which the replication shall not be taken on record within the aforesaid period of *fifteen days*.

15. If any of the parties wish to seek inspection of any document(s), the same shall be sought and given within the requisite timelines.

16. List before the Joint Registrar for completion of pleadings on 16.12.2024. It is made clear that if any party unjustifiably denies any document(s), then it would be liable to be burdened with costs.

17. List before the Court on 20.01.2025.

**I.A. 39533/2024** (*Order XXXIX rule 1 & 2 CPC, 1908*)

18. The plaintiff vide the present application seeks an *ex-parte ad- interim* injunction against the defendants.

19. From the pleading and arguments advanced by the learned counsel for the plaintiff the following are borne out:-

19.1. The plaintiff, Sun Pharmaceutical Industries Ltd., is a company under the Companies Act, 2013 having its registered office at Sun House, Plot No.201B/1, Western Express highway, Goregaon (East) Mumbai, Maharashtra-400063.



19.2. The plaintiff and its group companies market, manufacture, trade pharmaceutical and medicinal preparations, drugs and formulations in more than 100 countries of the world under its trade marks SUN/ SUN PHARMA/ SUN PHARMACEUTICALS and had a consolidated global revenue from operations of over Rs.4,32,788.7 Million in the financial year 2022-2023.

19.3. One of the pharmaceutical preparations marketed by the plaintiff is under the trademark RACIRAFT which was coined, adopted and registered by the plaintiff on 17.01.2022 in Class 5. RACIRAFT is a combination drug containing, Sodium Alginate, Calcium Carbonate, and Sodium Bicarbonate and is used for the treatment of acidity and heartburn.

19.4. The defendant no.1, a company under the Companies Act, 2013, applied for registration of the impugned mark ZACIRAFT under application no.6261074 on 15.01.2024 before the Trade Marks Registry on a “*proposed to be used*” basis wherein in the objection raised by the Trade Marks Registry, the trademark ZACIRAFT was cited.

19.5. The defendants have adopted the whole of the plaintiff's trademark RACIRAFT and merely replaced the initial letter 'R' with 'Z' which is visually, structurally as well as phonetically (deceptively) similar to the plaintiff's trademark RACIRAFT and is being used as a cure for the same ailment. Furthermore, defendants adopted the impugned mark ZACIRAFT PLUS with a mere addition of "PLUS".

19.6. The plaintiff has no control, access or supervision over the mode of manufacture, working conditions, technical expertise, plant and machinery, hygienic conditions and the raw material used by the defendants for



manufacture, packaging and sale of the medicinal preparation under the impugned mark ZACIRRAFT/ ZACIRRAFT PLUS and any deficiency in the efficacy of the product or any health hazard caused to the consumers, by use of the product marketed and manufactured by the defendants under the impugned mark ZACIRRAFT/ ZACIRRAFT PLUS, will directly and adversely affect and cause irreparable prejudice, damage and injury to the goodwill and reputation of the plaintiff.

20. This Court has heard the learned counsel for the plaintiff and perused the pleadings as well as the documents on record.

20.1. The defendants have replicated the registered trademark RACIRRAFT of the plaintiff as it is by adopting ZACIRRAFT plus and only replacing the first alphabet thereof. The competing marks are thus visually, phonetically and structurally deceptively similar to each other. Not only that, the products of the defendants under the impugned mark are also for the same disease(s) as that of the plaintiff.

20.2. Being engaged in carrying on its business in the same line, and that too through the same kind of traders for catering to the same line of customers, it can hardly be said that the defendants were unaware of the plaintiff and/ or its trademark RACIFART.

20.3. In view of the law laid down in *Cadila Health Care v. Cadila Pharmaceuticals Ltd* AIR 2001 SC 1952, *Heinz Italia & Anr. v. Dabur India Ltd.* (2007) 6 SCC 1, *Brihan Karan Sugar Syndicate Private Limited vs. Yashwantrao Mohite Krushna Sahakari Sakhar Karkhana* (2024) 2 SCC 577 and *Brittania Industries Ltd. v. ITC India Ltd.* (2021) SCC OnLine



Del 1489 qua pharmaceutical preparations, this Court is required to be more cautious and stringent. As such, the competing impugned mark(s) of the defendants cannot be allowed to subsist and/ or continue further.

21. In view of the aforesaid, the plaintiff has been able to make out a *prima facie* case with the *balance of convenience* for grant of an *ad interim ex-parte injunction* in their favour and against the defendants. In case the defendants are not restrained by way of an *ad interim ex-parte* injunction, there is a likelihood of the plaintiff suffering *irreparable harm, loss, injury and prejudice* which cannot be compensated for in terms of money.

22. Accordingly, till the next date of hearing, the defendants, their directors, their assignees in business, affiliates, associates, predecessors, successors in business, their distributors, dealers, stockists, retailers, chemists, custodians, franchisees, licensees, importers, exporters, servants, agents and all persons claiming through and/or under them or acting on their behalf is/are restrained from manufacturing, selling, offering for sale, advertising, distributing, marketing, exhibiting for sale, trading in or otherwise directly or indirectly dealing in medicinal & pharmaceutical preparations or similar or like or allied goods under the impugned mark ZACIRAFIT/ ZACIRAFIT PLUS or any other extensions and/or any trade mark containing the word ZACIRAFIT/ ZACIRAFIT PLUS, and/or any other trade mark as may be deceptively similar to the plaintiff's registered trade mark RACIRAFIT in any form or manner.

23. Upon filing of the process fee, issue notice to the defendants by all permissible modes returnable before the Joint Registrar on 16.12.2024.



24. Reply, if any, be filed within a period of *thirty days* from the date of service. Rejoinder thereto, if any, be filed within a period of *fifteen days* thereafter.

25. The provisions of *Order XXXIX Rule 3 CPC* be complied within two weeks.

26. List before the Court on 20.01.2025.

**I.A. 39534/2024**(*Order XXVI Rule 9 CPC, 1908: Appointment of Local Commissioner*)

27. The plaintiff, vide the present application, seeks appointment of Local Commissioner to visit the premises of the defendant no.2.

28. Learned senior counsel for the plaintiff submits that the defendants are aware of the plaintiff and their products and the infringing materials placed on record are clear evidence of the intention of the defendants to ride upon the goodwill and reputation of the plaintiff. The plaintiff believes that the infringing products are stocked at the location set out in the memo of parties filed with the plaint and the defendant no.2 are likely to remove all physical evidence or deny their involvement in the infringing activities.

29. In view of the aforesaid as also considering the factual matrix involved, and most relevantly, in order to preserve the counterfeit and infringing materials involved, in the considered opinion of this Court, it is deemed appropriate to appoint Local Commissioner to visit the premises of the defendant no.2 as prayed for.

30. Accordingly, Ms. Swadha Gupta, Advocate [91-8587970190] is appointed as Local Commissioner with a direction to visit the premises of the



defendant no.2 at CU-V-KAR Genetic Medicines Pvt. Ltd. 14 Pharmacy, Selaqui, Dehradun, Uttarakhand 248011.

32. The Local Commissioner is to execute the commission in the premises of the defendant no.2 with the following directions:-

- a) The Local Commissioner be accompanied by a representative of the plaintiff and/ or its counsel, who shall be permitted to enter into the premises of the respective defendants.
- b) The Local Commissioner to seize, pack and seal the infringing products and other material bearing the plaintiffs' trade marks and/or its trade dress and/or any other marks which are identical and/or deceptively and confusingly similar to the plaintiffs' said trade marks and trade dress and handover the same on *Superdari* to the defendant no.2 upon the said defendant giving an '*Undertaking*' that they shall not tamper with or remove the sealed products as also shall in compliance of the orders of this Court, as and when passed, produce the sealed products under *Superdari*.
- c) The Local Commissioner is permitted to take photocopies and/ or screenshots of all the books of accounts including ledgers, cashbooks, bill books, purchases and sales records or any document(s) deemed necessary found in the premises of the defendants, etc. for placing the hard copies or e- copies thereof on record.



- d) The Local Commissioner is permitted to make video recording of execution of the commission at the premises of the defendants in compliance of the present order.
- e) The Local Commissioner is permitted to take the assistance of the Station House Officer [SHO] of the local Police Station within whose jurisdiction the premises of the defendants are situated. The said SHO is directed to render and provide all and every necessary assistance and protection to the Local Commissioner, if as and when sought for ensuring unhindered and effective execution of the commission at the premises of the defendants in compliance of the present order.
- f) If the premises of the defendant(s) is found under lock(s), the Local Commissioner is permitted to break open the said lock(s) in the presence of the SHO/ any designated police officer from the local Police Station.
33. The fee of the Local Commissioner is fixed at *Rs.1,50,000/- [Rupees One Lakh Fifty Thousand Only]* in addition to all the related expenses for travel as also any other miscellaneous out of pocket expenses for execution of the commission. All the aforesaid expenses shall be borne by the plaintiff and paid in advance to each of the Local Commissioner.
34. The commission be executed within a period of *ten days* from today, i.e. on or before 27.09.2024.
35. The report of the Local Commissioner be filed within a period of two weeks from the date of the execution of the commission.



36. A copy of this order be provided to the Local Commissioner.

37. Accordingly, the application is allowed and disposed of.

*Dasti.*

**SAURABH BANERJEE, J**

**SEPTEMBER 17, 2024**

**Ab**