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

+ **CS(COMM) 459/2022**

SUN PHARMACEUTICAL INDUSTRIES LTD. Plaintiff

Through: Mr. Sachin Gupta, Ms. Jasleen Kaur,
Ms. Swati Meena and Ms. Yashi Aggarwal,
Advocates.

versus

M/S. VENSAT BIO & ORS.

..... Defendants

Through: None.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

% **08.07.2022**

I.A. 10339/2022 (Exemption)

1. Subject to the Plaintiff filing originals, clearer copies and documents with proper margins, which it may seek to place reliance on, within four weeks from today, exemption is granted.

2. Application is allowed and disposed of.

I.A. 10338/2022 (Exemption from advance service)

3. Since there is an urgency in the matter and the same is being heard today, Plaintiff is exempted from serving advance notice on the Defendants.

4. For the reasons stated in the application, the same is allowed and disposed of.

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5. Let plaint be registered as a suit.

6. Upon filing of process fee, issue summons to the Defendants, through all permissible modes, returnable on 13.10.2022 before the learned Joint Registrar.

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7. Summons shall state that the written statement shall be filed by the Defendants within 30 days from the receipt of summons. Along with the written statement, Defendants shall also file an affidavit of admission/denial of the documents filed by the Plaintiff.

8. Replication be filed by the Plaintiff within 15 days of the receipt of the written statement. Along with the replication, an affidavit of admission/denial of documents filed by the Defendants, shall be filed by the Plaintiff.

9. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

I.A. 10340/2022 (under Order 39 Rules 1 and 2 CPC, by Plaintiff)

10. Present application has been preferred by the Plaintiff under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 for grant of an *ex-parte ad-interim* injunction.

11. Issue notice to the Defendants through all prescribed modes, returnable on 09.11.2022.

12. It is averred that Plaintiff started business of marketing pharma products as a proprietary firm in the year 1978. In 1982, a partnership firm under the name and style of M/s. Sun Pharmaceutical Industries was formed to manufacture, deal in and trade into pharmaceutical goods, preparation and allied goods and services. On 01.03.1993, the Partnership firm was converted into a Joint Stock Company and was incorporated under the Companies Act, 1956 under the name and style of Sun Pharmaceutical Industries Ltd. (SPIL).

13. It is further averred that the Plaintiff markets drugs and formulations in more than 150 countries of the world, with 45 manufacturing sites in 6



Continents and 10 world class Research Centres with over 30,000 strong multi-cultural work forces from over 50 different nationalities. Plaintiff is now ranked as No. 1 Pharma Company in India in a total of 11 specialties and is the world's 4th largest Generic Pharmaceutical Company. Plaintiff has multiple factory sites which have been granted US Food and Drug Administration (USFDA) approval.

14. It is stated in the plaint that Plaintiff's manufacturing operations are focused on producing generics, branded generics, specialty, Over-the-Counter (OTC) products, Anti-Retrovirals (ARVs), Active Pharmaceutical Ingredients (APIs) and intermediates in the full range of dosage forms, including tablets, capsules, injectables, ointments, creams and liquids. Plaintiff also manufactures specialty APIs, including controlled substances, steroids, peptides and anti-cancers. Plaintiff has a highly skilled team of regulatory affairs specialists who are well versed with regulatory policies and procedures around the world. Plaintiff has a wealth of experience in the timely filing of dossiers as well as handling regulatory queries from both authorities and customers.

15. It is averred that *vide* a duly approved Scheme of Arrangement, Plaintiff acquired all the assets along with the intellectual property of Ranbaxy Laboratories Limited. The said Scheme of Arrangement between Plaintiff and Ranbaxy Laboratories Limited was duly approved and sanctioned by the High Court of Gujarat *vide* order dated 24.12.2014 in Company Petition No. 219 of 2014 and by the High Court of Punjab and Haryana *vide* order dated 09.03.2015 passed in Company Petition Nos. 132 of 2014 and 165 of 2014. By virtue of Clause 12 of the duly approved Scheme of Arrangement, all the intellectual property along with the



goodwill, including the trademark which is the subject matter of the present proceedings, stood transferred from Ranbaxy Laboratories Limited in favour of the Plaintiff.

16. It is averred that Plaintiff in the year 1978 adopted and started using the trademark 'SUN'/'SUN PHARMA'/'SUN PHARMACEUTICAL' (hereinafter referred to as SUN) as a trade name and subsequently, as a trademark and house mark. The said trademark SUN has since then been used continuously, extensively and openly. Trademark SUN appears on all of the Plaintiff's products, packaging, promotional materials and stationery and even on the office buildings. The said mark is also prominently displayed on its website namely www.sunpharma.com.

17. It is averred that in the year 1973, Plaintiff's predecessor coined and invented the trademark 'SPORIDEX', which had been used since the year 1980. Plaintiff's medicine under the trademark SPORIDEX contains the salt Cefalexin and is used to treat bacterial infections in various parts of the body, such as, lungs, ears, throat, urinary tract, skin, soft tissues, bones and joints. The said medicine is a Schedule 'H' drug.

18. It is also stated that Plaintiff's predecessor filed and obtained registration for the trademarks SPORIDEX on 23.11.1973 in Class 05 for the goods namely "*medicinal, pharmaceutical preparations, ...etc.*". Plaintiff has been recorded as the subsequent proprietor in respect of trademark with registrations under no. 292373, 625059 and 648354 with the Trade Marks Registry, as reflected from the details furnished in the Plaint. The said marks are duly registered, renewed, valid and subsisting and there is no disclaimer on the said trademarks. However, registration under no. 625059 is registered



with a condition that the trademark MUCOSPORIDEX shall give no right to the exclusive use of word 'MUCO'.

19. It is further stated that the trademark SUN being an arbitrary mark and trademark SPORIDEX being a coined and invented mark enjoys inherent distinctiveness indicating trade origin and source of the products bearing the said trademark as that of the Plaintiff. It is also stated that Plaintiff's trademarks SUN and SPORIDEX have acquired formidable goodwill, reputation and distinctiveness vis-a-vis such goods.

20. It is also averred that the immense reputation and goodwill of the trademark/house mark/trade name SUN, which appears on all the products of the Plaintiff, is well-reflected in its sales turnover which is Rs.3,31,392 Lakhs which is growing every year, as reflected from the details furnished in the Plaint.

21. It is further averred that due to superior quality and high efficacy of its said medicine bearing the trademark SPORIDEX, continuous and extensive use of the said trademark and large sales of the said medicine bearing the said trademark, Plaintiff has acquired immense reputation and goodwill in the said trademark and the medicine sold thereunder. The result of the efficacy of the medicinal preparation under the abovementioned trademark is well-reflected in Plaintiff's consolidated annual turnover of Rs. 33,139/- crores globally. Sales turnover of the Plaintiff for the year 2020-2021 is Rs. 7,786.17 Lakhs, which is growing steadily every year, details of which are given in the Plaint.

22. It is averred that Defendant No. 1, namely, Vensat Bio is a Company and Defendant No. 2, namely, Madhav Biotech Pvt. Ltd. is pharmaceutical company, incorporated under the Companies Act, 2013. Defendant No. 3,



namely M/s Orison Pharma International, appears to be a Partnership firm. It is apparent from Defendant No. 2's website that both Defendants No. 1 and 2 are sister concerns. Further, Defendants No. 1 and 2 are engaged in marketing and Defendant No. 3 is engaged in manufacturing of the medicine under the impugned mark SPORTEK.

23. It is further averred that in the 1st week of June 2022, Plaintiff came across Defendants' medicine under the impugned mark SPORTEK being sold at Delhi. From the packaging of the impugned medicines it was learnt that Defendant No. 3 is also using the impugned trading name ORISON/ORISON PHARMA. Further, Defendants' medicine under the impugned mark SPORTEK were also found to be listed/selling through various e-pharmacies such as MedPlus Mart, MedIndia, and MediBuddy.

24. It is further stated that Defendants' medicine under the impugned mark SPORTEK contains the same molecule Cephalexin and is used to treat bacterial infections in various parts of the body, such as, lungs, ears, throat, urinary tract, skin, soft tissues, bones, and joints and is a Schedule 'H' drug.

25. It is also stated that to the best of the Plaintiff's knowledge, Defendants have not filed any application for registration of the impugned marks SPORTEK/ORISON/ORISON PHARMA in the relevant class.

26. It is averred that Defendants' medicine under the impugned mark SPORTEK is listed and/or being sold on Defendant No. 3's own website and various e-pharmacies, such as MedPlus Mart, MedIndia and MediBuddy.

27. Learned counsel for the Plaintiff contends that Defendants' impugned marks/trade names SPORTEK and ORISON/ORISON PHARMA are deceptively similar to the Plaintiff's registered trademarks/trade names SPORIDEX and SUN/SUN PHARMA and hence their use will cause



confusion and deception amongst customers. Use by Defendants of the impugned marks for similar products constitutes infringement. Plaintiff's trademarks have been extensively and commercially used in the course of trade since year 1980 and have acquired distinctiveness and formidable goodwill and reputation as a badge of quality products originating from the Plaintiff. The intent of the Defendants in using a deceptively similar mark for pharmaceutical preparations is clearly to misrepresent and encash on the immense goodwill of the Plaintiff and the Defendants being guilty of committing an actionable tort are liable to be enjoined under provisions of Section 135 of the Trade Marks Act, 1999.

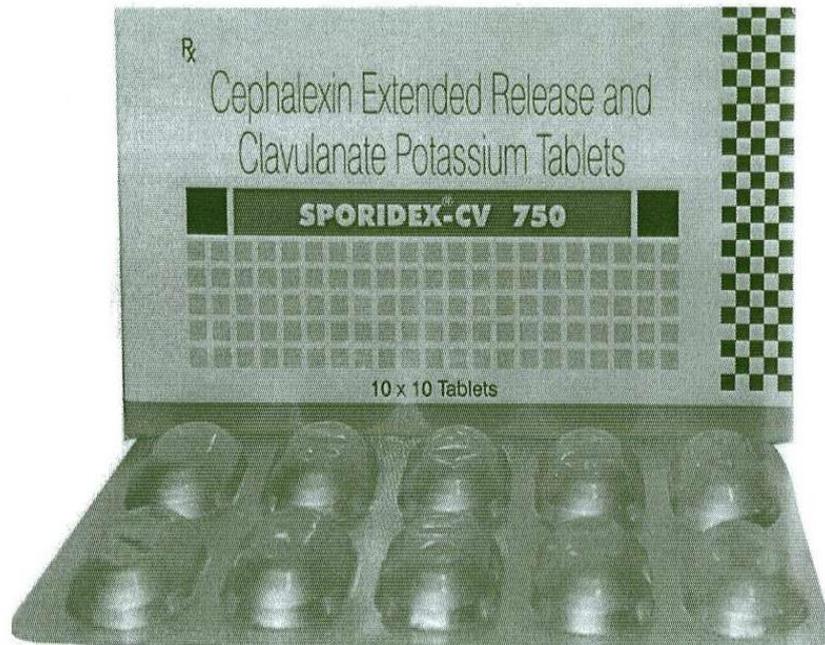
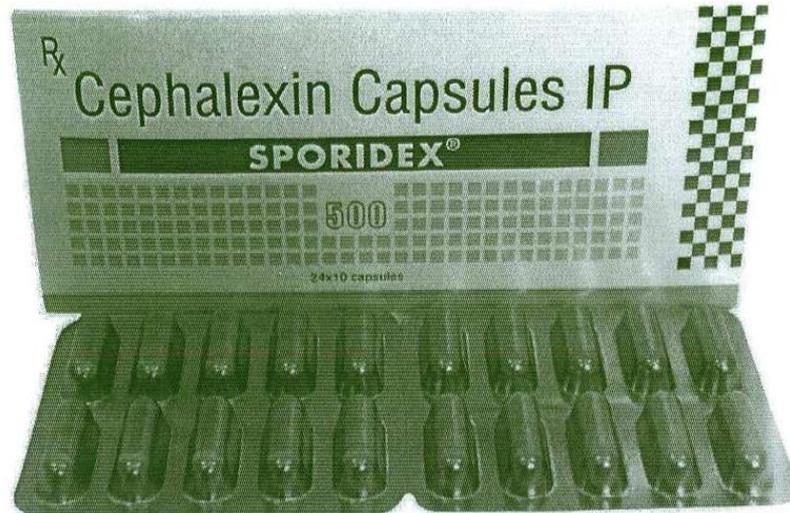
28. It is further contended that the Defendants ought to be enjoined even in public interest. Plaintiff has no control, access or supervision over the mode of manufacture, hygiene conditions etc. maintained by the Defendants for manufacture, packaging and sale of the medicinal preparation under the impugned mark. Any deficiency in the efficacy of the product could be a serious health hazard to the consumers. The Supreme Court in ***Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd., (2001) 5 SCC 73***, has clearly held that in respect of pharmaceutical and medicinal preparations the threshold of the test of confusion is much lower compared to other products and stricter approach should be adopted while applying the test to judge the possibility of confusion of one medicinal product for another by the consumer.

29. Having heard learned counsel for the Plaintiff, this Court is of the view that Plaintiff has made out a *prima facie* case for grant of *ex parte ad-interim* injunction in respect of the trademark 'SPORIDEX', at this stage. Balance of convenience lies in favour of Plaintiff and it is likely to suffer



irreparable harm in case the injunction, as prayed for, is not granted.
Comparative of the two competing marks is as follows:-

**PLAINTIFF'S MEDICINE UNDER THE TRADEMARK
SPORIDEX**





DEFENDANT'S MEDICINE UNDER THE IMPUGNED TRADEMARK SPORTEK



30. Accordingly, Defendants, their Directors, Partners, Proprietors, their assignees in business, licensees, franchisee, distributors, dealers, stockists, retailers, chemists, are restrained from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in medicinal and pharmaceutical preparations under the impugned trademark SPORTEK or any other trademark as may be deceptively similar to Plaintiff's registered trademark 'SPORIDEX', amounting to infringement of Plaintiff's registered trademark and passing off of the Defendant's goods for those of Plaintiff's, till the next date of hearing.

31. Plaintiff shall comply with the provisions of Order 39 Rule 3 CPC within a period of one week from the execution of the local commissions.



I.A. 10341/2022 (For appointment of Local Commissioner)

32. Present application has been preferred by Plaintiff under Order 26 Rule 9 read with Order 39 Rule 7 CPC, seeking appointment of Local Commissioners.

33. Although in the application, Plaintiff has referred to two addresses, however, during the course of arguments, learned counsel for the Plaintiff submits that the infringing goods are likely to be found at a third premise and therefore, one of the Local Commissioners so appointed, be directed to visit the third address also and offers to pay an additional fee in that regard.

34. Upon hearing, the application is allowed.

35. Accordingly, Mr. Vishal Patel, Advocate (Mobile No. 9716319899) and Mr. Sajan Shankar Prasad, Advocate (Mobile No. 9999343357) are appointed as Local Commissioners.

(a) Mr. Vishal Patel, Advocate shall visit the premises at the following address:-

Madhav Biotech Pvt. Ltd.

3, Amar Building, Chambaghat,
Solan, Himachal Pradesh -173213.

(b) Mr. Sajan Shankar Prasad, Advocate shall visit the premises at the following addresses:-

a) M/s. Orison Pharma International

Khari, Mauza-Ogli, Kala Amb,
Himachal Pradesh-173030.

b) Saphnix Life Sciences

Village Barotiwala, Paonta Sahib,
Himachal Pradesh-173025.

36. Local Commissioners shall visit the aforesaid premises, search and take into custody the infringing products bearing the impugned mark as



forementioned, including packaging, promotional materials, stationery, dyes, blocks, etc. and prepare an inventory of the same.

37. Local Commissioners along with the Representative(s) of the Plaintiff and/or its counsel shall be permitted to enter the premises of the Defendants, as aforementioned.

38. Local Commissioners shall seize the infringing products and hand over the same to the Defendants on *superdari*, upon the Defendants furnishing an undertaking that they shall produce the goods, so seized, before the Court, as and when further directions are issued in this regard.

39. Local Commissioners shall make copies and sign books of accounts including stocks and excise register ledgers, cash books, purchase vouchers, sale records, etc., found in the premises mentioned above.

40. Local Commissioners shall be permitted to take photographs/videos of the execution of the Commission. They shall also be entitled to seek police assistance or protection of the Local Police Station(s), if so required, for the purpose of execution of the order of this Court. The SHO(s) of the concerned Police Station(s) are directed to provide necessary assistance to the Local Commissioners, if sought for.

41. In case the premises as aforementioned are found locked, the Local Commissioners are at liberty to break open the locks.

42. Plaintiff shall serve a copy of this order upon the Defendants along with paper book of the suit at the time of execution of the proceedings.

43. Fee of Local Commissioners is fixed as Rs.1,50,000/- each in addition to travel, boarding and lodging expenses as well as other miscellaneous out-of-pocket expenses for the execution of the Commissions. An additional fee of Rs. 50,000/- shall be paid to Mr. Sajan Shankar Prasad, Advocate, as



offered by learned counsel for the Plaintiff, for his visit at the second address aforementioned. Fee of the Local Commissioners shall be paid in advance by the Plaintiff.

44. Report of the Local Commissioners shall be filed within two weeks of the execution of the Commissions.

45. Plaintiff shall inform the Registry about the execution of the proceedings by the Local Commissioners and only thereafter, Registry shall issue summons of the suit to the Defendants.

46. This order shall not be uploaded on the website of this Court till execution of the Commissions by the Local Commissioners.

47. Application is accordingly disposed of.

48. Copy of this order be given to learned counsel for the Plaintiff *dasti* under the signatures of the Court Master.

JYOTI SINGH, J

JULY 08, 2022/rk