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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(COMM) 23/2018

SUN PHARMACEUTICAL INDUSTRIES LIMITED Plaintiff
Through: Mr. Sachin Gupta, Advocate.

versus

M/S A.S. LIFESCIENCES & OTHERS Defendants
Through: None.

**CORAM:
HON'BLE MR. JUSTICE MANMOHAN**

ORDER

11.01.2018

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I.A.405/2018 in CS(COMM) 23/2018

Keeping in view the averments in the application, plaintiff is exempted from filing the originals/clearer/typed/translated copies of documents at this stage and is also permitted to file additional documents within thirty days.

Needless to say, this order is without prejudice to the rights and contentions of the parties.

Accordingly, present application stands disposed of.

CS(COMM) 23/2018

Let the plaint be registered as a suit.

Issue summons in the suit to the defendants by all modes including *dasti*, returnable for 14th March, 2018 before the Joint Registrar for completion of service and pleadings.

The summons to the defendants shall indicate that a written statement to the plaintiff shall be positively filed within four weeks of the receipt of the summons. Liberty is given to the plaintiff to file a replication within two weeks of the receipt of the advance copy of the written statement.

The parties shall file all original documents in support of their respective claims along with their respective pleadings. In case parties are placing reliance on a document which is not in their power and possession, its detail and source shall be mentioned in the list of reliance which shall be also filed with the pleadings.

Admission/denial of documents shall be filed on affidavit by the parties within two weeks of the completion of the pleadings. The affidavit shall include the list of the documents of the other party. The deponent shall indicate its position with regard to the documents against the particulars of each document.

List the matter before Court on 15th May, 2018.

I.A.406/2018 in CS(COMM) 23/2018

Issue notice to defendants by all modes including *dasti*, returnable for 14th March, 2018 before the Joint Registrar.

It is pertinent to mention that the present suit has been filed for permanent injunction restraining infringement of trademark, passing-off, unfair competition, rendition of accounts, damages, delivery up, etc.

In the plaint, it is stated that the plaintiff is engaged in the medicinal and pharmaceutical business since 1978 and markets drugs and formulations in more than 150 countries worldwide under its extensive range of distinctive trademarks/brand names. It is stated that the plaintiff has a consolidated annual turnover of over Rs.30,000 Crores globally.

It is further stated in the plaint that the plaintiff is the top Pharma Company in India in a total of 11 specialities and is the world's fourth largest generic pharmaceutical company and has manufacturing sites in six continents and 10 world class research centres with over 30,000 strong multi-cultural workforces from over 50 different nationalities.

It is stated in the plaint that the plaintiff (predecessor in title) namely Ranbaxy Laboratories Ltd. coined the trade mark LULIFIN in April 2008 and has been using the same for the last eight years i.e. since January 2010. It is stated in the plaint that the plaintiff (predecessor in title) obtained the registration of the trade mark LULIFIN in Class 5 of the Trade Marks Act, 1999 on 21st April, 2008 for treatment of conditions or disease related to mycotic infection in the form of antifungal cream. Learned counsel for plaintiff states that the medicine in question was a patented drug till 2016.

It is the case of the plaintiff that the plaintiff has taken efforts to popularise goods sold under the trade mark LULIFIN and spent a substantial sum of money on sales promotion, advertisement and publicity of the said goods. The sales figure of the antifungal cream sold under the mark LULIFIN in the financial year 2016-2017 was Rs. 2599 lacs.

Learned counsel for the plaintiff states that the plaintiff has been vigilantly protecting its statutory and common law rights in the LULFIN trade mark and has secured injunctions against various third parties selling goods under conflicting marks namely LULJEN, LULICLIN and LULIZEN.

Learned counsel for the plaintiff states that in the first week of January, 2018 the plaintiff through its field force came across the defendants' medicinal product selling under the impugned mark LULIVIN

which is deceptively similar to the plaintiff's trade mark LULIFIN. He states that the defendants have adopted the whole of the plaintiff's mark LULIFIN by replacing the letter 'F' by 'V' to make the impugned mark LULIVIN. He also states that the defendants' mark LULIVIN is visually, structurally and phonetically deceptively similar to the plaintiff's trade mark LULIFIN and is used as a cream for the same ailment. He refers to the paragraph 28 of the plaint to contend that the defendant No.1 had previously been manufacturing a similar medicine under the mark LULIDIN.

Learned counsel for the plaintiff states that the defendants have now unlawfully adopted the impugned mark despite being in the pharmaceutical industry and being aware about the plaintiff's mark LULIVIN.

In the *prima facie* opinion of this Court, the triple identity test is satisfied as the defendants have made use of a deceptively similar trademark in relation to identical goods (antifungal cream) having an identical trade channel (products sold *vide* same trading channels).

Keeping in view the aforesaid, this Court is of the opinion that a *prima facie* case of infringement and passing off is made out in favour of the plaintiff and balance of convenience is also in its favour. Further, irreparable harm or injury would be caused to the plaintiff if an interim injunction order is not passed.

Consequently, till further orders, the defendants, their directors, partners or proprietors, as the case may be, 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 under the mark LULIVIN or any other trade mark which may be deceptively similar to the

plaintiff's trade mark LULIFIN in any manner whatsoever.

Let the provisions of Order 39 Rule 3 CPC be complied within a period of two weeks.

I.A. 407/2018 in CS(COMM) 23/2018

The plaintiff seeks appointment of a Local Commissioner to visit the premises of the defendant No.1. Accordingly, Mr. Abhinav Agrawal, Advocate, Mobile No.9999893543 is appointed as the Local Commissioner to visit the following site of the defendant No. 1:-

**M/s A.S. Lifesciences
Plot No. 136 Industrial Estate- Kutana
Haryana - 124001**

The Local Commissioner shall make an inventory and take into custody all infringing goods bearing the marks LULIVIN along with its packaging material, promotional materials, stationary, dyes, blocks etc. However, the Local Commissioner shall return the seized infringing goods to the defendant on Superdari upon their furnishing an undertaking that it will produce the goods as and when called upon to do so by this Court.

The Local Commissioner shall break open locks and shall also be entitled to obtain police assistance from the local police stations. The SHO of the concerned police station shall render all assistance if a request in that regard is made by the Local Commissioner.

The Local Commissioner shall obtain extract from the books of accounts, stock and excise registers maintained by the defendant pertaining to medicinal preparations manufactured and sold by the defendant along with pending stock of packaging material with regard to the mark LULIVIN or any LULI formative marks.

The Local Commissioner shall be entitled to take photographs as well. The fees of the Local Commissioner is tentatively fixed at Rs.1,00,000/- apart from all other out of pocket expenses.

Accordingly, the present application stands disposed of.

Order dasti under the signature of the Court Master.

MANMOHAN, J

JANUARY 11, 2018

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Baird
12/01/2018
Court Master
High Court of Delhi
New Delhi