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

\+ CS(COMM) 1038/2024 & I.A. Nos. 45742/2024, 45743/2024, 45744/2024, 45745/2024 & 45746/2024

SUN PHARMACEUTICAL INDUSTRIES LTD. .....Plaintiff

Through: Mr. Sachin Gupta with Mr. Adarsh Agarwal, Ms. Prashansa Singh, Mr. Rohit Pradhan, Mr. Ajay, Mr. Yashveer Singh, Mr. Archna and Mr. Tanmay Sharma, Advocates.
(M): 9811180270
Email: info@litlegal.in

versus

ARTURA PHARMACEUTICALS P. LTD. .....Defendant

Through: None.

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

% 21.11.2024

I.A. 45743/2024 (Exemption from filing certified and copies of documents)

1. The present is an application under Section 151 of the Code of Civil Procedure, 1908 ("CPC"), on behalf of the plaintiff, seeking exemption from filing certified clearer/typed or translated copies of documents.

2. Exemption is granted, subject to all just exceptions.

3. Plaintiff shall file legible, clear, and translated copies of the documents, on which the plaintiff may seek to place reliance, before the next date of hearing.

4. Accordingly, the present application is disposed of.

I.A. 45742/2024 (Exemption from undergoing Pre-Institution Mediation)

5. The present is an application under Section 12A of the Commercial Courts Act, 2015, read with Section 151 of CPC, seeking exemption from undergoing Pre-Institution Mediation.

6. Having regard to the facts of the present case and in the light of the judgment of Supreme Court in the case of ***Yamini Manohar Versus T.K.D. Keerthi, 2023 SCC OnLine SC 1382***, and Division Bench of this Court in ***Chandra Kishore Chaurasia Versus RA Perfumery Works Private Ltd., 2022 SCC OnLine Del 3529***, exemption from attempting Pre-Institution Mediation, is granted.

7. Accordingly, the application stands disposed of.

I.A. 45744/2024 (Exemption from advance service to the defendant)

8. The present is an application under Section 151 CPC, seeking exemption from advance service to the defendant.

9. The plaintiff seeks urgent interim relief, and has also sought appointment of Local Commissioner. Therefore, in the peculiar facts and circumstances of this case, exemption from effecting advance service upon the defendant, is granted.

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

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11. Let the plaint be registered as suit.

12. None appears for the defendant despite advance service.

13. Upon filing of the process fee, issue summons to the defendant by all

permissible modes. Summons shall state that the written statement be filed by the defendant within thirty days from the date of receipt of summons. Along with the written statement, the defendant shall also file affidavit of admission/denial of the plaintiff's documents, without which, the written statement shall not be taken on record.

14. Liberty is given to the plaintiff to file replication within thirty days from the date of receipt of the written statement. Further, along with the replication, if any, filed by the plaintiff, 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 the documents, the same shall be sought and given within the timelines.

15. List before the Joint Registrar (Judicial) for marking of exhibits, on 20th January, 2025.

16. List before the Court on 08th April, 2025.

I.A. 45746/2024 (Application under Order XXXIX Rules 1 and 2 CPC)

17. The present suit has been filed seeking permanent injunction restraining infringement of trademarks, passing off, unfair competition, damages/rendition of accounts of profits and delivery up, etc.

18. Learned counsel appearing for the plaintiff submits that by way of the present suit, the plaintiff complains against the defendant for using the impugned marks PEPFIX and NEOVITAL, which are deceptively similar to the plaintiff's registered and prior used trademarks. The same are reproduced as under:

S. No	Plaintiff's Trade Mark	Defendant's Mark
1.	PEPFIZ Molecule: Papain, Fungal Diastase And Simethicone Use: Antacid Sold in the form: Effervescent tablets and sachets. TM Registration under No. 555726 dt. 02.08.1991 in Class- 5. Renewed and subsisting.	PEPFIX Molecule: Same Use: same Sold in the form: Capsules No TM appl. filed
2.	REVITAL Molecule: combination of vitamins and minerals Use: Multivitamins for overall health. Earliest TM registration under no. 447372 dt. 26.12.1985. Renewed and subsisting.	NEOVITAL Molecule: Same Use: same No TM appl. filed

19. It is submitted that the plaintiff coined and adopted the trade marks PEPFIZ and REVITAL in the years 1991 and 1985 respectively, and has been continuously, openly and extensively using them since the years 2004 and 1988, respectively. The said trademarks had annual sales of approx. ₹ 22.6 million and ₹ 17,948.4 million, respectively in the FY 2023-24.

20. It is further submitted that recently, in the first week of November, 2024, the plaintiff became aware that the defendant is marketing products under the impugned marks. The products under these impugned marks are being sold at Delhi. The defendant has not filed any application for registration of the impugned marks.

21. It is submitted that the competing marks are deceptively similar, which is evident from the fact that the impugned mark PEPFIX is almost identical to the plaintiff's trade mark PEPFIZ, with the Z being replaced with 'X' in the impugned mark. It is pertinent to note that the defendant has another product called PEPSOL with the same product packaging, to which the plaintiff has no objection, and the plaintiff only seeks relief against the mark PEPFIX.

22. It is further submitted that the impugned mark NEOVITAL is phonetically, visually, and structurally similar to plaintiff's registered and prior used trade mark REVITAL, which is causing confusion among consumers.

23. It is submitted that the adoption and use of the impugned marks amounts to infringement of plaintiff's registered trademarks, passing off and unfair competition, which in turn, is causing confusion and deception amongst the public and loss to the plaintiff. Therefore, the defendant ought to be restrained by way of an *ex-parte ad interim* injunction.

24. It is further submitted that the trademarks of the plaintiff, namely PEPFIZ and REVITAL, have acquired distinctiveness and enviable goodwill and reputation due to their extensive, long and continuous use. The products bearing the said trademarks identify plaintiff as the source or origin and none else. The plaintiff has the statutory and common law right to the exclusive use of the trade marks PEPFIZ and REVITAL. The use of the same or deceptively similar trade marks by any unauthorized person or trader in relation to the similar kind of goods, will constitute infringement of the plaintiff's right of the exclusive use as well as passing off under Section 29 and Section 27 of the Trade Marks Act, 1999.

25. It is submitted that the plaintiff's subject trademarks have been extensively and commercially used by the plaintiff in the course of trade of medicinal and pharmaceutical preparations. Because of quality drugs originating under the said trademarks, the plaintiff's subject trademarks have acquired goodwill and reputation as a badge of quality drugs originating from the plaintiff. The trade mark REVITAL has also been recognized as "well known", vide Trade Mark Journal No. 2177 dated 07th October, 2024.

26. It is further submitted that the medicine under the impugned marks are not reflected in any of the relevant medical trade journals and to the best of plaintiff's knowledge, it seems that the defendant has recently started using the present impugned marks, if at all. Further, the said medicine under the impugned marks, are also not reflected in ORG IMS Research, which is considered as the Indian pharmaceutical industry benchmark for market data.

27. It is submitted that such inept adoption and coinage is not a mere coincidence and has clearly been done by the defendant to sail close to the plaintiff's well-known trade mark. The impugned adoption clearly shows the defendant's *malafide* intention to slavishly imitate the trade mark used by the plaintiff. It is submitted that the plaintiff has also filed an application for the mark PEPFIX, under no. 6640762 dated 25th September, 2024, which is pending for registration, in pursuance of the plaintiff's right of business expansion. The use of the impugned marks by the defendant, therefore, being an actionable tort, is liable to be injuncted under the provisions of Section 135 of the Trade Marks Act, 1999.

28. This Court also notes the submission of learned counsel appearing for the plaintiff that though the defendant company has been incorporated since

the year 2010, however, the impugned products have been launched only recently.

29. This Court also notes the submission of learned counsel for the plaintiff that no application for registration of the impugned marks PEPFIX and NEOVITAL has been filed by the defendant in the trademark Registry. Thus, he submits that the adoption of the impugned marks by the defendant is only recent.

30. In the above circumstances, the plaintiff has demonstrated a *prima facie* case for grant of injunction and, in case, no *ex parte ad interim* injunction is granted, the plaintiff will suffer an irreparable loss. Further, balance of convenience also lies in favour of the plaintiff, and against the defendant.

31. Accordingly, till the next date of hearing, the defendant, its directors, assignees, affiliates, associates, predecessors, successors in business, their distributors, dealers, stockists, wholesalers, retailers/ chemists, custodians, franchisees, licensees, importers, exporters, servants, agents, e-commerce and warehouse aggregators and all persons claiming through and/or under them or acting on their behalf, are restrained from selling, offering for sale, advertising, distributing, marketing, exhibiting for sale, trading in or otherwise directly or indirectly dealing in goods under the impugned marks PEPFIX and NEOVITAL, or any other extensions and/or any other trademarks containing the words PEPFIX and NEOVITAL, or any other mark that may be identical or deceptively similar to the plaintiff's registered trademarks PEPFIZ and REVITAL, amounting to infringement of the registered trademarks of the plaintiff as well as passing off the defendant's goods and business, as those of the plaintiff's goods and business.

32. It is clarified that the defendant is at liberty to manufacture its medicinal preparations and market and sell the same under any other mark/name, which is not similar or deceptively similar to the plaintiff's registered trademarks PEPFIZ and REVITAL

33. Issue notice to the defendant by all permissible modes upon filing of the Process Fee, returnable on the next date of hearing.

34. Let reply be filed within a period of four weeks.

35. Rejoinder thereto, if any, be filed within two weeks, thereafter.

36. Compliance of Order XXXIX Rule 3 CPC, be done, within a period of two weeks.

37. List before the Court on 08th April, 2025.

I.A. 45745/2024 (Application for appointment of Local Commissioner)

38. The present application has been filed on behalf of the plaintiff under Order XXXIX Rule 7 CPC read with Section 135 of the Trade Marks Act, 1999, seeking appointment of Local Commissioner.

39. Learned counsel appearing for the plaintiff submits that the plaintiff apprehends that on being served with the *ad interim* injunction order, the defendant will flood the market with infringing products, without proper documents executed to show such sale, thereby, frustrating the very purpose of this Court granting an *ad-interim* injunction order. The defendant may also manipulate or tamper with its books of accounts, stock register, invoice books, receipt books, etc. which are extremely valuable evidence and necessary for proper adjudication of the matter in dispute.

40. It is submitted that in order to preserve evidence of infringement, it is necessary that Local Commissioner be appointed to visit the premises of the defendant.

Court Master
High Court of Delhi
New Delhi

41. Accordingly, the following directions are issued:

I. Mr. Anmol Agarwal, Advocate, (Mob. No. 9013215235), is appointed as Local Commissioner, with a direction to visit the following premises of the defendant:

1505 Portia Road, Sri City SEZ,
Satyavedu Mandal,
Chittoor District, Andhra Pradesh-517588

II. The learned Local Commissioner, along with a representative of the plaintiff and its counsel, shall be permitted to enter upon the premises of the defendant mentioned hereinabove, or any other location/premises, that may be identified, during the course of commission, in order to conduct the search, and seize all the products bearing impugned marks PEPFIX and NEOVITAL, their packaging, promotion materials, etc.

III. After seizing the infringing material, the same shall be inventoried, sealed, and signed by the learned Local Commissioner, in the presence of the parties, and released on *superdari* to the defendant, on their undertaking to produce the same, as and when further directions are issued, in this regard.

IV. The learned Local Commissioner shall be permitted to record details of such other persons who, according to the information disclosed by the defendant, have role in manufacturing and sale of products under the impugned marks PEPFIX and NEOVITAL.

V. The learned Local Commissioner shall also be permitted to make copies of the books of accounts, including ledgers, cash books, stock registers, invoices, books, etc., in so far as they pertain to the infringing products.

VI. Further, the learned Local Commissioner shall be permitted to undertake/arrange for photography/videography of the execution of the commission.

VII. Both the parties shall provide assistance to the learned Local Commissioner, for carrying out the aforesaid directions.

VIII. In case, the premises is found locked, the learned Local Commissioner shall be permitted to break open the lock(s). To ensure an unhindered and effective execution of this order, the Station House Officer ("SHO") of the local Police Station, is directed to render all assistance and protection to the Local Commissioner, as and when, sought.

IX. The fee of the learned Local Commissioner, to be borne out by the plaintiff, is fixed at ₹ 2,00,000/- (Rupees Two Lakhs). The plaintiff shall also bear all the expenses for travel of the Local Commissioner and other miscellaneous out-of-pocket expenses, for the execution of the commission. The fee of the Local Commissioner shall be paid in advance by the plaintiff.

X. The Local Commission shall be executed within a period of two weeks from today. The Local Commissioner shall file the report within a period of two weeks from the date, on which the commission is executed.

42. The order passed today, shall not be uploaded for a period of two weeks.

43. In terms of the foregoing, the present application stands disposed of.

44. *Dasti* under signatures of the Court Master.

Court Master
High Court of Delhi
New Delhi

Sd/-

MINI PUSHKARNA, J

NOVEMBER 21, 2024
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