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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 668/2024 & I.A. Nos. 35947/2024, 35948/2024 &
35949/2024

SUN PHARMA LABORATORIES LTDPlaintiff

Through: Mr. Sachin Gupta with Ms. Prashansa
Singh, Mr. Ajay Kumar, Ms. Archana
and Mr. Manan Mondal, Advocates.
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versus

RESOLUTE HEALTHCARE & ORS.Defendants
Through: None.

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

% **ORDER**
09.08.2024

I.A. 35948/2024 (Exemption from filing certified 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. 35947/2024 (Exemption from instituting Pre-Litigation 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.

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8. None appears for the defendants despite advance service.

9. Learned counsel appearing for the plaintiff has drawn the attention of this Court to document nos. 3, 8, 9 and 10 to show the source of the E-mail address of the defendants, upon which the defendants have been served.

10. Thus, this Court notes that valid service has been done upon the defendants. However, the defendants have chosen not to appear, despite the same.

11. Accordingly, let the plaint be registered as suit.

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



13. 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 defendants, 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.

14. List before the Joint Registrar (Judicial) for marking of exhibits, on 03rd October, 2024.

15. List before the Court on 18th December, 2024.

I.A. No. 35949/2024 (Application under Order XXXIX Rules 1 and 2 read with Section 151 CPC seeking ex-parte ad-interim injunction)

16. The present suit has been filed for permanent injunction restraining infringement of trademark, passing off, unfair competition, delivery up, damages, rendition of account of profits, etc.

17. Learned counsel appearing for the plaintiff submits that by way of the present suit, the plaintiff has raised its grievance against the defendants from using the impugned trademark 'TRYGABA', which is deceptively similar to the plaintiff's registered and prior used trademark 'TRIGABANTIN'. The table showing the similarity between the products of the plaintiff and defendants, as given in the plaint is reproduced as under:-



S. No	Plaintiff's Trade Mark	Defendants' Mark
1.	<p>TRIGABANTIN</p> <p>Proprietor: Plaintiff</p> <p>Molecule: Gabapentin +Mecobalamin +Lipoic Acid</p> <p>Use: used for the treatment of neuropathic pain</p> <p>TRIGABANTIN is Registered under No. 1388396 dt. 30/09/2005 in Class- 5.</p> <p>The trade mark is valid, subsisting and renewed from time to time.</p>	<p>TRYGABA</p> <p>Proprietor: Defendant No. 1.</p> <p>Molecule: Pregabalin & Methylcobalamin</p> <p>Used for same ailment.</p> <p>Impugned trade mark application under no. 3504230 dated 04.03.2017, claiming use since 01.03.2017, has been opposed by the Plaintiff on 09.04.2020 vide opposition no. 1039516. Parties have filed their respective evidence and the same shall be heard shortly.</p>

18. Learned counsel appearing for the plaintiff submits that plaintiff has continuously, openly and extensively been using the trademark



‘TRIGABANTIN’ since the year 2007.

19. It is submitted that the plaintiff came across the application of the defendants for registration of the impugned trademark ‘TRYGABA’, and immediately filed an opposition against the same. The said opposition is still pending.

20. It is submitted that the plaintiff recently became aware that defendants are marketing and manufacturing products under the impugned trademark ‘TRYGABA’. It is submitted that the competing marks are deceptively similar, which is evident from the fact that the impugned trademark ‘TRYGABA’ is almost the prefix of the plaintiff's registered trademark ‘TRIGABANTIN’. Thus, it is submitted that the defendants, adoption and use of the impugned trademark, amounts to infringement of plaintiff's registered trademark, passing off and unfair competition.

21. It is submitted that the trademark ‘TRIGABANTIN’ was coined by the plaintiff in 2005 and has been in use since 2007. The registration details of the product of the plaintiff, is given as follows:-

Trade Mark	Registration No. & Date	Class / goods
TRIGABANTIN	1388396 Dt. 30.9.2005	Class 5- Medicinal and pharmaceutical preparations ...

22. It is submitted that the trademark of the plaintiff, i.e., ‘TRIGABANTIN’ has acquired distinctiveness and enviable goodwill and reputation due to its extensive, long and continuous use. The products bearing the said mark identify plaintiff, as the source or origin and none else.



Thus, it is submitted that use of the same or a deceptively similar mark by any unauthorised 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.

23. It is submitted that the defendants have deliberately truncated the plaintiff's trademark 'TRIGABANTIN' to create the impugned trademark 'TRYGABA', intending to create confusion in the minds of the general public, and making the defendant's trademark almost indistinguishable from the plaintiff's trademark. This intentional resemblance results in a high likelihood of deception and misrepresentation, infringing upon the plaintiff's established trade mark rights.

24. Learned counsel appearing for the plaintiff submits that the defendant's products under the impugned trademark are used for treating the same ailment, i.e., neuropathic pain. Therefore, there is a possibility of great confusion among the consumers since the competing medicines serve the same purpose and can be interchanged even by the pharmacist while selling the same to consumers.

25. Thus, it is submitted that such adoption and coinage by the defendants is not mere coincidence and has clearly been done by the defendants to sail close to the plaintiff's well-known trademark. The adoption clearly shows a malafide intention on the part of the defendants to slavishly imitate the trade mark used by the plaintiff.

26. It is submitted that the plaintiff's product under the registered trademark 'TRIGABANTIN' is the market leader in its segment with a market share of more than 80%.



27. It is submitted that defendants have unethically and unlawfully adopted the impugned trademark 'TRYGABA'. Being in the pharmaceutical business, the defendants are well aware of the plaintiff's adoption and use of its trademark 'TRIGABANTIN'. Thus, it is submitted that having seen the success of the plaintiff's medicine under the trademark, the defendants adopted the impugned trademark which is confusingly and deceptively similar to the plaintiff's trademark. Such dishonest adoption amounts to infringement of the plaintiff's prior used trademark, passing off, unfair trade practice, unfair competition, and dilution. It is submitted that such acts also amount to misrepresentation and misappropriation of plaintiff's goodwill in their trade mark.

28. Thus, it is submitted that the plaintiff has a *prima facie* case in its favour. The balance of convenience also lies in its favour. It is submitted that the plaintiff shall suffer irreparable injury and damage on account of the misappropriation of its goodwill.

29. Learned counsel appearing for the plaintiff submits that the defendant's impugned trademark 'TRYGABA' is visually, structurally, and phonetically (deceptively) similar to the plaintiff's registered trademark 'TRIGABANTIN', and its use will cause confusion and deception among the consumers and persons involved in the same or similar business or profession.

30. In the above circumstances, the plaintiff has been able to demonstrate a *prima facie* case for grant of injunction and if no ex-parte ad-interim injunction is granted, the plaintiff will suffer irreparable loss. Further, the balance of convenience also lies in favour of the plaintiff and against the defendants.



31. Accordingly, till the next date of hearing, the defendants, their Directors, Proprietors, Partners, as the case may be, their assignees, 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 are restrained from manufacturing, selling, offering for sale, advertising, distributing, marketing, exhibiting for sale, trading in or otherwise directly or indirectly dealing in medicinal preparations or similar or like or allied goods under the impugned mark 'TRYGABA', or any other extensions and/or any other trade mark containing the word 'TRYGABA', and/or any other trade mark as may be identical with and/or deceptively similar to the plaintiff's registered mark 'TRIGABANTIN', amounting to infringement/passing off of the plaintiff's trademark.
32. However, it is made clear that the defendants are at liberty to exhaust their existing stock, in the next three months.
33. The defendants are directed to file an affidavit, clearly indicating their statement of stock along with the date of manufacture and the batch number, within a period of two weeks, from today .
34. Issue notice to the defendants by all permissible modes, upon filing of process fees, returnable on the next date of hearing.
35. Reply, if any, be filed within a period of four weeks from the date of service.
36. Rejoinder thereto, if any, be filed within a period of two weeks, thereafter.
37. Compliance of Order XXXIX Rule 3 CPC, be done, within a period of one week, from today.



38. List before the Court on 18th December, 2024.

MINI PUSHKARNA, J

AUGUST 9, 2024

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