

ANIL, ANTIIL,
Additional District Judge-05
South-East District, Room No. 603,
Saket Courts, New Delhi

IN THE COURT OF ANIL ANTIIL, ADDITIONAL DISTRICT JUDGE
SOUTH EAST DISTRICT, SAKET COURTS, ND.

TM NO. 137/17

Sun Pharmaceutical Industries Ltd Vs. Canixa Life Sciences P. Ltd. & Anr.

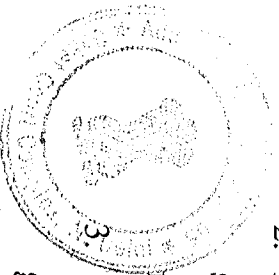
21.12.2017

Order

Present: Ms Sachin Gupta, Ld. Counsel for plaintiff.

Record perused. Submissions heard.

1. Issue summons of the suit and notice of the application u/O 39 rule 1 and 2 CPC to defendant on filing of PF/RC as well as through speed post and approved courier agency for **22.01.2018**.
2. Plaintiff is also directed to furnish authorized email ID of the defendant and soft copy of the plaint alongwith all the relevant documents at the time of filing PF.

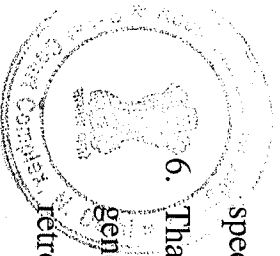


At this stage, Ld. Counsel for the plaintiff argued that plaintiff is entitled to grant of ex-parte injunction on account of infringement of trademark of plaintiff company. The Ld. Counsel argued that in case ex-parte injunction is not granted, then the plaintiff shall irreparable loss and injury because defendant is selling the goods using the identical trade marks of the plaintiff and thus causing substantial loss to the business of the plaintiff as well as goodwill to the products of the plaintiff company. Ld. Counsel for plaintiff has prayed for grant of ex-parte injunction.

4. The case of the plaintiff as set out in the plaint in nutshell is that plaintiff

namely Sun Pharmaceutical Industries Ltd. Is a company incorporated under the companies Act, 2013. The plaintiff has been prominently, widely, consistently conducting its Medicinal Pharmaceutical business since the year 1978 and markets drugs and formulations in more than 150 countries of the world under its extensive range of well-known and distinctive trademark/brand names.

5. That the plaintiff is now ranked as no. 1 pharma company in India in total of 11 specialties and is the world's 4th largest Generic Pharmaceutical company. The plaintiff has multiple factory sites which have been granted US Food and Drug Administration (USFDA) approval. The plaintiff company is ranked as the top Pharma Company of India (AIOCD-AWACS December 2014) and is ranked as one of the top three pharma companies in branded dermatology in US while the company is ranked as one of the top five specialty Generic Pharma Companies Globally.

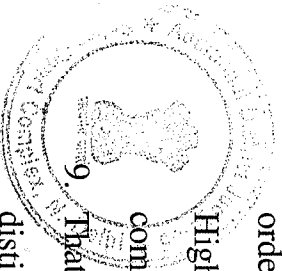


6. That the plaintiff manufacturing operations are focused on producing generics, branded generics, specially, over-the-counter (OTC) products anti-retrovirals (ARVs), Active Pharmaceutical Ingredients (APIs) and intermediates in the full range of dosage forms, including tablets, capsules, injectables, ointments, creams and liquids. The plaintiff also manufacture specialty APIs, including controlled substances, steroids, peptides and anti-cancers. A wide range of regulatory agencies routinely conduct stringent audits of plaintiff manufacturing facilities for compliance with Current Good Manufacturing Practices (cGMP) and several regulatory agencies including FDA-USA, EMA-Europe, MHRA-UK, MCC-South Africa, TGA-

Australia, ANVISA- Brazil, WHO-Geneva, BfArM-Germany, KFDA-Korea and PMDA-Japan, have certified plaintiff's facilities.

7. That the therapeutic segments covered by the plaintiff's portfolio of over 200 high quality molecules include psychiatry, anti-infectives, neurology, cardiology, orthopedic, diabetology, gastroenterology, ophthalmology, nephrology, urology, dermatology, gynecology, respiratory, oncology, dental and nutritional. In several countries, the plaintiff rank among the leading companies in these therapy areas.

8. That vide duly approved scheme of arrangement, the plaintiff all the assets alongwith the intellectual property of Ranbaxy Laboratories Ltd. The said scheme of arrangement between the plaintiff and Ranbaxy Laboratories Ltd. Was duly approved and sanctioned by the Hon'ble High Court of Gujarat vide order dated 24.12.2014 in company petition no. 219 of 2014 by the Hon'ble High Court of Punjab and Haryana vide order dated 09.03.2015 passed in company petition no. 132 of 2014 and company petition no. 165 of 2014.



9. That the trademark **LULLIFIN** being a coined mark enjoys inherent distinctiveness indicating trade origin and source of the goods bearing the said trademark **LULLIFIN** is also registered in India in **Class-5, under registration no -1677854 dated 2104.2008 for Goods- Pharmaceutical & Medicinal Preparations for Human & Veterinary use.**

10. That the plaintiff has a statutory right to the exclusive use of the registered trademark **LULLIFIN** and the use of the same or a deceptively similar trade mark by an unauthorized person or trader in relation to the similar kind of goods will constitute infringement of the plaintiff's right of the exclusive use

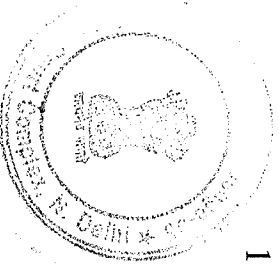
and the registered trademark under the provision of the Trade Mark Act, 1999.

11. That the plaintiff has also taken to popularize its goods sold under the trademark **LULIFIN** and has expended substantial sums of money on sales promotions, advertisement and publicity of its said goods bearing said trademark. The details of sales figures of the plaintiff is mentioned in para 13 of the plaint.

12. That the plaintiff recently filed a suit against a party using **LULIZEN** and the Hon'ble Madas High Court vide ex-parte ad interim injunction order dated 28.07.2017 in CS no. 575/17 was pleased to restrain the said party from using the impugned mark **LULIZEN**. The said suit has now been decreed in favor of the plaintiff and against the defendant.

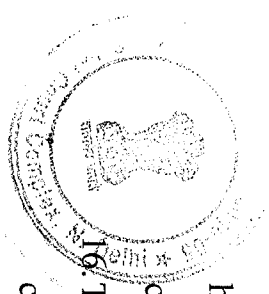
13. That D-1 and D-2 namely Canixa Life Sciences P. Ltd and Optimus Pharma P. Ltd. are companies under the Companies Act, 2013 having their registered office mentioned in the memo of parties. The defendants are engaged in the business of manufacturing and marketing Pharmaceutical Preparations. That the medicine under the impugned mark **LULICLIN** is being marketed by D-1, which is being manufactured by D-2.

14. That the defendants have adopted the mark of the plaintiff **LULIFIN** by just replacing the alphabet "F" by "CL" to make the impugned mark **LULICLIN**. The mark is visually, structurally as well as phonetically and deceptively similar to the plaintiff's trademark **LULIFIN** and is being used for selling identical product. The defendants have unlawfully adopted the impugned trademark **LULICLIN**. The defendants are well aware of the



plaintiff adoption and use of **LULIFIN**. Such adoption also amounts to unfair trade practice, unfair competition and dilution and also amounts to misrepresentation and misappropriation of the plaintiff's goodwill in the trademark **LULIFIN**.

15. That plaintiff came to know the publication of the application of the D-1 for registration of the impugned mark **LULICLIN** under no 3235006 dated 13.04.2016 in the trademark journal no. 1768 dated 24.10.2016. D-1 in its trade mark application claimed use since 01.04.2016. The plaintiff on 03.01.2017 filed its notice of opposition before the trademark registry where the alleged date of use was strongly disputed. It was also disputed that the medicine under the impugned mark has never been sold as they are not found in the market or any trade/ medicinal journal. However, D-1 filed counter statement on 23.11.2017 wherein it reiterated its false claim that it has been using impugned mark since 2016; the opposition proceedings are currently pending.



16. That use and adoption of impugned trademark **LULICLIN** by the defendant constitute infringement of plaintiff's trademark **LULIFIN**, which constitutes a violation of plaintiff's statutory right of exclusive use and infringement of registered trademark **LULIFIN** under section 29 of the Trade Marks Act, 1999.

17. That defendants by adopting and using the trademark **LULICLIN** are passing off and enabling others to pass off their impugned goods and business as that of the plaintiff as well as diluting the plaintiff proprietor rights therein. The defendant is not the proprietary of the impugned trade

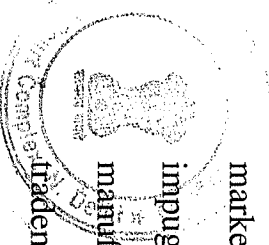
mark/ Label and has adopted and is so using in relation to their impugned goods and business and is otherwise dealing with it in the course of trade without the leave and license of the plaintiff.

18. Heard. Perused the record.

19. The marks used by the defendant is confusingly and deceptively similar to the registered trademark of the plaintiff company and such use of the mark by the defendant's violates the statutory rights of the plaintiff. The use of mark which are confusingly or deceptively similar to the registered trademark of plaintiff in relation to similar goods with respect to which the mark is registered is likely to cause confusion in the mind of general public.

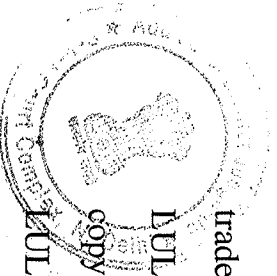
20. That the defendants are engaged in the business of manufacturing and marketing Pharmaceutical Preparations. That the medicine under the impugned mark **LULICLIN** is being marketed by D-1, which is being manufactured by D-2, which is deceptively and confusingly similar to trademark **LULIFIN**. Defendant is thus reaping unfair advantage without any due cause and such an act is highly detrimental to the reputation of the trade marks of plaintiff company and same constitutes infringement within the meaning of Trademarks Act.

21. The plaintiff has placed on record the copy of ex-parte interim injunction order dated 28.07.2017 passed by Hon'ble Madras High Court, copy of certificate of incorporation of the plaintiff company, copy of certificate for use in legal proceedings for the trademark **LULIFIN** under the registration no. 1677854 in class 5 dated 21.04.2008 in favor of the plaintiff, copy of examination report dated 13.03.2009 issued by TMR Delhi, copy of licenses



agreement dated 12.09.2006, copy of patent certificate for API Luliconazole with covering letter dated 14.05.2009 from SPI to Ranbaxy, copy of permission dated 05.06.2009 for manufacture of new drug formulation for Iuniconazole cream, Copy of import approval dated 07.10.2009 for Iuniconazole GOI, Copy of certificate dated 07.07.2017 issued by IMS ORG, Copy of sample sales invoices of medicine sold under the trademark LULIFIN for the period 2010-2017, copy of sample promotional material qua medicine under the trademark LULIFIN.

22. Plaintiff has also placed on record copy of CA certificate for sales turnover for the year 2009-2017, copy of renewal dated 24.03.2012, copy of license dated 24.03.2015, copy of trademark application filed by D-1 and trademark Journal Entry, Copy of notice of opposition filed by plaintiff, copy of counter statement (downloaded), plaintiff outer packaging under its trademark LULIFIN, defendants outer packaging under the impugned mark LULICLIN, invoice dated 04.12.2017 under the trademark LULICLIN, copy of decree order passed by Hon'ble Madras High Court against the mark LULIFIN.

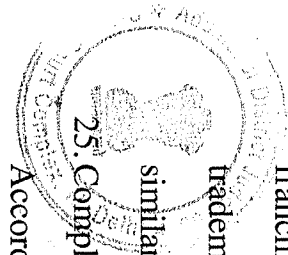


23. The trademark **LULIFIN**, has been registered in favour of plaintiff under the Trademark Act, 1999, and has become well-known. The plaintiff is entitled to protect its trademark. Comparing both the marks, one used by the plaintiff and the other one used by the defendant prima facie appears to be structurally, visually and phonetically similar, which may cause confusion in the mind of general public and the customers. If the defendant is permitted to use the trademark which is identical, deceptively and confusingly similar

to the plaintiff company, it will not only cause wrongful loss to the plaintiff company, but it will also cause grave prejudice and harm to public. Section 135 of Trade Mark Act provides that, *"The relief which a Court may grant in any suit for infringement or for passing off referred to in section 134 includes injunction (subject to such terms, if any, as the court thinks fit) and at the option of the plaintiff, either damages or an account of profits, together with or without any order for the delivery-up of the infringing labels and marks for destruction or erasure."*

24. Thus, the plaintiff has been successful in making out a good prima facie case in its favour for grant of ex-parte injunction. Accordingly, defendant, their associates, agents, directors, officers, employees, distributors, franchisee, representatives, assignees are hereby restrained from using the trademark **LULICLIN** or any other trademark, which may be deceptively similar to the plaintiff's well-known trademark **LULIFIN** till further orders.

25. Compliance of O 39 R 3 be done by the plaintiff within five working days.



Accordingly, present application stands disposed of.

This order may not be uploaded.

Dasti order be given as prayed for.

(Anil Antil)
ADJ-05/SE/Saket/New Delhi
21.12.2017.

Additional District Judge-05
Saket, New Delhi