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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 147/2025 with I.A. 4372/2025, I.A. 4373/2025, I.A. 4374/2025, I.A. 4375/2025 & I.A. 4376/2025**

DANONE ASIA PACIFIC HOLDINGS PTE LTDPlaintiff
Through: Mr. Ayush Sharma, Mr. Ashish Sharma, Mr. V. S. Krishna and Mr. M.S. Bharath, Advocates

versus

SUN BIOCEUTICALS PVT LTD & ANR.Defendants
Through:

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

% **ORDER**
19.02.2025

I.A. 4374/2025 (u/s 12A of the Commercial Courts Act, 2015)

1. As the present suit contemplates urgent interim relief, in light of the judgment of the Supreme Court in *Yamini Manohar v. T.K.D. Krithi*, 2023 SCC Online SC 1382, exemption from the requirement of pre-institution mediation is granted.

2. Accordingly, the application is disposed of.

I.A. 4376/2025 (u/O-XI Rule 1(4) of the Commercial Courts Act, 2015)

3. The present application has been filed on behalf of the plaintiff seeking leave to file additional documents under the Commercial Courts Act, 2015.

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

5. The plaintiff is permitted to file additional documents in accordance with the provisions of the Commercial Courts Act, 2015 and the Delhi High



Court (Original Side) Rules, 2018.

6. Accordingly, the application is disposed of.

I.A. 4375/2025 (seeking exemption from effecting advance service upon the defendants)

7. The plaintiff seeks urgent interim relief against the defendants with regard to the infringing products and for this purpose, an *ex-parte* appointment of Local Commissioners is also sought to confiscate the infringing products. It is submitted that there is a probability that the defendants may displace/ hide the infringing products if they are given an advance service of the plaint paper book.

8. Therefore, in the peculiar facts and circumstances of this case, exemption from effecting advance service upon the defendants is granted.

9. Accordingly, the application is disposed of.

CS(COMM) 147/2025

10. Let the plaint be registered as a suit.

11. Issue summons.

12. Summons be issued to the defendants through all permissible modes. The summons shall state that the written statement(s) shall be filed by the defendants within thirty (30) days from the date of the receipt of summons. Along with the written statement(s), the defendants shall also file affidavit(s) of admission/ denial of the documents of the plaintiff, without which the written statement(s) shall not be taken on record.

13. Liberty is given to the plaintiff to file replication(s), if any, within thirty (30) days from the receipt of the written statement(s). Along with the replication(s) filed by the plaintiff, affidavit(s) of admission/ denial of the documents of the defendants be filed by the plaintiff.



14. 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 also be filed with the pleadings.

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

16. List before the Joint Registrar on 3rd April, 2025 for completion of service and pleadings.

17. List before the Court on 24th July, 2025.

I.A. No. 4372/2025 (u/O-XXXIX Rules 1 & 2 of the CPC, 1908)

18. The present suit has been filed seeking permanent injunction restraining the defendants from infringement of trademarks and copyright of the plaintiff and passing off, along with other ancillary reliefs.

19. The plaintiff is a part of the Danone Group of Companies which have their origin since the year 1896. Currently, the Danone Group conducts business in over 120 countries and is one of the world's foremost players in the specialized nutrition market as well as in the dairy and plant-based products market.

20. The plaintiff is the owner and the registered proprietor of the word mark

PROTINEX and the device mark , among others, which have been commercially used by the plaintiff and its predecessors in India since the year 1957.

21. The registration for the word mark PROTINEX was obtained by the



plaintiff's predecessors in class 5 with effect from 15th February, 1957 and in class 30 with effect from 20th September, 1971. A list of the plaintiff's trade mark registrations in India has been given in paragraph no.47 of the plaint.

22. The plaintiff is also the registered proprietor of the mark PROTINEX in various classes in several other countries, a list of which is given in paragraph no.49 of the plaint.

23. The plaintiff and its predecessors have used different packaging for its products sold under the mark PROTINEX each of which has a distinctive and unique style and the plaintiff claims copyright in the same. The details of the copyright registrations obtained by the plaintiff are given in paragraph no.58 of the plaint.

24. The plaintiff's products under the mark PROTINEX are available across the country including on e-commerce/ quick commerce platforms such as Amazon, Flipkart, Big Basket and Blinkit and online pharmacies such as Netmeds and 1mg. It is submitted that the plaintiff has recorded tremendous sales of its products under the mark PROTINEX. The plaintiff has also spent large sum of money on publicity, advertisements and sales promotional activities which has resulted in immense popularity of the mark PROTINEX.

25. The plaintiff operates India specific websites, accessible at www.danone.in and www.protinex.com, which prominently feature its PROTINEX marks. The plaintiff also has a strong social media presence and has significant following on its profiles on Facebook, Twitter, LinkedIn, Instagram and YouTube.

26. It is the case of the plaintiff that its PROTINEX brand is one of the most trusted brands of the country. The plaintiff is one of the market leaders in the industry and holds about 27% of the total market share in the adult



nutrition segment as of 2023. It is also submitted that the plaintiff has received various recognitions, accolades and awards under the mark PROTINEX, a list of which is given in paragraph no.34 of the plaint.

27. It is the case of the plaintiff that in the year 2019, it had instituted a suit being CS(COMM) 729/2019 against the defendants herein, among other defendants, seeking permanent injunction restraining the defendants from infringing the trademarks and copyright and passing off by adopting and using



the deceptively similar marks PROTIMAXX/ and PROTEX/



28. The aforesaid suit was decreed on 30th January, 2020 in terms of a settlement arrived at between the parties and consequently a decree of permanent injunction was passed in favour of the plaintiff and against the defendants.

29. It is submitted that during a routine internet search in the last week of September 2024, the plaintiff came across the products bearing the mark



PROTIMAXX/ which were being sold on various e-commerce platforms. Upon a perusal of the online listings of the impugned products on Meesho and IndiaMart, it was found that the defendant no.1 is the manufacturer of the impugned products and the defendant no.2 is marketing



the impugned products. The plaintiff also came across the website owned by the defendant no.2, accessible at <https://www.maxxfarmacia.com/>, which displayed the image of a product bearing the mark PROTIMAXX/

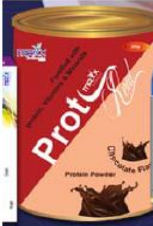


. Subsequently, a further enquiry carried out by the plaintiff revealed that the defendant no.2 is supplying products under the mark



PROTIMAXX/

30. A comparison between the products of the plaintiff and the defendants is given in the table below:

PLAINTIFF'S TRADEMARKS AND TRADE DRESS	DEFENDANTS' IMPUGNED TRADEMARKS AND TRADE DRESS
	
	



31. A perusal of the table above, would show that not only the defendants adopted a mark which is deceptively similar to the plaintiff's PROTINEX marks but have also used a similar colour combination of red, white and brown for the impugned products and copied other features of the plaintiff's trade dress.

32. In view of the above, a *prima facie* case of infringement and passing off is made out on behalf of the plaintiff in its favour. Clearly, an attempt has been made by the defendants to create an impression that the impugned products being manufactured and sold by the defendants are associated with the plaintiff.

33. Balance of convenience is in favour of the plaintiff and against the defendants. Irreparable loss, harm and injury would be caused to the plaintiff if the defendants continue to sell the impugned products under the impugned



marks. Prejudice would also be caused to the public as the impugned marks of the defendants are deceptively similar to the plaintiff's PROTINEX marks and are likely to cause confusion in the market.

34. Consequently, till the next date of hearing, the defendants, their partners, employees, officers, servants, agents, and all others acting for and on their behalf are restrained from manufacturing, selling, distributing, exporting, advertising, offering for sale, any products and in any other manner, directly or indirectly, dealing with any products or services under the



marks/ trade dress, PROTIMAXX/ or any other mark/ trade dress which is identical/ deceptively similar to the plaintiff's PROTINEX marks.

35. Issue Notice.

36. Notice be issued to the defendants through all permissible modes, including e-mail.

37. Reply(ies) be filed within four (4) weeks.

38. Rejoinder(s) thereto, if any, be filed within two (2) weeks thereafter.

39. In view of the fact that the plaintiffs have sought appointment of Local Commissioners to seize the infringing products, the very purpose of grant of *ex-parte ad interim* injunction would be defeated if the defendants are given notices contemplated in Order XXXIX Rule 3 of the Code of Civil Procedure, 1908 (hereinafter 'CPC') prior to the execution of the commission. Hence, it is directed that the plaintiff shall serve notices under Order XXXIX Rule 3



of CPC at the time of execution of the commission which shall not be later than two (2) weeks from today.

40. List before the Joint Registrar on 3rd April, 2025 for completion of service and pleadings.

41. List before the Court on 24th July, 2025.

I.A. 4373/2025 (u/O-XXVI Rule 9 of the CPC, 1908)

42. The present application has been filed under Order XXVI Rule 9 of the CPC seeking appointment of two Local Commissioners to visit and inspect the premises of the defendants, make an inventory of all the products, labels, packaging/ promotional material, etc. bearing the impugned marks (hereinafter referred to as ‘infringing material’) and effect seizure of the same.

43. In view of what is stated above, the plaintiff has made out a case for the appointment of two Local Commissioners.

44. Accordingly, Mr. Arun Sanwal, Advocate (Mobile No. +91 9868331233) is appointed as a Local Commissioner to visit the premises of the defendant no.1 situated at:

***Khasra Phase 1, Hall No 2, Plot No 508, Block C,
Sector 38, Rai Industrial Estate,
Sonapat – 131029. Haryana, India***

45. Further, Mr. Guru Dhananjay, Advocate (Mobile No. +91 9176804153) is appointed as a Local Commissioner to visit the premises of the defendant no.2 situated at:

***25/12, Canal Rd, Police Colony, Kilpauk Garden Colony,
Chennai – 600010, Tamil Nadu***

46. The following directions are passed in this regard:

a. The Local Commissioners, along with a representative of the plaintiff



and its counsel, shall be permitted to enter upon the premises of the defendants mentioned above or any other location/ premises that may be identified during the course of commission, in order to conduct the search and seizure.

- b. The Local Commissioners shall conduct a search at the defendants' aforesaid premises and seize the infringing material.
- c. The Local Commissioners shall make an inventory of all the infringing material.
- d. After seizing infringing material, the same shall be sealed and signed by the Local Commissioners, in the presence of the parties, and released on *superdari* to the defendants on their undertaking to produce the same as and when further directions are issued in this regard.
- e. The Local Commissioners shall also be permitted to make copies of the books of accounts including ledgers, cash registers, stock registers, invoices, books, etc. insofar as they pertain to the infringing material.
- f. The defendants and their representatives are directed to provide full assistance to the Local Commissioners for executing the present commission.
- g. In case, the aforesaid premises of the defendants or any part thereof are found locked, the Local Commissioners are permitted to break open the locks and doors for execution of the commission.
- h. To ensure an unhindered and effective resolution of this order, the SHO of the local police station having jurisdiction of the aforesaid premises and the DCP concerned are directed to render the necessary protection and assistance to the Local Commissioners, if and when sought.
- i. The Local Commissioners shall have the liberty to take photographs



and/ or videos of the stock seized and to take a sample of the infringing material to be filed along with the Report.

47. The Local Commissioners shall file their Reports within two (2) weeks of executing the commission, along with photographs/ videos taken and photocopies of the books of account and stock and the inventory procured pursuant thereto.

48. The fees of the Local Commissioners, to be borne by the plaintiff, are fixed at Rs.1,25,000/- for Mr. Arun Sanwal and Rs.1,50,000/- for Mr. Guru Dhananjay. The plaintiff shall also bear expenses for travel and lodging of the Local Commissioners and other miscellaneous out-of-pocket expenses for the execution of the commission.

49. The application stands disposed of in the aforesaid terms.

50. The order passed today shall not be uploaded for a period of two (2) weeks from today.

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

AMIT BANSAL, J

FEBRUARY 19, 2025
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