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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 337/2024, I.A. 9226/2024, I.A. 9227/2024, I.A. 9228/2024, I.A. 9229/2024, I.A. 9230/2024 & I.A. 9231/2024**
MANKIND PHARMA LIMITED Plaintiff

Through: Mr. Chander M. Lall, Sr. Adv. with
Mr. Ankur Sangal, Mr. Ankit Arvind,
Mr. Shashwat Rakshit and Ms. Nidhi
Pathak, Advs.

versus

MANKING PHARMACEUTICAL PRIVATE LIMITED & ANR.
..... Defendants

Through:

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER
26.04.2024

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I.A. 9227/2024 (Exemption from undergoing pre-institution mediation)

1. Having regard to the facts of the present case and in light of the judgement of Division Bench of this Court in **Chandra Kishore Chaurasia v. R.A. Perfumery Works Private Ltd.**, FAO (COMM) 128/2021, exemption from attempting pre-institution mediation is allowed.
2. Accordingly, the application stands disposed of.

I.A. 9228/2024 (Seeking leave to file additional documents)

1. The present application has been filed on behalf of the plaintiff under Order 11 Rule 1(4) of the Code of Civil Procedure, 1908 (“CPC”) as



applicable to commercial suits under the Commercial Courts Act, 2015 seeking to place on record additional documents.

2. The plaintiff, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act, 2015 and the Delhi High Court (Original Side) Rules, 2018.

3. Accordingly, the present application is disposed of.

I.A. 9229/2024 (Seeking enlargement of time for filing Court Fees)

1. Counsel for plaintiff undertakes to file the requisite Court Fees within the next three weeks.

2. In light of the above undertaking, the present application is allowed and disposed of.

I.A. 9230/2024 (Exemption from filing dim/illegible copies etc.)

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

2. Applicant shall file legible, clear, and original copies of the documents on which the applicant may seek to place reliance, before the next date of hearing.

3. Accordingly, the present application is disposed of.

I.A. 9231/2024 (Application for appointment of a Local Commissioner)

1. This application has been filed under Order XXVI Rule 9 & 10 of the CPC seeking appointment of a Local Commissioner.

2. This application is being kept pending for the time being.



CS(COMM) 337/2024

1. Let the plaint be registered as a suit.
2. Upon filing of process fee, issue summons to the defendants by all permissible modes. Summons shall state that the written statement(s) be filed by the defendants within 30 days from the date of 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 shall not be taken on record. Liberty is given to the plaintiff to file a replication within 30 days of the receipt of the written statement(s). Along with the replication, if any, filed by the plaintiff, affidavit(s) of admission/denial of documents filed by the defendants, be filed by the plaintiff, without which the replication(s) shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.
3. List before the Joint Registrar for marking of exhibits on 30th July, 2024.
4. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

I.A. 9226/2024 (Application under Order XXXIX Rule 1 and 2 CPC)

1. This application has been filed under Order XXXIX Rule 1 and 2 of the CPC by plaintiff, in the present suit seeking a decree of permanent injunction, restraining defendants, and all those acting for and on their behalf, from manufacturing, selling, advertising, directly and indirectly dealing in, any goods or services under the defendants mark 'MANKING'/'



device (“**impugned mark**”) and the trade devices, or any other trademark which may be identical or deceptively similar to plaintiff’s registered mark ‘MANKIND’, and other attendant relief.

2. Plaintiff claims that the trademark ‘MANKIND’ was adopted by the plaintiff in the year 1986 for medicinal and pharmaceutical products. The registrations claimed by the plaintiff are tabulated as under:

S. NO	Trade Mark	Reg. No.	Class	Date of Reg.
1.	MANKIND	5645154	5	13/10/2022
2.		657871	5	07/03/1995
3.		2468879	5	30/01/2013
4.		2510537	5	09/04/2013
5.		2061279	35	30/11/2010
6.		2061276	35	30/11/2010
7.		2510565	35	09/04/2013
8.	MANKIND	2245094	44	07/12/2011
9.	MANKIND – V3	5495041	44	07/12/2011



10.		2510558	44	09/04/2013
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3. Plaintiff also runs and operates a website i.e. www.mankind.com.
4. The sales figures claimed by the plaintiff are tabulated as under:

Year	Sales Turnover in INR (in Crores)
2005-06	3385
2006-07	4913
2007-08	6248
2008-09	8402
2009-10	1085
2010-11	1406
2011-12	1650
2012-13	1971
2013-14	2288
2014-15	2693
2015-16	3149
2016-17	3525
2017-18	3923
2018-19	3877
2019-20	4794
2020-21	5529
2021-22	7257
2022-23	8127

5. Plaintiff claims to have garnered an extensive reputation and goodwill for their mark 'MANKIND'.
6. Mr. Chander M. Lall, Senior Counsel for the plaintiff, also points out that the trademark 'MANKIND' has been declared a well-known trademark under Rule 124 of the Trade Mark Rules. It is also pointed out that various orders have been passed by this Court relating to the protection granted to plaintiff's 'MANKIND' mark, which are tabulated as under:



S No.	Case Title	Order date	Remarks
1.	Mankind Pharma Limited & Anr v Mainkind Crop Science Private Limited	2 May 2023	The Defendant was using the trade name Mainkind Crop Science Private Limited. The Court held that the words MAINKIND and MANKIND are phonetically nearly identical and restrained the Defendant from using MAINKIND or any other mark similar to MANKIND.
2.	Mankind Pharma Limited v Novakind Bio Science Private Limited CS (COMM) 188/ 2021	7 August 2023	The Defendant was using NOVAKIND as a part of the corporate name. The Court held that marks NOVAKIND and MANKIND, when used for pharmaceutical preparations are confusing and restrained the Defendant from using the mark NOVAKIND.
3.	Mankind Pharma Limited v Mankind Food & Beverage Pvt. Ltd. & Ors. CS(OS) 2385/2012 before High Court of Delhi, India	13 August 2014	The Defendant was using the tradename MANKIND FOOD & BEVERAGE PVT. LTD. The Court after considering ex-parte evidence held as follows:



		'On the basis of the documents placed on record, the plaintiff has established that it is the owner of the trade mark/house mark/brand name "MANKIND" and the plaintiff has the exclusive right to use the same. Plaintiff has also established that the trademark and trade name consisting of the word "MANKIND" have got a secondary meaning as the public identify and associate the said name and trade mark exclusively with the Plaintiff. Plaintiff has further established that on account of continuous, open, extensive and exclusive use for many years, wide publicity through print and electronic media and massive marketing and sales promotional works of the goods under the trade name and the trade mark consisting of the word MANKIND, plaintiff has been able to built an unparallel reputation and goodwill with respect to its trademark MANKIND. Plaintiff has also established that the defendants by using the trademark
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			or trade name consisting of the word MANKIND, which is identical to plaintiff's mark, in respect of packaged drinking water, are causing infringement of rights in the trademark of plaintiff.
4.	Mankind Pharma Limited v Sham Lal and Ors., CS(COMM) 563/2017 before High Court of Delhi, India	6 November 2017	The Defendant was using the trade name MANKIND MERCHANDISE PRIVATE LIMITED. The Court held that the Defendant had no justification to adopt the mark MANKIND and use of virtually identical trade name as that of the plaintiff.
5.	Mankind Pharma Limited v Sudhanshu Kumar and Ors., CS(OS) 2982/2015 before High Court of Delhi, India	7 November 2017	The Defendant was using the tradename MANKIND TRACOM PRIVATE LIMITED. The Court held that the Defendant had no justification to adopt the mark MANKIND and use of virtually identical trade name as that of the plaintiff.
6.	Mankind Pharma Limited v Mankind India Network, CS(OS) 1027/2013	24 May 2013	The Defendant was using the trade name Mankind India Network. The Court restrained the Defendant from using the word



	before High Court of Delhi, India		Mankind India on their website and/or on their ayurvedic medicinal product and/ or part of their trade name.
7.	Mankind Pharma Limited v Sandip Kumar Aggarwal & Anr, CS(OS) No. 2547/2015 before High Court of Delhi, India	16 October 2015	The Defendant was using the trade name Mankind Commercial Private Limited. The suit was decreed in terms of settlement between the parties wherein the Defendant agreed to not use the infringing corporate name.
8.	Mankind Pharma Limited v Gopal Prajapati & Anr, CS(OS) No. 2614/2015 before High Court of Delhi, India	5 October 2015	The Defendant was using the trade name Mankind Distributors Private Limited. The Court restrained the Defendants from using the mark "MANKIND" in their trade name/ mark in any manner whatsoever or any other deceptively similar trade mark as that of the Plaintiff.



9.	Mankind Pharma Limited v Khalid Khan Rasool & Anr., CS(OS) 2535/2015 before High Court of Delhi, India	25 August 2015	The Defendant was using the trade name Mankind Production Private Limited. The Court restrained the Defendant from using the trade name MANKIND PRODUCTION PRIVATE LIMITED or any other mark/trade name with the word element MANKIND or KIND in any manner amounting to infringement of the plaintiff's registered trade mark/trade name MANKIND PHARMA LIMITED and the series of mark.
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7. The grievance is against the defendants, who are using the impugned marks for their pharmaceutical products. The comparative representation of the rival marks is as under:

PARTICULARS	PLAINTIFF	DEFENDANT
Trade Marks	MANKIND 	MANKING 
Product		
Point of Similarities	• The trade mark of the Defendant is almost identical to the Plaintiff's trade mark. • The manner of use on the product by the Defendant is identical. • The Defendant is selling medicines with same formulation as that of the Plaintiff. • That the Defendant in order to come closer to the Plaintiff is also using a tagline and that the said tagline is written in the same font and manner as that of the Plaintiff.	

8. Considering these are pharmaceutical products, Mr. Lall, Senior Counsel, has pointed out to the decision of the Hon'ble Supreme Court in



Cadila Health Care Ltd. vs. Cadila Pharmaceuticals Ltd., (2001) 5 SCC 73.

9. Mr. Lall, Senior Counsel, has pressed for an *ex parte ad interim* injunction. However, this Court feels that it may be appropriate to give a short notice to defendants to respond, particularly in respect of their tradename, which the plaintiff claims is deceptively similar to that of the plaintiff's mark 'MANKIND'.

10. List on 01st May, 2024.

11. Order be uploaded on the website of this Court.

ANISH DAYAL, J

APRIL 26, 2024/MK