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

Through: Mr. Chandar M. Lall, Sr. Advocate
with Mr. Ankur Sangal, Mr. Ankit
Arvind and Mr. Shashwat Rakshit,
Advocates.

versus

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

Through:

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

% **ORDER**
08.05.2024

1. Pursuant to previous order of this Court dated 26th April, 2024, short notice was issued in the facts and circumstances as already narrated in the said order, and the matter was listed on 01st May, 2024.
2. On that day, one Ms. Rajlakshmi, Advocate appeared through VC, however, was not audible despite numerous attempts. The matter was then listed on 08th May, 2024, directing that the counsel for defendants may appear in Court. Additionally, a request was made to counsel for plaintiff to inform said counsel for defendant and defendant himself about the listing of the matter today.
3. Plaintiff's counsel has handed up e-mails addressed to the defendant, of



25th April, 2024 [*giving advance notice in the matter to be listed before this Court*]; **26th April, 2024** [*informing that the matter will be listed on 01st May, 2024*]; **29th April, 2024** [*annexing the pleadings and applications filed before the Court pursuant to a telephonic conversation*]; **06th May, 2024** [*informing that there was a phone call with Ms. Rajlakshmi as well as the WhatsApp message and the listing of the matter on 08th May, 2024*]. Screenshots of WhatsApp chats with Ms. Rajlakshmi are also handed up which bears out that she was duly informed that the matter is listed today before this Court.

4. Despite the fact that defendant and counsel have been adequately informed, no one appears on behalf of the defendant.

5. Mr. Chander M. Lall, Senior Counsel for plaintiff, therefore, presses for his application under Order XXXIX Rule 1 & 2 of CPC. In addition to the facts as stated in the order dated 26th April, 2024, focus by the Senior Counsel is on the similarity of the marks of plaintiff and those adopted by the defendant, which is reproduced as under:

PARTICULARS	PLAINTIFF	DEFENDANT
Trade Marks	MANKIND 	MANKING 
Product		

6. He contends that not only the placement of the mark on the pharmaceutical products is in the same place, but also the mark is



phonetically similar to that of the plaintiff's house mark 'MANKIND'. Further, defendant's product uses a similar device of the alphabet 'M' within an oval. The plaintiff uses its mark on various products, both in black and in blue colour, along with other variations as is evident from documents annexed by plaintiff, which is extracted below:



TRUE COPY ASL

This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.

The Order is downloaded from the DHC Server on 14/05/2024 at 19:59:34



7. Senior Counsel for plaintiff has also pointed out to additional documents which have been filed by them under Index dated 30th April, 2024 bearing out that the first Director of defendant company is Mr. Ramdayal Meena, as evident from the Ministry of Cooperate Affairs [‘MCA’] Records. The said Mr. Meena was in fact an employee of the plaintiff company and had joined on 27th January, 2011 and sought voluntary separation on 28th February, 2017. As per his employee records, his wife’s name is stated as Ms. Priya who is stated to be the second Director of defendant no.1 company as per the MCA records.

8. It is underscored by Senior Counsel for plaintiff that while said Mr. Meena was an employee of plaintiff company, he had incorporated the defendant no. 1 company, Manking Pharmaceutical Pvt. Ltd., on 19th July, 2016, which is also reflected in the MCA Records. On this basis, it is claimed that said Mr. Meena has sought to incorporate defendant no.1 company to dishonestly adopt a phonetically similar variation of the plaintiff’s mark and also instituted a device/logo which is deceptively similar.

9. Screenshots of defendant no.1 company’s website have also been adverted to show that under this name, the defendants are causing confusion by posturing as a reputed pharmaceutical company. The said screenshot also shows that Mr. Meena is the Managing Director and founder of the company.

10. In view of the above facts and circumstances, this Court is satisfied that plaintiff has made out a *prima facie* case for grant of an *ex parte ad interim* injunction till the next date of hearing. Balance of convenience lies in favour of plaintiff, and they are likely to suffer irreparable harm in case the



injunction, as prayed for, is not granted.

11. Accordingly, till the next date of hearing, following reliefs are granted in favour of the plaintiff in the following terms:

- a) The defendants and all those acting for or on their behalf are restrained from selling, promoting or directly or indirectly dealing in any goods and services offered under these include trademarks 'MANKING',



or

any other mark that may be identical to or deceptively similar with the plaintiff's registered trademarks 'MANKIND' as well as the plaintiff's



logo

12. Upon plaintiff taking steps, issue notice through all permissible modes including through email. Reply be filed within six weeks with advance copy to counsel for plaintiff, who may file rejoinder thereto, if any, before the next date of hearing.

13. Compliance of Order XXXIX Rule 3, CPC be effected within one week.

14. List before the Court on 23rd August, 2024.

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

1. This application has been filed by plaintiff under Order XXVI Rules 9 & 10 of CPC for appointment of Local Commissioner.



2. This application is kept pending for the time being.
3. Order be uploaded on the website of this Court.

ANISH DAYAL, J

MAY 8, 2024/RK/sc