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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(COMM) 388/2024**

DR. REDDYS LABORATORIES LIMITED Plaintiff

Through: Mr. Ranjan Narula, Ms. Aishani
Singh & Ms. Shivangi Kohli, Advs.

versus

ZEELAB PHARMACY PVT LTD Defendant

Through: None

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

% **14.05.2024**

I.A. 10940/2024 (Exemption from filing certified, clear copies of documents)

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. No.10941/2024 (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 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. No.10942/2024 (exemption from instituting pre-litigation 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.

CS(COMM) 388/2024

1. Let the plaint be registered as a suit.
2. Upon filing of process fee, issue summons to the defendant by all permissible modes. Summons shall state that the written statement be filed by the defendant within 30 days from the date of receipt of summons. Along with the written statement, the defendant shall also file affidavit of admission/denial of plaintiff's documents, without which the written statement shall not be taken on record. Liberty is given to plaintiff to file a replication within 30 days of the receipt of the written statement. Along with the replication, if any, filed by the plaintiffs, affidavits of admission/denial of documents filed by the defendant, be filed by plaintiff, without which the replication 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 20th August 2024.
4. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

I.A. 10939/2024 (under Order XXXIX Rule 1 & 2 CPC)

1. This application under Order XXXIX Rules 1 and 2 of Code of Civil Procedure, 1908 ('CPC') has been filed by plaintiff as part of the accompanying suit seeking permanent injunction restraining defendant from



manufacturing, marketing, supplying, selling, promoting and dealing with directly or indirectly, in medicinal and pharmaceutical preparations under the impugned trade mark ‘**OMEZEE**’/ ‘**OMEZEE-DM**’ [*‘impugned marks’*] and/or any other mark deceptively similar to the plaintiff’s mark ‘**OMEZ**’.

2. Plaintiff is an Indian incorporated company and claims to be one of India’s largest pharmaceutical companies having started its operation in 1984. Soon after they obtained success through their brand OMEZ for pharmaceutical product ‘*Omeprazole*’ which is used for ulcer and reflux oesophagitis medication. It is claimed that OMEZ soon became one of the most popular brands of plaintiff’s portfolio.

3. Registrations under the trademark ‘**OMEZ**’ are tabulated by plaintiff as under:

S.N	Trademark	Reg. No.	Reg. Date	Class	Status
1.	OMEZ	513230	11/07/1989	5	Registered
2.	OMEZ*-10	803622	26/05/1998	5	Registered
3.	OMEZ(OMEPRAZOLE CAPSULES)	803628	26/05/1998	5	Registered
4.	OMEZ	804000	28/05/1998	5	Registered
5.	OMEZ (LABEL)	1310524	22/09/2004	5	Registered
6.	OMEZ INSTA	1560853	22/05/2007	5	Registered
7.	OMEZ-D SR (Device mark)	2377505	09/08/2012	5	Registered
8.	OMEZ-FF	2377505	09/08/2012	5	Registered
9.	OMEZ Jr.	2843464	17/11/2014	5	Registered
	OMEZ Jr (Device mark).	2843465	17/11/2014	5	Registered



4. Packaging used by plaintiff is as under:



5. Plaintiff's mark '**OMEZ**' enjoys immense reputation and goodwill, as claimed by plaintiff. It is a coined word inherently distinctive to the product of the plaintiff and has been in continuous and extensive use since 1990. The promotional expenses for OMEZ for the financial year 2022-23 is in the range of Rs.2.87 crores.

6. Mr. Ranjan Narula, counsel for plaintiff has also pointed out to various previous actions of enforcement initiated by plaintiff for protection of their mark '**OMEZ**' which are tabulated as under:



S.NO	NAME	ORDER	<u>IMPUGNED MARK:</u>
1.	CS(COMM) 454/2020 DR. Reddy's laboratories limited vs. Pro Bios Pharmaceuticals Private Limited	That vide order dated 16.10.2020, an ex-parte ad interim order was passed by the Hon`ble court restraining the Defendant therein to use the impugned mark. Vide judgement dated 28.07.2022, a consent decree was passed, and the Defendant acknowledged the rights of the Plaintiff in the mark OMEZ and was permanently restrained from using the mark OMZES as per the settlement agreement dated 09/07/2021.	OMZES
2.	CS(COMM) 278/2020 DR. Reddy's laboratories	That vide order dated 27.07.2020 passed an ad interim injunction restraining the Defendant from	OMEZA



	limited vs. Jitendra Goyal	selling its products under the impugned mark OMEZA. Vide judgment dated 16.07.2021 the Hon'ble court recorded that the matter was settled before the mediation centre and passed the a decree recording the settlement.	
3.	CS(COMM) 138/2021 DR. REDDYS LABORATORIES LIMITED vs. WINGS BIOTECH	Vide order dated March 24, 2021, Defendant gave undertakings that they shall discontinue the use of the impugned mark, changing it to "Omey Tech", withdrawing a trademark application, and making a charitable donation. The Hon'ble court accepted the undertaking and decreed the suit.	OMEZ TECH
4.	CS (COMM) 211/2021 DR. REDDYS LABORATORIES vs. COMBITIC	An ex-parte injunction was passed vide order dated April 29, 2021, restraining	OMES



GLOBAL CAPLET PVT LTD	Defendant from marketing, supplying, selling, advertising, or exporting pharmaceutical preparations under the impugned mark “OMES” or any deceptively similar mark to “OMEZ”. That vide order dated 18.08.2022, the matter was settled between the parties wherein Defendant has recognized and acknowledged the Plaintiff’s rights in the mark ‘OMES’ and has agreed not to challenge the said rights in the future in India and globally and have stopped manufacturing of the impugned mark. The Hon’ble Court thereafter decree the matter.	
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5.	CS(COMM) 5/2021 DR. REDDYS LABORATORIES LIMITED vs. RIDGECURE PHARMA	On January 6, 2021, this Hon'ble court granted an ex- parte order restraining the Defendant, its partners, affiliates, and others from manufacturing, marketing, supplying, selling, offering for sale (including online), advertising, directly or indirectly, medicinal and pharmaceutical preparations under the trademark "OMEZ" or any other mark identical or deceptively similar to the Plaintiff's mark "OMEZ" until further orders. Vide order dated 30.01.2023, the matter was settled between the parties vide	OMEZ- D & OMEZ – 20
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		settlement agreement dated 17th January 2023 wherein Defendant undertook that they have stopped manufacturing, exporting, and offering for sale, advertising, directly or indirectly medicinal and pharmaceutical preparations not limited to tablets, capsules, injections, syrups under the mark OMEZ both for domestic sale in India and for export. The Hon'ble Court thereafter passed the consent decree.	
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7. Grievance of plaintiff is against defendant supplying same formulation *Omeprazole* under the impugned marks. It is stated that plaintiff got to know through their representative in the second week of April 2024 and issued a legal notice on 23rd April 2024 which did not receive a reply. Further, a copy of this suit has been sent with advance notice to the defendant but no one appears on its behalf.

8. The packaging used by defendant is as under:



9. In this view of the matter, in the opinion of this Court, 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 plaintiff is likely to suffer irreparable harm in case the injunction, as prayed for, is not granted.

10. Accordingly, till the next date of hearing, *ex-parte ad interim* injunction is passed against defendant in the following terms:

- (i) Defendant and all those acting for or on its behalf are restrained from manufacturing, marketing, supplying, selling, promoting and dealing with directly or indirectly, in medicinal and pharmaceutical preparations under the impugned mark '**OMEZEE**', '**OMEZEE-DM**' and/or any other mark identical or deceptively similar to the plaintiff's mark '**OMEZ**'.

11. On steps being taken by plaintiff, issue notice to defendant through all permissible modes including speed post, courier, and email. Affidavit of service along with proof thereof be placed on record before the next date of hearing.



12. Reply, if any, be filed within six weeks with advance copy to the counsel for plaintiff, who may file rejoinder thereto, if so desired, before the next date of hearing.
13. Compliance with Order XXXIX Rule 3, CPC be effected within a week's time.
14. List on 10th September 2024.
15. Order be uploaded on the website of this Court.

ANISH DAYAL, J

MAY 14, 2024/sm/sc

Click here to check corrigendum, if any