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

+ CS(COMM) 458/2025

DWD PHARMACEUTICALS LTDPlaintiff

Through: Mr. Rupin Bahl, Mr. Karan Bajaj
and Ms. Aastha Arora, Advocates.

versus

GOODCARE PHARMA PVT LTD & ANR.Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

% **13.05.2025**

I.A. 11953/2025 (*Exemption from pre-litigation mediation*)

1. *Vide* the present application under *Section 12A* of the Commercial Courts Act, 2015, read with *Section 151* of the Code of Civil Procedure, 1908 (*CPC*), the plaintiff seeks exemption from pre-litigation mediation.

2. Considering the averments made in the present application, as also since the plaintiff is seeking *ex parte ad interim* injunction in an accompanying application, and in view of the judgment passed by the Hon'ble Supreme Court in *Yamini Manohar v. T.K.D. Krithi 2024 (5) SCC 815*, which has been followed by a Division Bench this Court in *Chandra Kishore Chaurasia v. R. A. Perfumery Works Private Limited 2022:DHC:4454-DB*, the plaintiff is exempted from instituting pre-litigation mediation.

3. Accordingly, the present application stands disposed of.

I.A. 11954/2025 (*for Exemption*)

4. Exemption allowed, subject to all just exceptions.

5. The application stands disposed of.

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I.A. 11952/2025-Addl.doc.

6. *Vide* the present application under *Order XI Rule 1(4)* read with *Section 151* of the CPC, the plaintiff seeks leave of this Court to file additional documents.

7. For the reasons stated therein, the plaintiff will be at liberty to file additional documents at a later stage, *albeit*, after initiating appropriate steps, strictly as per the provisions of the Commercial Courts Act, 2015 read with *Section 151* of the CPC and the Delhi High Court (Original Side) Rules, 2018.

8. Accordingly, the present application stands disposed of.

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9. *Vide* the present plaint, the plaintiff seeks permanent and mandatory injunction for infringement of trademark, passing off and unfair competition, delivery up, rendition of accounts, and damages.

10. Let the plaint be registered as a suit.

11. Upon filing of the process fee, issue summons of the suit to the defendants through all permissible modes returnable before the learned Joint Registrar on 07.08.2025.

12. The summons shall state that the written statement(s) be filed by the defendants within a period of *thirty days* from the date of the receipt of the summons. Written statement(s) be filed by the defendants along with affidavit of admission/ denial of documents of the plaintiff, without which the written statement(s) shall not be taken on record.

13. Replication thereto, if any, be filed by the plaintiff within a period of *fifteen days* from the date of receipt of the written statement(s). The said replication, if any, shall be accompanied by with affidavit of

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admission/ denial of documents filed by the defendants, without which the replication shall not be taken on record within the aforesaid period of fifteen days.

14. If any of the parties wishes to seek inspection of any document(s), the same shall be sought and may be given within the requisite timelines.

15. List before the learned Joint Registrar for marking exhibits of documents on 07.08.2025. It is made clear that if any party unjustifiably denies any document(s), then it would be liable to be burdened with costs.

I.A. 11951/2025 (*Order XXXIX rule 1 & 2 CPC: Stay*)

16. *Vide* the present application, the plaintiff seeks to restrain the defendants and/ or persons associated with the defendants in any manner whatsoever, from infringing upon the trademark “ZEST” and its family of trademarks registered in the plaintiff’s name under *Class 5*.

17. As per pleadings, the plaintiff is a company incorporated in India in the year 1967 and is engaged in the business of manufacturing, marketing and selling pharmaceutical formulations. The plaintiff obtained their first registration for the trademark “ZEST” *vide* registration no.406639 in 1983 and since then has obtained registration of its multiple variations in Class 5. Further, the said trademark is being used as a formative mark, wherein “ZEST” is being used as the primary trademark among the various pharmaceutical products.

18. The plaintiff has been operating their business for the past 40 years and has invested substantial time and resources in the research, development, advertising, and promotion of its products, including but not limited to the “ZEST” family of trademarks. Further, a considerable amount of revenue and sales have been generated by the plaintiff and

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evidently, there is a significant presence on the internet qua the plaintiff's official website "www.dwdindia.com" and the same is easily accessible, whereon the products bearing the "ZEST" family of trademarks are advertised.

19. The defendants herein are companies registered under the Indian laws and operate in the same trade channel i.e., the pharmaceutical industry. Both defendants operate online, via the website bearing the domain name "GOODCAREPHARMA.COM" and "http://baidyanath.com/", whereon the pharmaceutical products are advertised under the label "GOODCARE ZEST" and the same products are being sold thereon.

20. Pertinently, defendant no.1, vide application no.1906350, attempted and failed to secure registration of the trademark "ZEST" in *Class 5* in the year 2010. Further, the plaintiff first came across the trademark application no.4395172 under *Class 5* in the year 2022 for securing a trademark for the mark "GOODCARE ZEST", filed by the defendants.

21. Evidently, the defendants, being aware of the registered trademark of the plaintiff *qua* opposition filed by the plaintiff to the application no.1906350 of the defendant no.1 filed in 2010, were continuing use of the plaintiff's trademark till date, and the same is still available on defendant no.2's website, as aforementioned.

22. Since the defendants are still continuing with the usage of the "ZEST" family of trademarks, the plaintiff has instituted the captioned suit against the defendants, wherein the present application has been filed.

23. This Court has heard the submissions advanced by the learned counsel for the plaintiff and gone through the pleadings and the documents

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on record.

24. Based on what is before this Court, given hereinbelow is the comparative table of the competing marks of the parties:-

| <u>Plaintiff's Trademark and Product</u> | <u>Defendants' Impugned Mark and Product</u> |
|--|---|
| "ZEST" | "GOODCARE ZEST" |
|  |  |

25. Considering what is borne out from the aforesaid, *prima facie*, there is hardly any difference between the "ZEST" trademark of the plaintiff and the mark "GOODCARE ZEST" of the defendants, particularly since "ZEST" is the prominent mark therein. The impugned mark is identically similar to that of the plaintiff and a clear attempt is being made by the defendants to deceive the public. In fact, the product of the defendants

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offered/ sold under the trademark “GOODCARE ZEST” creates an inference in the minds of the general public that the products sold by them emanate from the house of the plaintiff.

26. Furthermore, the pictorial representation therein clearly indicates that an average person, with imperfect recollection, would find it extremely difficult to discern any substantial difference between the plaintiff’s and the defendant’s products. The variations evince that the separable parts thereof i.e. “GOOD” & “CARE” are descriptive and do not have any bearing, in view of the tenets of imperfect recollection, the only thing recollected is “ZEST”, thereby evidencing the defendants’ *mala fide* intent to unfairly capitalize on the goodwill established by the plaintiff.

27. Furthermore, admittedly the defendants have sought registration under the same Class and are operating in the same line of business and are further dealing in the same trade channels, with an identical customer base, and also existing within the presence of the same market. Therefore, there is more than one chance of causing confusion amongst not only the members of the trade but also the members of the general public.

28. Also, the plaintiff is the prior adopter and the prior user as also the prior registrant of the “ZEST” family of trademarks, it has better/ stronger rights than those of the defendants.

29. Moreover, since the products are involving pharmaceutical preparations, this Court needs to exercise a higher degree of care and caution as any likelihood of confusion in the minds of the general public as also the members of the trade, could be severely detrimental to the public health and safety.

30. Taking all the aforesaid factors together, the *balance of convenience*

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and probabilities tilt in favour of the plaintiff for the grant of an *ex parte ad interim* injunction in its favour and against the defendants. So much so, as per the existing circumstances, the plaintiff has been able to make out a *prima facie* case in its favour and against the defendants as well. Therefore, allowing the defendants to continue dealing in the products under the trademark “GOODCARE ZEST” is likely to create confusion among the general public. Pertinently, considering the aforesaid, the plaintiff is prone to *irreparable harm* and *injury* to it.

31. Accordingly, till the next date of hearing, the defendants, their directors, employees, servants, agents, distributors, partners, franchises, representatives, suppliers, affiliates, subsidiaries, franchisees, licensees, representatives, group companies, assigns, etc. are restrained from using, selling, manufacturing and advertising the “ZEST” family of trademarks and/ or any other confusingly/ deceptively similar trademarks amounting to infringement.

32. Upon filing of the process fee, issue notice to the defendants through all permissible modes, including through *email*, returnable before the Court on 04.09.2025.

33. Reply be filed within four weeks. Rejoinder thereto, if any, be filed within two weeks thereafter.

34. The provisions of *Order XXXIX Rule 3* of the CPC be complied with within one week.

35. List on 04.09.2025.

SAURABH BANERJEE, J

MAY 13, 2025/NA

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