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

+ **CS(COMM) 551/2020**

HAMDARD NATIONAL FOUNDATION (INDIA) & ANR.

.....Plaintiffs

Through : Mr. Shivendra Pratap Singh, Adv.

versus

SADAR LABORATORIES PVT. LIMITEDDefendant

Through : Mr. N.K. Kantawala with Mr. Praver
Sharma and Mr. Prakhar Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **15.12.2020**

[Court hearing convened via video-conferencing on account of COVID-19]

I.A. No.12034/2020

1. Allowed. The plaintiffs are permitted to file additional documents.
2. The additional documents will be filed within 30 days from today.

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3. This is an application filed by the plaintiffs under Section 151 of the Code of Civil Procedure, 1908 [in short "CPC"] seeking exemption not only from filing original and certified copies of certain documents but also from filing legible copies of dim annexures.
4. The application is allowed, subject to the plaintiffs filing legible copies of dim documents within two weeks from today.

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4.1 Insofar as the filing of original and certified copies of the documents is concerned, the plaintiffs will place the same on record as and when they are directed to do so by this Court.

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5. The case set up by the plaintiffs is, broadly, as follows:

5.1 Plaintiff no. 1 claims to be the owner of the registered word mark and label mark “ROOH AFZA” under Class 5 and Class 32.

5.2 It is averred by the plaintiffs that they have been using the aforementioned word mark and label mark since 1942.

5.3 Presently, the plaintiffs are aggrieved by the fact that the defendant is not only using the impugned mark “DIL AFZA” under Class 5, but also under Class 32.

6. To be noted, Class 5 relates to medicinal and pharmaceutical preparations while Class 32 relates to syrups for making beverages.

7. Mr. N.K. Kantawala, who appears on advance notice, on behalf of the defendant, says that the defendant has been using the word mark “DIL AFZA” for Unani medicines since 1949.

7.1 Furthermore, Mr. Kantawala says that insofar as syrups and beverages are concerned, the defendant has been using the impugned mark since 2018.

8. On the other hand, Mr. Shivendra Pratap Singh, who appears for the plaintiffs, has drawn my attention to the applications filed by the defendant with the Trade Marks Registry. The application concerning Class 5 filed by the defendant is dated 04.07.2018. In that application, the date of user is given as 01.01.1949.

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9. Insofar as the application under Class 32 is concerned, the same is dated 10.06.2018. In this application, according to Mr. Singh, the defendant had claimed that it intended to use its mark in future.

10. Given this position, Mr. Singh says that the claim of the defendant that it has been using the impugned mark “DIL AFZA” for syrups and beverages, which falls under Class 32 since 2018, is false.

10.1 Furthermore, Mr. Singh says that insofar as the application under Class 5 is concerned, which claims user since 01.01.1949, *qua* Unani medicines, the same is not backed by any document(s), which would establish use since that date.

11. According to Mr. Kantawala, the defendant has obtained registration of the impugned mark in the aforementioned classes.

12. Mr. Singh has referred me to the averments made in the interlocutory application filed by the plaintiffs, based on which, it is stated by him that rectification petitions have been filed before the Intellectual Property Appellate Board.

12.1 Mr. Singh further submits that, for the moment, the plaintiffs are concerned with the use of impugned mark “DIL AFZA” in Class 32 i.e. syrups and beverages.

13. Accordingly, issue summons in the suit and notice in the captioned application.

13.1 Mr. Prakhar Sharma accepts service on behalf of the defendant.



13.2 Mr. Kantawala seeks a short accommodation to file a reply. Given the fact that the plaintiffs have not shown enough alacrity to move the Court, I am inclined to grant a week's accommodation to the defendant.

13.3 The defendant will file its written statement and a reply to the interlocutory application at least two days before the next date of hearing. Copies of the written statement and reply will be furnished to Mr. Singh.

14. Mr. Kantawala, on instructions of Mr. Prakhar Sharma, Advocate, says that till the next date of hearing, the defendant will not manufacture and sell syrups and beverages, falling under Class 32, under the impugned mark i.e. "DIL AFZA".

14.1 The statement of Mr. Kantawala is taken on record.

15. List the matter on 27.01.2021.

RAJIV SHAKDHER, J

DECEMBER 15, 2020

pmc

[Click here to check corrigendum, if any](#)

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