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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 534/2024**
GLAXO GROUP LIMITEDPlaintiff
Through: Ms. Urfee Roomi, Ms. Janaki Arun
and Ms. Anuja Chaudhary,
Advocates
versus
QPHARM HEALTH CARE LIMITED AND ANRDefendants
Through: None.

CORAM:
HON'BLE MR. JUSTICE SAURABH BANERJEE

% **ORDER**
03.07.2024

I.A. 32060/2024 (Exemptions)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

I.A. 32059/2024 (Additional Documents)

3. The plaintiff vide the present application seeks leave to file additional documents under the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (hereinafter referred to as '**Commercial Courts Act**'). If the plaintiff wishes to file additional documents at a later stage, shall file the same strictly as per the provisions of the Commercial Courts Act and the Delhi High Court (Original Side) Rules, 2018.
4. Accordingly, the present application is allowed in terms of above and is disposed of.

I.A. 32061/2024 (u/S 12A of the Commercial Courts Act)

5. The plaintiff vide the present application seeks exemption from



instituting pre-litigation mediation.

6. Considering that the plaintiff seeks urgent ad-interim relief and in view of the orders passed in ***Chandra Kishore Chaurasia vs. R A Perfumery Works Private Ltd*** 2022/DHC/004454, the plaintiff is exempted from instituting pre-litigation mediation.

7. The application is allowed and disposed of.

I.A. 32062/2024 (Permission to file documents in sealed cover)

8. The plaintiff vide the present application seeks permission to file some documents in a sealed cover. Let the same be filed in the Registry, which shall be kept in a sealed cover.

9. The application stands disposed of.

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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 next date of hearing before the Joint Registrar on 7th August, 2024.

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

13. Liberty is also given to the plaintiff to file a replication within fifteen days from the date of receipt of written statement(s). Replication, if any be filed by the plaintiff along with affidavit(s) of admission/denial of documents filed by the defendants, without which the replication shall not be taken on record.

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

15. List before the Joint Registrar for marking exhibits of documents on 7th August, 2024. It is made clear that if any party unjustifiably denies any document(s), would be liable to be burdened with costs.

16. List before the Court on 24th October, 2024.

I.A. 32058/2024 (u/O XXXIX Rules 1 & 2 of the CPC)

17. The plaintiff vide the present suit, primarily seeks protection of the packaging/trade dress of its well-known product name/marks 'AUGMENTIN', 'BETNESOL', 'BETNOVATE', 'FEFOL' and 'FEFOL-Z' used for pharmaceutical and medicinal preparations.

18. The plaintiff claims to be one of the leading pharmaceutical companies in the world, which has a large number of well-known brands as part of its bouquet whereas, as per plaintiff, the defendant No.1 is a company registered under the Companies Act, 2013 engaged in the business of pharmaceutical and medicinal preparations and the defendant No.2 is one of its Director.

19. The plaintiff also claims to be a leading international science-led global healthcare company which traces its roots back to the year 1715. Today, the company has a significant global presence in more than 150 countries, including India.

20. The plaintiff is engaged in various products. Some of such popular products of the plaintiff are under the marks 'AUGMENTIN', 'BETNESOL', 'BETNOVATE', 'FEFOL' and 'FEFOL-Z'. The details of the various valid and subsisting registrations for the plaintiff's marks in India are illustrated below :



S.No.	Reg No.	Mark	Goods	Reg Date	Valid Until
1.	200822	BETNESOL	Pharmaceutical, veterinary and sanitary substances	February 21st, 1961	February 21st, 2030
2.	219258	BETNOVATE	Pharmaceutical, veterinary and sanitary substances	December 5th, 1963	December 5th, 2025
3.	354687	AUGMENTIN	Pharmaceutical preparations and substances for human use and veterinary use	October 23rd, 1979	October 23rd, 2027
4.	261202	FEFOL	Pharmaceutical preparations and substances for human use	December 10th, 1969	December 10th, 2024
5.	598144	FEFOL-Z	Pharmaceutical preparations and substances for human use	May 26th, 1993	May 26th, 2027

21. The defendants are also engaged in the business of pharmaceutical



and medicinal preparation and in fact are users of various marks bearing the names, but not limited to, 'BETNOTREAT', 'TOPMENTIN' and 'PIFOL-Z'.

22. The present suit relates to the alleged trade mark, infringement, passing off etc. by the defendants for various product names/marks as used by the plaintiff. A competing differentiation of the marks, packaging and capsule trade dress of both the plaintiff and the defendants involved therein is extracted below :

S. No.	Defendants' Marks and/or Defendants' Packaging and Capsule Trade Dress	Plaintiff's Marks and/or Plaintiff's Packaging and Capsule Trade Dress
1.		
2.		
3.		



4.		
5.		

23. As per the plaintiff, the defendants have been advertising and selling their products bearing their marks, packaging and capsule trade dress through their website www.qpharm.in and also through third-party websites such as *IndiaMart*.

24. The plaintiff claims that after a thorough investigation by the plaintiff of the unauthorized use by the defendants of its marks, packaging and capsule trade dress, the plaintiff sent a legal notice dated February 1st, 2024 to the defendants, which despite sending a follow-up reminder via email on February 9th, 2024 was not responded to. This prompted the plaintiff to resend the legal notice dated February 1st, 2024 to the

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defendants on February 21st, 2024, however, the plaintiff has not received any response thereto as well from the defendants till date.

25. This Court has heard the learned counsel appearing for the plaintiff as also gone through the averments made in the application alongwith the documents on record filed by the plaintiff.

26. What entails is that the defendants' marks, packaging and capsule trade dress are identically/ deceptively similar to the plaintiff's marks, packaging and capsule trade dress. Moreover, it is not in dispute that they are not only sold through identical trade channels but also sold to the same set of consumers as well. It can, thus, be safely inferred that there is a likelihood of confusion in the minds of general public as regards to the association of the defendants' marks, packaging and capsule trade dress with that of the plaintiff's. Additionally, a visual comparison of the competing marks, packaging and capsule trade dress of the parties reflects that the same was not possible if the defendants were not aware of the plaintiff's marks, packaging and capsule trade dress. Therefore, all the aforesaid are sufficient for this Court to conclude that the defendants' have in fact copied identically similar features of the plaintiff's marks, packaging and capsule trade dress without any kind of permission, much less authorization from the plaintiff.

27. Interestingly, as per the settled principle of law laid down by the Hon'ble Supreme Court of India in ***Cadila Health Care v. Cadila Pharmaceuticals Ltd*** AIR 2001 SC 1952 and reiterated and reaffirmed by it in ***Heinz Italia & Anr. v. Dabur India Ltd.*** (2007) 6 SCC 1 and ***Brihan Karan Sugar Syndicate Private Limited vs. Yashwantrao Mohite Krushna Sahakari Sakhar Karkhana*** (2024) 2 SCC 577 as well as by the Hon'ble



High Court of Delhi in ***Brittania Industries Ltd. v. ITC India Ltd.*** (2021) SCC OnLine Del 1489, this Court has to be more cautious and stringent while dealing with matters relating to pharmaceutical products, as involved herein, more so, since confusion may arise in the minds of general public, if the competing marks, packaging and capsule trade dress of the defendants' are allowed to subsist and/or continue. Also, to safeguard and protect from such measures, this Court is to adopt a stricter approach for judging the possibility of any confusion of any pharmaceutical product as involved herein with another by any such layman/consumer which is to be avoided at all costs.

28. Taking into consideration the overall facts and circumstances involved as also the settled position of law enumerated by the Hon'ble Supreme Court of India and followed by various Hon'ble High Courts from time to time, this Court finds no reason for not passing an order granting an *ad-interim ex-parte* injunction in favour of the plaintiff and against the defendants. The plaintiff has also been able to make out a *prima facie* case with the balance of convenience in its favour and against the defendants. In view thereof and in fact there is a high probability of the plaintiff suffering irreparable harm, loss and injury, if this Court does not grant the relief of *ad-interim ex-parte* injunction in its favour and against the defendants.

29. Accordingly, considering that the defendants' products are a look alike imitation of the plaintiff's trade dress and packaging using the same colour combinations, so much so the strip of one of the product (FEFOL-Z vs. PIFOL-Z) is exactly same, the defendant Nos.1 and 2 are restrained from using, manufacturing, selling, offering for sale, advertising any pharmaceutical preparations or any other packaging which is a colourable



reproduction or a substantial imitation of the packaging and trade dress of plaintiff's product under the various product marks/names as delineated above.

30. It is further directed that the defendants' listings on the third-party websites like *IndiaMart* with the infringing packaging and trade dress of the plaintiff's be also taken down. A copy of this order be communicated by the learned counsel for the plaintiff to *IndiaMart*. Upon receipt of the present order, *IndiaMart* is directed to take down the said listings of the defendants from its website within a period of 72 hours.

31. The provisions of Order XXXIX Rule 3 CPC be complied within a week.

32. List before the Court on 24th October, 2024.

SAURABH BANERJEE, J.

JULY 3, 2024/akr