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

+ **CS(COMM) 677/2025**

MANKIND PHARMA LIMITED

.....Plaintiff

Through: Mr. Chander M. Lall, Sr. Adv. with
Mr. Ankur Sangal, Mr. Ankit
Arvind, Mr. Shashwat Rakshit, Ms.
Nidhi Pathak and Ms. Annanya
Mehan, Advs.

versus

AGIOS PHARMACEUTICAL, INC & ORS.

.....Defendants

Through: None

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

% **10.07.2025**

I.A. 15953/2025 (*Deficit Court fees*)

1. *Vide* the present application under *Section 149* read with *Section 151* of the Code of Civil Procedure, 1908 (*CPC*), the plaintiff seeks two weeks' time to file the deficit Court fees.

2. For the reasons stated in the application, the plaintiff is granted only a period of *two days* to file the deficit Court fees.

3. Accordingly, the application stands disposed of in the aforesaid terms.

I.A. 15951/2025 (*Exemption from pre institution mediation*)

4. *Vide* the present application under *Section 12A* of the Commercial Courts Act, 2015, read with *Section 151* of the *CPC*, the plaintiff seeks exemption from pre-institution mediation.



5. Considering the averments made in the present application, as also since the plaintiff is seeking urgent interim relief, and the products involved are intended for usage by the humans, and the possibility of consumer deception is likely to cause detriment to public interest, the plaintiff is exempted from instituting pre-institution mediation, more so, since accompanying applications under *Order XXXIX rule/s 1 & 2 CPC* and under *Order XXVI rule 9 CPC* have also been filed herewith.

6. Accordingly, the present application is allowed and disposed of.

I.A. 15954/2025 (*Exemption*)

7. Exemption allowed, subject to all just exceptions.

8. The application stands disposed of.

I.A. 15952/2025 (*Additional documents*)

9. *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.

10. 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.

11. Accordingly, the present application stands disposed of.

I.A. 15955/2025 (*Exemption from advance service*)

12. *Vide* the present application under *Section 151* of the CPC, the plaintiff seeks exemption from advance service upon the defendants.

13. Learned counsel for the plaintiff submits that considering the position involved, particularly since appointment of Local Commissioners for execution of search and seizure of evidence/ counterfeit products at the



premises of defendants are sought, there is a likelihood that the apprehensions of the plaintiff will become a reality in case advance service is effected and therefore, an exemption from effecting advance service is necessary.

14. Therefore, for the reasons stated in the application, as also taking into account the aforesaid factors and in the interest of justice, the plaintiff is granted exemption from effecting advance service upon the defendants.

15. Accordingly, the present application is allowed and disposed of.

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16. *Vide* the present plaint, the plaintiff seeks grant of a permanent injunction restraining infringement of trade mark, passing off, unfair trade practice, damages, etc. against the defendants.

17. Let the plaint be registered as a suit.

18. 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 16.10.2025.

19. 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(s) of admission/ denial of documents of the plaintiff, without which the written statement(s) shall not be taken on record.

20. Replication(s) thereto, if any, be filed by the plaintiff within a period of *fifteen days* from the date of receipt of written statement(s). The said replication(s), if any, shall be accompanied with affidavit(s) of admission/ denial of documents filed by the defendants, without which the replication(s) shall not be taken on record within the aforesaid period of



fifteen days.

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

22. List before the learned Joint Registrar for marking exhibits of documents on 16.10.2025. 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. 15949/2025 (Stay)

23. *Vide* the present application, the plaintiff seeks an interim injunction restraining the defendants from infringement and/ or passing off of its trademarks, amongst other ancillary reliefs.

24. As per plaint, the plaintiff is a public limited company incorporated under the Companies Act, 1956, and has been engaged in the business of pharmaceutical preparations since 1986, providing a broad spectrum of medications including antibiotics, antifungals, anthelmintics, etc. in around 34 countries worldwide.

25. For carrying on with its business activities, since its inception in 1986, the plaintiff has been using the trademark **MANKIND/ KIND**, and has subsequently diversified into using other related trademarks with **KIND** as the prefix/ suffix, for e.g. **VOMIKIND**, **RABEKIND**, **ELECTROKIND**, etc., for which it has also obtained numerous registrations in India, and abroad, as enumerated in *paragraph nos.10, 11 and 16* of the captioned plaint. The said trademark variants also include **PYRIKIND** and **PARAKIND** which are involved in the present dispute, and have been registered since 2003 and 2007 respectively under Class 5 of the Trade Marks Act, 1999 (*the Act*).

26. The plaintiff has garnered substantial sales in over 100 different



products today, and has invested significant amounts in advertising the same under the afore-mentioned trademarks, including featuring prominent celebrities in newspaper and magazine advertisements and campaigns all over India.

27. In the last week of June 2025, the plaintiff came across the product listings of the defendant no.1, a biopharmaceutical company also trading in pharmaceutical preparations, under the mark **PYRUKYND/**



(*impugned marks*) on the website of defendant nos.2 and 3, who are its importers, prompting the plaintiff to approach this Court.

28. Upon conducting inquiries, the plaintiff also discovered that the defendant no.1 has obtained registrations for the above impugned marks *vide* registration nos.4536882 and 5149639 in the years 2020 and 2021 respectively, also under Class 5 of the Act, to which the plaintiff has initiated respective rectification proceedings in July 2025.

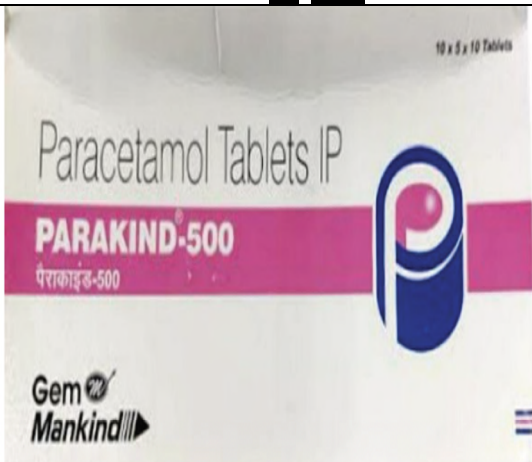
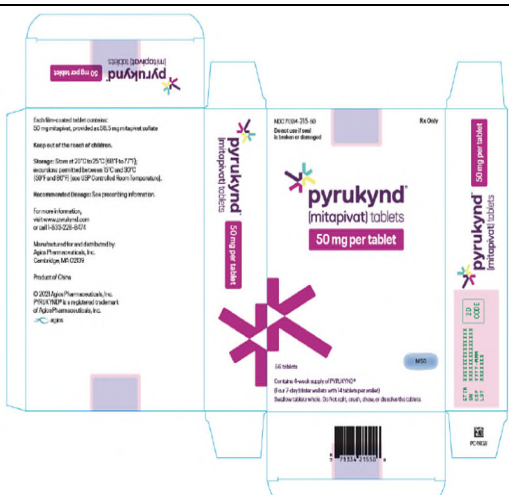
29. Based on the above, learned senior counsel for the plaintiff submits that the use of the impugned marks by the defendants as well as the registrations obtained by the defendant no.1 are bad in law, as the impugned marks are a clear infringement of the trademarks of the plaintiff being identically/ deceptively similar thereto, as also pertaining to identical class of products, i.e. pharmaceutical preparations, the plaintiff is entitled to an *ad interim* injunction at this stage.

30. This Court has heard learned senior counsel for the plaintiff, as also gone through the pleadings and documents on record.

31. A comparison of the plaintiff's trademarks and the defendants'



impugned marks, as well as the products thereunder as evinced from the pleadings and the documents is as follows:-

Plaintiff's trademarks and products	Defendants' impugned marks and products
<u>PYRIKIND</u> <u>PARAKIND</u> <u>KIND</u> <u>MANKIND</u>	<u>PYRUKYND</u>
	

32. A perusal of the above gives the impression that the defendants, by using the impugned marks have attempted to come as close as possible to the trademarks of the plaintiff. Especially considering the trademark **PYRIKIND** of the plaintiff juxtaposed with the defendants' impugned mark **PYRUKYND**, the same leaves no scope for doubt that the impugned mark has been almost entirely lifted and affixed upon their product by the defendants, introducing the slightest change possible of only one alphabet, i.e. **I** to **U** and **Y**, and that it has been done deliberately only for the sake of adding a minuscule distinction, and to still have the identical visual and phonetic effect as the plaintiff's trademarks to make all believe that it is originating from the house of plaintiff. In fact, the plaintiff also has a



separate registration for the trademark **KIND**, and the impugned mark is clearly phonetically identical, and in fact, identically and deceptively similar to the same, as the change of one alphabet in the present case does not have any impact whatsoever on the overall impression of the product, especially viewing the same through the eyes of an average consumer with imperfect recollection.

33. Further, it is pertinent to note that both the products belong to the very same trade, i.e. pharmaceutical preparations, and such products are commonly sold through identical trade channels, i.e. pharmacies/ local chemist shops. In the present case, the listings by the defendant no.1 under the impugned marks are also on websites of a pharmaceutical nature, being the defendant nos.2 and 3, which have the various listings of the pharmaceutical products. In such a scenario, any deceptive similarity between the products of the plaintiff and those of the defendants ought to be avoided as any confusion between the two distinct medicines can cause severe detriment to the consumer, and even prove to be fatal. So much so, it is the settled position of law that while dealing with pharmaceutical preparations, this Court owes a duty of exercising a greater degree of care, caution and diligence, as also to apply a more stringent test to avoid any possibility/ likelihood of confusion between different medicinal products amongst the general public.

34. In light of the aforesaid at this stage, this Court is of the view that the plaintiff has been able to make a *prima facie* case in its favour, as also *irreparable harm, loss and injury* is likely to be caused to the plaintiff if the defendants are allowed to continue, as well as considering the likelihood of confusion between different medicinal products. As such, the



balance of convenience also tilts in favour of the grant of an *ad interim* injunction in favour of the plaintiff and against the defendants.

35. Accordingly, till the next date of hearing, the defendants, their proprietors, partners, directors, principal officers, servants, distributors, dealers and agents, and all others acting for and on their behalf are hereby restrained from selling, offering for sale, advertising and/ or directly or indirectly dealing in any goods and services under the impugned marks

PYRUKYND/  and or any other mark(s) being identical and/ or deceptively similar and/ or amounting to infringement and/ or passing off of trademarks **MANKIND/ KIND/ PYRIKIND/ PARAKIND** and any other variants thereof of the plaintiff.

36. Upon filing of process fee, issue notice to the defendants through all permissible modes, including through *email*, returnable before the Court on 17.11.2025.

37. Reply(s) be filed within a period of four weeks. Rejoinder(s) thereto, if any, be filed within a period of two weeks thereafter.

38. List before Court on 17.11.2025.

I.A. 15950/2025 (*Appointment of Local Commissioners*)

39. *Vide* the present application, the plaintiff seeks appointment of Local Commissioners to visit the premises of the defendants.

40. Learned counsel for the plaintiff submits that the defendants are aware of the plaintiff and its products and the infringing materials placed on record are clear evidence of the intention of the defendants to ride upon the goodwill and reputation of the plaintiff. The plaintiff believes that the infringing products are being marketed from the location(s) set out in the



memo of parties annexed with the plaint and the defendants are likely to remove all physical evidence or deny their involvement in the infringing activities.

41. In view of the aforesaid as also considering the factual matrix involved, and most relevantly, in order to preserve the counterfeit and infringing materials involved, in the considered opinion of this Court, it is deemed appropriate to appoint Local Commissioners to visit the premises of the defendants.

42. Accordingly, the following are appointed as Local Commissioners with a direction to visit the premises of the defendants as entailed herein below:-

S.no.	Local Commissioner	Defendant and their Premises	Fee Schedule
1.	Mr. Dipanshu Gaba, Advocate +91- 9873730191	Defendant No.2 INDIAN PHARMA NETWORK TOWER A 905, I-THUM BUSINESS PARK BLOCK A, SECTOR 62 NOIDA-201301, UTTAR PRADESH	Rs.2,00,000/- [Two Lakhs only]
2.	Mr. Dhruv Arora, Advocate +91-9810012712	Defendant No.3 MEDVITAZ PHARMA SOLUTIONS 777, SECTOR NO. 37 FARIDABAD, HARYANA – 121 003	Rs.2,00,000/- [Two Lakhs only]

43. The Local Commissioners are to execute the commission in the respective premises of the defendants with the following directions:-

- a) The Local Commissioner(s) be accompanied by a representative and/ or counsel of the plaintiff, who shall be



permitted to enter into the premises of the defendant(s) as per the address(es) hereinabove.

b) The Local Commissioner(s) is/ are permitted to seize, pack and seal the infringing products/ materials and handover the same on *Superdari* to the concerned defendant(s) upon the said defendant(s) giving an '*Undertaking*' that he/ they shall not tamper with or remove the sealed products as also shall in compliance of the orders of this Court, as and when passed, produce the sealed products under *Superdari*.

c) The Local Commissioner(s) is/ are permitted to take photocopies and/ or screenshots of all the books of accounts including ledgers, cashbooks, bill books, purchases and sales records or any document(s) deemed necessary and found in the premises of the defendant(s) etc. for placing the hard copies or e-copies thereof on record.

d) The Local Commissioner(s) is/ are permitted to make video recording of the execution of the commission at the premises of the defendant(s) in compliance of the present order.

e) The Local Commissioner(s) is/ are permitted to take the assistance of the Station House Officer (SHO) within whose jurisdiction the premises of the defendant(s) is situated. The said SHO shall provide all and every necessary assistance and protection to the Local Commissioner(s), if as and when sought for ensuring protection of the Local Commissioner(s) as also for unhindered and effective execution of the commission at the premises of the defendant(s) in compliance of the present order.

f) If the premises of the defendant(s) is/ are found under lock(s), the Local Commissioner is/ are permitted to break open the



said lock(s) in the presence of the SHO/ any designated Police Officer from the local Police Station for acting in compliance of the aforesaid.

44. The fee of the each of the Local Commissioners finding mention in the fee schedule hereinabove, is in addition to all the related expenses for travel as also any other miscellaneous out of pocket expenses for the execution of the commission. All the aforesaid expenses shall be borne by the plaintiff and paid in advance to the each of the Local Commissioners.

45. The commission be executed within a period of *seven days* from today, i.e. on or before 17.07.2025.

46. The provisions of *Order XXXIX rule 3* of the CPC be complied forthwith, after the execution of the commission.

47. The report of the Local Commissioner(s) be filed within a period of two weeks from the date of execution of the commission.

48. A copy of this order be provided to each of the Local Commissioner(s).

49. Accordingly, the application is allowed and disposed of.

Dasti.

SAURABH BANERJEE, J

JULY 10, 2025/So