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

+ **CS(COMM) 647/2023 & I.A. 5378/2024**

SUN PHARMA LABORATORIES LTD. Plaintiff

Through: Mr. Sachin Gupta, Adv.

versus

CONSERN PHARMA LTD. Defendant

Through: Mr. Ayush Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

% 06.03.2024

I.A. 5378/2024 (for interrogatories, discover, nd production of documents)

1. This application has been filed on behalf of the plaintiff under Order XI Rule 4 and 12 of Code of Civil Procedure, 1908 for interrogatories and discovery of documents. On the basis of a statement made by defendants through their counsel that, without prejudice to their statement that defendant's mark was not similar to the plaintiff's mark, they were willing to give up the use of their mark '**VENISH**' for pharmaceutical preparations or for any allied or cognate goods in the future, a partial decree was passed by this Court on 26th February, 2024. Issue of damages was left open and an issue was framed on regarding the same for which burden of proof was placed on plaintiff in the following manner:

“Whether plaintiff shall be entitled for a decree of damages/ rendition of accounts, if so necessitated, against the defendant? OPP”

2. This application is for directions to answer interrogatories appended



along with the application which relate to the sales figures of defendants.

3. At the outset, it is stated by counsel for defendants that there was no third-party manufacturing and they were themselves manufacturing said product, and therefore, the question no.2 in the interrogatories, being, ***“Who manufactures the medicine VENISH for you? If third parties, please provide the statement of purchase.”*** does not really need to be answered.

4. As regards sales figures, same have been produced already, in compliance of the order dated 09th October, 2023 by virtue of the affidavit of Mr. Tarun Kamal dated 27th January, 2024 which is on record of this Court which shows the total sales, total sales return, and net sales.

5. The only issue which may require some clarification is as per question no.1, being since when have defendants been marketing medicine under the mark ‘VENISH’ or ‘VENISH’ formative marks.

6. Furthermore, for the purposes of disclosure, since sales figures have been provided but statement of costs has not been provided by defendants, same may also be produced by defendants.

7. Said statement of costs be certified by Chartered Accountant and duly filed by way of an affidavit with a copy to counsel for plaintiff.

8. On these two questions, being question nos.1 and 2, interrogatories are allowed and may accordingly be responded to within a period of four weeks by defendants.

9. Application is disposed of. Other interrogatories are not necessary in the context as stated above.

10. It is made clear that burden of proof of establishing relief of damages is on the plaintiff. Accordingly, plaintiff may file their evidence by way of an affidavit on the issue relating to damages within four weeks thereafter.



11. List before the Joint Registrar on 18th July, 2024, the date already fixed.
12. Order be uploaded on the website of this Court.

ANISH DAYAL, J

MARCH 6, 2024/MK/sc