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

+ CS(COMM) 848/2024 & I.A. Nos. 40841/2024, 40842/2024,  
40843/2024, 40844/2024 & 40845/2024

SUN PHARMACEUTICAL INDUSTRIES LTD .....Plaintiff

Through: Mr. Sachin Gupta with Mr. Rohit  
Pradhan, Ms. Prashansa Singh, Mr.  
Ajay Kumar and Ms. Archana,  
Advocates.  
(M): 9811180270  
Email: info@litlegal.in

versus

TRUE DERMA SA PVT LTD & ORS. ....Defendants

Through: None.

**CORAM:**  
**HON'BLE MS. JUSTICE MINI PUSHKARNA**

**ORDER**  
**30.09.2024**

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**I.A. 40844/2024 (Exemption from filing certified copies of documents)**

1. The present is an application under Section 151 of the Code of Civil Procedure, 1908 ("CPC"), on behalf of the plaintiff, seeking exemption from filing certified clearer/typed or translated copies of documents.
2. Exemption is granted, subject to all just exceptions.
3. Plaintiff shall file legible, clear, and translated copies of the documents, on which the plaintiff may seek to place reliance, before the next date of hearing.
4. Accordingly, the present application is disposed of.



**I.A. 40843/2024 (Exemption from instituting Pre-Institution Mediation)**

5. The present is an application under Section 12A of the Commercial Courts Act, 2015, read with Section 151 of CPC, seeking exemption from undergoing Pre-Institution Mediation.

6. Having regard to the facts of the present case and in the light of the judgment of Supreme Court in the case of *Yamini Manohar Versus T.K.D. Keerthi*, 2023 SCC OnLine SC 1382, and Division Bench of this Court in *Chandra Kishore Chaurasia Versus RA Perfumery Works Private Ltd.*, 2022 SCC OnLine Del 3529, exemption from attempting Pre-Institution Mediation, is granted.

7. Accordingly, the application stands disposed of.

**I.A. 40845/2024 (Exemption from advance service to the defendants)**

8. The present is an application under Section 151 CPC, seeking exemption from advance service to the defendants.

9. The plaintiff seeks urgent interim relief, and has also sought appointment of a Local Commissioner. Therefore, in the peculiar facts and circumstances of this case, exemption from effecting advance service upon the defendants, is granted.

10. For the reasons stated in the application, the same is allowed and disposed of.

**CS(COMM) 848/2024**

11. Let the plaint be registered as suit.

12. Upon filing of the process fee, issue summons to the defendants by all permissible modes. Summons shall state that the written statement be filed by the defendants within thirty days from the date of receipt of summons. Along with the written statement, the defendants shall also file affidavit of



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

13. Liberty is given to the plaintiff to file replication within thirty days from the date of receipt of the written statement. Further, along with the replication, if any, filed by the plaintiff, an affidavit of admission/denial of documents of the defendants, be filed by the plaintiff, without which, the replication shall not be taken on record. If any of the parties wish to seek inspection of the documents, the same shall be sought and given within the timelines.

14. List before the Joint Registrar (Judicial) for marking of exhibits, on 20<sup>th</sup> November, 2024.

15. List before the Court on 20<sup>th</sup> January, 2025.

**I.A. No. 40841/2024 (Application under Order XXXIX Rules 1 and 2 CPC)**

16. The present suit has been filed seeking permanent injunction restraining infringement of trade mark/trade name, passing off, unfair competition, damages/rendition of accounts of profits and delivery up, etc.

17. Learned counsel appearing for the plaintiff submits that by way of the present suit, the plaintiff complains against the defendants for using the impugned mark/name RE-VITALCARE on its medicinal and pharmaceutical preparations, which is deceptively similar to the plaintiff's registered, well-known and prior used trade mark REVITAL. The plaintiff obtained its earlier registration for the trade mark REVITAL in the year 1985 and has the sale of ₹ 17288.54 Million in the year 2022-2023. In the third week of September 2024, the plaintiff came across the defendant's product selling at Delhi. The defendant no. 1 had applied for the marks RE-



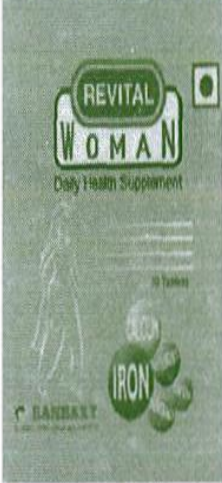
VITALCARE and TRUE REVITALCARE under application nos. 6071845 and 6116480, dated 18<sup>th</sup> August, 2023 and 19<sup>th</sup> September, 2023 respectively. The learned Ld. Registrar objected to both applications vide its examination reports dated 04<sup>th</sup> November, 2023 and 07<sup>th</sup> December, 2023, citing REVITAL and its formative marks of the plaintiff. The defendant, in its replies dated 18<sup>th</sup> August, 2023 and 15<sup>th</sup> May, 2024, claimed that the cited marks were dissimilar.

18. It is submitted that the use of the impugned mark RE-VITALCARE not only amounts to passing off its goods as those of the plaintiff's, but the impugned use also amounts to infringement of the plaintiff's registered trade mark.

19. It is submitted that plaintiff's predecessor coined the trade mark REVITAL in the year 1985 for its nutraceutical preparations and has been extensively and continuously using the same since the year 1988. The plaintiff's product under the mark REVITAL is a well-balanced combination of ginseng, vitamins, and minerals in appropriate concentration, which has been formulated to prevent stress, fatigue and improve physical and mental performance and for overall health and vitality.

20. It is further submitted that the trade mark REVITAL being a coined mark enjoys inherent distinctiveness indicating trade origin and source of the goods bearing the said trade mark. REVITAL is also registered in India, the details of which, as given in the plaint, are as under:-



| S. No. | Appl. No. & Dt.           | Trade Mark                                                                                                       | Goods                                                                         |
|--------|---------------------------|------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------|
| 1.     | 447372 dt.<br>26.12.1985  | REVITAL                                                                                                          | Class 5: Pharmaceutical and medical preparations                              |
| 2.     | 2090755 dt.<br>28.01.2011 |                                 | Class 5: Pharmaceutical and medical preparations for human and veterinary use |
| 3.     | 2575070 dt.<br>02.08.2013 | <br>Capsule (Device)         | Class 5: Dietic and nutritional food supplements                              |
| 4.     | 2090785 dt.<br>28.01.2011 | <br>Revital Woman<br>(Label) | Class 5: Pharmaceutical & medicinal preparations for human &, veterinary use  |



### OTHER INDIAN TRADE MARK REGISTRATIONS

| S. No | Trade Mark                                     | Cl. | Appl. No. | Date       |
|-------|------------------------------------------------|-----|-----------|------------|
| 1.    | REVITAL                                        | 31  | 1161418   | 26.12.2002 |
| 2.    | REVITALITE                                     | 5   | 1482255   | 28.08.2006 |
| 3.    | Revital ActEVE                                 | 5   | 1741373   | 08.10.2008 |
| 4.    | REVITAL +                                      | 5   | 1746828   | 22.10.2008 |
| 5.    | REVITAL PLUS                                   | 5   | 1746829   | 22.10.2008 |
| 6.    | REVITAL-VGM                                    | 5   | 1746830   | 22.10.2008 |
| 7.    | REVITAL (Label)                                | 31  | 2090754   | 28.01.2011 |
| 8.    | REVITAL WOMEN (Label)                          | 31  | 2090784   | 28.01.2011 |
| 10.   | REVITAL G+                                     | 5   | 2288886   | 24.02.2012 |
| 12.   | REVITAL LISTENING TO MY<br>BODY & MIND (label) | 41  | 2521821   | 29.08.2013 |
| 13.   | 25 YEARS – REVITAL                             | 5   | 2768144   | 04.07.2014 |
| 15.   | REVITAL H                                      | 5   | 2866846   | 22.12.2014 |
| 16    | REVITAL                                        | 5   | 4751295   | 20.11.2020 |
| 17    | REVITAL                                        | 29  | 4784145   | 16.12.2020 |



|    |                                                         |    |         |            |
|----|---------------------------------------------------------|----|---------|------------|
| 18 | REVITAL                                                 | 30 | 4751296 | 20.11.2020 |
| 19 | REVITAL H ENERGY NXT                                    | 5  | 5259479 | 23.12.2021 |
| 20 | REVITAL H POPVITS                                       | 5  | 5112688 | 01.09.2021 |
| 21 | REVITAL H POPVITS                                       | 29 | 5112685 | 01.09.2021 |
| 22 | REVITAL H POPVITS                                       | 30 | 5112686 | 01.09.2021 |
| 24 | REVITAL H PROTEIN NXT                                   | 5  | 5259480 | 23.12.2021 |
| 25 | REVITAL H PROTEIN NXT<br>CHOCO ALMOND BAR<br>(Device)   | 5  | 5330109 | 15.02.2022 |
| 26 | REVITAL H PROTEIN NXT<br>COFEE HAZELNUT BAR<br>(Device) | 5  | 5330110 | 15.02.2022 |
| 27 | REVITAL H PROTEIN NXT<br>COFEE HAZELNUT BAR<br>(Device) | 30 | 5330111 | 15.02.2022 |
| 28 | REVITAL H PROTEIN NXT<br>CHOCO ALMOND BAR<br>(Device)   | 30 | 5330112 | 15.02.2022 |
| 29 | REVITAL H ENERGY NXT<br>CHOCO ALMOND BAR<br>(Device)    | 5  | 5330113 | 15.02.2022 |
| 30 | REVITAL H ENERGY NXT<br>YUGHURT BERRY BAR<br>(Device)   | 5  | 5330114 | 15.02.2022 |
| 31 | REVITAL H ENERGY NXT<br>YUGHURT BERRY BAR<br>(Device)   | 30 | 5330115 | 15.02.2022 |





|    |                                                      |    |         |            |
|----|------------------------------------------------------|----|---------|------------|
| 32 | REVITAL H ENERGY NXT<br>CHOCO ALMOND BAR<br>(Device) | 30 | 5330116 | 15.02.2022 |
| 33 | REVITAL H ENERGY NXT                                 | 30 | 5330117 | 15.02.2022 |
| 34 | REVITAL H PROTEIN NXT                                | 30 | 5330118 | 15.02.2022 |
| 35 | REVITAL NXT                                          | 5  | 5309539 | 01.02.2022 |
| 36 | REVITAL NXT                                          | 30 | 5323771 | 10.02.2022 |
| 37 | REVITAL SENIOR (LABEL)                               | 5  | 2090756 | 28.01.2011 |
| 38 | REVITAL SENIOR (LABEL)                               | 31 | 2090757 | 28.01.2011 |
| 39 | KIDDI-REVITAL                                        | 5  | 2257158 | 27.12.2011 |
| 40 | REVITAL H                                            | 5  | 5335270 | 18.02.2022 |
| 41 | REVITAL H                                            | 30 | 5335271 | 18.02.2022 |

21. It is submitted that the plaintiff has been recorded as the subsequent proprietor of the trade mark REVITAL with the Trade Marks Registry. The said marks are duly registered, renewed, valid and subsisting. Further, there is no disclaimer on the said trademarks. The plaintiff has filed Certificate for Use in Legal Proceedings (LPCs) *qua* some of its registrations.

22. It is further submitted that besides vast sales in India, the plaintiff has also been exporting its product under the mark REVITAL to various countries including Sri Lanka, Kenya, Brazil, Mauritius, Nepal, Malaysia, Singapore, Zambia etc. The products manufactured and marketed by the plaintiff under the mark REVITAL are immensely popular worldwide, owing to their superior quality and the constant endeavors of the plaintiff to introduce significant innovations in the market.

23. It is submitted that the plaintiff has been commercially using the trade mark REVITAL for more than 3 decades not only Pan India but also in





several foreign countries. The plaintiff also has several trade mark registrations in domestic and international jurisdictions. The plaintiff has enforced its rights in its trade mark across the country. The plaintiff has also incurred substantial expenditure in rigorous promotion and advertising of its REVITAL product. As a result of the plaintiff's tireless efforts and promotions, its trade mark REVITAL and its label/package/trade dress is recognized and known to the general public not only in India but internationally as well.

24. It is further submitted that the registered trade mark REVITAL and its formative marks have acquired distinctiveness and enviable goodwill and reputation due to its extensive, long and continuous use since the year 1988. The products bearing the said trademarks identify plaintiff as the source or origin and none else. The plaintiff has the statutory and common law right to the exclusive use of the trademarks REVITAL and other REVITAL formative marks. The use of the same or deceptively similar trade mark by an unauthorized person or trader in relation to the similar kind of products will constitute infringement of the plaintiff's right of the exclusive use under Section 29 of the Trade Marks Act, 1999.

25. It is further submitted that the plaintiff's trade mark REVITAL, and its formative mark has acquired formidable goodwill, reputation and distinctiveness *vis-a-vis* such goods. The plaintiff, therefore, has the exclusive right to use the said trade mark and ought to be protected by this Court against imitation, confusion, deception, dilution and unfair competition by competitors in trade.

26. It is further submitted that the defendants has unethically and unlawfully adopted the impugned mark RE-VITALCARE. Being in



pharmaceutical business, the defendants are well aware of the plaintiff's adoption and use of its trade marks REVITAL and its formative marks. Having seen the success of the plaintiff, the defendants adopted the impugned mark. Such dishonest adoption amounts of infringement of the registered trade mark, passing off, unfair trade practice, unfair competition and dilution. Such act also amounts to misrepresentation and misappropriation of plaintiff's goodwill in its trade marks.

27. It is submitted that because of prior adoption, extensive use, and voluminous sales qua the trade mark REVITAL and its formative marks, coupled with extreme quality control maintained by the plaintiff, the said trademarks have acquired distinctiveness and formidable goodwill and reputation as a badge of quality products originating from the plaintiff. The unauthorized use of the impugned mark RE-VITALCARE by the defendants is likely to cause confusion and/or deception in the minds of the consumers. Such impugned use by the defendants constitutes acts of misrepresentation, misappropriation and passing off of the defendant for those of the plaintiff for the reasons stated above. The use of the impugned mark RE-VITALCARE by the defendants, therefore, being an actionable tort, is liable to be enjoined under the provisions of Section 135 of the Trade Marks Act.

28. In the above said circumstances, the plaintiff has demonstrated a *prima facie* case for grant of injunction and, in case, no *ex parte ad interim* injunction is granted, the plaintiff will suffer an irreparable loss. Further, balance of convenience also lies in favour of the plaintiff, and against the defendants.

29. Accordingly, till the next date of hearing, defendants, their directors, proprietors, partners, as the case may be, their assignees, affiliates,



associates, predecessors, successors in business, their distributors, dealers, stockists, retailers/ chemists, custodians, franchisees, licensees, importers, exporters, servants, agents and all persons claiming through and/or under them or acting on their behalf are restrained from manufacturing, selling, offering for sale, advertising, distributing, marketing, exhibiting for sale, trading in or otherwise directly or indirectly dealing in medicinal preparations or similar or like or allied goods under the impugned mark RE-VITALCARE, or any other extensions and/or any other trade mark containing the word RE-VITALCARE, and/or any other trade mark as may be identical with and/or deceptively similar to the plaintiff's registered trade mark REVITAL or its formative marks, amounting to infringement or passing off of the plaintiff's goods.

30. Issue notice to the defendants by all permissible modes, upon filing of process fees, returnable on the next date of hearing.

31. Reply be filed within a period of four weeks, from the date of service.

32. Rejoinder thereto, if any, be filed within a period of two weeks, thereafter.

33. Compliance of Order XXXIX Rule 3 CPC, be done, within a period of two weeks, from today.

34. List before the Court on 20<sup>th</sup> January, 2025.

**I.A. 40842/2024 (Application for appointment of Local Commissioners)**

35. The present application has been filed on behalf of the plaintiff under Order XXVI Rule 9 read with Order XXXIX Rule 7 read with Section 151 CPC, seeking appointment of a Local Commissioner.

36. It is submitted that in order to preserve evidence of infringement, it is necessary that Local Commissioner be appointed to visit the premises of the



defendants.

37. Accordingly, the following directions are issued:

37.1 Mr. Archit Mishra, Advocate (Mob. No. 9412636726), is appointed as Local Commissioner, with a direction to visit the following premises of defendants:

***SOFTGEL HEALTHCARE PRIVATE LIMITED  
Survey No. 20/1,  
Vandalur - Kelambakkam Road,  
Pudupakkam Village, Chengalpattu District,  
Kancheepuram, PUDUPPAKKAM,  
Tamil Nadu, India, 603103***

37.2 The learned Local Commissioner, along with a representative of the plaintiff and its counsel, shall be permitted to enter upon the premises of the defendants mentioned hereinabove, or any other location/premises, that may be identified, during the course of commission, in order to conduct the search, and seize the impugned counterfeit goods of the defendants.

37.3 After seizing the infringing material, the same shall be inventoried, sealed, and signed by the learned Local Commissioner, in the presence of the parties, and released on *superdari* to the defendants, on its undertaking to produce the same, as and when further directions are issued, in this regard.

37.4 The learned Local Commissioner shall also be permitted to make copies of the books of accounts, including ledgers, cash books, stock registers, invoices, books, etc., in so far as they pertain to the infringing products.

37.5 Further, the learned Local Commissioner shall be permitted to undertake/arrange for photography/videography of the execution of the



commission.

37.6 Both the parties shall provide assistance to the learned Local Commissioner, for carrying out the aforesaid directions.

37.7 In case, any of the premises are found locked, the learned Local Commissioner shall be permitted to break open the lock(s). To ensure an unhindered and effective execution of this order, the Station House Officer (“SHO”) of the local Police Station, is directed to render all assistance and protection to the Local Commissioner, as and when, sought.

37.8 The fee of the learned Local Commissioner, to be borne out by the plaintiff, is fixed at ₹2,00,000/-. The plaintiff shall also bear all the expenses for travel/lodging of the Local Commissioner and other miscellaneous out-of-pocket expenses, for the execution of the commission. The fee of the Local Commissioner shall be paid in advance by the plaintiff.

37.9 The Local Commission shall be executed within a period of two weeks from today. The Local Commissioner shall file the report within a period of four weeks from the date, on which the commission is executed.

38. The order passed today, shall not be uploaded for a period of two weeks.

39. In terms of the foregoing, the present application stands disposed of.

40. *Dasti* under signatures of the Court Master.

**MINI PUSHKARNA, J**

**SEPTEMBER 30, 2024**

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