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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(COMM) 905/2024

DANONE ASIA PACIFIC HOLDINGS PTE. LTD.Plaintiff

Through: Mr. M.S. Bharath, Ayush Sharma,
Reshma Rajagopal, Krishna V.S. and
Ashish Sharma, Advocates.

versus

M/S ROCKWELL PHARMACEUTICALS & ORS.....Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

% **16.10.2024**

I.A. 42385/2024 (seeking exemption from advance service to defendants)

1. Plaintiff seeks urgent interim relief against counterfeit products and for this purpose, an *ex-parte* appointment of Local Commissioners is also sought to confiscate the goods. Therefore, in the peculiar facts and circumstances of this case, exemption from effecting advance service upon the defendants is granted.

2. The application is disposed of.

I.A. 42387/2024 (u/s12A of Commercial Courts Act)

3. As the present suit contemplates urgent interim relief, in light of the judgment of the Supreme Court in *Yamini Manohar v. T.K.D. Krithi*, 2023 SCC Online SC 1382, exemption from the requirement of pre-institution mediation is granted.



4. The application stands disposed of.

I.A. 42386/2024 (O-XI R-1(4) of the Commercial Courts Act)

5. The present application has been filed on behalf of the Plaintiff seeking leave to file additional documents under the Commercial Courts Act, 2015.

6. The Plaintiff are permitted to file additional documents in accordance with the provisions of the Commercial Courts Act, 2015 and the Delhi High Court (Original Side) Rules, 2018.

7. Accordingly, the application is disposed of.

CS(COMM) 905/2024

8. Let the plaint be registered as a suit.

9. Issue summons.

10. Summons be issued to the defendants through all modes. The summons shall state that the written statement(s) shall be filed by the defendants within thirty days from the date of the receipt of summons. Along with the written statement(s), the defendants shall also file affidavit of admission/denial of the documents of the plaintiff, without which the written statement(s) shall not be taken on record.

11. Liberty is given to the Plaintiff to file replication(s), if any, within thirty days from the receipt of the written statement(s). Along with the replication(s) filed by the Plaintiff, affidavit of admission/denial of the documents of the defendants be filed by the Plaintiff.

12. The parties shall file all original documents in support of their respective claims along with their respective pleadings. In case parties are placing reliance on a document, which is not in their power and possession, its detail and source shall be mentioned in the list of reliance, which shall also be filed with the pleadings.



13. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

14. List before the Joint Registrar on 20th December, 2024 for completion of service and pleadings.

15. List before the Court on 28th February, 2025.

I.A. 42383/2024 (O-XXXIX Rule 1 and 2 of CPC)

16. The present suit has been filed seeking relief of permanent injunction restraining the defendants from infringing the trade mark and passing off their goods as those of the plaintiff along with other ancillary reliefs.

17. The plaintiff is a part of the Danone Group of Companies which have their origin from the year 1896. Currently, the Danone Group conducts business in over 120 countries and is one of the world's foremost players in the specialized nutrition market as well as in the dairy and plant based products market.

18. The plaintiff is the registered owner of the word mark and the device mark 'PROTINEX' which has been commercially used by the plaintiff and its predecessors in India since 1957.

19. The registration of the word mark 'PROTINEX' was obtained by the predecessors of the plaintiff company in class 5 on 15th February, 1957 and in class 30 on 20th September, 1971. The plaintiff also has various other registrations of the word mark 'PROTINEX' and its formative marks, details of which are given in paragraph 45 of the plaint.

20. The plaintiff also has various international trade mark registrations of the work mark PROTINEX' and its formative marks in its favour, which are given in paragraph 47 of the plaint.

21. The plaintiff and its predecessors have also used different packaging

for its products sold under 'PROTINEX' brand which has a distinctive and unique style and the plaintiff claims copyright in the same. The details of the copyright registrations obtained by the plaintiff are given in paragraph 57 of the plaint.

22. On or about September, 2024, the plaintiff came across the products



being sold under the mark 'PROTEX' which was marketed by the defendant no.1 and manufactured by the defendant no.4. Upon investigation conducted by the plaintiff, it was found that Mr. Vishweswar Kumar is the sole proprietor of the defendants no.1, 2 and 3.

23. Upon further investigation conducted by the plaintiff, it was found that defendants no.5 and 6, who are husband and wife, have now formed a private limited company i.e., the defendant no.4 herein, which has been manufacturing and selling the products under the impugned mark



'PROTRILEX'

24. In the year 2020, the plaintiff had filed a suit [CS (COMM) 306/2020] before this Court against the defendants no.4 and 5 based on infringement of



the very same trade mark 'PROTINEX', wherein a decree of permanent injunction was passed against the aforesaid defendants based on a settlement entered into between the parties.

25. It is stated that the defendants no.4 and 5 are still continuing with the infringing activities in violation of the decree passed by the court in CS(COMM) 306/2020.

26. A comparative table illustrating the similarities between the work mark of the plaintiff and the impugned marks of the defendants are set out in the table below:

PLAINTIFF'S MARK	IMPUGNED MARK OF DEFENDANTS NO.1 TO 3
PROTINEX	PROTEX

PLAINTIFF'S MARK	IMPUGNED MARK OF DEFENDANTS NO.4 TO 6
PROTINEX	PROTRILEX

27. It is clear from the above that the marks being used by the defendants are phonetically and structurally similar to that of the plaintiff. Plainly, the defendants are seeking to ride on the goodwill and reputation of the plaintiff company. A *prima facie* case is made out on behalf of the plaintiff.

28. Balance of convenience is in favour of the plaintiff and against the defendants. Irreparable injury would be caused to the plaintiff if the defendants continue to use the impugned marks. Prejudice would also be



caused to the public as the marks of the defendants are phonetically and deceptively similar to that of the plaintiff and likely to cause confusion in the market.

29. Consequently, till the next date of hearing, the defendants no. 1, 2 and 3 their partners, directors, proprietors, subsidiaries, affiliates, franchisees, officers, servants, agents, distributors, stockists, representatives, licensees and/or any person acting on their behalf are restrained from manufacturing, selling, distributing, exporting, advertising, offering for sale, any products and in any other manner, directly or indirectly, dealing with any products or



services under the trademarks, 'PROTEX /  / PROTEX formative marks which are phonetically/deceptively similar to the Plaintiff's registered trade marks.

30. Further, the defendants no. 4, 5, and 6 their partners, directors, proprietors, subsidiaries, affiliates, franchisees, officers, servants, agents, distributors, stockists, representatives, licensees and/or any person acting on their behalf are restrained from manufacturing, selling, distributing, exporting, advertising, offering for sale, any products and in any other manner, directly or indirectly, dealing with any products or services



under the trademarks, 'PROTRILEX/ PROTRILEX formative marks which are phonetically/deceptively similar/identical to the Plaintiff's registered trade marks.

31. Issue Notice.

32. Notice be issued to the defendants *via* all permissible modes, including e-mail.

33. Reply(ies) be filed within four (4) weeks.

34. Rejoinder(s) thereto, if any, be filed within two (2) weeks thereafter.

35. In view of the fact that the plaintiff has sought appointment of Local Commissioners to seize the infringing goods, the very purpose of grant of ex-parte ad interim injunction would be defeated if the defendant no.1 is given notices contemplated in Order XXXIX Rule 3 of Code of Civil Procedure, 1908 (hereinafter "CPC") prior to the execution of the commission. Hence, it is directed that the plaintiffs shall serve notices under Order XXXIX Rule 3 of CPC at the time of execution of the commission which shall not be later than two weeks from today.

36. List before the Joint Registrar on 20th December, 2024 for completion of service and pleadings.

37. List before the Court on 28th February, 2025.

I.A. 42384/2024 (O-XXVI R-4, 9 and 10 of CPC)

38. The present application has been filed under Order XXVI Rule 9 of the



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CPC seeking appointment of Local Commissioners to visit the premises of the defendants, make an inventory of all the goods dealing in impugned Trade Mark/Trade Dress/Packaging/Artistic Work and seizure of the same.

39. In view of what is stated above, the plaintiff has made out a case for appointment of Local Commissioners.

40. Even though in the application the plaintiff seeks appointment of five Local Commissioners to visit the five separate premises of the defendants but in the course of oral submissions, he confines the request to appointment of two Local Commissioners to visit the two premises of the defendants.

41. Accordingly, Mr. Arjun Aggarwal, Advocate, (Mobile No. +91 9873632138) is appointed as the Local Commissioner to visit the premises of the defendants at the address given below:

Plot No.60, Sidcul Bypass Rd, Integrated Industrial Estate, Sector 8A,
Industrial Area, Haridwar, Uttarakhand – 249403.

42. Mr. Aasheesh Gupta, Advocate, (Mobile No. +91 9560284991) is appointed as the Local Commissioner to visit the premises of the defendants at the address given below:

Plot No.90 HPSIDC Darni, Industrial Area Baddi, Distt. Solan,
Himachal Pradesh - 173205.

43. The following directions are passed in this regard:

- i. The Local Commissioners, along with a representative of the plaintiff and its counsel, shall be permitted to enter upon the premises of the defendants mentioned above or any other location/premises that may be identified during the course of commission, in order to conduct the search and seizure.
- ii. The Local Commissioners shall make an inventory of all the infringing



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products including but not limited to label/packaging material (hereinafter referred to as ‘infringing material’).

- iii. The Local Commissioners shall conduct a search at the defendants’ premises and seize the infringing goods, including any packaging/promotional material reflecting infringement.
- iv. After seizing infringing material, the same shall be inventoried, sealed and signed by the Local Commissioners, in the presence of the parties, and released on *superdari* to the defendants on their undertaking to produce the same as and when further directions are issued in this regard.
- v. The Local Commissioners shall also be permitted to make copies of the books of accounts including ledgers, cash registers, stock registers, invoices, books, etc. insofar as they pertain to the infringing products.
- vi. The defendants and their representatives are directed to provide full assistance to the Local Commissioners for executing the present commission.
- vii. In case, the aforesaid premises of the defendants or any part thereof is found locked, the Local Commissioners are permitted to break open the locks and doors for execution of the commission.
- viii. To ensure an unhindered and effective resolution of this order, the SHO of the local police station having jurisdiction of the aforesaid premises and the DCP concerned are directed to render the necessary protection and assistance to the local commissioners, if and when sought.
- ix. The Local Commissioners shall have the liberty to take photographs and/or videos of the stock seized and to take a sample of the infringing products to be filed along with the Report.



44. The Local Commissioners shall file their Reports within two (2) weeks of executing the commission, along with photographs taken and photocopies of the books of account and stock and the inventory procured pursuant thereto.
45. The fees of the Local Commissioners, to be borne by the plaintiff, is fixed at Rs.1,50,000/- each. The plaintiff shall also bear expenses for travel and lodging of the Local Commissioners and other miscellaneous out-of-pocket expenses for the execution of the commission.
46. The application stands disposed of in the above terms.
47. The order passed today shall not be uploaded for a period of two weeks from today.
48. *Dasti.*

AMIT BANSAL, J

OCTOBER 16, 2024/rt