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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION (LODGING) NO. 4610 OF 2023
IN
COMMERCIAL IP SUIT (LODGING) NO. 4256 OF 2023**

Sun Pharma Laboratories Limited ...Applicant/Plaintiff

Versus

Zawadi Healthcare Limited ...Defendant

- Mr. Hiren Kamod a/w Mr. Vaibhav Keni, Ms. Neha Iyer, Mr. Prem Khullar and Mr. Anees Patel i/by Legasis Partners, for Applicant/Plaintiff.
- Mr. Atmaram Patade, Ms. Shikha, Ms. Mohini Thorat and Mr. Suraj Naik, for Defendant.

CORAM : MANISH PITALE, J

DATE : 03rd MARCH, 2023.

P. C. :

1. Heard, learned Counsel for the parties.
2. The present suit and the application for interim reliefs are filed in the context of registered trademark of the Plaintiff "PANTOCID" and its variants. The Plaintiff claims that the Defendant, by using the impugned trademark "PANTOZED" and its variants, has infringed the registered trademark of the Plaintiff.
3. The Plaintiff is in the business of manufacture and sale of medicinal and pharmaceutical products and it claims to have consolidated annual turnover of over Rs. 38426 Crores globally for the year 2021-2022. The Plaintiff has stated that it has manufacturing sites in 6 continents and there are 10 research

centers all over the world and manufacturing units, besides India in Countries like United States of America, Brazil, Canada etc. The Plaintiff has stated the details of its registered trademarks in paragraph nos. 11 and 12 of the plaint. Copies of registration certificates are placed on record, which show that the earliest registration for the trademark “PANTOCID” in favour of the Plaintiff dates back to 19th February, 1998. The table showing the details of the registrations of “PANTOCID” and its variants are given in paragraph no. 12 of the plaint.

4. The Plaintiff has further stated that it exports its products bearing the registered trademark “PANTOCID” and its variants in various countries, including Kenya, Tanzania, Myanmar, Malaysia, Vietnam etc. The sales turnover figures are stated in the plaint, which show that for the year 2021-2022, the sales turnover was Rs. 51,363.46 Lakhs for the said product and the Plaintiff spent Rs. 1254.10 Lakhs for promotional expenses. The Plaintiff has pleaded that it has been vigilant in protecting its Intellectual Property Rights in the said trademark and several proceedings have been initiated before this Court and other Courts wherein ad-interim reliefs/*ex-parte* ad-interim reliefs have been granted in favour of the Plaintiff in the context of the said registered trademark.

5. As regards the Defendant, it is stated that in the fourth

week of January, 2023, a marketing representative of the Plaintiff came across the impugned product bearing the trademark “PANTOZED-40” in Kenya, which was shown to be manufactured by Defendant No. 2 in Mumbai, India. A photograph of the impugned product is placed on record at Exhibit “G”. The Plaintiff then states that a search was conducted on the internet and it was found that the impugned product bearing the infringing trademark “PANTOZED-40” was available on the website www.patameds.com. It is further found on inquiries that on the website of Defendant No. 2, although products referring to the molecular composition of the medicine “PANTOPRAZOLE” were found, the impugned trademark “PANTOZED-40” was conspicuous by its absence. It is significant that the impugned product is also claimed to be a medicine for treatment of same ailments for which the Plaintiff’s product has been in the market for a long period of time i.e. treating gastroesophageal reflux disease (Acid reflux) and peptic ulcer disease. It is further submitted that on search conducted on the website of the Trade Mark Registry, no application for registration of the impugned product “PANTOZED-40” was found.

6. It is specifically pleaded on behalf of the Plaintiff that Defendant No. 2 is a habitual offender, having been party to number of proceedings in Courts on allegations of infringing registered

trademarks pertaining to medicinal and pharmaceuticals preparations. The learned Counsel for the Plaintiff has brought to the notice of this Court that by order dated 30th January, 2018, passed in Suit (L) No. 31 of 2018 with Notice of Motion (L) no. 54 of 2018 in the case of Shalina Laboratories Pvt. Ltd. & Anr. Vs. Syncom Formulations (India) Ltd., in the context of Defendant No. 2, this Court observed that Defendant No. 2 appeared to be copying unabashedly products of several manufactures and upon being caught it submits to a decree and then starts infringing some other well known marks.

7. On 24th February, 2023, when this application was taken up for consideration, learned Counsel having instructions to appear for Defendant No. 2, appeared in Court. The hearing on the present application was adjourned to today, making it clear that no further time would be granted.

8. The learned Counsel for Defendant No. 2 has appeared in Court and submits that although reply affidavit for the said Defendant is ready but it is to be affirmed and that short adjournment could be granted to place the reply on record. It is further submitted that this Court may not be prejudiced by the allegations of habitual offender leveled by the Plaintiff against Defendant No. 2, for the reason that the proceedings upon which the Plaintiff was placing reliance stood

disposed of by way of settlement between the parties. It is further submitted that the Plaintiff cannot claim any monopoly over the central and essential part of its trademark i.e. "PANTO", for the reason that even according to the Plaintiff, the origin of the said part is PANTOPRAZOLE, which is the molecular composition of the product in question. It is further submitted that the pleadings as regards Defendant No. 1 are deficient and that therefore, this Court may not grant ad-interim reliefs in favour of the Plaintiff.

9. This Court has considered the material on record, it is undisputed that the Plaintiff has been granted ad-interim relief/*ex-parte* ad-interim relief in number of proceedings by this Court and proceedings initiated before other Courts in the context of the registered trademark "PANTOCID". The impugned trademarks in such proceedings included "PANTOCIM", "PANTORID" and others. Insofar as the present case is concerned, this Court has compared the registered trademark of the Plaintiff "PANTOCID" with the impugned trademark "PANTOZED-40" being used by the Defendant. This Court is convinced that a strong *prima facie* case is indeed made out by the Plaintiff in its favour, as regards protection of its Intellectual Property rights for the registered trademark "PANTOCID". A perusal of the impugned trademark "PANTOZED-40" would show that there is indeed similarity between the two marks and there is likelihood of

confusion in the minds of innocent consumers/patients, particularly because the present case is concerned with the pharmaceutical/ medicinal products and this Court is expected to adopt a strict view in such cases.

10. Despite the learned Counsel for the Defendant claiming that registration of the Trademark “PANTOCID” of the Plaintiff cannot be said to be *prima facie* sustainable, for the reason that a major part of the registered trademark is nothing but the name of the molecular composition of the drug in question, this Court is convinced that on the basis of material placed before this Court, a strong *prima facie* case is indeed made out in favour of the Plaintiff. Since the Defendant No. 1 is also served, this Court is inclined to take up the Leave Petition for consideration in order to combine the cause of action of passing off with that of infringement.

11. The Leave Petition is not on board. Taken on board.

12. Having considered the Leave Petition, this Court is inclined to allow the same, in the interest of justice. Accordingly, the Leave Petition is allowed, particularly to avoid multiplicity of proceedings.

13. As regards, cause of action of passing off, the Plaintiff has specifically pleaded in paragraph no. 23, as to in what manner the

Defendants have committed the tort of passing off in the context of the trademark of the Plaintiff. This Court is convinced that a *prima facie* case is indeed made on behalf of the Plaintiff for grant of ad-interim relief in the context of the cause of action of passing off also.

14. This Court is further convinced that unless ad-interim reliefs as claimed are granted, the Plaintiff is likely to suffer grave and irreparable loss, thereby indicating that balance of convenience is also in favour of the Plaintiff, particularly in the backdrop of the material placed before this Court regarding the huge sales turnover of the Plaintiff showing that it has earned considerable goodwill over a period time in the context of its registered trademark "PANTOCID".

15. In view of the above, there shall be *ex-parte* ad-interim reliefs in terms of prayer clause (a) and (b), which read as follows:

- "a. that pending the hearing and final disposal of the suit, the Defendants by themselves, their proprietors, partners, directors, servants, agents, stockists, distributors, dealers, franchisees, licensees, importers, exporters, assigns, predecessors and all persons claiming through and/ or under them or acting on their behalf be restrained by a temporary order and injunction of this Hon'ble Court from infringing the Plaintiff's said registered trade mark PANTOCID bearing registration no.791979, PANTOCID DSR bearing no.4632166, PANTOCID-IV bearing no.4646473 and PANTOCID L. bearing no.4494365,

all in class 5, by the use of the impugned trade mark PANTOZED/PANTOZED-40 or any other trade mark identical with and/or deceptively similar to the Plaintiff's said registered trade mark bearing nos.791979, 4632166. 4646473 and 4494365, all in class 5, in respect of the goods covered by the Plaintiff's said registrations or similar or like goods or in any other manner, whatsoever;

- b. that pending the hearing and final disposal of the suit, the Defendants by themselves, their proprietors, partners, directors, servants, agents, stockists, distributors, dealers, franchisees, licensees, importers, exporters, assigns, predecessors and all persons claiming through and/or under them or acting on their behalf be restrained by a temporary order and injunction of this Hon'ble Court from manufacturing, importing, exporting, selling, advertising, distributing, marketing, exhibiting for sale or otherwise dealing in the impugned goods or similar or like goods under the impugned trade mark PANTOZED/PANTOZED-40 or any other trade mark identical with and/or deceptively similar to the Plaintiff's well-known trade mark PANTOCID, so as to pass off the Defendants' impugned goods or like goods as and for the Plaintiff's well-known goods or in any other manner whatsoever;"

16. List for further consideration on **17th April, 2023**, in the meanwhile, the Defendants may file their affidavits within a period of two weeks from today.

17. Needless to say, the order passed by this Court will not foreclose the right of the Defendants to raise the issue of jurisdiction before this Court.

(MANISH PITALE, J.)