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

+ CS(COMM) 922/2018 & I.A. 7704/2018

SUN PHARMACEUTICAL INDUSTRIES LTD Plaintiff
Through: Mr.Sachin Gupta, Advocate.

Versus

INFOCOM NETWORK LIMITED & ORS Defendants
Through: Mr. Sitesh Narayan Singh,
Advocate for defendant No.13.

% Date of Decision: 12th October, 2018

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present suit has been filed for permanent injunction restraining infringement of trademark, passing off, unfair competition, rendition of accounts of profits/damages and delivery up. The prayer clause is reproduced hereinbelow:-

“32. It is, therefore, most respectfully prayed that this Hon’ble Court may be pleased to grant the following reliefs in favour of the Plaintiff and against the Defendants:

(a) A decree for permanent injunction restraining the Defendants, their directors, partners or proprietors, as the case may be, their assignees in business, its distributors, dealers, stockists, retailers/chemists,

servants and agents from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in medicinal preparations under the impugned trade names/trade mark/domain name/corporate name, inter alia comprising the words SUN/SUN PHARMA/SUN PHARMACEUTICALS and/or using any other trade name/trade mark/domain name/corporate name as may be deceptively similar to the Plaintiff's trade name/mark/domain name/corporate name SUN/SUN PHARMA/SUN PHARMACEUTICALS amounting to infringement of registered trade mark Nos. 408870, 1564369, 1822656 of the Plaintiff.

(b) A decree for permanent injunction restraining the Defendants, their directors, their directors, partners or proprietors, as the case may be, their assignees in business, distributors, dealers, stockists, retailers/chemists, servants and agents from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in medicinal preparations under the impugned trade names/trade mark/domain name/corporate name, inter alia comprising the words SUN/SUN PHARMA/SUN PHARMACEUTICALS and/or using any other trade name/trade mark/domain name/corporate name as may be deceptively similar to the Plaintiff's trade name/mark/domain name/corporate name SUN/SUN PHARMA/SUN PHARMACEUTICALS amounting to passing off of the Defendants' goods and business for those of the Plaintiff.

(c) A decree for permanent injunction restraining the Defendant Nos. 17-19 from registering or maintaining any domain name as may be deceptively similar to the Plaintiff's trade name/mark SUN/SUN PHARMA/SUN PHARMACEUTICALS amounting to infringement of registered trade mark Nos. 408870, 1564369, 1822656 of the Plaintiff.

(d) An order for rendition of accounts of profit illegally earned by the Defendants and a decree for an amount so found due, or in the alternative, a decree for Rupees One Crore Five Thousand only (Rs.1,00,05,000/-) towards token damages may be passed in favour of the Plaintiff and against the Defendants.

(e) An order for delivery of the infringing goods of the Defendants including impugned promotional materials, stationery, dyes, blocks etc. bearing the impugned trade names/trade mark/domain name/corporate name, inter alia comprising the words SUN/SUN PHARMA/SUN PHARMACEUTICALS and/or using any other trade name/trade mark/domain name/corporate name as may be deceptively similar to the Plaintiff's trade name/mark/domain name/corporate name SUN/SUN PHARMA/SUN PHARMACEUTICALS to an authorised representative of the Plaintiff for destruction/erasure. The Defendants may also be directed to withdraw contents in respect of impugned trade marks from domain/website names, email IDs, trade journals, e-journals etc.

(f) An order for costs in the proceedings

(g) Any further orders as this Hon'ble Court may deem fit and proper under the facts and circumstances of the present case."

2. Vide order dated 30th May, 2018, this Court had granted an *ex parte ad interim* injunction in favour of the plaintiff and against the defendants. The relevant portion of the *ex-parte* injunction order is reproduced hereinbelow:-

"Consequently, till further orders, the defendants, their directors, partners or proprietors, as the case may be, their assignee in business, its distributors, dealers,

stockists, retailers, servants and agents are restrained from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in medicinal and pharmaceutical preparations under the trademark/trade name/domain name/corporate name, inter alia comprising the words, SUN/SUN PHARMA/ SUN PHARMACEUTICALS and/or using any other trademark/trade name/domain name/corporate name, which may be deceptively similar to the plaintiff's trademark/trade name/domain name/corporate name, SUN/SUN PHARMA/ SUN PHARMACEUTICALS, in any manner whatsoever.

Defendant nos. 17 to 19 are also directed to suspend/freeze the impugned domain names, namely www.sunpharmachem.com, www.raisingssunpharma.com and www.godsun.in.”

3. Vide order dated 11th October, 2018, this Court on the basis of the statements/undertakings given by the learned counsels for defendant nos.1,3, 4, 5, 7, 13 had decreed the suit qua the said defendants.
4. Since despite service on the defendant nos. 2, 6, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18 and 19, none entered appearance, they were proceeded *ex parte* on 11th October, 2018.
5. At this stage, learned counsel for the plaintiff gives up prayers 32 (d) and (e) of the prayer to the suit. The statement made by learned counsel for plaintiff is accepted by this Court and plaintiff is held bound by the same.
6. This Court is also of the view that the present suit can be disposed of without any further delay. A Coordinate Bench of this Court in ***Satya Infrastructure Ltd. and Ors. Vs. Satya Infra & Estates Pvt. Ltd., 2013 SCC OnLine Del 508*** has held as under:-

“I am of the opinion that no purpose will be served in such cases by directing the plaintiffs to lead ex parte evidence in the form of affidavit by way of examination-in-chief and which invariably is a repetition of the contents of the plaint. The plaint otherwise, as per the amended CPC, besides being verified, is also supported by affidavits of the plaintiffs. I fail to fathom any reason for according any additional sanctity to the affidavit by way of examination-in-chief than to the affidavit in support of the plaint or to any exhibit marks being put on the documents which have been filed by the plaintiffs and are already on record. I have therefore heard the counsel for the plaintiffs on merits qua the relief of injunction.”

7. In the plaint, it is stated that the plaintiff originally started marketing pharma products as a proprietary firm in the year 1978 and in 1982 formed a partnership firm and continued its business under the name and style of M/s Sun Pharmaceutical Industries. It is stated that the plaintiff is engaged in the business of marketing drugs and formulations in more than 150 countries worldwide under its extensive range of well known and distinctive trade marks/brand names. It is stated that the plaintiff is known in the trade circles as ‘SUN/SUN PHARMA’ and has a consolidated annual turnover of over Rs.30,000/- Crores globally.

8. It is further stated in the plaint that the plaintiff is the no.1 Pharma Company in India in a total of 11 specialities and is the world’s fourth largest generic pharmaceutical company and has manufacturing sites in six continents and 10 world class research centres with over 30,000 strong multi-cultural workforce from over 50 different nationalities.

9. It is stated that the plaintiff is the registered proprietor of 53 trademarks containing SUN, SUN PHARMA and SUN PHARMACEUTICAL INDUSTRIES LTD. in various Classes under the

Trade Marks Act, 1999 in India, and 143 trade mark registrations in various countries across the globe. It is stated that by virtue of continuous and extensive use since 1978, the words 'SUN' and/or 'SUN PHARMA' are exclusively associated with the plaintiff.

10. It is stated that the plaintiff has been using the trademark 'SUN PHARMA' as a part of its domain names since 1997. It is further stated that the plaintiff has various subsidiaries across the globe, whose names include the words 'Sun Pharma / Sun Pharmaceuticals / Sun Pharmaceutical Industries'. It is also stated that the plaintiff's stock code i.e. stock symbol in the Stock Market in NSE is 'SUNPHARMA' and the plaintiff has 59,386 shareholders.

11. It is the case of the plaintiff that the annual turnover of the plaintiff in the financial year 2017-18 was Rs. 30,00,000 lakhs, approximately and the plaintiff incurred an expenditure of not less than Rs. 54,668 lakhs on advertising and promotion.

12. Learned counsel for the plaintiff states that in the third week of May, 2018, the plaintiff came across the defendant no.1's platform www.tradeindia.com, where it discovered multiple sellers i.e. defendant nos. 2 to 16, selling products under names that were deceptively similar to the plaintiff's registered trademark and trade name. He states that the defendants have adopted the whole of the plaintiff's mark 'SUN PHARMA' and added extra words to it.

13. Learned counsel for the plaintiff states that the defendant no. 2, JBK Sun Pharma India P. Ltd., has added the prefix JBK and the suffix India around the plaintiff's mark 'SUN PHARMA'. He states that the defendant no. 6 i.e. Sun Shine Pharma, has added the word 'Shine' in

between the plaintiff's mark 'SUN PHARMA'. The defendant no. 8 i.e. New Sun Pharma, has added the prefix 'New' before the plaintiff's mark 'SUN PHARMA', the defendant no. 9 i.e. Sun World Pharma, has added the word 'World' in between the plaintiff's mark 'SUN PHARMA'. He states that the defendant no. 10 i.e. Sun Pharma Agency, has added the suffix 'Agency' after the plaintiff's mark 'SUN PHARMA' and the defendant no. 11 i.e. Raising Sun Pharma has added the prefix 'Raising' before the plaintiff's mark SUN PHARMA. He further states that the defendant no.12 i.e. God Sun Pharma Science, has added the prefix 'God' and suffix 'Science' around the plaintiff's mark SUN PHARMA and the defendant no. 14 i.e. Sun Pharma Equipments has added the suffix 'equipments' after the plaintiff's mark SUN PHARMA. He further states that the defendant no. 15 i.e. Sun Pharma Drug Distributors, has added the suffix 'drug distributors' after the plaintiff's mark SUN PHARMA. He states that the defendant no. 16 i.e. Sun Pharma Sales & Services has simply added the suffix 'sales and services' after the plaintiff's mark SUN PHARMA.

14. Learned counsel for the plaintiff states that the defendant no. 17, is the registrar of the website of the defendant no. 11 i.e. www.raising.sunpharma.com, the defendant no. 18 is the registrar for the website of the defendant no. 12 i.e. www.godsun.in, and defendant no. 19 is the registrar of the website of defendant no. 3 i.e. www.sunpharmachem.com.

15. Learned counsel for the plaintiff states that the impugned marks/ trade names/ domain names are visually, structurally as well as phonetically deceptively similar to the plaintiff's trademark/trade name

SUN PHARMA. He states that the defendants have unethically and unlawfully adopted the impugned marks/trade names or facilitated the adoption and propagation of the same with the intent to ride upon the goodwill and reputation of the plaintiff. He also states that the adoption of the impugned trademarks/trade names amounts to misrepresentation and misappropriation of the plaintiff's goodwill in its trade mark/trade name SUN/SUN PHARMA and also amounts to unfair trade practice, unfair competition and dilution.

16. Learned counsel for the plaintiff states that the use of the impugned trademarks/trade names by the defendants is likely to cause confusion and/or deception in the minds of the consumers qua the source of the goods, as the defendants are in the same business as that of the plaintiff.

17. Learned counsel for the plaintiff lastly states that the plaintiff has been vigilantly protecting its statutory and common law rights in the trademark/trade name SUN/SUN PHARMA and has secured injunction against various parties using trademarks/trade names deceptively similar to the plaintiff's trade mark/trade name SUN/SUN PHARMA like SUNMAY PHARMAA and SHREESON.

18. On 30th May 2018, this Court also appointed a Local Commissioner to visit the premises of the defendants. During the execution of the local commission, no material was found. However, the defendants were found to be in possession of a catalogue and brochure of the defendants infringing activities. The relevant portions of the Local Commissioner's report is reproduced hereinbelow:-

“6. That thereafter, Shri Rakesh Kumar Singh provided me the following documents:

- a) Catalogue of M/s Sun Pharma Chem – Home Page*
- b) Catalogue of M/s Sun Pharma Chem – Company Profile*
- c) Catalogue of M/s Sun Pharma Chem – Products*
- d) Catalogue of M/s Sun Pharma Chem – Contact details*
- e) Invoice No.2017-2018/02437 dated 24.08.2017 for Rs.40,000/-.*
- f) Invoice No.2017-2018/03231 dated 26.09.2017 for Rs.1800/-*
- g) Brochure of tradeindia.com which is stated to be the trade name of the Defendant No.1.”*

19. In the opinion of this Court, the defendant nos. 2, 6, 8, 9, 10, 11, 12, 14, 15 and 16 have no real prospect of defending the claim, as they have neither entered appearance nor have they filed their written statements. Further, the plaintiff is the registered user of the trade marks in question.

20. In view of the above, the present suit is decreed in favour of the plaintiff and against the defendant nos. 2, 6, 8, 9, 10, 11, 12, 14, 15 and 16 in accordance with paragraph 32 (a) and (b) of the present plaint along with actual costs. Defendant nos. 17 to 19 are directed to cancel the impugned domain registrations i.e. www.raising.sunpharma.com, www.godsun.in and www.sunpharmachem.com. Registry is directed to prepare a decree sheet accordingly.

21. With the aforesaid observations, present suit and pending application stand disposed of.

MANMOHAN, J

OCTOBER 12, 2018

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