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

+ **CS(COMM) 94/2023**

DABUR INDIA LIMITED Plaintiff

Through: Ms. Kripa Pandit and Mr. Christopher, Advs.

versus

VIBCARE PHARMA PVT LTD AND ANOTHER. Defendant

Through: Mr. Ravi Krishan Chandra, Mr. Harshvardhan and Mr. Shivam Prashar, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

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21.07.2023

CS(COMM) 94/2023 and I.A. 3415/2023 (Order XXXIX Rules 1 and 2 of the CPC)

1. The disputes between the parties stand settled. Settlement Agreement dated 7 July 2023, drawn up under the aegis of the Delhi High Court Mediation and Conciliation Centre has been placed on record. The terms of settlement contained therein read thus:

“A. That the Plaintiff has claimed itself to the owner of various trade mark registrations in respect of the trademark HONITUS (word) as well as the HONITUS Cough Remedy



label/carton/packaging and/or (as reproduced in paragraph no. 12 of the Plaint). The Plaintiff have

Signature Not Verified

Signed By: HARI SHANKAR
Signing Date: 24.07.2023
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further claimed themselves to be owner of the aforementioned trademarks as well as the copyright subsisting therein by virtue of prior adoption and use under the common law. The Defendants herein do not dispute the validity of the registrations acquired by the Plaintiff and undertake that they shall not challenge the same on any ground whatsoever.

B. The Defendants hereby voluntarily undertake before this Hon'ble Court that they shall forthwith refrain from inter alia manufacturing or authorizing the manufacture, selling, offering for sale, marketing, exporting, importing, retailing, supplying, distributing, exhibiting, promoting, labelling, packaging, dealing in and/or using in any manner whatsoever, the impugned trade



dress/ packaging/ label/ get-up (as reproduced in detail in paragraph no. 35 of the Plaint) or in any other packaging/trade dress, as may be identical, and/or deceptively similar or confusingly similar to the Plaintiffs well-known registered trade dress/ label which includes the outer packaging,



label, bottle and complete trade dress either as a trade mark or part of a trade mark, or as a label/trade dress or part of a label/trade dress, as a device mark or part of a device mark, or in any other manner whatsoever, in relation to any goods or services, or in relation to any promotional marketing or advertising material or any other material used or intended to be used for labelling or packaging or for promoting any goods or services, as may amount to infringement of the Plaintiffs registered well-known trademarks, and/or passing off of the Defendants' products and business as that of the Plaintiff and/or infringement of the Plaintiff's copyright in such packaging labels.

C. The Defendants have assured that they have already taken steps to delist their products NURACUFF-AYURVEDIC MEDICINE FOR COUGH RELIEF bearing the impugned trade



dress/ packaging/ label/ get-up from the online/e-commerce portals, and from the physical markets and have destroyed all the impugned trade dress/packaging/label/ get-up, as above.

D. The Defendants have agreed to amend the packaging/trade dress/label for the impugned product with packaging/label/trade



dress which is also annexed herewith as ANNEXURE-C. The Plaintiff has no objection to the use and/or registration of the said amended packaging/label/trade dress by the Defendants. It is hereby clarified that the Defendants shall be free to use and/or register the mark NURACUFF-AYURVEDIC MEDICINE FOR COUGH RELIEF unless such mark is used in any packaging/label/trade dress as may similar to the Plaintiffs



well-known label/carton/packaging and/or .”

2. The parties are represented by learned Counsel who undertake on behalf of their respective clients to remain bound by the terms of settlement.
3. This Court has perused the terms and finds them to be in order.
4. As such, nothing survives for adjudication in the present suit.



The suit stands decreed in the terms of the aforesaid Settlement Agreement dated 7 July 2023, by which the parties shall remain bound.

5. Let a decree-sheet be drawn up accordingly.
6. The plaintiff shall be entitled to refund of the court fee, if any, deposited by it as the settlement has taken place consequent to mediation proceedings.
7. Miscellaneous application does not survive for consideration and stands disposed of accordingly.

C.HARI SHANKAR, J

JULY 21, 2023

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