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

+ **CS(COMM) 436/2021**

DR. REDDYS LABORATORIES LIMITED Plaintiff
Through: Mr. Ranjan Narula, Mr. Shashi
Ojha, Ms. Aishani Singh and Ms. Shivangi
Kohli, Advs.

versus

FAST CURE PHARMA Defendant
Through: None

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

% **16.08.2023**

CS(COMM) 436/2021

1. The plaintiff alleges infringement, by the defendant, of the plaintiff's trademark, RAZO, by use of the mark RAZOFAST, for identical pharmaceutical products.
2. The active ingredient of the product of the plaintiff and the defendant is the same, i.e. Rabeprazole.
3. The plaintiff holds the following registrations:



S.No.	Trademark	Reg. No.	Reg. Date	Class
1.	Razo-D	1320974	18/11/2004	5
2.	RAZO	2336815	24/05/2012	5
3.	RAZO	2370917	27/07/2012	5

These registrations are stated to be valid and subsisting as on date.

4. The following photographs of the packs in which the plaintiff markets its products have also been provided in the documents filed with the plaint:



5. The plaint alleges that, towards the second week of August, 2021, the plaintiff came to know that the defendant was



manufacturing, marketing and selling rabeprazole tablets, under the mark RAZOFAST.

6. This, alleges the plaintiff, was a transparent attempt at capitalising on the plaintiff's goodwill and creating an association between the product of the defendant and the mark of the plaintiff, with the suffix "FAST" added to the name to make it appear that the product would provide faster relief. It is alleged that the overall trade dress adopted by the defendant in respect of its product is also such as would enhance the possibility of confusion between the marks of the defendant and the plaintiff. Photographs of the defendant's packs are also provided with the plaint, and may be reproduced thus:



7. The impugned mark, RAZOFAST, stands registered in favour of the defendant on 25 June, 2018. The defendant claims user since 6 February, 2017, whereas the plaintiff claims user since 2002.

8. Predicated on these facts, the plaintiff has instituted the present suit against the defendant, praying thus:



“It is, therefore, prayed that this Hon'ble Court may be pleased to grant the following reliefs:

- i. An order for permanent injunction restraining the Defendant, its partners, officers, servants, employees, dealers, agents, representatives, stockiest, distributors and all other persons acting on behalf the Defendant from manufacturing, marketing, supplying, selling and offering for sale including online sale, advertising, directly or indirectly medicinal and pharmaceutical preparations under the trademark RAZOFAST and/or any other mark identical or deceptively similar to the Plaintiff's mark RAZO and/or in any other manner whatsoever as may be likely to cause confusion or deception amounting to infringement of the Plaintiff's trade mark registrations as mentioned in paragraph No. 9 of the plaint;
- ii. An order for permanent injunction restraining the Defendant, its partners, officers, servants, employees, dealers, agents, representatives, stockiest, distributors and all other persons acting on behalf the Defendant from manufacturing, marketing, supplying, selling and offering for sale including online sale, advertising, directly or indirectly medicinal and pharmaceutical preparations under the trademark RAZOFAST and/or any other mark identical or deceptively similar to the Plaintiff's mark RAZO and/or in any manner whatsoever as may be likely to cause confusion or deception amounting to passing off its goods and business as and for those of the Plaintiff;
- iii. For disclosure of information by Defendant about sale of the total products under the impugned mark RAZOFAST and provide the last batch number of product manufactured under the mark RAZOFAST with details of payments received;
- iv. For delivery upon affidavit by the Defendant to the Plaintiff all the offending material, goods, cartons, labels, dies, wrapping and other material bearing the offending trade marks for purposes of destruction and/or obliteration as the case may be;
- v. An order directing the Defendant to remove all listings of the impugned mark RAZOFAST from its websites, B2B websites or any other online directories, B2B, B2C website or portals that may be used by the



Defendant to promote their products bearing the mark RAZOFAST or any other mark identical or deceptively similar to the Plaintiff's said mark links of which are herein below:-

Defendant's website
https://fastcurepharma.co.in/products.php
Third parties websites
https://www.lmg.com/drugs/razofast-20mg-tablet-618025
https://www.medplusmart.com/product/RAZOFAST-20MG-TAB/RAZO0079
https://mednear.com/drugs/razofast-20mg-tablet-6038c0f4394900003d01a819
https://dawaaghar.com/product/Razofast-20mg-Tablet-47

- vi. A decree for damages of Rs. 2,00,00,010/- be passed in favor of the Plaintiff and against the Defendant; and/or
- vii. A decree of rendition of accounts in favour of the Plaintiff and against the Defendant by directing the Defendant to render all accounts of profits illegally earned on account of the infringing activities;
- viii. An order for costs of the proceedings;
- ix. Any other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

9. While issuing summons in the present suit on 14 September 2021, this Court also issued notice in I.A. 11821/2021 filed with the



suit under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (CPC), seeking interlocutory injunctive reliefs, returnable on 30 November 2021. On the said date, the Court proceeded to allow I.A. 11821/2021 by restraining the defendant, pending disposal of the suit, from manufacturing, marketing, supplying, selling and offering for sale or advertising medicinal and pharmaceutical preparations under the trademark RAZOFAST or any other mark which is identical or deceptively similar to the plaintiff's mark RAZO.

10. The defendant never turned up to contest the suit. No written statement was filed. The right of the defendant to file written statement was struck off on 23 August 2022. The defendant has, even thereafter, not turned up to prosecute these proceedings.

11. In the circumstances of the case and after hearing Mr. Ranjan Narula, learned Counsel for the plaintiff and having perused the record, I am of the opinion that the suit is capable of being straightway decreed under Order VIII Rule 10 of the CPC.

12. The plaintiff's mark RAZO, which is an inventive and arbitrary manner of denoting the Active Pharmaceutical Ingredient in the product rabeprazole, has been wholly copied by the defendant in the impugned RAZOFAST mark. The trade dress of the defendant is also similar to that of the plaintiff. The products of the defendant and the plaintiff are the same, namely, rabeprazole. They are also available at



the same retail outlets and cater to the same class of consumers. The triple identity test, of deceptive similarity of marks, identity of goods and availability through the same sources and catering to the same consumer base also stands satisfied in the present case.

13. The use, by the defendant, of RAZO as the prefix in the impugned mark RAZOFAST also indicates an intent to ride on the goodwill and reputation of the plaintiff, and, therefore, to pass off its product as that of the plaintiff.

14. In the absence of any written statement, all assertions and allegations in the plaint stand admitted.

15. A clear case of infringement and passing off is made out, in favour of the plaintiff and against the defendants. An injunction must, therefore, follow, as held by the Supreme Court in *Laxmikant V. Patel v. Chetanbhai Shah*¹ and *Midas Hygiene Industries (P) Ltd. v. Sudhir Bhatia*².

16. Mr. Ranjan Narula does not press for damages but presses for costs. Given the facts of the case, I am of the opinion that the plaintiff is entitled to costs at actuals.

17. The suit, therefore, stands decreed in terms of prayers (i) and (ii) in the prayer clause in the plaint. It is reported that the infringing and offending listings enumerated in prayer (v) have already been

¹ (2002) 3 SCC 65

² (2004) 3 SCC 90



removed. They shall stay removed and shall not be revived hereafter. The plaintiff is also entitled to the costs of the suit, as actually incurred by it.

18. To ascertain the quantum of costs to which the plaintiff would be entitled, let the matter be placed before the concerned Taxation Officer for the plaintiff to present its bill of costs. The Taxation Officer would then decide the costs to which the plaintiff is entitled.

19. Let a decree-sheet be drawn up in the aforesaid terms.

20. The suit stands decreed accordingly.

21. List the matter before the Taxation Officer on 19 September 2023.

C.HARI SHANKAR, J

AUGUST 16, 2023

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