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

+ **CS(OS) 1646/2012 & IA No.8929/2014**

**SUN PHARMACEUTICAL INDUSTRIES
LIMITED**

..... Plaintiff

Through: Mr Hemant Singh, Ms Mamta Jha,
Mr Shashi Ojha and Ms Ambika
Gautam, Advocates.

versus

THREE B HEALTH CARE LTD. & ORS Defendants

Through: Ms Paulami Ganguly and Mr Harsh
Vardhan, Advocates for D-2.
Mr Praveen K. Mittal, Advocate for
D-3.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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10.08.2016

The learned counsel appearing for defendant no.2 (Mankind Pharma Limited) states that the defendant no.2 is not marketing the products of defendant no.3 which are alleged to be offending the trademark of the plaintiff. She further states that she has no objection if the suit is decreed against defendant no.2. Accordingly, the suit is decreed against defendant no.2 in terms of prayers (i) and (ii) which are quoted below:-

- “i) An order for permanent injunction restraining the Defendants, whether acting by itself or through its partners or proprietor, as the case may be, its officers, servants, agents and representatives, or any of them from:
- a) Manufacturing, marketing, selling and/or using in

relation to its medicinal pharmaceutical preparations and other like medicines the infringing mark VOLIKING or any other mark deceptively similar thereto, as its Trademark or Trademark being identical to the Plaintiff's Trademark "VOLINI" so as to infringe upon the Plaintiff's registered Trademark;

- b) Manufacturing, marketing, selling and/or using in relation to its medicinal pharmaceutical preparations and other like medicines the infringing mark VOLIKING or any mark deceptively similar thereto being identical to the Plaintiff's distinctive and reputed Trademark "VOLINI" so as to pass off their medicines and business or enable others to pass off the Defendants business and medicines as and for those of the Plaintiff or in some way connected therewith;
- c) Manufacturing, marketing, selling and/or using in relation to their medicinal pharmaceutical preparations and other like medicines the infringing label of VOLIKING, bearing a similar font of writing, get-up, and representation which is identical with and/or is substantially similar to the font of writing, get-up, and representations constituting trade dress of the Plaintiff's original artistic label of "VOLINI" so as to infringe upon the Plaintiff's artistic work;

ii) An order for permanent injunction restraining the Defendants, by in itself, its proprietor/partners, its servants, assignees, transferees and all those connected with the Defendants from manufacturing, marketing, exporting, selling and/or offering for sale the medicinal pharmaceutical preparations and other like medicines under the mark VOLIKING or any other mark deceptively similar to that of the Plaintiff's registered Trademark "VOLINI" with get-up, arrangement of features, layout, etc., which resembles the Plaintiff's "VOLINI" pharmaceutical preparations product tablet strip and the box as described in Para 18 and/or in any

manner whatsoever doing any other thing as may be likely to cause confusion or deception amounting to passing-off of the medicines and business of the Defendants as and for those of the Plaintiff.”

The learned counsel for the plaintiff does not press for other prayers against defendant no.2.

The decree sheet be drawn.

The plaintiff has filed an application for revocation of the defendants trademark being ORA No.197/2013/TM/DEL before the IPAB. It *prima facie* appears that the defendants trademarks are similar to that of the plaintiff and, therefore, further proceedings of the suit are stayed till the conclusion of the proceedings before the IPAB.

VIBHU BAKHRU, J

AUGUST 10, 2016
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