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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 2271/2014 & IAs 1947/2016, 1948/2016**

ABBOTT HELATHCARE PVT LTD Plaintiff
Through: Mr. M.K.Sahu, Adv.

versus

RELIEF BIOTECH PVT LTD & ORS Defendants
Through: Mr. P.C.Arya, Adv. for D-1 -2 & 3

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **09.02.2016**
IA 1947/2016

1. This is a joint application filed by the plaintiff and defendant no.2 on his behalf and on behalf of defendant no.1 under Order 23 Rule 3 CPC.
2. Learned counsel for the plaintiff as well as learned counsel for defendant nos.1 and 2 state that the defendant no.2 has filed the application on behalf of defendant no.1 as well. I note that the attorney of the plaintiff company as well as defendant no.2 (for defendant no.1) has filed the supporting affidavits.
- 3) The averments made in the application are as under:-

“2. That during the pendency of the present proceedings, the plaintiff and the defendants have arrived at a settlement in view of the following terms and conditions:

(a) That the Defendants admit, confirm and agree that the Plaintiff is the registered proprietor of the trademark No. 293710 "ESGIPYRIN" in class 5 with respect to the medicinal and pharmaceutical preparations as of 22nd January 1974.

b) The Defendants agree, confirm and admit that the Plaintiff is the owner of the unique yellow blister packaging and its yellow tablets under the mark "ESGIPYRIN" wherein the said trademark "ESGIPYRIN" is prominently displayed in silver font within a black box on the blister foil, and similar representation of trademark "ESGIPYRIN" in prominent white font within black box on the outer carton and orange and white colour combination of carton and design which contains the said blister strips.

c) The Defendants undertake with immediate effect not to manufacture, sell or offer for sale, advertise, directly or indirectly, medicinal and pharmaceutical preparations under the trademarks EASIPYRIN and EREPYRIN or any other mark deceptively similar to the Plaintiffs registered trademark ESGIPYRIN and/or in any manner whatsoever doing any other thing as may likely to cause infringement of the Plaintiffs trademark registration No. 293710 in class 5 for the mark ESGIPYRIN.

d) The Defendants undertake not to manufacture, sell or offer for sale, advertise, directly or indirectly, medicinal and pharmaceutical preparations under the trademarks EASIFYRIN and EREPYRIN or any other mark deceptively similar to the Plaintiffs registered trademark ESGIPYRIN and /or in any manner whatsoever doing any other thing as may be likely to cause confusion or deception amounting to passing off their goods as and for those of the Plaintiff or use any other trade dress or packaging deceptively similar to that of the Plaintiffs product ESGIPYRIN as described hereinabove.

e) The Defendants undertake not to manufacture, sell or offer for sale, advertise, directly or indirectly medicinal and

pharmaceutical preparations as yellow (tartrazine) coloured tablets and/or with yellow, and silver coloured blister strip in back and front portion of strip or as colourable imitation or substantial reproduction of the yellow (tartrazine) coloured tablets and/or with yellow and silver blister strip in back and front portion of strip and/or bearing the marks EASIPYRIN and EREPYRIN and/or under exterior carton box identical with or a colourable imitation of or substantial reproduction of packaging, colour combination, scheme, layout and design of the Plaintiffs product ESGIPYRIN as filed along with the plaint in the list of documents, amounting to infringement of copyright thereto.

f) That the Defendants shall pay an amount of Rs. 1,00,000/- (Rs. One Lakh only) as full & Final amount in lieu of damages vide demand draft no. 806938082 dated 09/07/2015 Rs. 49996/- and demand draft no. 159177 dated 09.10.2015 for Rs.50,004/- in the name of Abbot Healthcare Pvt. Ltd.

g) That the Defendants shall hand over all the existing stocks and any packing material bearing the marks EASIPYRIN and EREPYRIN and/or any other mark deceptively similar to the Plaintiffs registered trademark ESGIPYRIN lying on their premises or anywhere else to the authorized representatives of the Plaintiff for the purpose of destruction within 7 days from the date of signing of the present settlement application.

4. Learned counsel for the parties agree that the prayers made in paragraph 33(a),(b),(c) and (d) of the plaint having been incorporated in the terms and conditions as reflected in para 2, para 9 should not have formed part of this application. They reiterate that the settlement has been entered into between the parties as per the terms and conditions laid down in paras 2 (a) to (g) of the application and, the suit be decreed in terms of para 2(a) to (g) of this application and not in terms of paragraphs 33(a), (b), (c) and (d) of the plaint. The said

statements are taken on record.

5. Learned counsel for the parties state that the settlement has been entered into by the parties at their free will. They also state that the parties shall be bound by the terms and conditions of the settlement. The statements are taken on record.

6. In view of the settlement as reflected above in paragraphs 2(a) to (g), the suit qua the plaintiff and the defendant Nos. 1 and 2 is decreed in the said terms. There shall be no order as to costs.

7. The suit and the application are disposed of.

IA 1948/2016

8. This is a joint application filed by the plaintiff and defendant no.3 under Order 23 Rule 3 CPC.

9. I note that the attorney of the plaintiff company as well as Managing Director of defendant no.3 has filed the application which is duly supported by their affidavits. The averments made in the application are as under:-

“2. That during the pendency of the present proceedings, the plaintiff and the defendants have arrived at a settlement in view of the following terms and conditions:

(a) That the Defendants admit, confirm and agree that the Plaintiff is the registered proprietor of the trademark No. 293710 "ESGIPYRIN" in class 5 with respect to the medicinal and pharmaceutical preparations as of 22nd January 1974.

b) The Defendants agree, confirm and admit that the Plaintiff is the owner of the unique yellow blister packaging and its yellow tablets under the mark "ESGIPYRIN" wherein the said

trademark "ESGIPYRIN" is prominently displayed in silver font within a black box on the blister foil, and similar representation of trademark "ESGIPYRIN" in prominent white font within black box on the outer carton and orange and white colour combination of carton and design which contains the said blister strips.

c) The Defendants undertake with immediate effect not to manufacture, sell or offer for sale, advertise, directly or indirectly, medicinal and pharmaceutical preparations under the trademarks EASIPYRIN and EREPYRIN or any other mark deceptively similar to the Plaintiffs registered trademark ESGIPYRIN and/or in any manner whatsoever doing any other thing as may likely to cause infringement of the Plaintiffs trademark registration No. 293710 in class 5 for the mark ESGIPYRIN.

d) The Defendants undertake not to manufacture, sell or offer for sale, advertise, directly or indirectly, medicinal and pharmaceutical preparations under the trademarks EASIFYRIN and EREPYRIN or any other mark deceptively similar to the Plaintiffs registered trademark ESGIPYRIN and /or in any manner whatsoever doing any other thing as may be likely to cause confusion or deception amounting to passing off their goods as and for those of the Plaintiff or use any other trade dress or packaging deceptively similar to that of the Plaintiffs product ESGIPYRIN as described hereinabove.

e) The Defendants undertake not to manufacture, sell or offer for sale, advertise, directly or indirectly medicinal and pharmaceutical preparations as yellow (tartrazine) coloured tablets and/or with yellow, and silver coloured blister strip in back and front portion of strip orasa colourable imitation or substantial reproduction of the yellow (tartrazine) coloured tablets and/or with yellow and silver blister strip in back and front portion of strip and/or bearing the marks EASIPYRIN and EREPYRIN and/or under exterior carton box identical with or a colourable imitation of or substantial reproduction of packaging,

colour combination, scheme, layout and design of the Plaintiffs product ESGIPYRIN as filed along with the plaint in the list of documents, amounting to infringement of copyright thereto.

f) That the Defendants shall pay an amount of Rs. 1,00,000/- (Rs. One Lakh only) as token amount in lieu of damages vide demand draft no.159177 dated 09/10/2015 in the name of Abbot Healthcare Private Limited.

g) That the Defendants shall hand over all the existing stocks and any packing material bearing the marks EASIPYRIN and EREPYRIN and/or any other mark deceptively similar to the Plaintiffs registered trademark ESGIPYRIN lying on their premises or anywhere else to the authorized representatives of the Plaintiff for the purpose of destruction within 7 days from the date of signing of the present settlement application” .

10. Learned counsel for the parties agree that the prayers made in paragraph 33(a),(b),(c) and (d) of the plaint having been incorporated in the terms and conditions as reflected in para 2, para 9 should not have formed part of this application. They reiterate that the settlement has been entered into between the parties in terms of the terms and conditions laid down in paras 2 (a) to (g) of the application and, the suit be decreed in terms of para 2(a) to (g) of this application and not in terms of paragraphs 33(a), (b), (c) and (d) of the plaint. The said statements are taken on record.

11. Learned counsel for the parties state that the settlement has been entered into by the parties at their free will. They also state that the parties shall be bound by the terms and conditions of the settlement. The statements are taken on record.

12. In view of the settlement as reflected above in paragraphs 2(a)

to (g), the suit is decreed qua the plaintiff and the defendant No. 3 in the said terms. There shall be no order as to costs.

13. IA 1948/2016 is disposed of.

V. KAMESWAR RAO, J

FEBRUARY 09, 2016
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