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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) No.830/2015 & IA No.6245/2015 (u/O 39 R-1&2 CPC).
BICODEX & ANR Plaintiffs

Through: Mr. Surinder Singh, Adv.

versus

PHARMA SYNTH FORMULATIONS LTD & ANR Defendants

Through: Ms. Rajeshwari H and Ms. Aparna
Gaur, Advs. for D-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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26.07.2016

1. The plaintiffs have sued the defendants for permanent injunction restraining the defendants from using the trademark 'ESONORM' in relation to the same pharmaceutical preparation with respect to which the plaintiffs have a registered trademark 'ECONORM'.
2. *Ex parte* injunction was granted in favour of the plaintiffs and which continues in force.
3. Pleadings have been completed and the suit is ripe for framing of issues.
4. The counsel for the defendants no.2 Micro Labs Ltd. states that the defendant no.2 is willing to suffer a decree for injunction restraining the defendant no.2 from using the mark 'ESONORM'.
5. On enquiry it is stated that the defendant no.1 was a contract manufacturer of the defendant no.2 and has nothing to do with the subject trademark.
6. None appears for the defendant no.1.

7. The right of the defendant no.1 to file written statement has already been closed on 3rd August, 2015.
8. The defendant no.1 is proceeded against *ex parte*.
9. The counsel for the plaintiffs states that the defendant no.2 in its written statement has proposed to use the trademark 'ESONOR' instead of 'ESONORM' and which also is infringing of the plaintiffs' trademark 'ECONORM'.
10. The counsel for the defendant no.2 states that the defendant no.2 is the registered proprietor of the trademark 'ESONOR' with respect to anti-inflammatory products since 1975.
11. The subject pharmaceutical preparation with respect whereto the trademark 'ESONOR' is sought to be used is a pro-biotic drug for maintaining intestinal flora and gastro intestinal diseases.
12. It is the contention of the counsel for the plaintiffs that the defendants though claim to be registered proprietor of 'ESONOR' since 1975 but have till date not used it and are not entitled to use it for the subject pharmaceutical preparations.
13. The aforesaid controversy cannot be the subject matter of this suit as there are no averments of the plaintiffs with respect to 'ESONOR' and the plaintiffs will be required to institute an independent suit therefor.
14. The counsel for the defendant no.2 states that the defendant no.2, even if desires to launch the subject drug under the name 'ESONOR', will not be able to do so at least within 15 days and during which time the plaintiffs, if so desire, can institute a fresh suit.
15. Both counsels are agreeable to disposal of this suit in these terms.

16. The suit is accordingly decreed in terms of para 24(i) and (ii) of the plaint, leaving the parties to bear their own costs.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

JULY 26, 2016

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