

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

IN ITS COMMERCIAL DIVISION

COMM. NOTICE OF MOTION (L) NO.237 OF 2017

IN

COMMERCIAL SUIT (L) NO.247 OF 2017

AND

LEAVE PETITION (L) NO.177 OF 2017

IN

COMMERCIAL SUIT (L) NO.247 OF 2017

Wockhardt Limited)....Plaintiff

V/s.

Mission Cure Pharma Private Limited & Anr.)....Defendants

Dr.Birendra Saraf a/w Mr.Ashish Mehta and Mr.Pratik Jhaveri i/by
Ashish Mehta for the plaintiff.

[Mrs.Rupali P.Lonkar-authorized signatory of plaintiff present in
Court].

[Mr.Udayan Jashwantlal Shah-authorized signatory for defendants
present in Court].

CORAM : K.R.SHRIRAM,J
DATE : 23.6.2017

P.C.:-

1 The parties have amicably settled the matter and have
tendered consent terms dated 23.6.2017. The consent terms signed
by the authorized signatory of the plaintiff, the authorized signatory of
the defendants and the advocate for the plaintiff, is taken on record
and marked `X' for identification.

2 Dr.Saraf appearing for the plaintiff identifies the authorized signatory of the plaintiff and also states that the authorized signatory of the defendants is present in Court. Dr.Saraf also states that his instructing advocate has checked the authority of the authorized signatory of the defendants and they are satisfied that the authorized signatory Udayan Jashwantlal Shah has the necessary authority on behalf of the defendant no.1.

Dr.Saraf seeks leave to withdraw the suit as against defendant no.2 is concerned. Suit dismissed as withdrawn as against defendant no.2.

3 Order in terms of consent terms. All undertakings accepted. Suit accordingly stands decreed against defendant no.1 in terms of prayer clauses-(a) to (d) which read as under :-

“(a) To grant a decree for permanent injunction restraining the Defendant by themselves, their partners (if applicable), directors, principal officers, servants, retailers, stockiest, distributors, representatives and agents from in any manner infringing the plaintiff's registered trademark by manufacturing, marketing and/or selling, offering for sale, stocking, advertising, directly or indirectly dealing in any pharmaceutical products falling under class 5 or any allied, agnate and/or cognate products under the impugned trademark 'PODOXIME' or any other trade mark/marks which are identical/deceptively similar to

the plaintiff's said registered trademarks 'PODOXIM' bearing registration no.581960 amounting to infringement of the aforesaid registered trademarks of the plaintiff ;

(b) pass a decree of permanent injunction restraining the Defendants by/through themselves, their partners, Directors, principal officers, employees, representatives, stockists, dealers, agents, sister companies or concerns and all other persons claiming under or through or on behalf of them or acting in concert with them or otherwise, from using similar trademark and packaging for selling its products as are deceptively/confusingly similar to the trademark of the plaintiff's thus passing off the trademark of the plaintiff, in any manner whatsoever ;

(c) Pass a decree of permanent injunction against the Defendants thereby restraining them by through themselves, their partners, Directors, Principal officers, employees, representative, stockist, dealer, agents, sister companies to forthwith surrender and hand over to the plaintiff company for destruction of all the goods/products that are an limitation of the plaintiff company trademark and of all material, goods, articles, utensils, stickers, hoardings, boxes and other material of the defendants bearing the mark `PODOXIME' ;

(d) pass a decree of mandatory injunction by directing the Defendants to forthwith surrender and hand over in the nature of delivery up to the plaintiffs for destruction

of all the product that are an imitation of the plaintiff's trademark and of all material, goods, articles, utensils, stickers, hoardings, cartons, boxes, pamphlets, brochures, advertising materials, papers stationery and other material of the Defendants bearing the mark 'PODOXIME', or any mark similar/identical to it."

4 The Court Receiver stands discharged without passing of account. The statement of Dr.Saraf on instructions that the plaintiff and/or the advocate on record for the plaintiff, within 2 weeks of receiving communication from the Court Receiver, shall pay the Court Receiver whatever charges are required to be paid is accepted.

5 Refund of court fees, if any in accordance with Rules.

6 Pending Notice of Motion disposed. All interim orders stand vacated. Pending Leave petition allowed by virtue of clause-3 of the consent terms.

7 All parties to act on an authenticated copy of this order.

(K.R.SHRIRAM,J)