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

+ **FAO(OS) (COMM) 71/2017**

SUN PHARMA LABORATORIES LIMITED Appellant

Represented by: Mr.Sudhir Chandra,
Sr.Advocate instructed by
Mr.Hemant Singh, Ms.Mamta
Jha, Mr.Shashi Ojha and
Ms.Ambika Gautam,
Advocates

versus

MYLAN LABORATORIES LIMITED & ANR Respondents

Represented by: Ms.Shwetasree Majumdar,
Advocate with Mr.Prithvi
Singh and Mr.Utkarsh Joshi,
Advocates

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

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24.03.2017

Cav.No.280/2017

Counsel as above appears for the respondents caveator and hence the caveat is discharged.

CM No.11721/2017

Allowed subject to just exceptions.

FAO(OS) (COMM) 71/2017

1. The generic salt is OXALIPLATIN.
2. Various pharmaceuticals using the salt to manufacture their product

are using the trademarks 'OXOPLAN', 'OXAMIL', 'OXALTOR', 'FEXOPLAT', 'GLENOXAL', 'OXALINIS', 'XPLATIN', 'KINAPLAST', 'XALIPAT' and 'PLATOXIN'. Meaning thereby, a part of the name of the generic salt is being used by all the manufacturers.

3. The two competing marks with which we are concerned are 'OXIPLAT' and 'SOXPLAT'.

4. It is apparent that the appellant and the respondent have picked up four letters : PLAT from the name of the salt. Whereas one has prefixed 'SOX', the other has prefixed 'OXI'. Both have registrations in their name.

5. Concededly, the respondent applied for registration in the year 2007 for the trademark 'SOXPLAT' on proposed to be used basis and there evidence that from the year 2009 started selling the drug under the said trademark.

6. The suit for injunction has been instituted in the year 2014.

7. The impugned order has correctly applied the legal principles concerning pharmaceutical products and especially when the two competing trademarks are registered. Indeed, a prior user would be entitled to an injunction against the registered proprietor of a subsequent trademark provided deceptive similarity is shown.

8. In the instant case the deceptive similarity was with reference to the phonetic similarity.

9. The drug in question is a anti-cancer drug. It is obviously sold on a prescription of a doctor. We doubt whether a chemist would be confused with reference to the phonetics of 'SOXPLAT' and 'OXIPLAT'. The argument of the appellant that the letter 'I' in the trademark 'OXIPLAT' would be silent and thus a person would pronounce the word more akin to

‘OXPLAT’. And so pronounced, there would be phonetic similarity with ‘SOXPLAT’.

10. Prima-facie where are of the opinion that a person reading the word ‘OXIPLAT’ would not pronounce it with the letter ‘I’ being silent. In any case, it would be a matter of evidence.

11. For three reasons we affirm the impugned order. Firstly, the competing trademarks are registered. Secondly, the respondent is admittedly in the market since the year 2009. The suit was filed in the year 2014. Thirdly, prima-facie we do not find any phonetic similarity and likelihood of confusion keeping in view that the drug is an anti-cancer drug and is sold on the prescription of a doctor. The chemist who sells the drug is an educated person and would know the phonetic difference between ‘SOXPLAT’ and ‘OXIPLAT’.

12. The appeal is dismissed in limine.

13. No costs.

CM No.11722/2017 & CM No.11723/2017

Dismissed as infructuous.

PRADEEP NANDRAJOG, J

YOGESH KHANNA, J

MARCH 24, 2017

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