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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) No.845/2016 & IA No.8319/2016 (under Order XXXIX
Rules 1&2 CPC).

ELI LILLY AND COMPANY & ANR Plaintiffs
Through: Ms. Kripa Pandit and Ms. Kangan
Roda, Advs.

versus

CONCEPT PHARMACEUTICALS LTD Defendant
Through: Mr. Tarun Ahuja, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **24.04.2017**

1. The plaintiffs have sued the defendant for permanent injunction restraining the defendant from using the trademarks 'LLILLY', 'CILIALIS' or any other trademark or name identical and / or deceptively and confusingly similar to the plaintiffs registered trademarks 'LILLY' and 'CIALIS' and from manufacturing, marketing, advertising or using the distinctive 'Cialis Tablet Trade Dress' including the 'Cialis Tablet Shape' and the distinctive embossing 20 / C 20 and/or 'Cialis Swirl' and the almond shape of the plaintiffs tablets.
2. The suit was entertained and vide *ex parte ad interim* order dated 18th July, 2016 the defendant was restrained in terms of prayer paragraphs A (i) to (v) of IA No.8319/2016.
3. The defendant has filed a written statement and to which no replication has been filed by the plaintiffs as yet.
4. The counsel for the plaintiffs states that the written statement filed by the defendant is incomplete and repeated reminders were given to the

counsel for the defendant therefor and the counsel for the defendant has on 22nd April, 2017 only supplied another set to the counsel for the plaintiffs but which is also incomplete.

5. The counsel for defendant states that what has been supplied to the plaintiffs is identical to what has been filed in the Court and if according to the plaintiffs the same is incomplete, the plaintiffs may take the said objection in their replication.

6. Considering the nature of the controversy I have enquired from the counsel for the defendant whether the defendant is willing to suffer a decree for permanent injunction as claimed in prayer paragraphs A(i) to (v) of the plaint.

7. The counsel for the defendant states (i) that the offending goods are not used by the defendant in India; and, (ii) that the defendant had received an order for export of the said goods to Syria and without knowing the rights of the plaintiff had exported the said goods and which were seized and on the basis of which the plaintiffs have filed the present suit. It is further stated that the defendant, having come to know of the rights of the plaintiffs, will not do so in future.

8. The counsel for the plaintiffs states that subsequent to the seizure of the goods, the Investigator of the plaintiffs had approached the defendant and the defendant had again agreed to supply the goods with the infringing trademark/trade dress. The counsel for the plaintiffs also states that the plaintiffs also require the defendant to make the disclosure and discovery in terms of prayer paragraphs B (v) and (vi) and to deliver all the offending goods with the defendant to the plaintiffs.

9. The counsel for the defendant is agreeable thereto as well.
10. The counsel for the plaintiffs states that in view of the defendant having so agreed, the plaintiffs will not press for the other reliefs.
11. Accordingly, a decree is passed in favour of the plaintiffs and against the defendant:-
- (i) of permanent injunction in terms of prayer paragraphs A (i) to (v) of the plaint;
 - (ii) of delivery for destruction of all offending goods and alike material in terms of prayer paragraph B (iii) & B (iv) of the plaint, within 30 days hereof; by allowing representatives of plaintiffs access to all premises of defendant;
 - (iii) of delivery and discovery in terms of prayer paragraphs B (v) and (vi) of the plaint with a direction to the defendant to within 30 days hereof deliver to the counsel for the plaintiffs particulars as mentioned therein; and,
 - (iv) of mandatory injunction in terms of prayer paragraph C by mandating the defendant to immediately within 30 days hereof withdraw applications if any filed for the marks 'LLILLY' or 'CILIALIS' or any other similar mark or trade dress, or to within the said time furnish an affidavit of its Director supported by a Resolution of Board of Directors of the defendant to the effect that the defendant has not made any such application.

12. The parties are left to bear their own costs.
Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

APRIL 24, 2017
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