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

+ CS(OS) 3632/2014

ABBOTT HEALTHCARE PVT LTD Plaintiff

Through Ms.Astha Joshi, Adv.

versus

UNIPLUS BIOTECH PVT LTD & ORS Defendants

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **25.10.2017**

1. This suit is filed by the plaintiff regarding its statutory and common-law proprietary rights over the trademark ESGIPYRIN and alleged violation thereof by the defendants using alleged deceptively similar mark EGYPYRIN and passing off their goods as that of the plaintiff.

2. It is stated that the plaintiff is a company incorporated under the Companies Act, 1956 and having its registered office at 4, Corporate Park, Sion-Trombay Road, Chembur, Mumbai 400 071. The plaintiff is a wholly owned subsidiary of Abbott Laboratories, Chicago, USA which was founded in the year 1888 by a young Chicago physician, Dr.Wallace Calvin Abbott. The Abbott Laboratories is a global, diversified health care company devoted to the discovery, development, manufacture and marketing of pharmaceutical, diagnostic, nutritional and hospital products. In paragraphs Nos 2 to 4 of the plaint whereby the details of the plaintiff business are mentioned. Further, paragraph nos. 5 to 8 of the plaint provides detailed information on use and registration of the plaintiff's mark ESGIPYRIN.

3. It is stated by the plaintiff that in view of longstanding use, vast publicity/promotion and sales throughout India, the plaintiff's above mentioned marks have earned substantial goodwill and reputation and the members of the trade and public exclusively associate these marks with the plaintiff and their business and no one else.

4. In addition to using a distinctive trade mark, the plaintiff uses a unique blister packaging for Tartazine (yellow) tablets under the said mark, the plaintiff uses a unique combination of red and black colours on a silver and yellow strip packaging wherein the said trademark ESGIPYRIN is prominently displayed in silver font on a black box. The unique packaging is thus a creative artwork of the plaintiff and thus entitled to copyright protection. In addition, the plaintiff's product strips under the mark ESGIPYRIN are sold in a box packaging in colours white and orange bearing a unique design (being) outline of men in different postures and the tag line "the potent dual acting analgesic anti inflammatory".

5. It is also stated in the plaint that the plaintiff is the registered proprietor of the trademark as in Class 5 in respect of medicinal and pharmaceutical preparation as on 22.01.1974. The trademark is said to have been renewed from time to time and is subsisting and is in full legal force. The trademark ESGIPYRIN was adopted and coined in the year 1974. The sale figures for ESGIPYRIN are stated in paragraph 8 of the plaint.

6. It is urged that in October 2014 the plaintiff came to know about the infringing activities of the defendant by manufacturing, marketing and selling medicines under the deceptively similar mark as that of the plaintiff company under the name EGYPRIN which is deceptively similar to the plaintiff's registered trademark ESGIPYRIN. It is further urged that the

products of the defendant are sold in a virtually same yellow colour strip identical to the plaintiff's distinctive yellow colour strip. It is the case of the plaintiff that on account of prior adoption, prior use, prior registration and extensive publicity and promotion the trademark of the plaintiff ESGIPYRIN has earned substantial goodwill and reputation. It is urged that the defendant by using a virtually identical mark and blister packaging in relation to identical goods is making a deliberate attempt to pass off its goods as and for the goods of the plaintiff.

7. On 4.1.2016 the JR noted that the defendants No.1 to 4 have been served and no written statement has been filed. Right of the defendant to file written statement was closed. On 14.9.2016 this court directed that defendants are proceeded ex parte.

8. Learned counsel for the plaintiff has today submitted that this court may pass a decree under Order 8 Rule 10 CPC relying upon judgment of this court in CS(COMM.)181/2016 titled ***Burger King Corporation vs. Shameek and Ors. decided on 2.5.2016***. In any case as per Order 8 Rule 10 CPC when a party fails to present a written statement within the time fixed by the court, shall pronounce judgment against him, or make such an order in relation to the suit, as it thinks fit.

9. Keeping in view the averments made in the plaint, in my opinion, it is a fit case of passing off. A decree under Order 8 Rule 10 CPC is passed in favour of the plaintiff and against the defendant in terms of prayers 34(a)(b)(c) (e) and (f) of the plaint.

JAYANT NATH, J.

OCTOBER 25, 2017/n