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

Date of Decision: 13th July, 2018

+ **CS (COMM) 723/2018**

**SUN PHARMACEUTICAL INDUSTRIES LIMITED
& ANR**

..... Plaintiffs

Through: Mr. Sachin Gupta, Advocate (M-9811180280).

versus

NAVEEN KUMAR JINDAL & ANR

..... Defendants

Through: Mr. Sanjeev Singh & Ms. Kamla,
Advocates (M-9811129304).

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

I.As. 3467/2018, 6723/2018, 6724/2018, 6725/2018 in CS(COMM) 723/2018

1. The Plaintiffs have filed the present suit for injunction restraining infringement of registered trademarks, Passing Off, Unfair Competition, Rendition of accounts of profits/Damages, Delivery Up etc., The present suit relates to four products of the Defendants, which are impugned by the Plaintiffs.

Product No.1- VOLIFITZ GEL

2. The submission of the Plaintiffs is that the mark *VOLIFITZ* is deceptively similar to their well known trademark *VOLINI*, which is a pain relieving gel. The Plaintiffs have no objection insofar as the packaging, getup and layout of the Defendants' product is concerned. However, it is

submitted that the mark *VOLIFITZ* is deceptively similar to *VOLINI*. The Defendant No.1's Director is present in court today. Upon instructions, Mr. Sanjeev Singh, Advocate for the Defendants, submits that his client is willing to change the word mark *VOLIFITZ* to any other mark which is not identical or deceptively similar to *VOLINI*. Specifically, the Defendants agree to not use the prefix "*VOLI*" or any other prefix which will render the mark deceptively similar to *VOLINI*. The Defendants have suggested the trademark *VOLGRIEF* to which the Plaintiffs have no objection. The Defendants agree to withdraw their trademark applications for the marks *VOLIF* and *VOLIFITZ* or suitably amend them, in compliance of the present order.

Product No.2- ANTOCID

3. The Plaintiffs have complained against the Defendants' use of the mark *ANTOSID* on the ground that the same is phonetically identical/deceptively similar to the Plaintiffs' mark - *PANTOCID*. The Defendants agree and undertake not to use the trademark *ANTOSID*, or any other deceptively similar trademark to the Plaintiffs' mark *PANTOCID*, in respect of their pharmaceutical preparations.

Product No.3- LULYF

4. The Plaintiffs object to the Defendants' use of the mark *LULYF* in respect of Luliconazole Cream. The Defendants agree not to use any identical or deceptively trademark to the Plaintiffs' mark *LULIFIN*. The Plaintiffs have no objection if the Defendants use the proposed mark *LULYT* or any other mark, which is not violative of the Plaintiffs' mark.

5. The Defendants shall also either withdraw the pending trade mark

applications before the Trademark Registry for the impugned marks, in respect of which they have today given undertakings today, or in the alternative, if permissible, amend the said trademark applications.

6. Insofar as the goods which were seized by the Local Commissioner, as per para 7 of the report of the Local Commissioner dated 6th April, 2018, are concerned, the counsel for the Plaintiffs submits that they do not have any objection if the Defendants are allowed to sell these products. However, the Defendants shall file an affidavit specifying the batch numbers of these products which were seized during the execution of the Local Commission. It is made clear that if any of the products are beyond the expiry date, the Defendants would not sell the same. The Defendants shall, after selling of these products, file an affidavit confirming the sale and the batch numbers/expiry date of the same. The same shall be done within a period of two weeks. The products are allowed to be de-sealed.

7. The Plaintiffs do not press for rendition of accounts/damages.

8. The suit is, thus, decreed in favour of the Plaintiffs against the Defendants in terms of paras 47(a) and (b) of the plaint. Decree sheet be drawn accordingly.

9. 50% of the court fee is directed to be refunded to the Plaintiffs. Suit and all the pending I.As. are disposed of.

PRATHIBA M. SINGH
JUDGE

JULY 13, 2018
Rahul