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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 813/2017 & IA No.13993/2017 (under Order XXXIX
Rules 1&2 CPC).

DABUR INDIA LIMITED Plaintiff

Through: Ms. Mamta Jha, Mr. Manish Mishra
and Mr. Vipul K. Tiwari, Advs.

versus

ELIZENCE LIFECARE LIMITED & ANR Defendants

Through: Mr. D.S. Chauhan and Mr. Kushal
Sharma, Advs. for D-1.

Mr. Umesh Mishra, Adv. for D-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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04.01.2018

1. This order is in continuation of the earlier order dated 27th November, 2017.

2. Both the defendants are reported to be served and the counsels for both the defendants appear.

3. The counsel for the defendant no.1 Elizence Lifecare Limited states that the defendant no.1 Elizence Lifecare Limited manufactured only ten thousand units of 'HONYTONE' for the defendant no.2 Unitas Pharmaceuticals and is otherwise not in the business of manufacturing or marketing any medicinal preparation in the name of 'HONYTONE' and with the trade dress as objected by the plaintiff and has no objection to suffer a decree for permanent injunction as claimed by the plaintiff in prayer paragraph 25(ii), (iii) & (iv) of the plaint dated 25th November, 2017.

3. The counsel for the defendant no.2 Unitas Pharmaceuticals states that the defendant no.2 Unitas Pharmaceuticals has complied with the direction

contained in para 8 of the order dated 27th November, 2017 and has filed on affidavit the particulars of the stocks of the infringing label and the box / carton with the infringing trade dress. The counsel for the defendant no.2 Unitas Pharmaceuticals further states that the said defendant no.2 also has no objection to suffer a decree for permanent injunction as claimed subject to the plaintiff giving up the claim for damages. It is also stated that the defendant no.2 Unitas Pharmaceuticals has already stopped manufacturing of the product with the infringing trade mark and trade dress and the only manufacturing was got done from the defendant no.1 Elizence Lifecare Limited vide Purchase Order dated 5th February, 2016.

4. Though the counsel for the defendant no.1 Elizence Lifecare Limited states that his instructions are that the defendant no.2 Unitas Pharmaceuticals, in the year 2015 had got the product with impugned mark manufactured from others also but since both the defendants have agreed to suffer a decree for permanent injunction, the same is not relevant.

5. The counsel for the plaintiff has fairly agreed that subject to a decree for permanent injunction as sought being passed today will not claim other reliefs.

6. The counsel for the plaintiff however presses for the relief claimed in prayer paragraph 25(i) of declaration of its mark 'HONITUS' and its trade dress as a "well-known trade mark."

7. It is not deemed appropriate to grant such a declaration without proper adjudication and without investigation.

8. Accordingly, a decree is passed in favour of the plaintiff and against both the defendants in terms of prayer paragraph 25(ii), (iii) & (iv) of the

plaint dated 25th November, 2017, leaving the parties to bear their own costs.

9. Decree sheet be drawn up.

10. The counsel for the defendant no.2 Unitas Pharmaceuticals during the hearing has also informed that the trade mark 'HONYTONE' is also registered.

11. The counsel for the plaintiff states that the plaintiff, in the plaint, has reserved the right to apply for cancellation thereof.

12. I have asked the counsel for the defendant no.2 Unitas Pharmaceuticals, whether the defendant no.2 Unitas Pharmaceuticals, having suffered an injunction, to put future litigation at rest, is willing to make a statement to apply to the Registrar of Trade Marks for cancellation of the entry in the Register.

13. The counsel for the defendant no.2 Unitas Pharmaceuticals states that he has no instructions in this regard.

14. Unless the defendant no.2 Unitas Pharmaceuticals within one month from today, itself applies for cancellation of the entry in its favour in the Register of Trade Marks, the plaintiff shall be entitled to apply for rectification of the Register for cancellation of the registration in favour of the defendant no.2 Unitas Pharmaceuticals.

RAJIV SAHAI ENDLAW, J

JANUARY 04, 2018

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