IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION NO. 1 OF 2019
IN
COMMERCIAL SUIT (L) NO. 1310 OF 2019

Abbott Healthcare Pvt. Ltd. ...Plaintiff
vs
Novartis Healthcare Pvt. Ltd. & Anr. ...Defendants.

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Mr. Janak Dwarkadas, Senior Advocate, a/w Mr. Rahul Dwarkadas, Mr. J. Diwan and Ms. Juhi Bahirwani i/b Veritas Legal for Plaintiff.
Mr. Venkatesh Dhond Senior Advocate, Mr. Nishad Nadkarni, Mr. Shailendra Bhandare, Ms Udita Kanwar i/b Khaitan & Company for Defendant No.1.
Mr. Ravi Kadam, Senior Advocate a/w Birendra Saraf, Mr. Dinesh Pednekar, Mr. Shailesh Poria & Ms. Rajashree R. i/b Economic Laws Practice for Defendant No.2.

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CORAM : S.C. GUPTE, J.
DATED: DECEMBER 09/10, 2019

P.C. :

Heard Learned Counsel for the parties.

2. This Commercial Suit is based on an agreement between the Plaintiff and Defendant No.1 dated 31st May, 2017, which is termed as a "co-marketing agreement". Under this agreement, Defendant No.1 had appointed the Plaintiff as a co-marketer for marketing of its product, Vildagliptin, with or without combination of Metformin, under the trademarks ZOMELIS and ZOMELIS Met. The grievance of the Plaintiff

in the present suit is *inter-alia* that despite the term of co-marketing, which extends upto 31st December, 2019, Defendant No.1 has terminated the appointment of the Plaintiff as a co-marketer with effect from 05th December, 2019. After the matter is heard at some length, this Court is of the view that the grievance, which calls for some protection at the ad-interim stage, concerns the residual co-marketed products lying with the Plaintiff as a co-marketer; the Plaintiff should have opportunity to dispose of the residual co-marketed products in its stock.

3. Learned Counsel for Defendant Nos. 1 and 2 have no objection to the residual co-marketed products lying with the Plaintiff in pursuance of the co-marketing agreement dated 31st May, 2017 being disposed of by the Plaintiff in the market. Both parties, i.e. the Plaintiff on the one hand and Defendant Nos.1 and 2 on the other, state that they shall not take steps to interfere with each other’s sale of rival products, that is to say, the residual co-marketed products lying with the Plaintiff and the products marketed by Defendant No.2 under the trademark ZOMELIS and ZOMELIS Met as a result of assignment of the trademark from the parent company of Defendant No.1. This shall operate as the only ad-interim order in the Interim Application. The ad-interim protection granted above to the Plaintiff is restricted to the residual stock of co-marketed goods lying with it as mentioned in paragraph 5.9 of the plaint read with Exhibit F of the plaint. It is expected that the Plaintiff shall dispose of the residual goods within a reasonable time frame. Liberty to Defendant No.2 to apply for a modification of this protection if the Plaintiff continues to sell the residual goods even after such reasonable time frame.

4. The Plaintiff shall be at liberty to amend the plaint by including a claim for damages, if any, against the Defendants.

5. So also, it is made clear that this order shall not in any way come in the way of Defendant No.2 marketing its products under the trademarks ZOMELIS and ZOMELIS Met.

6. Considering the fact that the only injunctive relief that could be granted, on the facts of the case, to the Plaintiff is the one that is noted above, Learned Counsel for all parties submit, without prejudice to their rights and contentions, as noted above, that this order may be treated as a final order on the IA and the IA may be treated as disposed of. It is ordered accordingly.

7. Considering the fact that some communications have already been addressed by Defendant No.2 to its traders inter alia objecting to sale of any goods under the trade marks Zomelis or Zomelis Met by any one other than Defendant No.2, it is agreed between the parties that the following trade circular shall be circulated by Defendant No.2 to all its traders.

> "We refer to our trade circular dated 6 December 2019. Subsequent to our above communication and pursuant to a suit filed by Abbott Healthcare Private Limited, before the Hon'ble High Court, Bombay, the Hon'ble High Court has recorded that neither Abbott Healthcare Pvt. Ltd nor Novartis Healthcare Private Limited and/or Eris Lifesciences Ltd shall take steps to interfere with each other's sale of rival products, i.e. the residual co-

marketed products lying with Abbott Healthcare Pvt.Ltd. and the products marketed by Eris Lifesciences Ltd. under the trade marks “Zomelis” and “Zomelis Met” as a result of assignment of those trade marks to it by Novartis AG. A copy of the order dated 9 December 2019 is annexed herewith for your ready reference.

Accordingly, please take note that the earlier trade circular/communication dated 6 December 2019, and in particular paragraph-3 thereof, stands modified in terms of the above order passed by the High Court.”

8. All concerned to act on the authenticated copy of this order.

(S.C. GUPTE, J.)