

\$~OS-14

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

+ CS(COMM) 716/2018

LUPIN LTD

..... Plaintiff

Through Mr.Ankur Sangal and Ms.Pragya
Mishra, Advs

versus

SUN PHARMA LABORATORIES LTD

& ANOTHER

..... Defendants

Through Mr.Hemant Singh and Ms.Aninoya
Sharm, Advs.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

%

20.03.2019

1. The present suit is filed by the plaintiff seeking a decree of permanent injunction to restrain the defendants, etc. from using the impugned marks Telipril, Telipril H or Levipil or any other variant of Telipril, Telipril H or Levipil or any other mark which is identical or deceptively similar to the plaintiff's mark "LIPRIL 10/LIPRIL" which amounts to infringement of the registered trade mark Nos.589188 and 1520744 of the plaintiff.
2. Parties have more or less settled the dispute but appear to be just a step short from filing a formal application for settlement before this court to record a settlement.
3. By the consent of the parties, the suit is disposed of as follows:-
 - (i) A decree is passed in favour of the plaintiff and against the defendants

in terms of para 29(a) and 29(b) of the plaint.

(ii) This is subject to the clarification that the term dealers/distributors used in the prayer clause shall mean only acts done by the distributors/dealers for or on behalf of the defendants or their sister companies.

4. The learned counsel for the parties have also agreed as follows:-

a) The Plaintiff agrees that it has no objection to use of the trade mark **LEVIPIL** by the Defendants and withdraws the present suit in respect thereof;

b) The Plaintiff agrees to withdraw the Opposition bearing No. 257169 filed against the Defendant No. 1's trade mark application no. 1347395 dated 29.03.2005 for the trade mark **LEVIPIL** in Class 5 by filing an appropriate request before the Registrar of Trade Marks within 15 days from today;

c) The Defendant Nos. 1 and 2 (hereinafter referred to as "the Defendants") state that they had already discontinued use of the trade mark **TELIPRIL** in 2010 and undertake not to use the trade mark **TELIPRIL** and/or any other mark deceptively similar to the Plaintiff's registered trade mark **LIPRIL** in future;

d) The Defendant No. 1 undertakes to withdraw its trade mark application no. 1347396 dated 29.03.2005 for the trade mark **TELIPRIL** in Class 05 by filing an appropriate request before the Registrar of Trade Marks within 15 days from today. The Defendant No. 1 confirms that there is no pending trade mark application for any mark which is containing **TELIPRIL** or any mark which is deceptively similar to the trade mark

LIPRIL of the Plaintiff except the application mentioned in the present clause;

e) The Defendants undertake not to file any application for registration of the trade mark **TELIPRIL** or any mark containing **TELIPRIL** and/or any other mark which is identical to or deceptively similar with the Plaintiff's registered trade mark **LIPRIL** in Class 5.

f) If the Plaintiff believes that any new mark adopted by the Defendant No 1 is deceptively similar to the Plaintiff's trade mark **LIPRIL**, the Plaintiff shall give the Defendant No 1 seven (7) days' written notice before taking any action against the Defendant No 1 for the parties to amicably settle the dispute.

5. It is ordered accordingly.

6. The suit stands disposed of as above. No orders as to cost.

7. Pending applications, if any, also stand disposed of.

8. As the parties have settled the matter at an initial stage, the plaintiff shall be entitled to refund of 50% of the court fees.

JAYANT NATH, J

MARCH 20, 2019

rb