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

+ CS(COMM) 918/2016

SUN PHARMA LABORATORIES LTD Plaintiff
Through Mr.Hemant Singh and Ms.Aninoya
Sharm, Advs.

versus

LUPIN LTD & ANR Defendants
Through Mr.Ankur Sangal and Ms.Pragya
Mishra, Advs. for D-1.
Mr. Vikas Mehta, Adv. for D-2.

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 dealing in medicinal preparations under the impugned mark **TRI-VOBIT** or any other mark which is phonetically or deceptively similar to the plaintiff's mark **TRIVOLIB** which amounts to infringement of the registered trade mark No.2190159 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 28(a), 28(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 parties have also agreed as follows:-

a) The Defendant No. 1 agrees that trade mark registration no. 2322870 for **TRI-VOBIT2** in Class 05 is deemed cancelled and that the Defendant No. 1 shall file an appropriate request for such cancellation before the Hon'ble Intellectual Property Appellate Board for an appropriate order to be passed for cancellation of the said registration, within fifteen days from today;

b) The Defendant No. 1 further undertakes to withdraw all applications, either trade mark, copyright or design applications, pertaining to the registration of the trade mark **TRI-VOBIT** and/or any other mark containing **TRI-VOBIT**, including trade mark Application No. 2322869 for the trade mark **TRI-VOBIT1**, trade mark application no. 2727128 for the trade mark **TRI-VOBITFORTE 1** and trade mark application no. 2727129 for the trade mark **TRI-VOBITFORTE 2**, within fifteen days from today. The Defendant No. 1 confirms that there is no pending trade mark application for any mark containing **TRI-VOBIT** or any mark deceptively similar thereto to **TRI-VOLIB** except the applications mentioned in the present clause;

c) The Defendants undertake not to file any application for registration of the trade mark **TRI-VOBIT** or any mark containing **TRI-VOBIT** and/or

any other mark which is identical to or deceptively similar with the Plaintiff's registered trade mark **TRIVOLIB** in Class 05;

d) If the Plaintiff believes that any new mark adopted by the Defendant No 1 is deceptively similar to the Plaintiff's trade mark **TRIVOLIB**, 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. Defendant No.1 shall remain bound by the above statement.

6. It is also agreed by the plaintiff that they have no objection of the use of the trade mark **T-VOBIT** and **VOBIT** by the defendants.

7. The suit stands disposed of as above.

8. No orders as to cost.

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

10. 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

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