$~13

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

\+ CS(COMM) 729/2019 & IA No.878/2020 (u/O XXXIX R-1&2 CPC)

DANONE ASIA PACIFIC HOLDINGS PTE. LTD...... Plaintiff

Through: Mr. Pravin Aand, Ms. Jaya Negi & Mr. Souradeep Mukhopadyay, Advs.

Versus

MAXX FARMACIA (INDIA) LLP & ORS. ..... Defendants

Through: Mr. D.K. Yadav, Adv.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

<u>O R D E R</u>

% **30.01.2020**

1. This order is in continuation of the earlier orders dated 23rd December, 2019 and 28th January, 2020.

2. The counsel for the plaintiff though states that the plaintiff is willing to give up the claim for damages but has in Court handed over a draft of an application under Order XXIII Rule 3 of the CPC and has stated that the defendants can take instructions qua the same and the application can be signed and filed in the Court.

3. I have perused the application and find the plaintiff to have therein mentioned the same clauses as already covered by the reliefs claimed in the plaint, of permanent injunction and to which the defendants through counsel have already day before yesterday consented.

4. The plaintiff, in addition has also raised the aspect of costs and also sought undertaking of the defendants to the effect that the defendants would be liable to pay to the plaintiff a sum of Rs.50 lacs as liquidated damages if

found to be in breach of permanent injunction.

5. The counsel for the defendants of course is not agreeable to costs.

6. However costs are in the discretion of the Court and for that reason the hearing need not be deferred.

7. As far as the clause required by the plaintiff, of payment of liquidated damages is concerned, the counsel for the plaintiff himself has fairly not pressed for the same.

8. The counsel for the defendants on enquiry, under instructions from Mr. Sumant Aggarwal, proprietor of defendant no.3 Shyam Pharma, for himself and on behalf of the other defendants states that the defendants are willing to destroy all the goods found by the Commissioner and other goods bearing the infringing mark.

9. A decree is accordingly passed, in favour of the plaintiff and jointly and severally against the four defendants viz. Maxx Farmacia (India) LLP, Sun Bioceuticals Pvt. Ltd., Shyam Pharma and Karnish Pharma, of (i) permanent injunction in terms of prayer paragraph 68 (a), (b), (c), (d) and (f) of the plaint dated 21st December, 2019; (ii) delivery in terms of prayer paragraph 68(h) of the plaint dated 21st December, 2019 by directing that the representative of the plaintiff may visit the two locations, at which the commission was issued and infringing goods seized, on 3rd February, 2020 at 1100 hours and in his presence the seal of the goods which were seized be removed and the goods containing the infringing mark be destroyed in the presence of the representative of the plaintiff and the representative of the defendants; the defendants are further directed to destroy all other stocks

of infringing mark and ensure that none is released in the market; (iii) recovery of costs assessed at court fees paid and legal fee and miscellaneous expenses including on two commissions issued assessed at Rs.3.50 lacs; however if the defendants on or before 15th February, 2020 pay to the plaintiff through counsel, by demand draft in the name of the counsel for the plaintiff, a sum of Rs.3 lacs, the decree for recovery of the balance costs shall stand satisfied; else, the plaintiff shall be entitled to execute the decree for recovery of costs with interest at 6% per annum. The counsel for the plaintiff shall be entitled to remit/transfer costs to the plaintiff.

8. Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

JANUARY 30, 2020
'gsr'..