

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL NOTICE OF MOTION NO. 304 OF 2016
IN
COMMERCIAL IP SUIT NO. 263 OF 2015**

Khursheed Anwar Mohamad Ali & Anr	Plaintiffs
V/s.	
Osmed Formulations (P) Ltd & Anr & Pankaj	Defendant
And	
Pankaj Maheshwari & Anr.	Respondents

Mr. Alankar Kirpekar a/w Mr. Shekhar Bhagat i/b MAG Legal for Plaintiff;
Mr. Sanjeev Singh i/b Shailesh Rai for Defendant.
Mr. Nipun Maheshwari, Respondent No.2 present

**CORAM : K.R.SHRIRAM, J.
DATED : 13th JANUARY 2021**

P.C. :

1 Mr. Singh admits that defendant no.1 and respondents are in breach of the orders passed by this court and are willing to give any reasonable damages as would be directed by the court. He prays for some leniency.

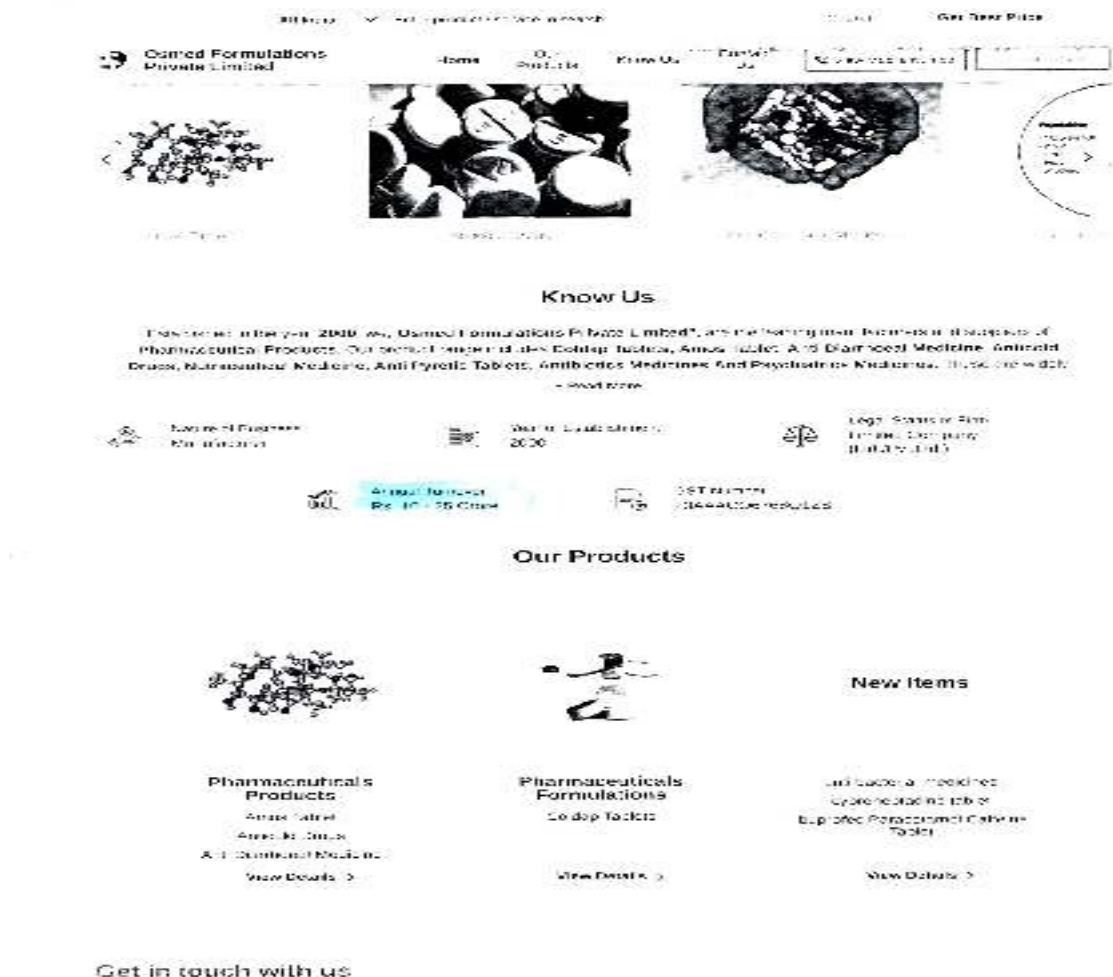
2 Mr. Singh, of course on instructions from Mr. Nipun Maheshwari (respondent no.2) states that after the order of 11-6-2019 was passed, defendant no.1 has not committed further breach of the orders. Mr. Kirpekar states he also has no information about breach subsequently, and submits that the court may dispose of the notice of motion but defendant no.1 and respondents should be put to terms. He submitted defendant no.1 and respondents should be made to pay substantial penalty otherwise it will only embolden defendant no.1 and respondents to continue to commit breach of orders passed by this court, not only in this matter but also later.

Mr. Kirpekar further states that these are pharmaceuticals products and also pose a higher risk if people buy defendant's products on the assumption that those are plaintiff's products. Mr. Kirpekar added that the nature of the commodity, the class of purchasers, the mode of purchase and other surrounding circumstances must also be taken into consideration. I totally agree with plaintiff's counsel.

In cases of medicinal and pharmaceutical products a higher degree of protection is called for. A stricter approach is called for while applying the test to judge the possibility of confusion and deception of one medicinal product for another by the consumer or the trade. (*Cadila Health Care Ltd v Cadila Pharmaceuticals Ltd*; (2001) 5 SCC 73).

3 To decide the quantum, the court asked Mr. Singh what was the turnover of defendant no.1. Mr. Singh was unable to answer. Respondent no.2, Mr. Nipun Maheshwari is present online and was hearing the entire conversation that was happening between counsels and the court. When respondent no.2 was asked what was the turn over of defendant no.1, he did not disclose. Mr. Maheshwari was directed to speak the truth and was also cautioned that the court has enough power to find out the correct turnover. His reply, in an unacceptable tone, was 'for which year'. This conduct of Mr. Nipun Maheshwari shows that defendant no.1 and its Directors will never learn from their mistakes and will never stop from undermining the dignity of this court. Mr. Singh was visibly embarrassed and was apologetic but respondent no.2 was unmoved.

4 In view of respondent no.2's refusal to indicate the turn over, the Court Associate, on court's oral directions, searched the website for defendant no.1 - Osmed Formulations (P) Ltd. In the website of defendant no.1, it says turn over of Rs.10 to 25 crores. The first page of the website of defendant no.1 - Osmed Formulations (P) Ltd. is scanned and reproduced below:



5 In the circumstances, defendant no.1 to pay Rs.10,00,000/- as donation within two weeks from today to K.E.M. Hospital to be used in the neurosurgery department and confirmation letter, alongwith a copy of this order, be sent to Dean, K.E.M. Hospital. The account details are as under :

Bank Account of Hospital	:	Dean, Poor Box Charity Fund, K.E.M. Hospital, Mumbai
Bank Account Number of Hospital	:	011710004666 (S.B.)
Bank and Branch	:	Dena Bank, Parel Branch
Address, Tel. No., Fax No. and e-mail of the concerned Bank	:	Dena Bank, Madina Manzil, 88, Dr. Ambedkar Road, Mumbai – 400 012, Maharashtra, 022-24131112/24135820, PAREL@DENABANK.CO.IN
MICR Code Number	:	400018040
IFSC Number	:	BKDN0450117

6 In addition, respondents shall pay a sum of Rs.2,00,000/- each as donation to High Court Legal Aid Fund, Account No.60045304283, IFSC-MAHB0000002, of Bank of Maharashtra, Branch- Fort, Mumbai 400 032, maintained by the High Court Legal Services Committee, Mumbai. This amount shall also be paid within two weeks from today.

7 Notice of motion accordingly disposed.

8 At this stage, Mr. Singh states that suit may be decreed in terms of prayer clauses (a), (b), (c) and (e) and not (d) because defendant have already suffered by being directed to pay donations as mentioned above.

Mr. Kirpekar is agreeable to that.

9 In the circumstances, suit stands decreed in terms of prayer clauses

(a), (b), (c) and (e), which reads as under:

(a) that this Hon'ble Court be pleased to restrain the defendant by itself and/or through directors, partners, proprietors, servants, agents, exporters, importers, stockiest and/or otherwise howsoever by an order of perpetual injunction from this Hon'ble Court restraining the defendant by itself through its Directors, servants, agents, manufacturers and/or otherwise howsoever from using the Trade Mark "EAT GOOD" as shown in Exhibit C so as to infringe plaintiff no.1's Trade Mark "EAT FINE" as shown in Exhibit A hereto.

(b) that this Hon'ble Court be pleased to restrain the defendant by itself and/or through directors, partners, proprietors, servants, agents, exporters, importers, stockiest and/or otherwise howsoever by an order of perpetual injunction from this Hon'ble Court restraining the defendant by itself through its Directors, servants, agents, manufacturers and/or otherwise howsoever from using the impugned artistic work bearing the mark "MAN XX POWER -100" as shown in Exhibit C1 so as to infringe plaintiff no.1's artistic work "MAN POWER – 100" as shown in Exhibit B hereto.

(c) that this Hon'ble Court be pleased to restrain the defendant by itself and/or through directors, partners, proprietors, servants, agents, exporters, importers, stockiest and/or otherwise howsoever by an order of perpetual injunction from this Hon'ble Court restraining the defendant by itself through its Directors, servants, agents, manufacturers and/or otherwise howsoever in any manner from using the impugned Trade Marks "EAT Good" and "MAN XX POWER – 100" and its cartons being Exhibits C and C1 hereto and/or any other mark or word and/or any other carton which is *are* deceptively similar in any manner whatsoever to plaintiffs' Trade Mark "EAT FINE" and "MAN POWER – 100" cartons so as to pass off and/or enable others to pass off the defendant's pharmaceutical preparation as and for that of plaintiff.

(e) that defendant be ordered and directed to delivery up to plaintiffs all the defendant's goods, articles, dies, moulds, plates, bags, sachets, things, cartons, packings, packing materials, carton boxes, blocks, stickers, promotional materials etc., bearing the impugned artistic work and/or impugned Trade Marks "EAT GOOD" and "MAN XX POWER – 100" and/or any other mark or label which is identical with and/or any other mark or label which is identical with and/or deceptively similar and/or confusingly similar in any manner whatsoever to plaintiffs' Trade Marks and cartons as shown in Exhibit "A1 and B" hereto and upon such delivery being made, the same be destroyed by and under the orders and direction of this Hon'ble Court."

10 No order as to costs. Refund of court fees, if any, in accordance with rules.

11 Stand over to 27th January 2021, for compliance.

(K.R.SHRIRAM, J)