

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.05.2021

PRONOUNCED ON : 27.05.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Appl.Nos.1980,1982 and 1983 of 2021 and
1949 of 2021
in O.A.Nos.281, 282 and 283 of 2021
in C.S.No.176 of 2021

Sun Pharmaceutical Industries Ltd,
Door No.8, Plot No.3,
Old Tower Block Street,
Nandanam, Chennai – 600 035. ... Applicant in Appln.Nos.1980,
1982 and 1983 of 2021

vs

Cipla Limited,
106A, 106/108 Ground and First,
Alapakkam Main Road, Alapakkam,
Chennai – 600 116.
Aslo at,
Cipla House, Peninsula Business Park,
Ganpatrao Kadam Marg,
Lower Parel, Mumbai – 400 013. ... Respondent in Appln.Nos.1980,
1982 and 1983 of 2021

Prayer in Appln.No.1980 of 2021:- Application filed under Order XIV
Rule 8 of Original Side Rules Read with Order 39 Rule 4 & Section 151
CPC, to show cause as to why this application should be not treated as
Urgent? This Court should not be pleased to vacate the order of interim

injunction dated 30.04.2021 granted in O.A.Nos.282 of 2021 and such further or other order as this Court deems fit and proper in the circumstances of the case should not be passed.

Prayer in Appln.No.1982 of 2021:- Application filed under Order XIV Rule 8 of Original Side Rules Read with Order 39 Rule 4 & Section 151 CPC, to show cause as to why this application should be not treated as Urgent? This Court should not be pleased to vacate the order of interim injunction dated 30.04.2021 granted in O.A.Nos.283 of 2021 and such further or other order as this Court deems fit and proper in the circumstances of the case should not be passed.

Prayer in Appln.No.1983 of 2021:- Application filed under Order XIV Rule 8 of Original Side Rules Read with Order 39 Rule 4 & Section 151 CPC, to show cause as to why this application should be not treated as Urgent? This Court should not be pleased to vacate the order of interim injunction dated 30.04.2021 granted in O.A.Nos.281 of 2021 and such further or other order as this Court deems fit and proper in the circumstances of the case should not be passed.

For Applicant : Mr.R.Shanmugasundaram,
(in all Applns) Senior Counsel for
Mr.Arun C.Mohan
For Respondent : Mr.P.S.Raman
(in all Applns) Standing Counsel for
Mr.K.Premchandar

COMMON ORDER

Application Nos.1980, 1982 and 1983 of 2021 in O.A.Nos.282, 283 and 281 of 2021 have been filed to vacate interim order granted in O.A.Nos.281 to 283 of 2021 in C.S.No.176 of 2021 on 30.04.2021.

2.Since multiple applications are before this court, the party shall be referred with reference to their rank in the suit as plaintiff and defendant for convenience. The plaintiff has filed the above suit for the following relief:-

“102.It is therefore humbly prayed that this Hon'ble Court may be pleased to grant a judgment and decree on the following terms:-

(a)A permanent injunction restraining the Defendants, their partners of proprietors, their servants, agents, stockists, distributors, wholesalers, retailers and printers and all persons acting, by through or under the direction of Defendants as the case may be, from reproducing, printing or publishing any lable or packaging, including cartons, tubes and caps including any packaging for the purpose of exports, which are a colourable imitation or substantial reproduction of the Plaintiff's subject products 'BUDECORT RESPULES' and 'DUOLIN RESPULES' artisitic packaging, trade dress or labels represented

as



and



amounting to infringement of copyright in the artistic works.

(b) A permanent injunction restraining the Defendants, their Directors, partners or proprietors, as the case may be, from manufacturing, packaging, selling, offering for sale or distribution, exporting, advertising, directly or indirectly dealing in medicinal products, or goods of any description bearing the mark RESPULE and/or any other marks that are identical or deceptively similar to the Plaintiff's registered trademark RESPULE, or containing any component of the subject trademark RESPULE, i.e., amounting to infringement of the Plaintiff's trademark number 1127296

(c) A permanent injunction restraining the Defendants, their partners or proprietors, their servants, agents, stockists, distributors, wholesalers, retailers and printers and all persons acting, by through or under the direction of Defendants as the case may be, from manufacturing, packaging, selling, offering for sale or distribution, exporting, advertising, directly or indirectly dealing in medicinal products, or goods of any description, using a packaging identical, or deceptively similar to the Plaintiff's packaging for 'Budesonide Respules' and 'DUOLIN Levosalbutamol Respules' represented

as



and



either alone or in combination with the mark

RESPULE, or any other deceptively similar mark, in any manner, in respect of medicinal products, or any other products and doing any other thing as may lead to passing off of their goods as those of the Plaintiff;

(d)A permanent injunction restraining the Defendants, its partners or proprietors, their servants, agents, stockists, distributors, wholesalers, retailers and printers and all persons acting, by through or under the direction of Defendants as the case may be, from manufacturing, packaging, selling, offering for sale or distribution, exporting, advertising, directly or indirectly dealing in medicinal products, or goods of any description, bearing the mark RESPULE, or any other deceptively similar mark or any identical mark, either alone, or in conjunction with the packaging so as to take unfair advantage of or to the detriment of the distinctive character and reputation of the Plaintiff's registered or well-known trademark RESPULE, and/or amount to unfair competition;

(e)An order for rendition of accounts of profits earned by the Defendants by the use of the deceptively similar packaging and infringing trademark, whether in India or through exports;

(f)An order for delivery-up of all impugned goods in the Defendants' possession, including cartons, tubes, caps, moulds, labels, films, wrappers and any other printed matter, packaging material bearing the impugned get up, lay out, arrangement of features, colour scheme, etc and invoices, letter heads, books of accounts and other documents relating to the products manufactured/sold under impugned get up, lay out, arrangement of features, colour scheme etc., to an authorized representative of the Plaintiff for

purposes of destruction;

(g)Costs and such other relief as this Hon'ble Court may deem fit, in the circumstances of the case, in the interest of justice and equity.

3.In the above suit the plaintiff also filed O.A.Nos. 281 to 283 of 2021 for the following interim relief as detailed below:-

(i)to show cause as to why this application should be not treated as Urgent? This Court should not be pleased to vacate the order of interim injunction dated 30.04.2021 granted in O.A.Nos.282 of 2021 and such further or other order as this Court deems fit and proper in the circumstances of the case should not be passed.

(ii)to show cause as to why this application should be not treated as Urgent? This Court should not be pleased to vacate the order of interim injunction dated 30.04.2021 granted in O.A.Nos.283 of 2021 and such further or other order as this Court deems fit and proper in the circumstances of the case should not be passed.

(iii)to show cause as to why this application should be not treated as Urgent? This Court should not be pleased to vacate the order of interim injunction dated 30.04.2021 granted in O.A.Nos.281 of 2021 and such further or other order as this Court deems fit and proper in the circumstances of the case should not be passed.

4.By an dated 30.4. 2021, this court was pleased to grant an ad-interim order in O.A.Nos. 283 and 281 of 2021. Aggrieved by the same, the defendant has now filed Application Nos.1980, 1982 and 1983 of 2021 to vacate the interim order granted by this court on 03.4.2021.

5.These applications for vacating these orders earlier came up for hearing on 19.5.2021. The enquiry in these Applications were adjourned and thus these applications are listed today before the court.

6.Appearing on behalf of the plaintiff learned senior counsel Mr.P.S.Raman submits that the plaintiff has an established market in the medical products viz **Budecort Respules and Duolin Respules** which are Budeonide Nebuliser Suspension BP and Levosalbutamol and Ipratropium Bromide Respirator Solution. It is submitted the word “**Respules**” is a coined word has been registered and has been in use since 2013. It is stated that these medicines were sold by the plaintiff with unique and colourful label and package and the adoption of a deceptively similar package by the defendant with trademark “**Budexfex Respules**” and “**Duoz Respules**” was correctly ordered to be enjoined

by this court on 30.4.2021. It is submitted that there is no urgency in vacating the interim order granted this court on 30.4.2021 inasmuch as the attempt of the defendant was not only to infringe the copyright in the unique artistic work trade dress in the label adopted for selling the above medicines but also an attempt to pass off their product and infringe the trademark of the plaintiff as that of the plaintiffs by causing confusion in the market. The learned senior counsel also submitted that by allowing the defendants to sell their product with the offensive trademark package/label, the plaintiffs rights would be diluted and therefore prayed for dismissal of Application Nos.1982 and 1983 of 2021.

7. Appearing on behalf of the defendant learned senior counsel/advocate general for the defendant submitted that defendant has of manufactured products valued approximately Rs.1.5 crores and Rs.3.5 crores and may be allowed to be sold in the market and that the defendant would adopt a new package/label totally different from the one which has been currently used by them. It is submitted that these products come with expiry date and therefore the defendant may be allowed to sell the existing stock as these medicines are required for treatment of patients

with Covid symptom and defendant is one of the company which is required to report the sale and stock position to the Union Health Ministry.

8.I have perused the documents filed by the plaintiff and the respective affidavits filed in support of the application for grant of an injunction, the counter filed by the defendant and the application filed by the defendant in support of Application Nos.1982 and 1983 of 2021 in the above suit for vacating the interim orders dated 30.04.2021. In my view, the application filed for vacating the interim order dated 30.4.2021 vide Application Nos.1982 and 1983 of 2021 in O.A.No. 281 to 283 of 2021 in C.S.No.176 of 2021 are misconceived and are liable to be dismissed.

9.The court cannot allow a party to violate another persons intellectual property rights viz copyright and trademark and remain a mute spectator where there also is an attempt to pass-off the goods notwithstanding fact that the country is facing unprecedented medical emergency and possibly the patients suffering from covid systems may

require the drugs manufactured both by the plaintiff and the defendant for treating patients them with respiratory ailments during these tough times.

10.The respective label and the trade dress adopted by the plaintiff has been copied by the defendant is *prima facie* slavish imitation of the plaintiff's label wrapper to take advantage of the unprecedented demand in the market for these medicines. It is clearly intended to ride on the goodwill and reputation of the plaintiff.

11.In the counter filed by the defendant and the affidavit filed by defendant in support of the Application Nos. 1982 and 1983 of 2021 to vacate interim order also the defendant has agreed to alter the package. According to the learned senior counsel/Advocate General these medicine have a life of one year. It is therefore open for the defendant to recall the products and repack the same without further loss to itself and release the same with the revised label/package and mitigate its possible loss. No concession can be extended merely because the defendant may have a chance to make quick profit due to Covid-19 pandemic.

12. Needless to state, if the defendant does alter the package/label as stated in the 5 of the affidavit filed in support of these applications in Application Nos.1982 and 1983 of 2021, it is without prejudice to the plaintiff's right to question the same. In my view even the proposed changes retains the words "Respule" as trademarks in the label which are *prima facie* deceptively similar to the trademark "**Budecort Respules**" and "**Duolin Respules**" and "**Respules**" of the plaintiff. Though not argued, the conduct of the defendant borders with violation of provisions of Drugs and Cosmetics Act, 1940 and the Rules made there under. *Prima facie* the attempt of the defendant is to trade on "spurious drugs" within the meaning of Section 17B(e) of the Act which reads as under:-

17-B.Spurious drugs- For the purposes of this chapter, a drug shall be deemed to be spurious,-

a....

b....

c...

d...

e.if it purports to be the product of a manufacturer of whom it is not truly a product.

12A.The defendant is therefore advised to suitably alter not only the trade dress, layout colour combination, design and artistic work on the label but also the words which are deceptively similar to plaintiff's respule.

13.The plaintiff has made *prima facie* case for continuance of Interim Order. In the light of the above discussion, the balance of convenience to continue the interim order granted by the court on 30.4.2021 still continues in favour of the plaintiff notwithstanding the fact that an attempt has been made by the dependent to nix the public interest due to the medical emergency in the country and world over with the rights of the plaintiff.

14.In my view, no prejudice or harm would be caused to the defendant if the interim order is allowed to continue till the disposal of the above suit. On the other hand, if the defendant is allowed to release the products in the market, it will result in incalculable damage to the proprietary rights of the plaintiff and by permitting the defendant to sell the good it will be allowing dilution of the proprietary rights of the plaintiff.

15.Further, dispute of commercial nature within the provisions of the Commercial Court Disputes Act, 2015 has arisen. It is open for the parties to take advantage of the said enactment for an early dispute. The defendant is at liberty to file written statements to speed-up the proceedings in the above suit for an early disposal.

16.Under these circumstances, Application Nos.1980, 1982 and 1983 of 2021 filed by the defendant for vacating the interim orders granted by this court on 30.4.2021 in O.A.Nos.281 to 283 of 2021 in the above suit are dismissed. The interim passed in O.A.Nos.283 and 281 of 2021 in the above suit shall continue to remain in force and will be subject to final outcome of the decision in the above suit. No costs.

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Index : Yes/No
Internet : Yes/No
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Appl.Nos.1980,1982 and 1983 of 2021

C.SARAVANAN,J.

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To
Cipla Limited,
106A, 106/108 Ground and First,
Alapakkam Main Road, Alapakkam,
Chennai – 600 116.
Also at,
Cipla House, Peninsula Business Park,
Ganpatrao Kadam Marg,
Lower Parel, Mumbai – 400 013.

Pre-delivery order in
Appl.Nos.1980,1982 and 1983 of 2021 and
1949 of 2021
in O.A.Nos.281, 282 and 283 of 2021
in C.S.No.176 of 2021

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27.05.2021