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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

O.S.A.(CAD) Nos.8 to 13 of 2021

Sun Pharmaceutical Industries Ltd.
Door No.8, Plot No.3,
Old Tower Block Street,
Nandanam, Chennai 35

..Appellant in all OSAs/Applicant/Defendant

Vs

CIPLA Ltd.,
106A, 106/108 Ground and First
Alapakkam Main Road, Alapakkam
Chennai 116
also at
Cipla House, Peninsula Business Park,
Ganpatrao Kadam Marg,
Lower Parel, Mumbai 400 013

..Respondent in all OSAs/Respondent/Plaintiff

Appeals filed against the common order of this Court dated 27.05.2021 in A.Nos.1982 of 2021 in O.A.No.283 of 2021, A.No.1980 of 2021 in O.A.No.282 of 2021, O.A.Nos.283, 282 and 281 of 2021 and A.No.1983 of 2021 in O.A.No.281 of 2021 respectively, in C.S.No.176 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 O.A No.282 of 2021:-

This Judges summons filed under Order 14 Rule 8 of O.S. Rules and Order 39 Rule 1 and 2 of the code of civil procedure 1908. Pleased to grant an Interim injunction restraining the 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 Applicant's registered trademark RESPULE or containing any component of the subject trademark RESPULE i.e. amounting to infringement of the Applicant's registered trademark Number 1127296.

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 O.A No.283 of 2021:-

This Judges summons filed under Order 14 Rule 8 of O.S. Rules and Order 39 Rule 1 and 2 of the code of civil procedure 1908. Pleased to grant an Interim injunction restraining the Respondent their partners or proprietors, their servants, agents, stockists, distributors, wholesalers, retailers and printers and all persons acting, by through or under the direction of Respondent as the case may be, from reproducing, printing or publishing any label 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 Applicant's Subject Products 'Budecort Respules and Duolin Respules' artistic packaging trade dress or Labels represented as and amounting to infringement of copyright in the artistic works.

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.

Prayer in O.A No.281 of 2021:-

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This Judges summons filed under Order 14 Rule 8 of O.S. Rules and Order 39 Rule 1 and 2 of the code of civil procedure 1908. Pleased to grant an Interim injunction restraining the Respondent their partners or proprietors, their servants, agents, stockists, distributors, wholesalers, retailers and printers and all persons acting, by through or under the direction of Respondent 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 Applicant'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 Applicant.

Prayer in C.S.No.176 of 2021:-

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 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 reproducing, printing or publishing any label 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' artistic 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 registered 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 interests of justice and equity.



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For Appellant : Mr.Satish Parasaran,
Senior Counsel,
for Mr.R.S.Rajesh

For Respondent : Mr.P.S.Raman,
Senior Counsel,
for Mr.Premchandrar

COMMON JUDGMENT
(Made by the Hon'ble Chief Justice)

The matter pertains to the get-up and colour scheme of the packaging material used by the appellant in producing capsules used for treating respiratory problems.

2. The appellant is the defendant in the suit. The judgment and order impugned dated May 27, 2021, insofar as it dismisses the defendant's vacating applications and makes the ad interim order absolute, is questioned on the ground that there are observations in the judgment which seriously prejudice the defendant and such observations were irrelevant in the context of the final order that has been passed.

3. It is apparent that the defendant sought to abandon the colour scheme and get-up used in its packaging material and adopt altogether different cartons or packaging material. Indeed, the defendant offered to abandon the packaging material objected to by the plaintiff. However, it is not for the Court to grant an advance permission to a person seeking to change the get-up or colour scheme or packaging material upon an infringement or passing-off action being brought; it is for the parties to agree on the change. The role of the Court is only to consider whether one offends the use of the other upon an action in such regard being brought.

4. The plaintiff complains that the injunction ultimately issued does not cover the entire ambit of the injunction sought. According to the plaintiff, a limited ad interim order was granted and since the Court was to consider the matter after notice, the plaintiff was satisfied with the limited ad interim order in the hope that the larger interim order sought would be granted at the final stage of the interlocutory proceedings. The plaintiff also points out that some of the observations in the impugned judgment will reflect that the trial Court intended to pass a larger injunction, but the operative part of the order restricts the injunction to what had been initially passed instead of incorporating the larger prayer made by the plaintiff.



5. Insofar as the order impugned continues the ad interim order passed, the same does not call for any interference. However, there are observations in the impugned judgment to which there is no sequitur; in the sense that these observations do not find any reflection in the operative part of the order. To the extent that such observations are contained in the impugned judgment, they may prejudice the defendant. Viewed from another angle, to the extent that these observations have not culminated in a larger injunction, the plaintiff may be aggrieved thereby, though there is no appeal preferred by the plaintiff as of now.

6. Accordingly, in the interest of justice, the defendant is permitted to apply afresh for vacating the subsisting order of injunction and for some of the observations that the defendant finds unpalatable to be removed from the judgment. If a fresh application for vacating the interim order is filed by the defendant, wherein it will be open to the defendant to rely on additional or further material, the trial Court should consider the matter afresh without being unduly influenced by the judgment and order impugned herein. Similarly, it will be open to the plaintiff to seek a larger injunction than the one passed at the ad interim stage and continued by the interim order. Again, the trial Court will consider the prayer for larger injunction uninfluenced by the judgment and order impugned herein.

7. It is made clear that nothing in this order should prejudice either the plaintiff or the defendant at the further hearing at the interlocutory stage. O.S.A.(CAD) Nos.8 to 13 of 2021 and C.M.P.Nos.9881, 9883, 9888, 9890, 9904 and 9906 of 2021 are disposed of without any order as to costs.

Sd/-
Assistant Registrar(CS-IX)

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Sub Assistant Registrar

kpl



To:

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

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O.S.A.(CAD) Nos.8 to 13 of 2021

RLD (CO)
SU (19/08/2021)