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

Date of Decision: 13th April, 2022

+ **CS(COMM) 465/2021 & I.As. 14615/2021, 16009/2021, 5099/2022**

MACLEODS PHARMACEUTICALS LIMITED Plaintiff

Through: Ms. Archana Sahadeva & Ms. Pragati
Aggarwal, Advocates
(M:9818758576)

versus

NAVA HEALTHCARE PVT. LTD. & ORS. Defendants

Through: Mr. Navin Kumar, Mr. Rajesh Kumar
Chaurasia, Mr. Bhavik Patel,
Advocates for D-1 (M:9212031425)
Mr. Sachin Gupta, Mr. Pratyush Rao,
Ms. Jasleen Kaur, Mr. Snehal Singh,
Ms. Swati Meena, Advocates for D-2
(M:9811180270)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. The present suit has been filed by the Plaintiff seeking permanent injunction restraining the Defendants from use of the mark 'Blofin-D3 Max' along with the trade dress and packaging, stated to be identical to the Plaintiff's trademark 'Bio-D3', 'Bio-D3 Max' 'Bio-D3 Fem'/ trade dress/layout/packaging/copyright/etc., as also for reliefs for passing off, unfair competition, misrepresentation, dilution, damages, rendition of accounts, etc. The said marks are used by the Plaintiff for multivitamin and calcium pharmaceutical preparations. The Plaintiff is the registered



proprietor of the said marks which have been in existence since 1998, with 'BIO D3 MAX' being registered in 2009. The Plaintiff has also adopted a unique colour combination and design incorporating various distinguishing features on the trade dress, such as a pictorial representation of a spinal cord and a leaf, combined together in the form of a butterfly. The annual turnover of the Plaintiff is stated to be around Rs.160 crores each, in 2019-20 and 2020-21.

3. The case of the Plaintiff is that the Defendants are using the mark 'Blofin-D3 Max' in similar packaging for identical pharmaceutical preparations consisting of the same active ingredient: 'Calcitriol, Omega-3 Fatty Acids, Eicosapentaenoic Acid, Docosahexaenoic Acid, Methylcobalamin, Boron & Calcium Carbonate.' The Plaintiff has filed the present suit seeking permanent injunction and damages. Vide order passed on 22nd September, 2021, the Court came to the conclusion that the Defendants' mark and trade dress are similar to the Plaintiff's however, the Plaintiff's prior user of the said mark ought to be established. Accordingly, notice was issued. Thereafter, an interim order was passed on 10th November, 2021, as clarified by order dated 24th November, 2021, where the Defendants had given an undertaking and the said undertaking was recorded by the Court in the following terms:

"1. Ms. Sahadev, learned Counsel for the plaintiff, submits that her client is satisfied with the proposal, in the affidavit dated 2nd November, 2021, filed by Defendant No. 1, in which Defendant No. 1 has undertaken not to continue to use the alleged infringing marks and representations and to change its trademarks as proposed in Para 3 thereof,



which reads thus:

3. That Defendant No. 1 has proposed to change the name of its trade mark “Blofin-D3 Max” to “Blofin-Plus” in a completely different style, design and getup from that of Plaintiff the same is as under:-



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Size 110 x 78 mm



Size 110 x 78 mm



Entry No. 03 Entry No. 03



2. In view thereof, she submits that the present application may be disposed of with a direction to the respondent to abide by its undertaking in Para 3 of the affidavit and by restraining the defendant from using the marks impugned in the plaint.

3. Accordingly, IA 12337/2021, is disposed of by binding down Defendant 1, to the undertaking and assurance contained in Para 3 of its affidavit dated 2nd November, 2021, as reproduced hereinabove. Defendant No. 1 shall stand restrained, during the pendency of the suit, from using the marks impugned in the suit and alleged by the Plaintiff, from infringing the plaintiffs' registered trademarks.

4. Defendant 2 has filed an affidavit, asserting that it has nothing to do with the use of the alleged infringing mark by Defendant No. 1 and that, in fact, Defendant No. 1 is using the name of Defendant 2 on its product without due authority.

5. He submits that in this regard. Defendant 2 is already before this Court, against Defendant No. 1 in CS (COMM) 531/2021, in which this Court has protected Defendant No. 2 against use, by Defendant No. 1, of its name and mark. As such, he submits that, his client is not a necessary party in these proceedings, and that, therefore, no order of injunction should operate against his client. He further submits that, for this purpose, the affidavit filed by his client may be treated as an application for deletion of his client from the array of parties.

6. The prayer for deletion is opposed by the plaintiff as well as by Defendant No. 1.

7. The Registry is directed to assign a separate IA number to the affidavit dated 18th October,



2021, filed by Defendant No. 2. This affidavit would be treated as an application for deletion of the name of Defendant No. 2 from the array of parties. Let a response to this affidavit/application be filed by the plaintiff and Defendant 1 within a period of four weeks from today, with advance copy to learned Counsel for Defendant No. 2, who may file rejoinder, thereto, if any, before the next date of hearing.

8. In so far as the prayer of Ms. Sahadev, for extending the application of the interlocutory injunction passed today to Defendant No. 2 is concerned, I see no legitimate objection to the said request. The injunction against use of the infringing trademark would apply in rem, and would cover all entities which would include Defendant No. 2. It is always open to Defendant No. 2 to contend that he has nothing to do with the alleged infringement. This contention is not in any way affected or prejudiced by the clarification, by this Court, that the injunction would apply against both the defendants.

9. As such, it is clarified that the interim injunction as passed today, shall apply to both the defendants in the present suit.”

4. By clarification dated 24th November, 2021, the interim order was also extended to Defendant No.3. The said order reads as under:

“1. This application merely seeks a modification of the order dated 10th November, 2021, passed by this Court specifically with respect to para 9 thereof in which it is clarified that the interim injunction, passed by the Court would apply to “both the defendants in the present suit”. The applicant points out that there are in fact three defendants and, therefore, seeks a modification to the extent



that the order of injunction would apply to all the defendants.

2. There can be no possible objection to this request. Accordingly, it is clarified that the interim injunction granted on 10th November, 2021 would apply to all the defendants in the suit.”

5. The said interim order is continuing. Vide order dated 31st January, 2022, the parties were referred to mediation, however, as per the mediation report dated 23rd March, 2022, the mediation has failed. Accordingly, the matter has been heard by the Court today. The products of the Plaintiff and Defendants have also been handed over in Court. The Plaintiff's and Defendants' impugned products are as under:

	PLAINTIFF'S PRODUCT	DEFENDANTS' PRODUCT
Trade Mark	Bio-D3 Max	Biotin-D3 Max
Packs		

6. This Court is of the clear opinion that the products are identical, the



trade dress, colour combination, mark and layout of the products are also identical and they are in respect of similar pharmaceutical preparations.

7. In so far as Defendant no.1 is concerned, an affidavit dated 2nd November, 2021, has been filed on behalf of Defendant No.1 by Mr. Hemant Suri, Director of Defendant No.1, that the Defendant No.1 has changed the trademark from 'Blofin-D3 Max' to 'Blofin-Plus', in a different artwork. The Plaintiff has no objection in respect of the new mark 'Blofin-Plus' in the packaging artwork which is handed over to the Court. Accordingly, the said affidavit with the artwork is taken on record. The same is set out below:

"3. That Defendant No.1 has proposed to change the name of its trade mark "Blofin-D3 Max" to "Blofin-Plus" in a completely different style, design and getup from that of Plaintiff the same is as under:







8. Defendant No.2 - Khandelwal Laboratories Pvt. Ltd., takes a stand that it has nothing to do with the infringing products, however, the case of the Plaintiff is that the infringing products have been manufactured by the Defendant No.1 in collaboration with Defendant No.2. A perusal of the product packaging also makes this collaboration very clear, where the name of Defendant No.2-Khandelwal Laboratories Pvt. Ltd. is reflected with Defendant No.1.

9. Under such circumstances, Defendant No.2's plea that it is not connected with the infringing products is rejected. Ld. Counsel for the Defendants submit that the Defendants have stopped manufacturing the infringing products under the impugned mark and packaging. Accordingly, a permanent injunction is granted against the Defendants, in terms of



paragraph 57 (a),(b) and(c) of the plaint.

10. In so far as Defendant No.3 is concerned, the said Defendant is the manufacturer of the product, however, Defendant No.3 has not entered appearance despite service. Accordingly, Defendant No.3 has been proceeded *ex parte*. Considering the nature of the matter, Defendant No.3, being the party who was manufacturing on behalf of Defendant Nos.1 and 2, the decree in terms of paragraphs 57 (a), (b) and (c) of the plaint, is also passed against Defendant No.3.

11. Insofar as damages/costs is concerned, litigation costs to the tune of Rs.2 lakhs shall be paid by Defendant No.1 to the Plaintiff and Rs.1 Lakh shall be paid by Defendant No.2 to the Plaintiff. The said amount shall be paid within a period of eight weeks, failing which, the Plaintiff shall be is given liberty to revive the present suit for pressing the reliefs of rendition of accounts and profits, against the Defendants Nos.1 and 2.

12. Accordingly, the suit is decreed in the above terms. Let the decree sheet be drawn accordingly. All the pending applications are also disposed of.

13. The next date before the Joint Registrar being 26th May, 2022 shall stand cancelled.

PRATHIBA M. SINGH
JUDGE

APRIL 13, 2022/aman/MS