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

Date of Decision: 28th March, 2022

+ **CS(COMM) 695/2021 & I.A. 17351/2021**

SUN PHARMA LABORATORIES LTD Plaintiff

Through: Mr. Sachin Gupta, Ms. Jasleen Kaur,
Ms. Snehal Singh, Ms. Swati Meena,
Mr. P. Rao and Mr. Sandeep Singh,
Advocates. (M:9811180270)

versus

TRUGEN NEUROSCIENCES PVT LTD & ANR. Defendants

Through: Mr. Parg Garg and Mr. P.
Kulshrestha, Advocates.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. The present suit for permanent injunction restraining infringement of trademark and passing off has been filed by the Plaintiff seeking protection of the mark 'URSOCOL' which was adopted by it in 2003. The Plaintiff's mark 'URSOCOL' is registered under Registration No. 1119429 for Medicines & Pharmaceutical preparations containing Ursodeoxycholic Acid included in Class 5 since 17th July, 2002. The annual sales of the Plaintiff's product are over Rs.90 crores in 2020-21. The said product contains Ursodeoxycholic Acid which helps to dissolve certain gallstones and prevent them from forming. It is stated to help in breaking down the cholesterol that has converted into stones in the gallbladder thereby dissolving the stones.
3. The grievance of the Plaintiff is that in December 2021 it came across



Defendants' product called 'UROCOL' which was being sold in Delhi and also on various e-commerce platforms such as Pharmeasy, Tata 1MG, Pharmearth, Dawa Adda, etc. as well as being promoted on Facebook. The Plaintiff found from the packaging of the said medicine that the Defendant No. 2- Trugen Pharmaceuticals Pvt. Ltd. is engaged in the manufacturing, and the Defendant No. 1- Trugen Neurosciences Pvt. Ltd. is marketing of the said medicine bearing the mark 'UROCOL'. Further, the products being sold by the Defendants under the mark 'UROCOL' also contain the same molecule, namely 'Ursodeoxycholic Acid', and is used for the same ailment which the Plaintiff's product 'URSOCOL' cures.

4. The Plaintiff relies upon various orders passed by the Trademark Registry wherein the Registry has disallowed applications for registration of identical/deceptively similar trademarks as that of the Plaintiff's mark 'URSOCOL'. The details of the said marks are as under:

Impugned marks	Appl. No	Class	Proprietor's name
URSOCOL	1097442	5	Sanfoi-Synthelabo
UROCHOL	1293850	5	Rakesh Kapoor
USECAL	2520561	5	Emmpee Health Care (P) Ltd.
URSOCLOX	3268674	5	Clox Pharma P. Ltd
URSOCURE	2466189	5	Astronova Organics P. Ltd.
URSOSIL	2422514	5	Kusum Healthcare P. Ltd



URSOFOL	2790568	5	Dazzle Medicare
URSOKER-300	4005654	5	Hariom
URSOCURE	4081662	5	Abhinandan Jain

5. According to the Id. Counsel for the Plaintiff, Defendants' use of the mark 'UROCOL' constitutes infringement of Plaintiff's registered trademark, passing off, as also unfair competition.

6. Upon the filing of the present suit, an *ad-interim* injunction was granted by Id. Single judge of this Court vide order dated 23rd December, 2021 in the following terms:

"17. Accordingly, till further orders, defendants, their directors, assignees in business, distributors, dealers, stockists, retailers/ chemists, servants and agents are restrained from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in medicinal preparations under the impugned mark UROCOL and/or any other trade mark as may be deceptively similar to the plaintiff's trade mark URSOCOL amounting to infringement of its registered trade mark under no. 1119429 and also from passing off, unfair competition, declaration, damages, delivery up, etc."

7. Vide the said order, along with the grant of *ad-interim* injunction, a Local Commissioner was appointed by the Court to visit the premises of the Defendants and make seizure of the infringing products. The Report of the Local Commissioner has been filed on record which shows that the Local Commissioner found the following quantity of products at the premises of the Defendants:



“INVENTORY SLIP

- 1. UROCOL 150 - Box Material - 200 items (1 katta)*
- 2. UROCOL 300 - Box Material - 700 items (1 katta)*
- 3. UROCOL 300 - Box Material - 1090 items (1 katta)*
- 4. UROCOL 300 - Metal Coil Roll - 6 Kgs.”*

8. Thus, it is clear that the mark ‘UROCOL’ was being used by the Defendant on its products. Ld. Counsel for the Defendants has entered appearance and submits that his clients are agreeable to give up the mark ‘UROCOL’ and stop manufacturing and marketing of their pharmaceutical preparations under the mark ‘UROCOL’. It is submitted by Ld. Counsel for the Defendants that they are agreeable to pay a sum of Rs.1,50,000/- as litigation costs to the Plaintiff.

9. In view of the above stand of the Defendants, the suit is decreed in terms of paragraph 27(a) and 27(b) of the Plaint. Considering the amount of stocks seized from the Defendants’ premises, the Defendants are further directed to pay a sum of Rs.2,00,000/- as litigation costs to the Plaintiff. The Defendants are also directed to destroy the packaging of the products bearing the infringing mark which have been seized by the Local Commissioner, in the presence of the representative of the Plaintiff. At this stage, Ld counsel submits that the Defendants may wish to utilise the stock. It is clarified that if the Defendant wishes to remove the tablets from the packaging bearing the mark ‘UROCOL’ and use the same in new packaging, it shall be strictly in accordance with the applicable Rules and laws. It shall also be ensured that the correct expiry date of the tablet is mentioned on the new packaging. Also, at the time of the destruction of the material, the batch numbers of the products already manufactured and put in the distribution



chain by the Defendants shall be given to the Representative of the Plaintiff so that it can be ensured that no further products are distributed by the Defendants.

10. In view of the fact that costs of Rs.2,00,000/- has been awarded to the Plaintiff, as also the fact that the parties have resolved their disputes amicably, the Plaintiff does not press for the relief of damages.

11. Full court fee is directed to be refunded to the Plaintiff in terms of the judgment passed by this Court in *Munish Kalra v. Kiran Madan 2019 (198) AIC 622*.

12. The suit is decreed in the above terms and all pending applications are disposed of in the above terms. Decree sheet be drawn up accordingly.

PRATHIBA M. SINGH
JUDGE

MARCH 28, 2022

dj/sk

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