

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 1223 OF 2020
IN
COMMERCIAL IP SUIT NO. 142 OF 2022**

Laboratoires Griffon Private Limited & anr ... Applicants/Orig. Plaintiffs
vs.
Knoll Healthcare Private Limited & ors ... Defendants

Mr. Amit Jamsandekar a/w. Ms. Archita Gharat, Mr. Kiran Mehta, Mr. Sai Prasad Mandlik and Mr. Vighnesh Kamat, i/by. Kiran J. Mehta for applicants/plaintiffs.

**CORAM : MANISH PITALE, J
DATE : 9th JANUARY, 2023**

P.C. :

. The plaintiffs have filed the present suit and the application for grant of interim reliefs, in the context of its registered trade marks GLIMET and GLIMET-DS.

2. In the application, notice was issued, pursuant to which, the defendants appeared and sought time to file reply. In the order dated 2nd March, 2020, this Court took note of the fact that the defendants were served on 14th February, 2020 and despite having sufficient time to file their affidavit-in-reply, they had failed to do so. Therefore, one last opportunity was granted to the defendants to file their affidavit-in-reply, subject to payment of cost of Rs.50,000/- to Tata Memorial Centre (to be used for research).

3. Thereafter, the defendants paid the costs and filed their reply affidavit in the present application. The plaintiffs filed rejoinder affidavit and the pleadings being complete, the application has come up for hearing/disposal.

4. Mr. Jamsandekar, learned counsel appearing for the plaintiffs invited attention of this Court to the pleadings in the plaint as well as the application, as also the documents placed on record.

5. The documents on record show that the plaintiff No.1 holds the registration for the word mark GLIMET, which dates back to 20th August, 1992, for medicinal and pharmaceutical preparations. The documents on record also show that plaintiff No.1 holds registration of word mark GLIMET-DS alongwith device, dating back to 11th February, 2014. A copy of the registered user agreement, executed by plaintiff No.1 in favour of the plaintiff No.2, is placed on record. Plaintiff No.2 is authorized to use the registered trade marks GLIMET and GLIMET-DS. Copies of invoices from the year 2007 onwards have been placed on record to show the presence of the said product of the plaintiffs in the market. Copies of advertisements and other such material is placed on record to show that the said trade marks and the products of the plaintiffs have been in public domain for a considerable period of time. Certificate of Chartered Accountant is also placed on record, showing the sales turnover for a period of ten years from 1st April, 2009 to 31st March, 2019. The same shows the turnover in respect of the said products of the plaintiffs to the tune of Rs.2,50,36,241/- for the year 2018-2019.

6. It is stated in the plaint that some time in the second week of September, 2019, the plaintiffs came across an advertisement of the trade mark GLIMED, published in the Trade Mark Journal dated 2nd September, 2019, issued by the Registrar of Trade Marks. It is stated that the said impugned mark was applied for by the defendants on 15th September, 2016, in respect of a medicinal and pharmaceutical preparation in the name of defendant No.1, claiming user from the year 2010. Since the plaintiffs found that the impugned mark GLIMED was deceptively similar to the plaintiffs' mark GLIMET, on 9th September, 2019, the plaintiffs issued notice to the defendant No.1. It is stated that the defendant No.1 avoided the service of notice and hence, the packet was returned back to the plaintiff. In this backdrop, the plaintiffs were constrained to file opposition proceedings before the Registrar of Trade Marks. The plaintiffs found that the defendants were using the impugned mark GLIMED and its variants, in respect of medicinal and pharmaceutical preparations. Upon purchasing the impugned products of the defendants and obtaining an invoice, the plaintiffs realized that the impugned products were also used for treatment of diabetes.

7. It is in this backdrop that the plaintiffs are pressing for grant of interim reliefs, on the ground that the impugned trade mark of the defendants is deceptively similar to the registered trade marks of the plaintiffs, as it is phonetically and structurally similar. Only alphabet 'T' is replaced by alphabet 'D' and since the impugned products of the defendants, bearing the impugned mark GLIMED and its variants also claim to be used for treating diabetes, it is claimed that the presence of the said products can be hazardous to the consumers.

8. Today, when the application is called out, none has appeared on behalf of the defendants. This Court has perused the reply affidavit filed on behalf of the defendants. The defendants have annexed voluminous documents, alongwith the reply affidavit, most of which are copies of invoices, pertaining to the impugned products. The crux of these invoices annexed to the reply affidavit, filed on behalf of the defendants is that they have been in the market, allegedly using the impugned marks, since the year 2010 and that the plaintiffs having acquiesced to the use of the impugned mark of the defendants and there being inordinate delay on the part of the plaintiffs, no case is made out for grant of interim reliefs.

9. This Court has considered the contentions raised on behalf of the plaintiffs as well as those raised on behalf of the defendants in their reply affidavit. A bare comparison of the two marks would show that the registered trade marks of the plaintiffs GLIMET is copied by the defendants in the impugned mark GLIMED. This Court finds that a strong *prima facie* case is indeed made out by the plaintiffs, for the reason that the impugned mark is phonetically similar to the registered trade marks of the plaintiffs and that it is also structurally similar, for the reason that only the alphabet 'T' has been replaced by the alphabet 'D' at the end of the mark. The defendants appear to be using variants of the impugned mark GLIMED, *prima facie*, only with a view to ride over the goodwill of the products of the plaintiffs, bearing the registered trade mark GLIMET.

10. Insofar as the aspects of acquiescence and delay are concerned, once there is sufficient material placed on record on behalf of the plaintiffs that they do have registrations in respect of their marks, dating back to the year 1992 and the defendants have failed to place on record in pleadings or any

other material to show that the plaintiffs were aware of the impugned mark and its use by the defendants, there does not appear to be much substance in the contentions raised on behalf of the defendants on the aspects of acquiescence and delay. There is lack of material placed on record on behalf of the defendants, to indicate as to in what manner it could be said that the plaintiffs were aware of the impugned marks of the defendants from the year 2010 onwards. In any case, once the plaintiffs have placed on record sufficient material that the registrations in their favour date back to the year 1992, a strong case is made out on their behalf for pressing for interim reliefs, with regard to infringement and passing off.

11. This Court is convinced that the stand taken in the reply affidavit, filed on behalf of the defendants does not, in any manner, demonstrate as to why the plaintiffs can be denied interim reliefs, despite their presence in the market with their products, bearing the registered trade marks for a long period of time. Registration dates back to the year 1992 and invoices dating back to the year 2007 have been placed on record by the plaintiffs.

12. Thus, a strong *prima facie* case is made out by the plaintiffs for grant of interim reliefs. It is also found that unless the defendants are restrained from further using the impugned trade mark, the plaintiffs will continue to suffer grave and irreparable loss, thereby indicating that the balance of convenience also lies in favour of the plaintiffs.

13. In view of the above, the application is allowed and ad-interim reliefs are granted in terms of prayer clauses (a) and (b), which read as follows:

- ‘a) that pending the hearing and final disposal of the suit, the Respondent No.1 to 4 by themselves, their directors,

employees, servants, agents, dealers, stockists, distributors, assignees, licensees and all those connected with them in their business be restrained by an order and injunction of this Hon'ble Court from using, manufacturing, selling, marketing, promoting, advertising, distributing, exhibiting for sale or otherwise and/or using in any manner in relation to their medicinal and pharmaceutical preparations the impugned trademark/s GLIMED-1, GLIMED-2, GLIMED- MF 1, GLIMED-MF 2, GLIMED-MF 1-1000 SR and GLIMED-MF 2-1000 SR or any mark identical and/or deceptively similar to the Applicant No.1's trade mark GLIMET registered under No.579544 and GLIMET DS registered under No.2676118 both in class 05, so as to infringe the Applicant No.1's registered trade mark/s numbers as above mentioned;

- b) that pending the hearing and final disposal of the suit, the Respondent No.1 to 4 by themselves, their directors, employees, servants, dealers, agents, stockist, distributors, assignees, licensees and all those connected with them in their business be restrained by an order and injunction of this Hon'ble Court from using, manufacturing, selling, promoting, advertising, distributing, exhibiting for sale or otherwise and/or using in any manner in relation to their medicinal and pharmaceutical preparations the impugned marks GLIMED-1, GLIMED-2, GLIMED-MF 1, GLIMED-MF 2, GLIMED-MF 1-1000 SR and GLIMED- MF 2-1000 SR or any mark identical and/or deceptively similar thereto being confusingly similar to the Applicant's marks GLIMET and GLIMET DS so as to pass off or enable others to pass off the Respondents goods as and for that of the Applicants;'

(MANISH PITALE, J)