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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION NO.1588 OF 2023
IN
COM IPR SUIT NO.72 OF 2023

Syncom Formulations (I) Ltd. & Anr. ...Applicants /
Plaintiffs

Versus

Usan Pharmaceuticals Pvt. Ltd. & Anr. ...Defendants

WITH
INTERIM APPLICATION (L) NO.4956 OF 2023
IN
COM IPR SUIT NO.72 OF 2023

Usan Pharmaceuticals Pvt. Ltd. & Anr. ...Applicants /
Defendants

In the matter between
Syncom Formulations (I) Ltd. & Anr. ...Plaintiffs

Versus

Usan Pharmaceuticals Pvt. Ltd. & Anr. ...Defendants

Alankar Kirpekar, Shekhar Bhagat, Ayush Tiwari and Rajas
Panandikar i/b. Shekhar Bhagat and Neelaja Kirpekar for the
Plaintiffs.

Mr. Pranshul Dube, for the Defendants.

CORAM : R.I. CHAGLA J

Reserved on : 26th September, 2023.

Pronounced on : 1ST DECEMBER, 2023.

ORDER :

1. The Interim Application No. 1588 of 2022 in the above Suit had been moved for ad-interim relief before this Court on 17th January, 2023 by the Applicants / Plaintiffs. Mr Dube had appeared for the Defendants and submitted that the Defendants have an answer for all the contentions raised on behalf of the Plaintiffs and there is no case made out for grant of ad-interim relief. The submissions on behalf of the Applicants / Plaintiffs and the Defendants were recorded.

2. This Court had been convinced that a strong prima facie case had been made out and that unless ad-interim reliefs are granted, the Plaintiffs are likely to suffer grave and irreparable loss, particularly because the impugned goods were found in the export market of the Central African Country 'Chad'. Further, the balance of convenience was in favour of the Plaintiffs. Accordingly, ad-interim relief was granted in favour of the Plaintiffs in terms of prayer Clauses (a) to (d) of the Interim Application.

3. The Plaintiffs had sought protection of their two registered trademarks and three copyrights pertaining to medicinal products manufactured and marketed by the Plaintiffs. The Plaintiffs case is that the Defendants are infringing their two registered trademarks and three copyrights pertaining to these medicinal products and that this infringement was noticed by the Plaintiffs at the first time in September, 2022 when the representative of the Plaintiffs had found the infringing products in the market of Central African Country 'Chad'.

4. The subject registered trademarks in respect of which the Plaintiffs have claimed relief are "RELIVAC" and "VOLVINAC-P". In addition the Plaintiffs are claiming infringement of copyrights in three marks "RELIVAC", "VOLVINAC-P" and "NIRUPQUIN".

5. With respect to Plaintiffs trademark "RELIVAC", the Plaintiffs are proprietor of the trademark "RELIVAC" which is a registered trademark. The date of registration being 8th June, 2006 in Class 5, pertaining to medicinal and pharmaceutical preparations. It is the case of the Plaintiffs that the original artwork on the carton containing the tablets, with the trademark "RELIVAC" was created in

the year 2018 by an employee of Plaintiff No.1 namely Mr. Bhushan Sane. Reliance has been placed on an email dated 6th February, 2018 from Mr. Bhushan Sane to the Plaintiff showing the date of creation of the artwork as on 6th February, 2018. The said email dated 6th February, 2018 has been annexed at Exhibit C-3 to the Plaint. There is an Affidavit of Mr. Bhushan Sane which has been filed on 17th January, 2023, wherein it is stated that he is the original author who had created the subject artwork and has confirmed that he had sent the email dated 6th February, 2018 which had attached the original artwork prior to modification (yellow background). The documents showing the artwork created and approved in the February, 2018 and being given the artwork No.2248-I to 2248-IV has been produced. The document bears the name of Mr. Bhushan Sane and signature of Mr. Santosh Soni of Regulatory Department of the Plaintiff.

6. The Plaintiffs have stated that the original artwork created in the year 2018 underwent minor modifications in terms of shades of colours in the year 2021. There is a copyright registration certificate dated 17th December, 2021 issued by the Registrar of Copyrights. This was issued pursuant to the application for registration filed on 11th September, 2021. In the certificate

pertaining to the modified artistic work the year of first publication is stated as 2021.

7. Upon perusing this material produced before this Court, a prima facie finding was arrived at that this Court is convinced that the original artwork, insofar as the trademark “RELIVAC” is concerned, pertained to the year 2018. The Plaintiff had also placed on record the certificate of the Chartered Accountant which shows the sales turnover for the year 2021-22 to the tune of Rs.1,77,05,501/- pertaining to their product “RELIVAC-50”. Further, there is a drug license of 27th April, 2017 showing renewal of the drug license and annexed to the Plaint at Exhibit C6. Further, annexed to the Plaint at Exhibits C8 to C12 are invoices from 2018 showing the use of the mark “RELIVAC”.

8. The Defendants in so far as the trademark “RELIVAC” is concerned have not been able to explain the adoption of the mark “RELIVAC”. Further, there is an admission on behalf of the Defendants that the impugned mark “RELIVAC” was adopted in the year 2020. The documents showing the creation of “RELIVAC” drug license has been placed on record by the Defendants which is dated

25th October, 2021.

9. This Court had by the said Order dated 17th January, 2023, arrived at a prima facie finding that the infringing mark of the Defendants i.e. “RELVAC-50” is not only phonetically similar to the registered trademark of the Plaintiffs but it is structurally found to be similar, as only the alphabet ‘i’ has been removed and the essential features have been replicated. This Court had arrived at a finding that a strong prima facie case of infringement of the registered trademark has been made out by the Plaintiffs.

10. It is relevant to note that the Defendants have neither in the Affidavit in Reply to the present Interim Application nor in the Interim Application (L) No.4956 of 2023 taken out by the Defendants seeking vacation of the said ad-interim order dated 17th January, 2023, addressed the issue of infringement of the Plaintiffs trademark “RELIVAC” by the Defendants impugned mark “RELVAC-50”. Thus there is no reason why the ad-interim relief which had been granted by the said Order dated 17th January, 2023 in respect of infringement of the Plaintiffs trademark “RELIVAC” should not be confirmed.

11. With respect to the infringement of copyright in the Plaintiffs mark “RELIVAC”, in the Interim Application filed by the Defendants purportedly under Order XXXIX Rule 4 of the Code of Civil Procedure, though the said order dated 17th January, 2023 is not an ex parte order but an order after notice and hearing of Mr. Dube for the Defendants, it has been contended that the Defendants were not been given an adequate opportunity to file Reply Affidavit to the Interim Application filed by the Plaintiff under Order XXXIX Rules 1 and 2 of Code of Civil Procedure, 1908 prior to the passing of the ad-interim Order. Mr. Dube, learned Counsel for the Defendants submitted that the Plaintiffs misrepresented the facts and played fraud in obtaining the ad-interim relief. He has submitted that “RELIVAC-50” is not the original artistic work of the Plaintiff as claimed. He has submitted that the usage of the same artwork which the Plaintiffs claim to have copyright in was being used for another product, “Diclofenac Sodium” by Defendant No.2. It had been created by Mr. Hitesh Kanani, Partner of Defendant No.2 and is being used by Defendant No.2 at least since 2015. He has relied upon an extract of stock register which is at Exhibit A to the Reply Affidavit filed by the Defendants. Thereafter, from 2020, the artistic work was being used by the Defendants on its ‘RELVAC 50’ medicines.

12. Mr. Dube has further submitted that the Plaintiffs have not produced any document prior to the year 2021 to show that they were using the artistic work “RELIVAC-50” prior to that year. He has submitted that the email dated 6th February, 2018 relied upon by the Plaintiffs does not depict the artistic work or logo of “RELVAC-50” and hence is of no substance, making it amply clear that the Plaintiffs did not create or use the artistic work “RELIVAC-50” prior to the year 2021.

13. Mr. Dube has further submitted that the Plaintiffs copyright certificate itself states the artwork of “RELIVAC-50” was ‘First Published’ in the year 2021.

14. Mr. Dube has submitted that the Plaintiffs though claiming to have taken an NoC from the Registrar of Trademarks which is mandatory under Section 45(1) of the Copyright Act, 1957, this in respect of logo “Syncom’s RELIVAC EXTRA” which is a completely different label than what is depicted on the Copyright Certificate. He has accordingly submitted that the copyright certificate is granted in violation of Section 45(1) of the Copyright Act, 1957 and that the Defendants reserve their rights to file

cancellation of copyright registration of the 'LOGO OF RELIVAC 50' which is invalid.

15. Mr. Kirpekar learned Counsel appearing for the Applicants / Plaintiffs has submitted that the Defendants have concocted a false claim of usage of same artwork for another product "Diclofenac Sodium". This false claim was made for the first time after the passing of the ad-interim order on 17th January, 2023. This was never raised by the Defendants before this Court at the hearing of the ad-interim application. He has submitted that the stock register which has been relied upon by the Defendants does not bear any signature of any person. The said document has not been identified by any person. He has accordingly submitted that the purported stock register cannot be construed as a secondary document under the Evidence Act, 1872. He has further submitted that upon a query which fell from the Court as to "who is the person maintaining the stock register and can the Defendants file an Affidavit in Support of the stock register"?, Mr. Dube on behalf of Defendants stated that the Defendants are not aware about the name of the person who has maintained the stock register and thus cannot file the Affidavit. He has submitted that in view thereof the stock register cannot be

considered as a document in support of the Defendants claim. He has further submitted that there is no other evidence from the public record which the Defendants could produce to support the claim of prior user of artwork by the Defendants under the product name “Diclofenac Sodium”.

16. Mr. Kirpekar has accordingly submitted that there is nothing to show that the Defendants were using the impugned artwork prior to 2021. In view thereof, the grant of injunction against the Defendants in respect of infringement of the Plaintiffs Copyright in the artistic work of RELIVAC-50 in terms of prayer Clause (a) of the Interim Application for which this Court had granted ad-interim relief is required to be confirmed.

17. With regard to the Trademark “VOLVINAC-P”, is concerned the Plaintiffs had placed before this Court the registration certificate showing that the registration dates back to 16th February, 2016. The sales turnover figure for the Plaintiffs product “VOLVINAC-P” pertaining to the year 2021-22 was stated to be Rs.13,92,300/- and the same is supported by a certificate issued by the Chartered Accountant. This Court was convinced that the strong prima facie

case is made out, since the essential and prominent features of the registered trademark of the Plaintiffs have been copied. A bare comparison of the two marks would show that there is structural similarity between the two marks, particularly the manner in which “VOVENOR-P” is depicted on the impugned product. The Defendants have no real answer to the Plaintiffs claim for infringement of their trademark “VOLVINAC-P” by the impugned mark “VOVENOR-P”. The only defence in the Interim Application as can be seen from the Affidavit in Reply which has thereafter been filed is with regard to the artistic work “VOLVINAC-P”.

18. The Defendants have for the first time during the arguments filed additional affidavit and that too after Affidavit in Rejoinder had been filed by the Plaintiffs wherein contention is made that the mark “VOLVINAC-P” has been registered with NAFDAC in the year 2010 and hence the Plaintiff is not the original owner or proprietor. The document relied upon is at page 566 of the additional affidavit.

19. Mr. Kirpekar has countered this contention by submitting that the document which has been relied upon by the

Defendants to claim that the mark “VOLVINAC-P” is registered with NAFDAC in the year 2010 is a document which is not from any official website of any statutory authority / body in Nigeria. The said document is just a table having no signature, no stamp etc. Hence, it is not admissible as evidence under Section 63 or 65 of the Evidence Act.

20. Mr. Kirpekar has submitted that the Plaintiffs have produced the trademark registration certificate which is sacrosanct under the Trade Marks Act, 1999. It is a settled law that the mark once registered is enforceable unless it is cancelled. He has placed reliance upon the decision of this Court in *Lupin Ltd. V Eris Pharma*¹. He has further submitted that it is settled law that any kind of registration outside India has no bearing on the registration of the trade mark in India. He has placed reliance upon *Kores (India) Ltd. Vs. Whale Stationery Products Ltd.*² in this context.

21. Mr. Kirpekar has further submitted that the document at Page 567 of the additional Affidavit which has been relied upon by the Defendant is of no consequence as it bears the

¹ 2016(67) PTC 144 (Bom.)

² 2008(3) Mh.L.J. 523.

date of manufacturing of 2015 which is subsequent to the Plaintiff's user since 2014-2015. He has submitted that the sample produced of counterfeit "VOLVENAC-P" is deceptively similar to the Plaintiffs trademark "VOLVINAC-P" and there is a difference of "I" and "E". This was relied upon for the first time at the hearing without giving copy to the Plaintiff apart from the fact that the date of manufacturing mentioned is in 2019, which is clearly subsequent.

22. With regard to infringement of Copyright claimed by the Plaintiffs of their mark "VOLVINAC-P", the Defendants have in their Reply and Interim Application filed by them contended that a false statement had been made by the Plaintiffs of use of artwork "VOLVINAC-P". The Plaintiffs had not put forth any documents prior to the year 2022 to show that they had used the artwork "VOLVINAC-P" prior to the year 2022. The Plaintiffs have connoted a story of creation of artwork in 2015 and modification of the artistic work in the year 2018. However, in the absence of cogent documentary evidence to show such adoption of the artistic work 'VOLVINAC-P' prior to the year 2022, it is clear that the said artistic work was not adopted by the Plaintiffs prior to year 2022.

23. Mr. Dube has contended that the Copyright registration of the artistic work “VOLVINAC-P” under A-126252 / 2018 shows that it does not have any reference of NoC / CC Number which is mandatory to be provided by the Registrar of Trade Marks under Section 45(1) of the Copyright Act, 1957. Thus, it is clear that the said copyright certificate has been obtained fraudulently without following due process of law.

24. Mr. Dube has claimed that “VOLVINAC-50” is not an original artistic work of the Plaintiff. He claims that the Defendants are prior users of the artistic work “VOVENOR-P” and “UFEN FORTE”, which is ground for cancellation of artistic work “VOLVINAC-P”. He has contended that the artistic work “VOVENOR-P” was being used by Defendant No.1 on “UFEN FORTE” tablets since at least 2012-2013 and the artwork was created by one Mr. Vimal Jaswat in 2012-2013. The document has been annexed to the Reply Affidavit to show the packing store book of Defendant No.1 for the year 201-2013 showing depiction of artistic work of “VOVENOR-P” on its “UFEN FORTE” tablets. He has submitted that prior to 2012-13 the Defendant No.1 was using a different label on its “UFEN FORTE” tablets. Further, contention is that from the year 2017, the Defendant

No.1 started using the artistic work of “VOVENOR-P”. The invoices and shipping documents as well as product approval copy of work of “VOVENOR-P” have been annexed to the Reply Affidavit.

25. Mr. Kirepekar has submitted that the Plaintiffs have relied upon official documents namely, the Registration Certificate which shows that the art work of “VOLVINAC-P” was created and approved in the year 2015. There is a no objection for “VOLVINAC-P” artwork issued by the Trade Mark Registry dated 13th December, 2017 pursuant to Application dated 25th October, 2016 which is available on the official website of the Trade marks seeking NoC along with supporting documents. The copyright registration shows first date of the publication of 2015. There is a Chartered Account Certificate certifying the statement of sales which has been annexed at Exhibit D-6 to the Complaint and invoices showing the use of the mark “VOLVINAC-P” at Exhibits D7 to D9 to the Complaint. He has submitted that as against this there is no explanation as to why the Defendants adopted the mark “VOVENOR-P” in the identical manner on the identical packaging for the identical product in the year 2017. He has submitted that no claim of modification is made by the Plaintiffs for

the artistic work of “VOLVINAC-P” in the Complaint or Rejoinder. The Defendants are guilty of making false statement on oath for creating confusion and misrepresentation. He has placed reliance upon the judgment of the Supreme Court in **S.P Chengalvaraya Naidu vs Jagannath**³ in support of his contention that the entire case of the Defendants is liable to be rejected and dismissed.

26. Mr. Kirpekar has submitted that the Defendants have concocted the story of use of identical artistic work of “UFEN FORTE” since the year 2012-13. He has submitted that as per the record of Trademark Registry the Defendant No.1 was using entirely different label from the year 2008 for “UFEN FORTE”. The Defendant No.1’s website also shows entirely different label for “UFEN FORTE”. He has placed reliance upon printout obtained from Defendant No.1’s website www.usanpharma.com dated 5th September, 2023. He has also placed reliance upon the copy of present status of trade mark application for the label mark “UFEN FORTE” bearing application No.1815628.

27. Mr. Kirpekar has submitted that the Plaintiffs’

3 1994 AIR 853

documents of creation of artistic work of “VOLVINAC-P” bears signature of person responsible for printing the said artistic work and which is of 2nd January, 2015 prior to the date mentioned as 8th April, 2015 on “UFEN FORTE” packaging. Further, the document relied upon by the Defendants with regard to their artistic work of “UFEN FORTE” does not have any reference to the name of the person who has purportedly signed under the remark “text matter Ok” at Page 261-262 of the Reply Affidavit.

28. Mr. Kirpekar has accordingly submitted that the Defendants have not a single document which is in public domain to show that the artwork “VOVENOR-P” was used prior to 2021 by the Defendants. Further the Defendants had not made any statement about “UFEN FORTE” when the application for ad-interim relief was considered by this Court on 17th January, 2023. The documents and concocted story of use of the artistic work for “UFEN FORTE” surfaced for the first time on 7th February, 2023 and thus creates serious doubt on the documents as produced by the Defendants in the Affidavit. Thus, the material on record clearly indicate that the Defendants claim of prior use is not borne out. He has submitted that usage of “VOVENOR-P” by the Defendants is subsequent to the use of

artistic work “VOLVINAC-P” of the Plaintiffs.

29. With regard to the trademark “NIRUPQUIN”, the Plaintiffs are pressing for relief only with regard to infringement of copyright. The Plaintiffs have claimed that in the year 2001, one Mr. Vijay Bankda who is Plaintiff No.2 and whole time director of Plaintiff No.1 Company had created original artwork titled as “NIRUPQUIN” to be used on the product packaging of the Plaintiffs. The Plaintiffs have relied upon copy of artistic work used since 2001-2002 by Plaintiff No.1 in respect of product, “NIRUPQUIN” which is annexed at Exhibit E-3 to the Plaint. The original of the document at Exhibit E3 has been produced which has the name of one Mr. Rajesh Narayan Mathur, Executive Manager of the Plaintiff Company and M/s Swadhaya Printers Private Limited and one Mr Avinash, the Graphic Designer of the Plaintiff Company along with the stamp and signature of the person communicating for the purpose of printing in the year 2002. The Plaintiffs have contended that the document is capable of being proved through oral evidence. In view of the objection raised on behalf of the Defendants to this document, the Plaintiffs have relied on a public document which is a trade mark application bearing No.1079148 dated 7th February, 2002 for the

same artistic work which is appearing at Exhibit E-3 to the Plaint. The date of the Trademark Application is in close proximity to the date shown on the said document at Exhibit E-3 i.e. 1st February, 2002.

30. The Plaintiffs have further claimed that the art work of the mark “NIRUPQUIN” was modified in the year 2015 and reliance is placed upon an email dated 8th August, 2015 to show that Mr. Bhushan Sane from the Creative Department of Plaintiff No.1 had modified the artistic work in the year 2015. There is an Affidavit of Mr. Bhushan Sane filed on 17th January, 2023 which has confirmed the email dated 10th August, 2015 and attachment of art work modified in the year 2015 had been sent by him.

31. The Plaintiffs have stated that after No Objection Certificate from Mr. Rajesh Bhidare, Plaintiffs filed appropriate application before the Registrar of Trademarks for seeking NOC required under Section 45 of the Copyright Act, 1957.

32. Upon obtaining the NoC from the Trade Mark Registry, the Plaintiffs filed Application for seeking registration of the artistic

work under the Copyright Act, 1957. Pursuant to which the Copyright Registry issued the Certificate of Registration of the modified artistic work titled “NIRUPQUIN” in favour of Plaintiff No.1. The Plaintiffs have relied upon the drug license in respect of the pharmaceutical composition as well as the certified statement of sales by the Chartered Accountant issued after perusal of invoices and document supporting the sales figures under the mark “NIRUPQUIN”. Further, the Plaintiffs have stated that the product under the mark “NIRUPQUIN” is exported from India in large quantities to many African countries including CHAD. These invoices have been annexed at Exhibit E-8 to E-15 to the Plaint.

33. Mr. Dube has referred to the Reply Affidavit wherein the Defendants have contended that the Plaintiffs had made an absolute false claim of use of “NIRUPQUIN” logo since 2002. They have referred to the Plaintiffs’ Trademark Application of “NIRUPQUIN” on 6th July, 2006 which was on a “proposed to be used basis”. They have stated that the Plaintiffs had themselves claimed that the artistic work of “NIRUPQUIN” was “First Published” in the year 2021 in the Copyright Certificate. Mr. Dube has further contended that the Plaintiffs have concocted a story that they “modified” their artistic

work. The document at Exhibit E-3 which has been relied upon by the Plaintiffs contains the “generic name”. Mr. Dube has submitted stated that the additional “generic name” does not in any way modify the artistic work since “generic name” is not an artistic feature. Mr. Dube has contended that the document at Exhibit E-3 does not bear any manufacturing or expiry date and has been created right before the filing of the Suit. Mr. Dube has also contended that the invoice at Exhibit E-8 is between the Plaintiffs and Syncom International, the purported buyer and seller, who are nothing but the Plaintiff itself. Thus, the invoice has been fraudulently created.

34. An objection has been raised by the Defendants to the Plaintiffs reliance on trade mark application bearing No.1079148 dated 7th February, 2002 which does not form part of the Plaint. Reliance has been placed on Order XXI Rule 1(5) in that context.

35. Mr. Dube has contended that the same artwork was being used for another product “Chloroquine Phosphate Tablets” from the year 2001. Reliance has been placed on relevant page of packing store book of the Defendants showing depiction of the artistic work of “NIVAQUINO” on their “Chloroquine Phosphate

Tablets”. This has been annexed at Exhibit L to the Affidavit in Reply. The renewal copy is of the year 2001 and hence actual approval for manufacturing of “Chloroquine Phosphate Tablets” is of 1996. Mr. Dube has submitted that the Defendants were using the artistic work of “NIVAQUINO” / “Chloroquine Phosphate Tablets” since at least 1999.

36. Mr. Kirpekar has submitted that the Defendants have admitted that their mark “NIVAQUINO” was adopted in the year 2021. There is no explanation as to why the Defendants adopted the mark “NIVAQUINO” in the same label as the artwork of the Plaintiff. He has submitted that the Defendants have after the passing of the ad-interim order on 17th January, 2023 concocted a false claim of usage of the same artwork for another product “Chloroquine Phosphate Tablets” from the year 2001. He has submitted that the purported stock register has been relied upon by the Defendants to show usage of same artwork for Chloroquine Phosphate Tablets viz. usage from the year 2003, which in any event is after the Plaintiffs’ application for label mark “NIRUPQUIN” which is of the year 2002. Further, the purported Stock Register is neither a primary document nor secondary document. The purported stock register does not bear

the signature of any person. He has submitted that when a query fell from the Court as to “who is the person who maintains the stock register and can the Defendants file Affidavit in Support of the stock register”, Mr. Dube on behalf of the Defendants stated that the Defendants are not aware of the name of the person who has maintained the stock register and thus cannot file any Affidavit. He has accordingly submitted that the purported stock register cannot be considered as a document for any purpose interim or final. There is no other evidence from the public record that the Defendants could produce to support the claim of prior user of artistic work by the Defendants under the product name “Chloroquine Phosphate Tablets”.

37. Mr. Kirpekar has accordingly submitted that the ad-interim relief in respect of infringement of copyright with regard to the mark “NIRUPQUIN” which has been granted deserves to be confirmed.

38. Having considered the rival submissions, in my prima facie view, the Defendants having failed in their opposition to the application for ad-interim relief, made a desperate attempt to rely on

purported material in support of their claim of prior user to that of the Plaintiffs' three marks "RELIVAC", "VOLVINAC-P" and "NIRUPQUIN". The Defendants Reply Affidavit only attempts to answer the Plaintiffs claim of infringement of copyright of the said three marks. However, there appears to be no answer to the Plaintiffs claim of infringement of their registered trademark "RELIVAC" and "VOLVINAC-P" which this Court at the ad-interim stage had found that the Plaintiffs had made out a strong prima facie case for grant of ad-interim relief. This on a prima facie finding that the rival marks are phonetically and structurally similar. The essential and prominent feature of the registered Trademarks of the Plaintiffs have been copied by the Defendants. Accordingly, the prima facie findings on infringement of registered Trademarks "RELIVAC" and "VOLVINAC-P" of the Plaintiffs by the Defendants' impugned marks is confirmed.

39. With regard to the infringement of copyright in respect of the Plaintiffs mark, "RELIVAC" by the Defendants impugned mark "RELVAC" is concerned, admittedly the creation of the artistic work of the impugned mark "RELVAC" was on 30th October, 2021. This was after the Plaintiffs application for registration of their artistic work "RELIVAC" which was filed on 11th September, 2021. Further, the

Plaintiffs have a copyright registration and under Section 48 of the Copyright Act, 1957. The extracts from the register of copyrights is prima facie evidence of particulars entered therein. Thus, the entries in the register of copyrights clearly shows that the artistic work of the Plaintiffs mark “RELIVAC” being prior in point of time to the impugned artistic work of the Defendants mark “RELVAC”.

40. I further find merit in the submission of Mr. Kirpekar for the Plaintiffs that the Defendants have concocted a false claim of usage of the same artwork for another product “Diclofenac Sodium” Prima facie, it appears that the extract from the purported stock register / packing stock book relied upon by the Defendants is a fabricated document as this extract from the purported stock register does not bear any signature of any person and has not being identified by any person. Mr. Kirpekar has pointed out that to a query put by this Court, as to “who maintains the stock register” and “whether the Defendants can file the Affidavit in Support of the Stock Register”, Mr. Dube on behalf of the Defendants was unable to name that person. Hence, there is no question of accepting such document without Affidavit in support of the document. I accordingly do not accept the claim made by the Defendants that the same art work was

being used for the product “Diclofenac Sodium” prior in point of time. Further, there is no official document produced by the Defendants in support of their claim that the Defendants were using the impugned art work prior to 2021. Accordingly, the ad-interim relief granted in respect of infringement of copyright of the Plaintiff’s artistic work “RELIVAC” by the Defendants impugned artistic work “RELVAC” is confirmed.

41. With respect to the infringement of copyright of the Plaintiffs artistic work “VOLVINAC-P” by impugned artistic work of the Defendants viz. “VOVENOR-P”, it is apparent that the Plaintiffs are the prior users of the artwork which has been created and approved in the year 2015 as is borne out from the copyright certificate which is at Exhibit D-4 to the Plaint. Further, the application for No Objection Certificate (NoC) for the Plaintiffs artwork was on 25th October, 2016 and copy of which has been downloaded from the official website of the trade marks for seeking NoC along with supporting documents by the Plaintiffs. The NoC has been issued by the Trademark Registry in respect of the Plaintiffs artistic work on 13th December, 2017. The Plaintiffs have in support of their user claim relied upon the Chartered Accountant certified

statement of sales at Exhibit D-6 to the Plaintiff and the invoices showing use of their mark “VOLVINAC-P” at Exhibits D7-D9 to the Plaintiff.

42. As against this the Defendants had at the ad-interim stage contended that they had used their impugned artistic work in the year 2017. This has been recorded in paragraph 19 of the said Order. In order to overcome this, in my prima facie view, the Defendants have come out with a concocted and false claim that the identical artwork has been used by the Defendants in respect of their product “UFEN FORTE” since the year 2012-13.

43. The Plaintiffs have been able to establish that as per Trademark Registry record Defendant No.1 was using an entirely different label from the year 2008 for “UFEN FORTE”. The Defendant No.1’s website shows an entirely different label for “UFEN FORTE”. Further, the contention of Defendant No.1 that the artistic work of “UFEN FORTE” is prior in point of time is not supported by any official document which has been produced by the Defendants. The only document sought to be relied upon is the purported Packaging of “UFEN FORTE”, wherein the date mentioned is 8th April, 2015

which is subsequent to the Plaintiffs creation of their artistic work bearing the signature of the person responsible for printing of the artistic work i.e. on 2nd January, 2015.

44. Considering that not a single document which is in public domain has been produced by the Defendants to show that their impugned artwork of “VOVENOR-P”, was prior to the Plaintiffs’ artwork of “VOLVINAC-P”, the Defendants claim of being prior user of the artwork requires to be rejected. Hence, the ad-interim order in respect of infringement of copyright in respect of the Plaintiffs mark “VOLVINAC-P” and for which the ad-interim relief has been granted by the Order dated 17th January, 2023 upon finding that a strong prima facie case has been made out is confirmed.

45. With respect to the artistic work of the Plaintiffs in their mark “NIRUPQUIN” is concerned and the Plaintiffs claim that the Defendants have infringed their copyright in the said artistic work by the impugned mark “NIVAQUINO”, prima facie I find that the Plaintiffs have been able to establish that their use of the artwork is prior in point of time to the impugned artwork having come into existence in the year 2002. The document at Exhibit E-3 relied upon

the Plaintiffs in support of their claim has been accepted by this Court in the ad-interim order dated 17th January, 2023. I find no reason for not accepting this document, particularly considering that the document is capable of being proved through oral evidence of Mr. Rajesh Narayan Mathur, Executive Manager of the Plaintiff Company and M/s. Swadhaya Printers Pvt. Ltd. and one Mr. Avinash, Graphic Designer of the Plaintiff Company. In view of the Defendants having disputed this document, the Plaintiffs have relied upon the public document being Trademark Application bearing No.1079148 dated 7th February, 2002 for the same artistic work and looking at the proximity of the two documents, the Plaintiffs have been able to justify their claim of the original artistic work dating back to the year 2002.

46. I do not find merit in the contentions on behalf of the Defendants that the document at Exhibit E-3 relied upon by the Plaintiffs is contrary to the Trademark Application dated 6th July, 2006 which was on a proposed to be used basis. Further, there is no merit to the objection raised by the Defendants to the Trademark Application dated 7th February, 2002 being relied upon by the Plaintiffs by placing reliance upon Order XI Rule 1(5) of the Code of

Civil Procedure, 1908. Mr. Dube has relied upon certain case laws in support of the opposition. However, one cannot lose sight of Order XI Rule 1 (c) (ii) which provides that, *nothing in this rule will apply to documents produced by the Plaintiffs in answer of any case set up by the Defendants subsequent to the filing of the Plaint.* In my view the document produced by the Plaintiff being Trademark Application bearing No.1079148 dated 7th February, 2002 for the same artistic work is in answer to the case set up by the Defendants that the document at Exhibit E3 cannot be relied upon.

47. Further, I do not find any substance in the contention of the Defendants that one of the invoices at Exhibit E8 is between the Plaintiff and Syncom International, who are nothing but the Plaintiff itself and hence cannot be relied upon. I find that this contention is an after thought as there is no such contention in the Reply Affidavit apart from the fact that there are other invoices produced by the Plaintiffs which are from the year 2002 in order to meet the case of the Defendants as to there being no such invoices. These documents / invoices can be relied upon by the Plaintiffs in view of the same provision of the CPC as aforementioned i.e. to meet the case of the Defendants.

48. I further prima facie find that the Defendants have concocted a false claim of usage of same artwork by another product “Chloroquine Phosphate Tablets” from the year 2001. There is nothing to support this claim apart from the extract of the purported stock register / packing store book which cannot be accepted as it does not bear the signature of any person and hence is neither a primary nor secondary document. Further, upon a query from this Court as to “who maintains the stock register and whether Defendants can file the Affidavit in Support of the Stock Register”, Mr. Dube on behalf of the Defendants stated that the Defendants are not aware about the person who maintains the stock register and hence no Affidavit is filed in support of thereof. Hence, the extract of the purported stock register cannot be accepted.

49. Thus, I find that the Defendants claim of prior user of artwork cannot be accepted. Infact, there is an admission that the Defendants mark “NIVAQUINO” is adopted in the year 2021 and there is no explanation as why the Defendants have adopted the mark “NIVAQUINO” under the same label as that of the art work of the Plaintiffs.

50. In view of the above findings, the ad-interim relief granted in respect of infringement of copyright of the artwork of the Plaintiffs mark, “NIRUPQUIN” by the Defendants impugned mark “NIVAQUINO” which has been granted by this Court on 17th January, 2023 having found that the Plaintiffs had made out a strong prima facie case is confirmed.

51. This Court is convinced that a strong prima facie case has been made out for grant of interim reliefs in favour of the Plaintiffs and that unless such interim reliefs are granted, the Plaintiffs are likely to suffer grave irreparable loss, particularly because the impugned products have been found in the market at Central African Country called ‘Chad’. Further, the balance of convenience is in favour of the Plaintiffs.

52. Accordingly, the Interim Application is allowed in terms of prayer Clauses (a), (b), (c) and (d) which read thus:-

(a) that pending the hearing and final disposal of the suit this Hon’ble Court be pleased to restrain the respondents by themselves, through their Directors, Partners, Proprietor, Agents, Exporters and / or any other person/s claiming through the Respondents from

in any manner using the artistic works as shown in Exhibits 'F', 'F-1' and 'F-2' to the Plaintiff, and/or any other artistic works that is substantially similar to the Applicants' / Applicant No.1's artistic works as shown in Exhibits 'C-4', 'D-3' and 'E-4' to the plaintiff, so as to infringe Applicant's registered copyrights in any manner whatsoever;

b) that pending the hearing and final disposal of the suit this Hon'ble Court be pleased to restrain the Respondents by themselves, through their Directors, Partners, Proprietor, Agents, Exporters and/or any other person/s claiming through the Respondents from using the impugned Trade Mark 'RELVAC' or any other mark which is deceptively similar to the Applicant No.1's registered Trade Mark 'RELIVAC' in any manner whatsoever so as to infringe the Applicant No.1's registered Trade Mark bearing Registration No.1457908;

c) that pending the hearing and final disposal of the suit this Hon'ble Court be pleased to restrain the Respondents by themselves, through their Directors, Partners, Proprietor, Agents, Exporters and/or any other person/s claiming through the Respondents from using the impugned Trade Mark 'VOVENOR-P' 'VOVENOR' or any other mark which is deceptively similar to the Applicant No.1's registered Trade Mark 'VOLVINAC-P' in any manner whatsoever so as to infringe the Applicant No.1's registered Trade Mark bearing Registration No.3186727; or

d) that pending the hearing and final disposal of the suit this Hon'ble Court be pleased to restrain the Respondents by themselves, through their Directors, Partners, Proprietor, Agents, Exporters and/or any other person/s claiming through the Respondents from in any manner using impugned packaging as shown in Exhibits 'F', 'F-1' and 'F-2' to the Plaintiff, and impugned

Trade Marks and/or any other mark or word which is/ are deceptively similar in look and /or sound or in any manner whatsoever to the Applicants' Trade Marks 'VOLVINAC-P', 'RELIVAC-50', 'NIRUPQUIN' and and / or any other packaging which is deceptively similar to the Applicants packaging and artistic work as shown in Exhibits 'C-4', 'D-3'and 'E-4' to the Plaint, so as to pass off and/or enable others to pass off Respondents' pharmaceutical preparation as and for that of Applicants;

53. The Interim Application No.1588 of 2023 is accordingly disposed of. The Interim Application (L) 4956 of 2023 does not survive and is disposed of.

54. There shall be no order as to costs.

[R.I. CHAGLA J.]