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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 51/2023 and I.A. 1796/2023(Order XXXIX Rules 1 and 2 of the CPC)**

WINGS PHARMACEUTICALS PVT. LTD. Plaintiff
Through: Mr. Sachin Gupta, Mr. Manan Mondal and Mr. Rohit Pradhan, Advs.

versus

GENFORD DRUGS PVT. LTD. & ORS. Defendants
Through: Mr. Manoj Arora, Adv. for Defendants 1 and 3

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)
06.04.2023

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I.A. 6435/2023 (Order XXIII Rule 3 of the CPC)

1. The dispute between the parties stands amicably resolved. The present application under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 (CPC) has been jointly filed by the parties. The terms of settlement read thus:

“i. The Defendants No. 1 and 3 above named hereby recognizes the Plaintiff is registered proprietor of the trade mark/copyright ORASORE blue and white Carton Packaging/Trade Dress, MOUTH + FIRST AID (Hindi and English) thereby having exclusive right to the use of the said trade marks, the details of which are given in the table below:

TRADE MARK REGISTRATIONS

S. No.	Trade Mark	No. & Date	Class/goods
1.	ORASORE	787554 Dt.	Pharmaceuticals and

Signature Not Verified

Digitally Signed
By: KAMLA KAWAT
Signing Date: 10.04.2023
11:23:07

		14/01/1998	medical preparations in class 5
2.	ORASORE MOUTH + FIRST AID in class 5 (Word)	3506438 Dt. 04/03/2017	Pharmaceuticals and medical preparations in Class 5
3.		3506440 Dt. 04/03/2017	Dentifrices in class 3
4.		3506442 dt. 04/03/2017	Dentifrices in class 3

Carton Packaging/trade dress from the year 2015



Carton Packaging/trade dress from the year 2018 onwards



ii. The Defendants No. 1 and 3 undertake to refrain themselves, their Directors, their assigns in business, licensees, franchisee, distributors, dealers, stockiest, retailers, chemists, from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in medicinal & pharmaceutical preparations under the impugned mark ORASENZ its Packaging/Trade Dress or any other trade mark as may be deceptively similar to the Plaintiffs registered trade mark ORASORE blue and white Dispenser, Mono Carton and Lami Tube Packaging/Trade Dress amounting to infringement of copyright of the Plaintiff registered.



iii. The Defendants No.1 and 3 confirm that the stock of the medicine under impugned mark ORASENZ, lying with them is as under:

Impugned Product	Batch No.	Manufacturing Date	Expiry	Qty.
ORASENZ	599	10/2021	09/2023	55 unites

iv. The Defendant No.1 and 3 confirm that the batch details of the medicines under the impugned mark ORASENZ, which have not expired as on date are as below:

Impugned Product	Batch No.	Manufacturing Date	Expiry	Qty.
ORASENZ	599	10/2021	09/2023	55 unites

v. The Defendant No.1 confirms that the products and/or packaging material bearing the impugned mark ORASENZ, which was seized by the Ld. Local Commissioner on 04.02.2023 shall be destroyed in the presence of the Plaintiffs representative, within 2

weeks of the recording of the present settlement;

vi. The Defendant No. 1 confirms that it shall withdraw the application for ORASENZ (word) under no. 4505994 dated 20.05.2020 in class-05 within a period of 2 weeks of the recording of the present settlement;

vii. The Defendant No. 1 also confirm that apart from the aforementioned application, they have not filed any other application for registration of the impugned mark, namely ORASENZ and ORASENZ blue and white impugned Carton Packaging/Trade Dress which is deceptively similar to Plaintiffs well-known registered trade mark ORASORE registered under no's. 787554 dated 14.01.1998 in class 5, 3506438 & 3506440 dated 4.3.2017 in class 5 & 3, respectively and Plaintiff's copyright registered under no. A-137528/2021 for ORASORE blue and white Carton Packaging Trade Dress;

viii. The Defendant No. 1 agrees, that the trade mark, trade dress/packaging of the Plaintiff's product has acquired well known status in the market, due to its longstanding exclusive and continuous usage amongst the users.

ix. The abovementioned undertakings have been tendered by Mr. Kishor Joshi on behalf of all the Defendants No.1 and 3 and the same shall be binding on the Defendants No.1 and 3, its assignees in business, franchisees, licensees, distributors, dealers and agents for all times to come;"

2. Parties are represented by learned Counsel, who undertake on behalf of their respective clients to abide by the aforenoted terms of settlement.

3. As such, nothing survives for adjudication in the present suit. The suit is accordingly decreed in terms of the aforesaid terms of settlement by which the parties shall remain bound.

4. Let a decree-sheet be drawn up accordingly.

5. The plaintiff shall be entitled to refund of the court fee, if any, deposited by it.

6. Miscellaneous applications, if any, do not survive for consideration and are accordingly disposed of.

C.HARI SHANKAR, J

APRIL 6, 2023

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