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

+ **CS(COMM) 61/2021**

PUMA SE Plaintiff

Through: Mr. Ranjan Narula and Mr.
Shashi P. Ojha, Advs.

Versus

ALIKA HEALTHCARE PVT. LTD Defendant

Through: None

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

JUDGMENT (ORAL)

08.05.2023

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1. The plaintiff alleges infringement, by the defendant, by use of the mark PUMA for pharmaceutical products for pantoprazole tablets. The defendant is manufacturing and selling its pantoprazole tablets under the marks PUMA-DSR and PUMA-40.

2. PUMA, both as a word mark as well as a device mark, stand registered in favour of the plaintiff in various classes. The plaintiff holds registrations of:

(i) the word mark PUMA in Classes 18 and 25 w.e.f. 15th February 1977 and w.e.f. 4th November 2015 in Class 35,

(ii) the device mark



- (a) w.e.f. 25th February 1986 in Class 18,
- (b) w.e.f. 3rd October 1991 in Class 24,
- (c) w.e.f. 22nd February 1996 in Classes 3 and 9,

- (d) w.e.f. 4th March 1996 in Class 16,
- (e) w.e.f. 3rd February 2004 in Class 41,
- (f) w.e.f. 8th November 1983 in Class 28,
- (g) w.e.f. 27th July 1984 in Class 14,
- (h) w.e.f. 25th February 1986 in Class 25 and
- (i) w.e.f. 12th November 2015 in Class 35.

(iii) the device mark 

- (a) w.e.f. 3rd July 1990 in Class 28 and
- (b) w.e.f. 5th February 1986 in Class 24, and

(iv) the device mark 

- (a) w.e.f. 15th February 1977 in Classes 18 and 25

3. The word and device marks PUMA are, therefore, registered in favour of the plaintiff in various classes in respect of various categories of goods.

4. The mark PUMA is also included in the list of well-known trade marks by way of a Circular under Rule 124(4) of the Trademarks Rules 2017, which has been placed on record at page 8 of the list of documents filed with the plaint.

5. To vouchsafe the reputation and goodwill of the plaintiff in the market, the plaint has also provided the returns earned by the plaintiff from the sales of products bearing the asserted PUMA mark which, during the year 2019, is in the region of ₹ 1,400 crores. Para 16 of the plaint also asserts that the plaintiff has spent huge amounts on advertisement and promotion of the PUMA mark which, during the year 2019, is in the region of ₹ 64.2 crores.

6. The plaint asserts that, owing to the goodwill earned by a dint of continuous use over a period of time, the mark PUMA has become indelibly associated, in the public psyche, with the plaint, and has become a source identifier.

7. The plaintiff is aggrieved by the use, by the defendant, of the marks PUMA-40 and PUMA-DSR for its pantoprazole tablets.

8. Despite summons, no written statement in response to the suit has been filed till date. The defendant has also been absenting from the proceedings. On 3rd December 2021, the defendant was proceeded *ex parte*. No application for setting aside the said order has been filed and the defendant has remained absent from the present proceedings even thereafter.

9. Ms. Sonu Kapoor, the constituted Attorney of the plaintiff, has tendered evidence as PW-1. She has filed her affidavit in evidence and was also examined in chief, wherein she reiterated the contents of the affidavit. The affidavit vouchsafes the contents of the plaint. As the defendant has remained absent, she was discharged without cross-examination.

10. The contents of the plaint, thereby, stand un rebutted and also stand proved by way of the affidavit of Ms. Sonu Kapoor as PW-1.

11. The recital in the plaint makes out a clear case of infringement, by the defendant, of the mark PUMA of the plaintiff, as the said mark has been registered in favour of the plaintiff not only as a device mark but also as a word mark simplicitor. Inasmuch as the mark also stands recognized by the Registry of Trade Marks as a well-known mark, it

would be entitled to protection across classes.

12. As there is no traversal to the assertions in the plaint, I am of the opinion that in exercise of the power vested in this Court by Order VIII Rule 10 of the Code of Civil Procedure, 1908 (CPC), the suit may be decreed at this stage itself.

13. Accordingly, in view of the aforesaid facts and circumstances, as a clear *prima facie* case of infringement of the plaintiff's registered mark is made out, the suit is entitled to be decreed.

14. Accordingly, there shall be a decree of permanent injunction restraining the defendant, as well as its director, servants, agents, associates and all other acting on its behalf from using the mark PUMA or any other mark which is identical or deceptively similar to the plaintiff's registered mark PUMA in respect of pharmaceutical products or any other product.

15. The defendant has remained absent from the present proceedings.

16. Mr. Ranjan Narula, learned Counsel for the plaintiff, points out that before instituting the present plaint, the plaintiff had served a cease and desist notice to the defendant on 11th September 2020 and that it was only when the defendant refused to abide by the said notice that the plaintiff had to approach this Court. In the process, he submits, the plaintiff has been burdened with needless expense of time and money. He, accordingly, prays for punitive costs in this case.

17. Perusal of the order sheet, in this case, reveals that summons in

this case were issued as far back as on 3rd February 2021. The defendant was represented only on one date of hearing, i.e. 20th April 2021 and on the said date by learned Counsel Mr. Mayank Sparsh, who submitted that the defendant was trying to settle the dispute with the plaintiff. That settlement has not taken place till date. The matter has dragged on for two more years.

18. In the meantime, the defendant has profited from the use of the impugned mark. The record also reveals that the defendant applied on 11th July 2019 for registration of the impugned mark, claiming user since 2nd August 2011. The defendant has, therefore, been using the impugned mark for over twelve years as on date.

19. For all the aforesaid reasons, the defendant deserves to be burdened with costs.

20. Keeping in view the overall facts and circumstance, I am of the opinion that the interests of justice would be subserved if the defendant is directed to pay costs of ₹ 5 lakhs to the plaintiff within a period of four weeks from today. Affidavit of compliance off payment of costs be filed within a week thereafter.

21. The suit stands decreed in the aforesaid terms. Decree-sheet be drawn up by the Registry.

22. It is also noticed that on 20th April 2021, the learned Counsel for the defendant had made a statement that he had moved an application for withdrawal of the Registration Application No. 4232283 dated 11th July 2019, filed by the defendant before the Registry of Trade Marks for registration of the impugned mark. The

fate of the said application is not known. In case the application is still pending, the Registrar is directed to treat the application for registration of the mark PUMA, filed by the defendant, as withdrawn.

C.HARI SHANKAR, J

MAY 8, 2023

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