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

Date of Decision: 21st April, 2023

\+ **CS(COMM) 221/2020 & I.A. 3010/2021** (*under Order XXXIX Rule 2A read with Section 151 of the Code of Civil Procedure, 1908 seeking initiation of contempt for non-compliance of order dated 03rd July, 2020*)

DR REDDYS LABORATORIES LIMITED ..... Plaintiff

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

versus

PURECA LABORATORIES PRIVATE LIMITED ..... Defendant

Through: None (proceeded *ex-parte vide* order dated 19th December, 2022).

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (*Oral*):

I.A. 6840/2023 (*under Order XXIIIA and VIII Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 ["CPC"] seeking summary judgment*)

1. The Plaintiff, Dr. Reddy's Laboratories Ltd. ["*DRL*"], has filed the present suit seeking various remedies including a permanent injunction to restrain the Defendant, M/s. Pureca Laboratories Pvt. Ltd. ["*Pureca*"], from infringing upon their registered trademark 'NISE'. DRL alleges that Pureca has engaged in unauthorized and slavish adoption of the identical or

deceptively similar mark 'NISE-P' for the same product, namely medicinal preparations such as Nimesulide and Paracetamol tablets. DRL asserts that Pureca's actions constitute infringement, passing off and unfair competition for which it seeks permanent injunction, damages, rendition of accounts, and other ancillary reliefs.

BRIEF FACTS

2. A brief description of DRL and the case set-up in the Plaint is given hereinbelow:

2.1. DRL is a prominent multinational pharmaceutical manufacturer and supplier with headquarters in India. DRL operates on a global scale, providing a wide range of products and services in the pharmaceutical industry. The company is involved in various core businesses including Active Pharmaceutical Ingredients (API), generics, branded generics, biosimilars, and over-the-counter pharmaceutical products. With a strong presence both in India and overseas markets, DRL has established itself as a significant player in the pharmaceutical sector, delivering high-quality medications and healthcare solutions.

2.2. *Trademark in question*: In the year 1995, DRL coined and adopted the distinctive mark 'NISE', which has since become widely known and associated with top-quality pharmaceutical preparations on a global scale. The mark has gained significant recognition among consumers and healthcare professionals in India. DRL holds registered trademarks for 'NISE' and its related variations in Class-05. These registrations extend not only within India but also across multiple countries. The 'NISE' branded medicinal preparations are available in diverse forms including tablets, gels, suspensions, sprays, and ointments. A list of 'NISE' registrations under Class-05 is provided below: -

SL. NO.	TRADE MARKS	TRADE MARK NOS.
1.	NISE (device)	803620
2.	NISE (device)	803632
3.	'NISE KID TABLETS' (word)	1035362
4.	'NISE TABLETS' (word)	1035369
5.	'NISE DROPS' (word)	1035370
6.	'NISE SUSPENSION' (word)	1035371

2.3. DRL has invested significant financial resources in establishing and building their reputation and goodwill associated with the subject mark.[1]

2.4. *Pureca's infringing activities*: In June 2020, DRL learnt of Nimesulide and Paracetamol preparations being sold under the mark 'NISE-P' ["*infringing mark*"] through their representative. In order to ascertain commercial outreach, DRL conducted further investigation which revealed that Pureca (as per its website www.purecalaboratories.com) was manufacturing/ marketing/ selling/ supplying pharmaceutical preparations including those bearing the infringing mark.

2.5. DRL is aggrieved by the bad-faith appropriation of their well-known subject mark by Pureca.

2.6. The infringing mark coupled with the writing style/ get-up/ colour/ strip packaging of the impugned mark 'NISE-P' is identical to DRL subject mark 'NISE'. The same has been done with an attempt to deceive and mislead consumers into buying their medicinal preparations.

PROCEEDINGS BEFORE THE COURT

3. *Interim Order*: On 03rd July, 2020, while issuing summons, an *ad-*

[1] Details of expenditure incurred by DRL since 2011 to 2017 is given in paragraph No. 10 of the Plaint.

interim order, in terms of prayer clause (a) and (b) of paragraph No. 9 of I.A. 5128/2020, was granted in favour of DRL.[2] During that hearing, Pureca's counsel argued that their drug is named 'PURE NISE-P'. However, the court noted that on medicinal strips, the word 'PURE' was inconspicuous which could be easily overlooked, and on the other hand 'NISE-P' was prominently displayed in bold letters.

4. On 17th December, 2020, counsel for Pureca, on instructions, stated that he has no opposition to the interim order being made absolute. Thus, I.A. 5128/2020 was disposed of and the interim order dated 03rd July, 2020 was confirmed. Parties were also referred to mediation, however, there was no resolution.

5. A partial decree was passed on 26th February, 2021 in favour of DRL and against Pureca (with no-objection recorded on behalf of Pureca) in terms of paragraph Nos. 31 (i) and (ii) of the Plaint. On the same date, an application seeking initiation of contempt proceedings against Pureca – I.A. 3010/2021 was listed and notice issued.[3] The suit continued for remaining reliefs.

6. Due to Pureca's repeated failure to appear in court on various scheduled dates, a court notice was issued to them on 25th August, 2022. However, despite service of the said notice, Pureca did not make an appearance. As a result, on 19th December, 2022, Pureca was proceeded against *ex-parte*.

7. Pureca has only been represented in court on two specific dates (03rd July, 2020 and 26th February, 2021), without any subsequent appearances.

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[2] Application under Order XXXIX Rules 1 and 2 read with Section 151 of CPC seeking injunctive reliefs.

[3] Application under Order XXXIX Rule 2A read with Section 151 of CPC seeking initiation of contempt

No written statement or reply to I.A. 3010/2021 has been filed on behalf of Pureca. Pureca's Authorized Representative filed an affidavit dated 24th February, 2021, asserting that they have complied with the court orders and, in accordance with the injunction order, ceased marketing of all products sold under the trade name "*Nice*" [sic.]. Furthermore, Pureca declares that they will refrain from using the impugned trademark "*'Pure Nise' in future for any purpose*".

ANALYSIS

8. The unrebutted allegations presented in the Plaint establish that DRL is the registered proprietor of the subject mark ('NISE' as well its formative marks), maintaining valid and active registrations, a fact proved by the documentation on record. Pureca has not presented any evidence to contradict these claims. DRL (and its predecessor(s)/ predecessor(s)-in-interest) have been openly, continuously, extensively and exclusively using the subject mark ('NISE') in respect of their products since more than two decades. As per Section 28 of the Trade Marks Act, 1999, DRL has the exclusive right to use the subject mark in connection with the products for which it holds registrations, and to seek relief in the event of infringement.

9. Based on the pleadings and documents on record, it is evident to the court that Pureca has intentionally used an infringing mark that is deceptively similar to DRL's subject mark. This action by Pureca is aimed at unlawfully benefiting from and creating an unauthorized association with the goodwill and reputation enjoyed by DRL's subject mark. Pureca's adoption of the deceptively similar mark 'NISE-P' and its blatant copying of

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proceedings for wilful disobedience/ non-compliance of interim order dated 03rd July, 2020.

the font, writing style, colour combination, and overall appearance of DRL's registered mark 'NISE' demonstrates malicious intent to capitalize on the reputation and goodwill associated with DRL's 'NISE' mark. This clearly establishes a case of trademark infringement and passing off.

10. From the foregoing, the court finds that the present case is fit for granting of a summary judgment. This decision is guided by the provisions of Order XIII-A of CPC, as applicable to commercial disputes, and Rule 27 of the Delhi High Court Intellectual Property Division Rules, 2022 ["*IPD Rules*"]. The weight of the evidence and the clear infringement of DRL's subject mark by Pureca calls for a swift resolution through summary judgment. In fact, in absence of defence, the court is also entitled to invoke Order VIII Rule 10 of CPC to pass a judgment.

11. The suit has already been decreed in part in favour of DRL in terms of prayers in paragraph No. 31 (i) and (ii) of the Plaint.

12. As regards relief of damages, DRL has prayed for award of compensatory aggravated as well as exemplary/ punitive damages. However, the court finds that no evidence has been led to substantiate the claim. There is no evidence to assess quantum of damages. However, in view of the fact that Pureca is guilty of infringement by dishonestly adopting nearly identical trademark, packaging, trade-dress, etc. and has chosen to deliberately stay away from the proceedings, despite service and knowledge of the same, the Court is of the view that DRL is entitled to notional damages and costs. However, since no stocks have been recovered or seized from the premises in absence of execution of a Local Commission and in that light, the court is not inclined to grant the relief of delivery-up, as prayed for in terms of prayer contained in paragraph No. 31 (iii).

RELIEFS

13. Decree of damages is passed in favour of DRL for a sum of INR 2,00,000/-. Further, DRL is also entitled to actual costs recoverable from Pureca of INR 4,15,000/- (which includes court fee of INR 2,15,000/- and counsel fee of INR 2,00,000/-).

14. Suit is decreed in the above terms. Registry is directed to draw up the decree sheet.

SANJEEV NARULA, J

APRIL 21, 2023

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(Corrected and released on: 31st May, 2023)