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

+ **CS(COMM) 1067/2018 & I.A. 10567/2023, I.A. 10568/2023**

PHARMACYCLICS LLC & ANR Plaintiffs
Through: Mr. Pravin Anand, Mr. Dhruv Anand, Ms. Udit Patro, Ms. Sampurna Sanyal and Ms. Nimrat Singh, Advs.

versus

LUCIUS PHARMACEUTICALS & ORS Defendants
Through: Mr. Anuj Soni, Adv.

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

ORDER (O R A L)
04.09.2023

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1. Plaintiff 1 is the holder of registered Indian Patent No. 262968 (IN'968) claiming a compound bearing the INN "Ibrutinib", which is sold by Plaintiff 2, as an exclusive sub-licensee, under the trademark "IMBRUVICA", through its exclusive licensee, Janssen Biotech Inc.

2. The suit patent IN' 968 was granted to Plaintiff 1 on 25 September 2014, w.e.f. 28 December 2006 and is therefore alive till



28 December 2026.

3. The plaint alleges that Defendant 1 is manufacturing Ibrutinib under its brand name “LUCIBRU”, as 140 mg Capsules.

4. Consequent to issuance of summons in this case, the only defendant who responded was Defendant 7.

5. Defendants 1, 2, 3, 4, 6 and 8 have never entered appearance in this matter and have been proceeded *ex parte vide* order dated 9 November 2022.

6. Defendant 5 was, however, appearing in these proceedings but has been absent since 9 November 2022 and is not represented today either.

7. Defendant 7 alone has filed a written statement in this matter, in which it was sought to be contended that Defendant 7 was marketing generic drugs manufactured by Defendant 1 and has nothing to do with the drug patented in Plaintiff 1’s name *vide* IN’ 968.

8. Mr. Pravin Anand, learned Counsel for the plaintiffs, submits that this is completely a false assertion and has drawn my attention in this context to Annexure-M of the documents filed with the plaint, which is the following screen shot.



Lucius Lucibru Capsules, Packaging Type: Bottle

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Hemkund Agencies
GS Complex, Ludhiana, Punjab

[Send to my mobile](#)

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Response Rate: 66%
Nature of Business: Wholesale Trader
Delivery Location: Deals Only in Export

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Product details:

Packaging Size	120 Capsules
Packaging Type	Bottle
Usage	Clinical, Hospital, Personal
Brand	Lucius
Strength (mg)	140 mg

Fact sheet

Year of Establishment
2012

Legal Status of Firm
Sole Proprietorship (Individual)

Nature of Business
Wholesale Trader

Number of Employees
Upto 10 People

Annual Turnover
Rs. 1 - 2 Crore

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Jul 2017

Contact us

Hemkund Agencies

Shop No. 20, 3rd Floor, GS Complex
GS Complex
Ludhiana - 141008 Punjab, India

Amarjeet Singh

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About us

Established in the year 2012, "Hemkund Agencies", is an emerging wholesale trader organization satisfying the elements of enriched lives by preparing finest quality Anti Cancer Tablets, Anti Diabetic Drugs and Respiratory Tract Drugs. We hold advanced technology and vast resources to form the extremely demanded variety of pharmaceutical products emphasizing the advantages of specific composition, high efficiency, moisture-proof packaging, no side effects, prolonged shelf life and competing costs.

Our purpose is to form most powerful medicines and we do this embracing the requests of this domain. We leave no stone unturned to grow our drug, which is backed by the vigorous purposes of our research and development department. Our team of organized drug scientists operates with close collaboration between the business analysts in order to forecast the end users' requirements. Moreover, owing to blended values of technology and expertise we have become capable of nurturing our pharmaceutical development with a constant growth.

9. Mr. Anand points out, from the aforesaid screenshot, that "LUCIBRU" 140 MG, which is the infringing product manufactured by Defendant 1, was being sold through Defendant 7, which has also set out its credentials on the afore-extracted webpage. As such, Mr. Anand submits that the attempt of Defendant 7 to disassociate itself



from the manufacture of the infringing drug by Defendant 1 and the sale thereof is merely an attempt to mislead the court.

10. In these circumstances, the plaintiffs have filed I.A. 10567/2023, under Order XIII A Rules 3 and 6 of the Code of Civil Procedure 1908 (CPC), as amended by the Commercial Courts Act 2015, seeking a judgment and decree against Defendant 7 on the ground that no triable case has been made out by the said defendant in the present proceedings.

11. The plaintiffs have also filed I.A. 10568/2023 under Order VIII Rule 10 of the CPC, for pronouncement of judgment against the remaining defendants.

12. Notice was issued on the aforesaid application to the said defendants on 29 May 2023. Despite over three months having passed since then, however, there is no response to the said application by Defendant 5 who is also absent today.

13. In the aforesaid circumstances, I see no reason to keep this matter pending. Barring Defendant 7, none of the remaining defendants have chosen to respond to the suit by way of written statement.

14. Mr. Anuj Soni appears and submits that though his father was representing Defendant 7, after his father's unfortunate demise during the Covid-2019 Pandemic, he has made attempts to contact Defendant 7, but to no avail.



15. The written statement of Defendant 7 is clearly not acceptable in view of the afore-extracted screenshot, which indicates that Defendant 7 was actually selling, in the market, the infringing product manufactured by Defendant 1.

16. As such, these applications, in my view, deserve to be allowed.

17. Accordingly, I.A. 10567/2023 and IA 10568/2023 are allowed.

18. The prayer clauses in the suit read thus:

“69. In light of the above facts and circumstances, it is respectfully prayed that this Hon’ble Court may be pleased to grant the following reliefs in favour of the Plaintiffs:

a. A decree of permanent injunction restraining the Defendants, its directors, employees, officers, servants, agents and all others acting for and on their behalf from making, using, selling, distributing, advertising, exporting, offering for sale, and in any other manner, directly or indirectly, dealing in any product that infringes the claimed subject matter of the Plaintiff’s Indian Patent No. 262968 or any of the claims thereof, including Ibrutinib and any forms thereof;

b. An order for damages in favour of the Plaintiffs and against the Defendants as stated hereinabove;

c. An order requiring the Defendants to render accounts of all sums earned by the Defendants through their unlawful and infringing activities referred to in this plaint and a decree for the same in favour of the Plaintiffs and against the Defendants;

d. An order for delivery up to the Plaintiffs by the Defendants of all infringing product;

e. An order appropriately punishing the Defendant Nos. 2 to 8 for the violation of their obligations under the Drugs and Cosmetics Act, 1940 and the Rules thereunder;



- f. An order for costs in the proceedings; and
- g. Any order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case"

19. A statement of costs has been filed by the plaintiffs, indicating that the plaintiffs have incurred total costs of ₹ 22,59,479/- towards prosecution of these proceedings. Mr. Anand submits that if such costs are granted, to be apportioned amongst the defendants, the plaintiffs would not press for damages.

20. Accordingly, the suit stands decreed in the following terms:

- (i) The defendants as well as all others acting on their behalf shall stand permanently enjoined from dealing with any product which infringes the claim subject matter of the plaintiffs' patent IN 262968, or any of the claims forming subject matter of the said patent including "Ibrutinib".
- (ii) The costs incurred by the plaintiffs of ₹ 22,59,479/- stand granted to the plaintiffs, to be apportioned amongst the defendants in equal proportions.
- (iii) Each of the defendants is directed to deposit the aforesaid costs in the registry of this Court within a period of four weeks from today.

21. In view of the aforesaid, the Court is not passing any order with respect to damages.



22. The suit stands decreed in the aforesaid terms.
23. Let a decree-sheet be drawn up by the Registry accordingly.

C. HARI SHANKAR, J.

SEPTEMBER 4, 2023

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