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

+ **CS(COMM) 245/2024, I.A. 6449-6453/2024**

GLAXO GROUP LIMITED

..... Plaintiff

Through: Mr. Vardaan Anand and
Ms. Aishwarya Debadarshini,
Advocates.

versus

LABORATE PHARMACEUTICALS INDIA LTD. Defendant

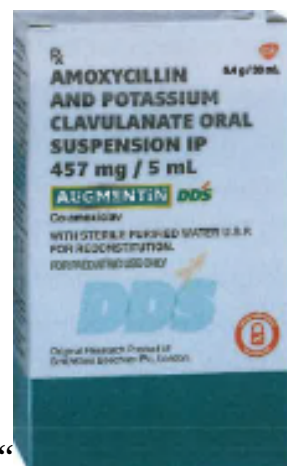
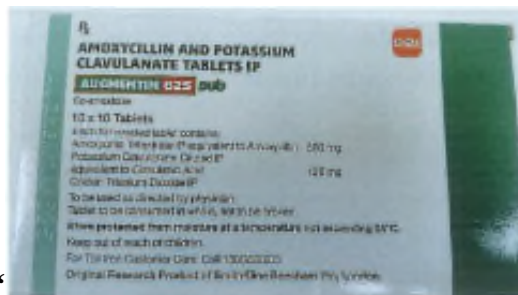
Through: Mr. Sucharu Garg and Mr. Siddharth
Bambha, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

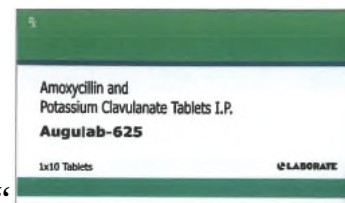
ORDER
27.03.2024

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1. The Plaintiff, Glaxo Group Limited, is the registered proprietor of the trademark “AUGMENTIN” as well as owner of the trade dress



“ ”/ “ ”. Their grievance
in the present suit pertains to the adoption of the marks “AUGULAB-625”



and “AUGULAB-DS” and associated packaging “ ”/



“ ”/



“ ”

and



“ ”, respectively.

2. Mr. Sucharu Garg, counsel for Defendant, reiterates the Defendant’s intent to not use the impugned marks and packaging, which has also been taken note of in the previous order dated 19th March, 2024 as follows:

“15. Mr. Bambha and Ms. Sucharu Garg, counsel appearing for Defendant on advance notice, submit that the Defendant is willing to resolve the matter amiably. They firstly inform that although a final undertaking was not submitted by the Defendant, they have nonetheless ceased manufacture of their product "AUGULAB-625" under the impugned packaging since June, 2023. On instructions, they state that a draft of undertaking as shared by the Defendant on 18th August, 2023 with the Plaintiff, has been prepared and is pending signatures and addition of certain information. Counsel for Defendant submit that the undertaking would be executed within a period of one week from today and will also be shared with the Plaintiff’s counsel, within the said timeline.



16. Ms. Shwetasree Majumdar, counsel for Plaintiff, suggests that along with their undertaking, the Defendant can also share with the Plaintiff images of the blister strip that they intend to use for their product "AUGULAB-625". Counsel for Defendant agree to share the images of the blister pack and suspension bottle, which are being used by the Defendant for the impugned product.

17. Let a signed copy of the undertaking be produced before the Court on the next date of hearing to give final direction."

3. In terms of the above order, an affidavit dated 26th March, 2024 of the Authorized Representative of Defendant, Mr. Ankit Ghangas, working as Assistant Manager, Legal at the Defendant-company, has been filed. The affidavit is accompanied with a Board Resolution in favour of Mr. Ghangas. As per the said affidavit, the Defendant has modified the impugned outer packaging and packaging of the blister strip used for "AUGULAB-625" tablets. As regards the impugned product "AUGULAB-DS", the Defendant has altered its outer carton packaging, which contains the suspension bottle. Further, to avoid any future disputes, the Defendant has, on their own volition, also amended the label affixed on the suspension bottle of "AUGULAB-DS". Images of the new packaging of the products, as detailed above, have been annexed with the affidavit.

4. The affidavit also records that Defendant discontinued the use of the impugned outer packaging of "AUGULAB-625" in June, 2023, with the last batch being produced under No. NAUT-039. Since then, the same have been produced and sold under the modified packaging only. The blister pack of "AUGULAB-625" and impugned outer packaging of "AUGULAB-DS" were last produced in February and March, 2024, under batch Nos. OAUT-008 and OABS-002, respectively.

5. The Defendant has also assured that in future, they will not adopt, use,



register, display, market, manufacture, sell or offer to sell or advertise any trademark or trade dress that is deceptively similar to Plaintiff's registered trademark "AUGMENTIN" and the associated packaging. Further commitments have also been set out in the affidavit.

6. Counsel for Plaintiff has received a copy of the affidavit of undertaking, and confirms that the same is to their satisfaction. Accordingly, counsel for the parties jointly request that the suit be decreed in terms of the undertaking given by the Defendant. Counsel for Plaintiff however requests for award of costs and nominal damages in their favour.

7. In light of the consensus between the parties, the suit is decreed in terms of the affidavit of undertaking dated 26th March, 2024 of the Defendant, which shall form part of the decree. The Defendant shall remain bound by the terms thereof.

8. In light of the conduct of the Defendant, demonstrated by the fact that they discontinued the use of the impugned packaging of "AUGULAB-625" in June, 2023, subsequent to Plaintiff's legal notices, and that on the first date itself, the Defendant undertook to not use the impugned packaging, award of costs or damages, as prayed for, is not warranted.

9. The label/ packaging of the suspension bottle of "AUGULAB-DS" manufactured by the Defendant is neither challenged in the instant suit, nor did it form a part of the legal notices issued by the Plaintiff prior to the suit. Since the Defendant has voluntarily agreed to cease its use, they are permitted to deplete/ exhaust the existing stock of the "AUGULAB-DS" product bearing the impugned packaging and containing the older version of the suspension bottle, as manufactured under the batch No. OABS-002 in March, 2024. Further, at the request of counsel, Defendant is also permitted



to deplete/ exhaust the stock of “AUGULAB-625” bearing the impugned blister packaging, which was last manufactured in February, 2024, under the batch No. OAUT-008. It is however clarified that henceforth, the Defendant shall not manufacture any further products bearing the impugned outer carton packaging and blister strip or the older bottle label of “AUGULAB-DS” product.

10. In view of the fact that there is an element of amicable settlement between the parties, the Plaintiff’s request for refund of the court fee is accepted and the Registry is directed to issue a certificate for refund of full court fee in favour of the Plaintiff.

11. Decree sheet be drawn up.

12. The suit and pending applications are disposed of.

13. The date already fixed before the Joint Registrar *i.e.*, 20th May, 2024 stands cancelled.

SANJEEV NARULA, J

MARCH 27, 2024

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