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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 274/2023, I.A. 8594/2023 & I.A. 22248/2023**

SUN PHARMA LABORATORIES LTD. Plaintiff
Through: Mr. Sachin Gupta, Mr. Ajay Kumar,
Mr. Manan Mondal, Mr. Ronit
Pradhan and Ms. Prashansa Singh,
Advs.

versus

M/S NUTRA SALES AND TRADERS & ANR. Defendants
Through: Mr. G.L. Saxena, Mr. R.P.
Pandey, Mr. Aman Kumar Singh and
Ms. Alka Singh, Advs. for D-1
Mr. Pramod Kant Saxena, Adv. for
D-2.
Mr. Apoorv Kurup, CGSC with Ms.
Nidhi Mittal and Ms. Muskaan Gupta,
Advs.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER
% **27.02.2024**

I.A. 22248/2023 (application under Order XXIII Rule 3 CPC)

1. This application has been filed jointly by the parties under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 placing the terms of amicable settlement arrived at between the parties. The terms of the settlement are as under:

“i. The Defendants above named hereby recognize the Plaintiff to be the proprietor of the trade mark FERTISURE, thereby having the exclusive right to the use of the said trade mark;



ii. The Defendants undertake to refrain themselves, their partners, proprietors, their assignees in business, licensees, franchisee, distributors, dealers, stockiest, retailers, servants, agents from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in nutraceuticals or pharmaceuticals under the impugned marks FERTISURE M, FERTISURE F, or any other marks which may be deceptively similar to the Plaintiffs registered trade mark, FERTISURE;

iii. The Defendants confirm that they will cease any unauthorized use of the mark FERTISURE and its variants, and refrain from applying for registration of similar or deceptively similar marks. Furthermore, the Defendant No.1 has withdrawn its product registration of the impugned mark 'FERTISURE' in the Department of Food Technology & Quality Control, Nepal (Department of Food) under no. 0178790557;

iv. The Defendants state that they have destroyed all stationary, packaging, promotional and publicity material, and labels under the impugned marks;

v. The Defendants confirm that they do not have any existing stocks of finished products bearing the impugned marks;

vi. The Defendants confirm that the below stocks of finished products bearing the impugned marks were manufactured last by the Defendant No.2. The last batch details of impugned product bearing mark FERTISURE are as under:

Sr. No.	Impugned Product With All Extensions	Last Batch No.	Batch quantity	Mfg. Date	Expiry Date	Existing Stock Qty.	Total value (INR)
1	FERTUSURE-M	UL22F354	1000	JUN-2022	NOV-2023	0	110000.00
2	FERTUSURE-F	UL23C437	991	MAR-2023	AUG-2024	0	109010.00



vii. The Plaintiff is foregoing costs and damages as sought in the plaint at the request of the Defendants;

viii. The aforementioned undertakings have been tendered by M/s United Laboratories, represented by Mr. Munish Goel who is also authorized to represent Defendant No. 1 in this matter, therefore, the same shall be binding on all the Defendants, its assignees in business, franchisees, licensees, distributors, dealers and agents for all times to come.”

2. The said application is signed by the authorised signatories of the parties as well as their respective counsel and supported by affidavits. Perusal of the said terms would bear that they are lawful and, therefore, acceptable to the Court.
3. Accordingly, nothing further survives for adjudication. Decree be drawn up in terms of the above terms of settlement.
4. Decree-sheet be drawn up accordingly.
5. Parties shall be bound by the terms of the settlement.
6. In view of the settlement between the parties, as per Section 16A of the Court Fees Act, 1870 the plaintiff will be entitled to 50% of the refund of the court fees.
7. Registry is directed accordingly.
8. Suit is disposed of. Pending applications also stand disposed of as being rendered infructuous.
9. Order be uploaded on the website of this Court.

ANISH DAYAL, J

FEBRUARY 27, 2024/MK/rj