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

Date of Decision: 05th March, 2024

+ CS(COMM) 412/2022 & I.A. 10240/2022

GLAXO GROUP LIMITED

..... Plaintiff

Through: Mr. Urfee Roomi, Ms. Janaki Arun
and Ms. Radhika Arora, Advocates.

versus

MODI LIFE CARE INDUSTRIES LIMITED

..... Defendant

Through: *Ex-parte.*

Ms. Hetu Arora Sethi, ASC, GNCTD
with Mr. Arjun Basra, Advocate for
Delhi Police.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. The Plaintiff has filed the present suit to restrain the use of the marks “BETSONE”, “BETASON” and “BETASONE” for pharmaceutical preparations in a silver-coloured aluminium strip, by the Defendant, alleging that the same is deceptively similar to Plaintiff’s trademark “BETNESOL” and its variants, which is also packed in a similar trade dress.
2. The Defendant has submitted a written statement in response to the suit. However, Mr. Urfee Roomi, counsel representing the Plaintiff, objects to its admissibility on the grounds that it was filed after the expiry of the statutory period. Consequently, before delving into the substantive arguments and evidence presented by the Plaintiff, it is would be appropriate



to first address the question of whether the Defendant's written statement can be considered in these proceedings. To take an informed decision, a detailed understanding of the procedural timelines and sequence of events is first warranted.

Proceedings this far

3. On 02nd June, 2022, while issuing summons in the suit, the Court granted an *ex-parte* ad-interim injunction in the Plaintiff's favour, restraining the Defendant from using the impugned packaging of aluminium strip with red lettering that bear the trademarks "BETSON", "BETASONE", "BESTASON" or any other mark incorporating the above-noted terms.

4. Alleging contravention of the order dated 02nd June, 2022 by the Defendants despite service and knowledge of proceedings, the Plaintiff filed I.A. No. 10240/2022 for appropriate directions. Notice on this application was issued on 07th July, 2022, whereafter Defendant entered appearance to contest the suit from 08th August, 2022. In the hearings held on 16th August, 2022 and 07th October, 2022, the Defendant's counsel submitted that they had not received a coloured copy of the plaint and the accompanying documents, resulting in directions to Plaintiff to provide the same. Thereafter, parties explored amicable settlement of their disputes, which could not fructify.

5. In the meantime, the Defendant filed a written statement on 14th April, 2023, which, according to the Plaintiff, was filed after the expiry of the maximum condonable timeframe of 120 days. The order dated 19th April, 2023 notes that no application seeking condonation of delay was placed on record by the Defendant till that date. Thereafter, on 27th July, 2023, the



counsel who had been representing the Defendant, informed the Court that he was not receiving any instructions from his client and thus, sought a discharge. However, despite court directions, neither a formal application seeking discharge was filed by the Defendant's counsel, nor did Mr. Amardeep Kapur Singh, Director of the Defendant-company, appear before the Court. Since then, none has been appearing on Defendant's behalf. Noticing this, the Court issued bailable warrants compelling the presence of Mr. Amardeep Kapur Singh on 07th December, 2023.

Delay in filing the written statement

6. As per the affidavit of service filed by the Plaintiff, which is accompanied with proof of service, the Defendant was served with the summons through speed post on the two addresses mentioned in the memo of parties on 17th and 23rd June, 2022. The Plaintiff also effected service of notice in I.A. 10240/2022 filed under Order XXXIX Rule 2A of the Code of Civil Procedure, 1908 ["CPC"] through e-mail, speed post, and courier modes, that were delivered between 18th to 21st July, 2022. As noted above, the Defendant joined the proceedings on 16th August, 2022, but maintained that they had not received adequate copies of the paper-book. This request was also reiterated on the next date (07th October, 2022). Mr. Roomi submits that the Plaintiff responded to the Defendant's request and immediately served the copies on both occasions. Yet, it is only on 25th March, 2023 that the Plaintiff received an advance copy of the written statement from the Defendant along with copies of applications for condonation of delay of 90 days in filing, and 24 days in re-filing of the written statement. Although these applications are not present in the court's record, Mr. Roomi has



handed over their copies, which are taken on record.

7. The Court has examined the aforesaid applications. Alleging that the Plaintiff supplied the complete set of paper-book on 12th October, 2022 after court directions, the Defendant has assumed that the limitation period for filing of written statement commenced from the said date and thus, as per the Defendant, the written statement was delayed by 90 days due to unavailability of the Directors of the Defendant and other disputes *inter se* the Directors. The Court is however unable to agree with the said submission. As detailed hereinabove, the Defendant was successfully served with the summons in the suit in June, 2022, however, no written statement was filed by them. In any case, even assuming the date of service of summons as 12th October, 2022 for the purpose of computing the delay in filing, as has been accepted by the Defendant, the filing of written statement on 14th April, 2023 is beyond the overall condonable limit of 120 days stipulated by the CPC, as amended by Commercial Courts Act, 2015.

8. In view of the above, the Court is of the opinion that notwithstanding the applications seeking condonation of delay, which were never placed on record, the written statement filed by the Defendant cannot be taken into consideration. Accordingly, it is directed that the said written statement be taken off the record and their defence is closed.

9. Given the Defendant's absence from the proceedings and non-compliance with the Court's directions, they are proceeded *ex-parte* and the Court has now proceeded to examine the Plaintiff's request for a decree under Order VIII Rule 10 r/w Order XIII-A of the CPC.

The Plaintiff's case



10. The Plaintiff, Glaxo Group Limited, is a part of the GSK group of companies, and is an international healthcare company engaged in research and development of a wide range of pharmaceuticals, medicines, vaccines, and consumer healthcare products. The Plaintiff's predecessors have been engaged in this business since 1715, and today, Plaintiff has a significant global presence in more than 150 markets, including India. The sales figures mentioned in paragraph No. 6, ranging up to GBP 34.1 billion, coupled with Plaintiff's robust advertisement mechanism,¹ are proof of Plaintiff's worldwide popularity. Their products are associated by the consumers with high quality and efficacy.

11. Among the multiple brands/ trademarks used by the Plaintiff, they adopted the mark/ brand name "BETNESOL" for pharmaceutical preparations used for treatment of allergies, arthritis, and inflammatory disorders in the 1960s. These products are sold in a unique silver-coloured strip packaging with red lettering. The active ingredient in Plaintiff's BETNESOL products is Betamethasone Sodium Phosphate, that helps reduce itching, swelling, redness etc. The present suit pertains to the mark "BETNESOL" and silver-coloured aluminium strip packaging with red

¹ The global marketing expenses of the Plaintiff have been detailed in paragraph No. 15 of the plaint.



lettering –  – in which the medicine “BETNESOL”, a Schedule H drug, is sold by the Plaintiff [*hereinafter*, “*subject packaging*”]. This strip contains several distinctive elements such as, the shape, size, writing style, arrangement of words, the GSK logo, and colour scheme of silver, red and black. It carries 20 tablets, spread across five rows and four columns that have a unique round shape and bulge. The subject packaging also constitutes as an artwork created by the Plaintiff under the Copyright Act.

12. The word mark “BETNESOL” is registered in Plaintiff’s favour under trademark No. 200822 in class 05, that dates to 21st February, 1961. While the present suit was pending adjudication, on 05th September, 2023, the mark “BETNESOL” has been declared as a well-known trademark by this Court in ***Glaxo Group Limited v. Manoj Kumar Jain and Ors.***²

13. The “BETNESOL” medicines bearing the subject packaging are widely circulated in India through a network of distributors and stockists as well as through online modes. The sales and advertisement figures disclosed in paragraphs No. 31 and 33 of the plaint of BETNESOL products demonstrate the prevalence and goodwill and reputation of the Plaintiff in



the market, resulting in Plaintiff being identified as the sole source of the BETNESOL marks and the subject packaging.

14. The Defendant has been manufacturing, marketing, and selling pharmaceutical and medicinal products under the trademarks “BETSONE”, “BETASONE” and “BETASON” [*collectively, “impugned marks”*] in a silver-coloured aluminium blister strip that nearly resembles the subject packaging. The products under “BETSONE” and “BETASONE” comprise of the ingredient Betamethasone, while the “BETASON” tablets contain Betamethasone Sodium Phosphate, used to treat the same ailments.

15. Upon learning of the impugned activities in January, 2022 through Defendant’s website and TradeIndia e-commerce platform, the Plaintiff addressed a cease-and-desist notice to the Defendant on 11th February, 2022, however, no response was received thereto. In light thereof, the Plaintiff commissioned the services of an investigation firm in March 2023 that confirmed that despite being put to notice of the Plaintiff’s proprietary rights, the Defendant continued with the impugned operations. Defendant’s conduct exhibits their intention to benefit from the Plaintiff’s standing in the market, thus constituting infringement and passing off of the Plaintiff’s registered mark and the subject packaging.

Analysis and findings

16. The Court has considered the afore-noted submissions. A comparative chart highlighting the similarities between the rival marks and packaging is drawn hereinbelow:

² CS(COMM) 377/2023.



<i>Plaintiff's mark/product</i>	<i>Defendant's mark/product</i>
BETNESOL	BETSONE BETASONE BETASON
	

17. The impugned marks “BETSONE”, “BETASONE”, and “BETASON” are deceptively similar to Plaintiff’s registered trademark “BETNESOL”. Apart from the fact that the impugned marks are visually, phonetically and structurally alike, with minimal alterations/ re-arrangement, which are insufficient to dispel the aspect of deceptive similarity, it can also be seen that the products are nearly identical in shape, colour scheme and overall ocular presentation. It must also be borne in mind that the parties are engaged in the trade of pharmaceutical/ medicinal products, where the identity in trademarks and goods/ services assumes greater significance as it



has potential impact on public health and requires a stricter approach when assessing trademark infringement.³ The parties' products contain the same ingredients and are used for treatment of the same ailments, which furthers the likelihood of confusion.

18. In light of the above, the Court is satisfied that the Plaintiff is entitled to a decree under Order VIII Rule 10 of CPC. Given the material presented on record, which satisfactorily substantiates the Plaintiff's case, the Court deems it appropriate to dispense with the requirement of leading *ex-parte* evidence.⁴

Relief

19. Mr. Roomi states that since no seizure was effected in this case, the Plaintiff is not pressing for the relief of damages, rendition accounts and delivery up sought in paragraph No. 64(e), (f), (g) and (h) of the plaint. He however requests for award of actual litigation costs which the Plaintiff has been burdened with, especially in light of the Defendant's conduct.

20. Accordingly, the suit is decreed in favour of the Plaintiff and against the Defendant in terms of paragraph No. 68 (a) to (d) plaint.

21. Mr. Roomi submits that in terms of invoices raised by the Plaintiff, the actual litigation cost incurred by the Plaintiff amounts to Rs. 17,42,668/-. However, considering the overall facts of the case, cost of Rs. 10 lakhs is awarded in favour of the Plaintiff, which shall be recoverable from the Defendant.

³ See: *Cadila Healthcare Limited v. Cadila Pharmaceuticals Limited*, 2001 SCC OnLine SC 578.

⁴ *Disney Enterprises Inc. and Anr. v. Balraj Muttneja and Ors.*, 2014 SCC OnLine Del 781, *Cross Fit LLC v. RTB Gym and Fitness Centre*, 2022 SCC OnLine Del 2788, and *The Indian Performing Right Society Ltd. v. Gauhati Town Club*, 2013 (134) DRJ 732.



22. Suit is disposed of along with the pending applications.
23. Decree sheet be drawn up.

SANJEEV NARULA, J

MARCH 5, 2024

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