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

Date of Decision: 17th May, 2024

+ CS(COMM) 497/2023

GLAXOSMITHKLINE PHARMACEUTICALS LIMITED

.....Plaintiff

Through: Ms. Shilpi Sinha and Mr. Vardaan
Anand, Advocates.

versus

**CACTUS PHARMACEUTICALS PRIVATE LIMITED AND
OTHERS**

.....Defendants

Through: Mr. Sudhanshu Sikka, Mr. Himanshu,
Ms. Anjali Mathur and Ms. Nancy
Thapar, Advocates for D-3.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. The Plaintiff, GlaxoSmithKline Pharmaceuticals Limited, a company incorporated in India, is a member of the 'GSK Group of Companies'¹, of which GlaxoSmithKline plc is the parent company. GSK is a pioneer in the global healthcare industry, involved in the research, development and manufacture of pharmaceuticals and vaccines.
2. Plaintiff is the registered proprietor of the trademark "CEFTUM", which is used for an oral prodrug of 'cefuroxime', a bactericidal cephalosporin antibiotic. The said drug is used for treatment of infections

¹ "GSK"



caused by susceptible bacteria such as, *inter alia*, respiratory tract, urinary tract, skin and soft tissue infections. Plaintiff conceived and adopted the trademark “CEFTUM” in the year 1986 and has been using the said mark continuously since then.

3. The Plaintiff secured registration for “CEFTUM” through trademark application No. 455064, filed on 5th June, 1986, for ‘PHARMACEUTICAL AND VETERINARY PREPARATIONS AND SANITARY SUBSTANCES’ in Class 5 under the Trade Marks Act, 1999². Products under the said mark were initially launched in the year 1991, and over the years, the Plaintiff has introduced several variants of the products under the CEFTUM brand, such as “CEFTUM 500”, “CEFTUM 250”, etc. On account of their extensive and continuous use of the said mark, Plaintiff asserts that the “CEFTUM” trademark has acquired immense reputation and goodwill, as evidenced by the significant sales of products under the said mark. As a result, the “CEFTUM” trademark has become distinctive *qua* pharmaceutical products of the Plaintiff and consumers exclusively recognise products bearing the said mark to be originating from the Plaintiff.

4. The Plaintiff is aggrieved by the Defendants’ adoption and use of the trademarks “CEFTUS” and “CEFBACTUM”³. In November 2022, Plaintiff came across two trademark applications filed by Defendant No. 1 in respect of the said marks in Class 5: (i) Application No. 5123013 for trademark “C E F T U S L B Tablet”/ “**CEFTUS LB Tablet**” filed on 8th September, 2021, claiming user since 2nd July, 2015; and (ii) Application No. 5359770 for trademark ‘CEFBACTUM HS’, filed on 7th March, 2022 on a ‘Proposed to

² “the Act”



be Used’ basis. Further, Plaintiff also discovered that Defendant No. 1 had secured registrations for the trademarks “CEFBACTUM” under No. 2863191 and “Cefbactum TZ 4.5g” under No. 5123011, both of which are registered in Class 5. Defendants No. 2, 3 and 4 are alleged to be manufacturers of the products sold under the marks “CEFTUS-OF”, “CEFBACTUM-TZ 4.5” and “CEFBACTUM-1125 MG”, respectively.

5. The Plaintiff immediately issued a cease-and-desist notice dated 01st November, 2022, calling upon Defendants to discontinue use of the Impugned Marks, however, they did not relent. Thereafter, Plaintiff filed an opposition against Defendant No. 1’s trademark application No. 5123013, however, despite service of the notice of opposition, Defendant No. 1 did not file any counter statement or respond to the Plaintiff’s legal notice. Finally, on 2nd December, 2022, Defendant No. 1 issued a communication through their counsel, whereby they denied any similarity between their marks and those of the Plaintiff, and refused to comply with the Plaintiff’s notice. In such circumstances, the Plaintiff filed the present suit alleging infringement and passing off of their registered mark “CEFTUS”.

6. On 26th July, 2023, while issuing summons, the Court, on a *prima facie* assessment of the facts narrated in the application and documents accompanying the plaint, passed an *ex-parte ad-interim* injunction to the following effect:

“34. Considering the above facts and the legal position, the Plaintiff has made a *prima facie* case for grant of an *ex parte ad-interim* injunction. Balance of convenience also lies in favour of the Plaintiff, and they are likely to suffer irreparable harm in case the injunction, as prayed for, is not granted. Therefore, an interim injunction is

³ Collectively, “Impugned Marks”



granted in the following terms:-

- i) Insofar as the mark 'CEFTUM' is concerned, all the Defendants shall cease all manufacture, sales, advertising of any pharmaceutical preparations under the mark 'CEFTUM' or 'CEFTUS' or any other identical or deceptively similar mark.*
- ii) Insofar as mark 'CEFBACTUM' is concerned, there are two separate products which have been sold by the Defendants, namely, 'CEFBACTUM-1125 mg' and 'CEFBACTUM-TZ 4.5', both these contain different formulations, and considering the nature of confusion that can be caused, all fresh manufacture of the Defendants' products under these two infringing marks shall be stopped with immediate effect.*
- iii) Insofar as the existing stock is concerned, the Defendants are directed to file an affidavit and seek permission of the Court in order to dispose of the existing stock.*
- iv) In addition, the Defendants seem to be having another variant 'CEFBACTUM HS' and 'CEFTUS LB' of which the formulations have not been mentioned. Let the Defendants placed on record the stock of the said products by the next date of hearing."*

7. The aforementioned *ad-interim* injunction has since been made absolute *vide* order dated 15th December, 2023. All the Defendants were duly served in August 2023, however, there has been no appearance on behalf of Defendants No. 1, 2 and 4. Defendant No. 3, on the other hand, has filed an affidavit dated 18th January, 2024, stating that they had immediately ceased manufacturing products under the Impugned Marks upon receiving notice of the injunction order, and that they have no intention of engaging in any such manufacturing in the future.

8. There has been no written statement filed on behalf of any of the Defendants. Since the overall condonable period of 120 days for filing written statement has lapsed, their right to do the same has been closed by the Joint Registrar on 19th February, 2024. In such circumstances, considering the lack of any contest by the Defendants, the Court has



proceeded with hearing the present suit *ex parte* against Defendants No. 1, 2 and 4.

9. The documents submitted into evidence affirms the Plaintiff's ownership over the mark "CEFTUM", as well as their extensive use of the said mark in respect of pharmaceutical products, which has been demonstrated through sales invoices placed on record. Further, the Plaintiff's usage of the trademark "CEFTUM" extends as far back as the year 1986, which clearly precedes Defendant No. 1's adoption of the Impugned Marks. Thus, the Plaintiff has also established their status as the senior user.

10. In light of the Plaintiff's well-established rights in the trademark "CEFTUM", there appears to be no constructive purpose in requiring the Plaintiff to present *ex-parte* oral evidence in this matter. This view is supported by the observations of this Court in ***Disney Enterprises Inc. v. Balraj Muttneja***⁴. Furthermore, in absence of any defence on behalf of the Defendants, the Court is empowered to adjudicate the matter summarily under Order VIII Rule 10 and Order XIII-A Rule 3 of the Code of Civil Procedure, 1908 (CPC) read with Rule 27 of the Delhi High Court Intellectual Property Rights Division Rules, 2022.

11. A tabular comparison between the competing marks is represented hereunder:

<u>Plaintiff's marks</u>	<u>Infringing Marks</u>
CEFTUM	CEFTUS, CEFTUS LB,  , CEFTUS-OF, CEFTUS-200,

⁴ 2014 SCC OnLine Del 781



	CEFBACTUM-1125, CEFBACTUM-HS, CEFBACTUM TZ 4.5G, CEFBACTUM
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12. At the outset, it is noticed that all the aforementioned marks begin with the letters ‘CEF’. The Impugned Mark “CEFTUS” substantially resembles the mark “CEFTUM”. Only the final letter has been modified from ‘M’ to ‘S’, which is a miniscule alteration insufficient for the purposes of distinguishing the same from the Plaintiff’s prior registered mark. Thus, “CEFTUS” is visually, phonetically and structurally similar to the Plaintiff’s prior registered mark “CEFTUM”. On the other hand, the Impugned Mark “CEFBACTUM”, which is registered in favour of Defendant No. 1, also begins with ‘CEF’ combined with the term ‘BACTUM’. While this term can be said to differ from the Plaintiff’s mark, yet ‘BACTUM’ is descriptive of the kind of infections sought to be treated by the drugs sold under the said mark. Thus, there remains a strong potential of confusion between the two competing marks in view of the overlapping letter ‘CEF’, which is likely to anchor the perception of customers and create the false impression that the Defendants’ products are originating from/ associated with the Plaintiff. The likelihood of confusion is further exacerbated by the fact that the competing marks are used in respect of similar products, i.e. pharmaceutical products prescribed for bacterial infections, albeit comprising of different chemical compositions. Furthermore, considering the fact that the marks are used in respect of pharmaceutical drugs, there is a need for the Court to employ a stricter yardstick in determining the possibility of confusion, in line with the observations of the Supreme Court in *Cadila Health Care v. Cadila*



*Pharmaceuticals Ltd.*⁵ Pertinently, there is no defence or contest to the allegations made in the present proceedings, which indicates that the Defendants are not objecting to the Plaintiff's claims.

13. The Plaintiff is one of the largest pharmaceutical companies in the world and they have, on the basis of documents on record, demonstrated their presence and strength in the pharmaceutical field, with substantial annual revenues earned and over 69,000 persons employed employees across the world. The Defendants' subsequent adoption of the Impugned Marks reflects a *mala fide* intention to ride upon this established goodwill and reputation of the Plaintiff, by misrepresenting their products to be associated with the Plaintiff. Such use of the Impugned Marks is likely to cause financial and reputational loss to the Plaintiff. Accordingly, the Court finds the Defendants' use of the Impugned Marks "CEFTUS", "CEFBACTUM" and their derivative marks to violate the Plaintiff's statutory and common law rights. Thus, the Plaintiff has sufficiently made out a case for grant of permanent injunction on account of infringement and passing off.

14. As regards the claim of rendition of accounts and damages is concerned, since there was no Local Commissioner appointed by the Court for seizure of goods, the counsel for Plaintiff has sought a summary adjudication on this issue. Despite being served with summons and provided ample opportunity to defend themselves, the Defendants have opted not to file a defence or present any evidence refuting the Plaintiff's claims. Their deliberate absence from the proceedings is indicative of a lack of interest in

⁵ AIR 2001 SC 1952



contesting the Plaintiff's claims and suggests an implicit acknowledgment of wrongdoing. Moreover, the Court recognizes that the Plaintiff had to incur significant legal expenses to initiate and pursue this action, which could have been avoided had the Defendants ceased their infringing activities promptly. The Defendants' conduct, therefore, not only resulted in unnecessary litigation but also forced the Plaintiff to allocate resources toward protecting their intellectual property rights. Given these circumstances, considering the fact that the Impugned Marks have been found to be infringing on the Plaintiff's marks, the Court finds it just to award nominal damages to the Plaintiff as partial compensation for their legal expenditures.

15. In view of the foregoing discussion, the following directions are issued:

15.1. The suit is decreed in favour of the Plaintiff and against all the Defendants No. 1 to 4 in terms of prayers sought in Paragraphs No. 33 (a) and (b).

15.2. Against the prayers sought in Paragraphs No. 33 (c) and (e) of the plaint, it is deemed appropriate to award nominal damages of INR 3,00,000/-, recoverable against Defendant No. 1.

15.3. Plaintiff shall also be entitled to costs of INR 5,01,000/-, recoverable from Defendant No. 1. This is inclusive of:

- (a) Court fee: INR 2,01,000/-
- (b) Legal Profession Fee: INR 3,00,000/-.

16. Decree sheet be drawn up.



17. With the above directions, the suit, along with pending application(s), is disposed of.

SANJEEV NARULA, J

MAY 17, 2024
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