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

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Date of decision: 6th February, 2025+ **CS(COMM) 223/2022 with I.A. 5472/2022, I.A. 1793/2025****CEDAR PROPERTIES AND TRADING LLP & ORS.Plaintiffs**

Through: Mr. H.L. Tiku, Sr. Advocate with Ms. Arushi Singh, Ms. Manviya Arun, Mr. Gaurav Dhingra and Mr. Hitesh Wadhwa, Mr. Rahul Regmi Advocates.

versus

MASKON LIFE SCIENCES PVT. LTD. & ORS.Defendants

Through: None.

CORAM:**HON'BLE MR. JUSTICE AMIT BANSAL****AMIT BANSAL, J. (Oral)****CS(COMM) 223/2022 & I.A.-1793/2025 (under Order XIII-A of the CPC seeking summary judgment)**

1. The present suit has been filed seeking relief of permanent injunction restraining the defendants from infringing the trademark of the plaintiffs and passing off their goods as those of the plaintiffs, along with other ancillary reliefs.

PLEADINGS IN THE PLAINT

2. The plaintiff no.1, Cedar Properties & Trading LLP, is a limited liability partnership incorporated under the provisions of the Limited Liability Partnership Act, 2008.

3. The plaintiff no.2, Martin and Harris Laboratories Limited, is a company incorporated under the Companies Act, 1956.



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4. The plaintiff no.3, Martin & Harris (P) Ltd., is a company incorporated under the Companies Act, 1913.
5. The plaintiff no.4, Walter Bushnell Private Limited, is a company incorporated under the Companies Act, 1956.
6. The plaintiff no.1 is engaged in the business of medicinal and pharmaceutical products for the past several decades. The plaintiff no.2 has been manufacturing and selling various pharmaceutical products, one of them being under the trademark "DROTIN" under license from Plaintiff no.1. The plaintiff no.3 is engaged in *inter alia* buying and selling the pharmaceutical goods, manufactured by the plaintiff no.2, including "DROTIN". The plaintiff no.4 is engaged in *inter alia* the marketing of the pharmaceutical products including the products under the trademark "DROTIN".
7. In the year 1997, the plaintiff no.4 coined and adopted the trademark "DROTIN" in respect of pharmaceutical products. The plaintiff no.4 registered the aforesaid mark in class 5 through trademark application no.732349. The aforesaid trade mark registration in favour of the plaintiffs is valid and subsisting. The plaintiffs have also filed the legal proceedings certificates with respect to the aforesaid trademark registration as document no.3 filed along with the plaint.
8. The plaintiff no.1 acquired all common law and statutory rights, interests and title in the trademark "DROTIN" from the plaintiff no.4 and other trademarks by a Deed of Assignment dated 30th March, 2017. An appropriate request for the recordal of the name of the plaintiff No.1 as the subsequent proprietor of the trademark "DROTIN" in form TM-P was filed



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before the Registrar of Trade Marks, and the same has been allowed. The plaintiffs have filed the aforesaid assignment deeds as document no.5 filed along with the plaint.

9. The products of the plaintiffs under the trademark "DROTIN" were first introduced in the Indian market in June, 1997 in the form of tablets which are recommended in cases of abdominal pain associated with Irritable Bowel Syndrome (IBS). The plaintiff no.2 also obtained a drug license for the manufacture of pharmaceutical products under the Trade Mark "DROTIN" dated 2nd April, 1997.

10. The plaintiffs have acquired enormous goodwill and reputation in relation to its products sold under the "DROTIN" mark and is a well-known name among its consumers. The net sales of the plaintiffs' products sold under the aforesaid mark for the period of April 2021 – March 2022 amounts to Rs. 94,89,03,652 crores and these figures have been substantiated by the plaintiffs with chartered accountant certificates, which have been filed as document no.11 filed along with the plaint.

11. The defendant no.1, Maskon Life Sciences Pvt. Ltd., is a company incorporated under The Companies Act, 1956, and is engaged in the business of manufacturing medicinal and pharmaceutical preparations.

12. The defendant no.2, Bharat Pharmaceuticals, is a company incorporated in India under the Companies Act, 1956 and is the marketing/distributing agent of the defendant no.1.

13. The defendant no.3, Binapani Nursing Home & Hospital, is engaged in the sale of impugned products manufactured by defendant no.1.

14. In December 2021, the plaintiffs discovered the adoption and use of



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the trademark "DROTOWIN" in respect of medicinal preparations by the defendants when the medicinal preparations under the impugned mark were found and purchased by the field staff of the Plaintiffs from the defendant no.3. As per the declarations made on the packaging of the pharmaceutical/medicinal preparations of the defendants, the products sold under the impugned Trade Mark "DROTOWIN" are also meant for treating the same ailments for which the medicinal preparations produced by the plaintiffs under the Trade Mark "DROTIN" are sold.

15. Upon further investigation, it came to the knowledge of the plaintiffs that the defendant no.2 had filed an application before the Registrar of Trade Marks at New Delhi seeking registration of the impugned mark "DROTOWIN" in class 5 *vide* application no. 4336389 on '*proposed to be used*' basis. The plaintiff no.1 has filed a notice of opposition to the aforesaid application and the opposition proceedings are pending before the Registrar of Trade Marks.

16. Any use of the impugned marks by the defendants, either independently or in a combined manner with other marks, in relation to the impugned products is causing confusion in the minds of the consumers and the public and amounts to infringement of the plaintiffs' trademark as well as passing off of the impugned products as those of the plaintiff.

PROCEEDINGS IN THE SUIT

17. On 7th April, 2022, while issuing summons in the suit, this Court granted an *ex-parte ad interim* injunction in favour of the plaintiffs and against the defendants by way of which the defendants were restrained from using the marks "DROTOWIN"/"DROTOWIN DS".



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18. The Joint Registrar, in his order dated 26th August, 2022 recorded that the defendant no.1 has filed its written statement along with its affidavit of admission/denial.
19. Thereafter, the plaintiff and the defendant no.1 engaged in settlement talks but the same were not successful. The same was recorded in the order dated 9th January, 2024.
20. The Joint Registrar recorded in the order dated 27th March, 2024 that the defendants no.2 & 3 had been served with summons sent through speed post, on 13th February, 2024 and 26th February, 2024 respectively.
21. Despite service, neither the defendants no.2 and 3 entered appearance nor did they file a written statement. Accordingly, the defendants no.2 and 3's right to file the written statement was closed *vide* order dated 3rd July, 2024.
22. Since none had appeared on behalf of the defendant no.1 for past several dates, *vide* order dated 20th January, 2024, all the defendants were proceeded against *ex parte*.
23. Counsel for the plaintiffs submits that this is a fit case where a Summary Judgment in terms of Order XIII-A of the Code of Civil Procedure, 1908 (CPC) as applicable to commercial disputes of a specified value, read with Rule 27 of the Delhi High Court Intellectual Property Rights Division Rules, 2022, deserves to be passed in favour of the plaintiffs and against the defendants.
24. Since all the defendants have already been proceeded against *ex parte*, I do not find it necessary to issue fresh notices before deciding the present application under Order XIII-A, CPC seeking summary judgment.



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ANALYSIS AND FINDINGS

25. I have heard the submissions of the counsel for the plaintiffs and perused the material on record.

26. A bare perusal of the competing marks makes it apparent that the defendants no.1 and 2 have slavishly copied the plaintiff's registered and well-reputed trademark "DROTIN" and the products of the defendants bearing the impugned mark are being used for identical products, i.e. pharmaceutical goods for the treatment of abdominal pain.

27. The mark used by the defendants no.1 and 2 has been formed by taking first 4 letters "DROT" and last letters "IN" from plaintiffs' mark and by adding two letters "OW" after "DROT" and before "IN". The defendants no.1 and 2 have made their mark "DROTOWIN" which is not only structurally but also visually similar and identical to the plaintiffs' trademark "DROTIN" without any justification for adopting the same and such adoption by the defendants is dishonest and *mala fide* and has solely been done so as to earn easy and illegal profits by encashing upon the plaintiffs' goodwill and reputation in their trademark "DROTIN".

28. From the averments made in the plaint and the evidence on record, the plaintiffs have been able to prove that the plaintiffs are the registered proprietor of the mark "DROTIN" in class 5. The plaintiffs, through their annual turnover and promotional expenses, have also been able to show their goodwill and reputation in respect of the aforesaid trademark among the members of the trade and public. Therefore, the defendants have taken unfair advantage of the reputation and goodwill of the plaintiffs' mark and have also deceived the unwary consumers of their association with the



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plaintiffs by dishonestly adopting the plaintiffs' mark without any plausible explanation. In view of the above, the plaintiffs have also established a case of passing off.

29. The defendant no.1 in its written statement has not set up any substantial defence. It has been averred in the written statement that the defendant no.1 is only a manufacturer of the products bearing the impugned mark for the defendant no.2 and the defendant no.1 does not claim any rights in the impugned mark.

30. Moreover, since the defendant no.1 has failed to enter appearance after 12th October, 2023 and the defendant no.2 has never entered appearance despite having suffered an *ad interim* injunction, it is evident that the defendants no.1 and 2 have nothing substantial to urge.

31. Therefore, I am of the opinion that no purpose would be served by directing the plaintiffs to lead *ex parte* evidence by filing an affidavit of examination in chief.

32. In ***Su-Kam Power Systems Ltd. v. Kunwer Sachdev***, 2019 SCC OnLine Del 10764, this Court has observed as under:

“90. To reiterate, the intent behind incorporating the summary judgment procedure in the Commercial Court Act, 2015 is to ensure disposal of commercial disputes in a time-bound manner. In fact, the applicability of Order XIII A, CPC to commercial disputes, demonstrates that the trial is no longer the default procedure/norm.

91. Rule 3 of Order XIII A, CPC, as applicable to commercial disputes, empowers the Court to grant a summary judgement against the defendant where the Court considers that the defendant has no real prospects of successfully defending the claim and there is no other compelling reason why the claim should not be disposed of before recording of oral evidence. The expression “real” directs the Court to examine whether there is a “realistic” as opposed to “fanciful” prospects of success. This Court is of the view that the expression “no genuine issue requiring a trial” in



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Ontario Rules of Civil Procedure and “no other compelling reason.....for trial” in Commercial Courts Act can be read mutatis mutandis. Consequently, Order XIII A, CPC would be attracted if the Court, while hearing such an application, can make the necessary finding of fact, apply the law to the facts and the same is a proportionate, more expeditious and less expensive means of achieving a fair and just result.

92. Accordingly, unlike ordinary suits, Courts need not hold trial in commercial suits, even if there are disputed questions of fact as held by the Canadian Supreme Court in Robert Hryniak (supra), in the event, the Court comes to the conclusion that the defendant lacks a real prospect of successfully defending the claim.”

33. The aforesaid principles are fully applicable in the facts and circumstances of the present case. As elaborated above, the defendants no.1 and 2 have no real prospect of successfully defending the claims in the present suit. Further, taking into account that the defendants no.1 and 2 have not set up any substantial defence, there is no compelling reason for the recording of oral evidence.

34. Therefore, this is a fit case where a summary judgment in terms of Order XIII-A of the Code of Civil Procedure, 1908 can be passed in favour of the plaintiffs and against the defendants no.1 and 2.

35. In view of the foregoing analysis, a decree of permanent injunction is passed in favour of the plaintiffs and against the defendants no.1 and 2 in terms of prayer clauses 37 (i) and (ii) of the plaint.

36. The counsel for the plaintiffs does not press for the remaining reliefs prayed for in the suit.

37. Let the decree sheet be drawn up accordingly.

38. The pending application stands disposed of.

AMIT BANSAL, J

FEBRUARY 6, 2025