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OA Nos. 740 to 742 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-01-2026

CORAM

**THE HONOURABLE MR JUSTICE SENTHILKUMAR
RAMAMOORTHY**

**OA Nos. 740, 741 & 742 of 2025
in
C.S(COMM DIV) NO. 184 OF 2025**

Nouveau Medicament Private Limited
720, Anna Salai, Nandanam, Chennai
Tamil Nadu 600035

Applicant(s)

Vs

1. Foregen Healthcare Ltd.
Represented by its Director, Mr.Nishant
Sharma, A-352, Ground Floor, Outer
Ring Road, Meera Bagh, Paschim
Vihar, New Delhi,-110087

Also at:
Plot No.104-105, DIC Industrial Area,
Baddi, Himachal Pradesh-173 205.

2.Zelleven Healthcare Private Limited
Represented by its Director, Mr Rajeev
Jetly, 212, Shahpur Jat ,New Delhi,
Andrewsganj, South Delhi, New Delhi
Delhi, India 110 049.

Respondent(s)

PRAYER in O.A.No.740 of 2025:

Judge's summons filed under Order 14 Rule 8 of O.S.Rules and Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908, praying to grant an ad-interim injunction restraining the Respondents/Defendants, their associates, affiliates, partners, their employees, officers, servants, agents, and all others acting for and on their behalf from manufacturing, selling, stocking, distributing, exporting,



promoting, advertising, offering for sale, any products, websites, domain names, social media platforms, email address, mobile application trade/corporate name and in any other manner directly or indirectly, online or offline, dealing with any goods or services under the impugned mark URG-9



or any other mark which is identical/deceptively similar to the Applicant/Plaintiffs trademark **ARG 9** amounting to **passing off** the goods/services of the Defendants as and for those of the Plaintiff in any manner whatsoever, pending the disposal of the suit.

PRAYER in OA No. 741 of 2025: Judge's summons filed under Order 14 Rule 8 of O.S.Rules and Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908, praying to grant an ad-interim injunction restraining the Respondents/Defendants, their associates, affiliates, partners, their employees, officers, servants, agents, and all others acting for and on their behalf from manufacturing, selling, stocking, distributing, exporting, promoting, advertising, offering for sale, any products, maintain and/or operate websites, domain names, social media platforms, email address mobile applications trade/corporate name and in any other manner, directly or indirectly online or offline, dealing with any goods or services under the impugned marks **URG 9**



amounting to infringement of Applicant/Plaintiff registered trademark ARG 9 under Registration No.2645507 in Class 5 in any manner whatsoever, pending the disposal of the suit

PRAYER in OA No. 742 of 2025: Judge's summons filed under Order 14 Rule 8 of O.S.Rules and Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908, praying to grant an ad interim injunction restraining the Respondents/Defendants, their associates, affiliates, partners, directors, proprietor, subsidiaries, affiliates, franchisees, e commerce and ware house aggregators, officers, servants, agents, distributors, stockists, representatives, licensees and any one acting for or on their behalf directly or indirectly as the



case may be from performing any actions, especially using the impugned marks URG 9 or any mark which is deceptively similar and or identical to the Applicant/Plaintiffs registered trademark ARG 9 amounting to unfair competition, dilution of the goodwill and reputation of the Applicant/Plaintiffs trademark or doing any other thing which will lead to dilution of the Applicant/Plaintiff Intellectual Properties in any manner whatsoever, pending disposal of the suit.

In all Applications

For Applicant: Mr. M.S.Bharath

For Respondents: Mr.Pawan Sharma
Ms.Preetha Natarajan

ORDER

The plaintiff is a manufacturer and marketer of medicinal and pharmaceutical products. The plaintiff asserts that it adopted and used the trade mark ARG-9 since 13.10.2003 in relation to a pharmaceutical preparation containing L-Arginine and Proanthocyanidin granules used in the treatment of Intra Uterine Growth Retardation (IUGR). The said trade mark was registered with effect from 19.12.2013 and the said registration remains in force as on date. Upon noticing the use of the mark URG-9 by the defendant, the suit was instituted seeking remedies in respect of alleged infringement, passing off, dilution of goodwill and reputation and relief incidental thereto. In the said suit, the present applications for interim injunction have been filed.



2. The contentions of learned counsel for the plaintiff may be summarized as under:

(i) The plaintiff is admittedly the prior user of the mark ARG-9, as evidenced by invoices, including invoice dated 14.11.2003.

(ii) The plaintiff has achieved substantial turnover from the sale of products bearing the mark ARG-9. As evidence thereof, the certificate issued by R.Srinivas, Chartered Accountant, is relied on. The aggregate turnover from financial year 2003-04 to 2024-25 is about Rs.163.59 crore.

(iii) Upon noticing the use of the offending mark URG-9, which is deceptively similar, in relation to a nearly identical product, the plaintiff issued pre-suit notice dated 28.02.2025. In spite of receiving such pre-suit notice, the defendant did not desist from using the impugned mark.

3. In support of the request for interim relief, learned counsel for the plaintiff relied on the following judgments:

(i) *Midas Hygiene Industries (P) Limited & Another v. Sudhir Bhatia & Others*, (2004) SCC OnLine SC 106;

(ii) *Moonshine Technology Private Limited v. Tictok Skill Games Private Limited & Others*, 2022 SCC OnLine Del 296;

(iii) *Indian Hotels Company Ltd. v. Jiva Institute of Vedic Science & Culture*, 2008 (37) PTC 468 (Del);

(iv) *Under Armour Inc. v. Aditya Birla Fashion & Retail Ltd.*, 2023 SCC Online Del 2269;



(v) *Cadila Healthcare Limited v. Cadila Pharmaceuticals Ltd.* 2001 SCC

OnLine SC 578;

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(vi) *South India Beverages Private Limited v. General Mills Marketing Inc. & Another*, 2014 SCC *OnLine* 1953.

(vii) *M/s.Apex Laboratories Pvt. Ltd. v. M/s.Knoll Healthcare Pvt. Ltd.*, 2025: MHC: 1419.

4. In response to these contentions, learned counsel for the defendants submitted as follows:

(i) The marks URG-9 and ARG-9 are not deceptively similar. The first vowel of the two marks being different, there is neither phonetic nor visual similarity.

(ii) The defendants' mark is used in IUGR treatment and URG-9 stands for uterine retardation of growth using L-Arginine.

(iii) Both the plaintiff's product and the defendants' product contain L-Arginine and, therefore, the plaintiff cannot claim exclusive rights to the use of a mark derived from L-Arginine.

(iv) The defendants have sold products bearing the mark URG-9 since 2021-22. The certificate issued by the Chartered Accountant reveals the turnover of the second defendant from 2021-22 up to 2024-25. The fact that the said defendant's turnover is lower than the plaintiff's is immaterial and the said defendant has shown evidence of substantial use. Therefore, the balance of convenience is in favour of the defendants.



(v) The trade dress of the defendants is completely different as is evident from the depiction thereof in the plaint.

(vi) The Hon'ble Supreme Court held in *F.Hoffmann-La Roche & Co. Ltd. v. Geoffrey Manners & Co. Pvt. Ltd. (1969) 2 SCC 716 (F.Hoffmann-La Roche)*, that the marks 'Dropovit' and 'Protovit' are dissimilar by comparing the consonants in the rival marks. If the said principle were to be applied to the rival marks in this case, the conclusion that follows is that the marks are dissimilar.

(vii) The second defendant has applied for registration of the mark URG-9. If an order of interim injunction were to be granted at this juncture, it would prejudice the defendant in the prosecution of the application before the Registrar of Trade Marks.

5. The first aspect to be examined in light of the rival contentions is evidence of use by the parties. After asserting that the plaintiff commenced use of the trade mark ARG-9 on or about 13.10.2003, the plaintiff submitted evidence thereof in the form of invoices. The first invoice on record is dated 14.11.2003. Several invoices issued since that date and up to about 09.05.2025 have been placed on record. By comparison, the defendants have filed the turnover certificate of Amit Rajender and Company, Chartered Accountants relating to sale of products bearing the trade mark URG-9. The said certificate



provides details of turnover since 2021-22. The conclusion that follows is that the plaintiff is undoubtedly the prior user.

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6. The next aspect to be examined is whether the two marks may be construed as deceptively similar. It is common ground between the parties that both products contain L-Arginine and are used to treat IUGR. The plaintiff does not deny that the mark was coined by drawing upon the name of the ingredient L-Arginine. It is, no doubt, true that marks derived from the name of the ingredient of a pharmaceutical preparation are not, inherently, as strong as invented or arbitrary marks. This drawback may, however, be offset by acquired distinctiveness. As noticed earlier, the adoption and use commenced in the year 2003. The plaintiff has also filed the certificate of the Chartered Accountant providing details of turnover from 2003-04 to 2024-25. The aggregate turnover over this period is about Rs.163.59 crore. Therefore, there is substantial *prima facie* evidence of post-registration use and, consequently, of acquired distinctiveness.

7. While testing for deceptive dissimilarity, it is necessary to examine the extent of similarity between the marks and the similarity of the goods in relation to which the marks are applied. In the case at hand, ARG-9 has been registered by the plaintiff as a word mark. The defendant's mark is URG-9. Thus, both marks are alpha-numeric. The numeric element is identical and the justification that the defendants' mark is derived from IUGR does not support the adoption



of such numeric element. The only difference between the two marks is in the initial alphabet or vowel. The rival marks are used in relation to nearly identical pharmaceutical preparations. When an overall comparison is made between ARG-9 and URG-9, viewed from the perspective of an average consumer with imperfect recollection, I conclude *prima facie* that the two marks are deceptively similar. Balance of convenience and hardship remain to be considered.

8. The plaintiff has used the mark since 2003 and, as recorded earlier, the turnover is in the region of Rs.163.59 crore. By comparison, the defendants have used the mark since 2021-22. The plaintiff has pleaded that the defendants have a registered mark named UGR-9.

9. Upon consideration of all the above aspects, I find that the balance of convenience is in favour of the plaintiff. In matters of this nature, once a *prima facie* finding of deceptive similarity is entered, ordinarily, an injunction should follow at the interlocutory stage. By taking note of the fact that the defendants have been selling products bearing the mark URG-9 since 2021-22, in order to balance the equities at this juncture, the order of interim injunction would be subject to the defendants being permitted to liquidate ready-to-sell inventory bearing the mark URG-9, whether with the defendants, their distributors, wholesalers or retailers, within three months from the date of receipt of a copy of this order. The above carve out is subject to the condition that the defendants



shall file an affidavit in Court with a copy to the plaintiff providing details of the inventory of ready-to-sell products as on date. This affidavit shall be filed within two weeks from the date of receipt of a copy of this order. Subject to the above exemption, an order of interim injunction, as requested in O.A.No.741 of 2025, shall operate with immediate effect.

10. As regards the applications for relief in respect of alleged passing off and dilution, the right to relief would hinge on the plaintiff establishing misrepresentation, reputation and goodwill and loss thereto. Therefore, the consideration thereof should await final disposal. All these applications are disposed of on these terms.

07-01-2026

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Index:Yes/No

Speaking/Non-speaking order

Internet:Yes

Neutral Citation:Yes/No
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SENTHILKUMAR RAMAMOORTHY J.

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(Comm.Div.No.184 of
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