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

+ **CS(COMM) 442/2021**

PFIZER INC & ORS.

..... Plaintiffs

Through Mr. Pravin Anand, Ms Tusha Malhotra and Ms Richa Bhargava, Advs.

versus

TRIVENI INTERCHEM

PRIVATE LIMITED & ORS.

..... Defendants

Through Mr. Rajshekhar Rao, Senior Advocate along with Mr. Naman Joshi, Mr. Guneet Sidhu, Mr. Abhishek Arora, and Mr. Siddharth Rawal, Advocates

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

% **21.10.2021**

I.A. 11916/2021 (ORDER XXXIX Rules 1 and 2 CPC) in CS(COMM) 442/2021

1. This matter is taken up today as 18th October, 2021 was declared a holiday.

2. Despite grant of an opportunity to file the reply, Defendant Nos. 1 and 2 have not chosen to do so.

3. Mr. Rajshekhar Rao, learned Senior Counsel, appearing for Defendant No. 3, restricts his submissions to contesting the second part of Prayer b(i) in the present application, which requires Defendant No. 3 not to permit any user/seller to offer for sale, advertise or sell

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the infringing Palbociclib products on any of its websites without any due authorisation or permission from the Plaintiff. Mr. Rao's submission is that, as an intermediary, he cannot be expected to monitor the offering for sale of Palbociclib, on its websites, *in futuro* and that, were his client to do so, it would militate against its status as an intermediary.

4. Mr. Rao, however, undertakes that all due care, circumspection and diligence as is required to be exercised by his client, in accordance with the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 as is applicable to an intermediary.

5. Plaintiff Nos. 1 and 2 are companies established in the US. Plaintiff No. 2 is a subsidiary of Plaintiff No. 1. Plaintiff No. 3 is a subsidiary of Plaintiff No. 1 incorporated in India.

6. Plaintiff No. 2 holds Indian Patent IN 218291 ("IN 291", in short) for a compound with the IUPAC name Palbociclib. This is the suit patent.

7. Plaintiff No. 3 markets pharmaceutical and healthcare products including Palbociclib in the Indian domestic market. Palbociclib is marketed by Plaintiff No. 3 under the name "Palbace".

8. The plaintiffs asserts that the suit patent IN 291 is valid and subsisting and having a term life of 20 years starting 10th January, 2003, i.e. till 10th January, 2023.



9. It is further averred, in the plaint, that Palbociclib has been approved by the CDSCO on 11th August, 2006 for postmenopausal women suffering from advanced breast cancer, in combination with letrozole as initial endocrine-based therapy. The plaint claims that the Food and Drug Administration (FDA) has, in 2013, designated Palbociclib as a “Breakthrough Therapy”, for potential treatment of patients with breast cancer under the US, FDA Safety and Innovation Act, 2012.

10. The plaintiffs allege that, in the second week of July, 2021, it came across a listing of Palbociclib on the website of Defendant No. 1, which was also advertising and selling its Palbociclib products on the website of Defendant No. 3.

11. It is further alleged that Defendant No. 1 had an online presence on various other websites and social media platforms such as JustDial, LinkedIn, Facebook, Lookchem etc. as well as on third party e-commerce websites. Defendant No. 1 is alleged to be marketing its Palbociclib as anticancer products.

12. The plaint further asserts that an email was sent to Defendant No. 1, asking for a quotation for Palbociclib, to which Defendant No. 1 responded, quoting a price of ₹ 95 lacs for 100 grams, i.e. ₹ 95,000/- per gram for supplying Palbociclib in a powder form.

13. The assertions in the plaint, read with the documents indicate,



prima facie, that Defendant Nos. 1 and 2 have, without due authorization, marketed and manufactured Palbociclib, in respect of which the plaintiffs hold a subsisting patent (IN' 291), without obtaining any licence or authorization from the plaintiffs.

14. Despite service of notice, the defendants have not chosen to respond to the plaint, thereby indicating that, *prima facie*, they have no substantial defence to offer.

15. It goes without saying that, as the product in question and the suit patent relates to a pharmaceutical product, and continued infringement, thereof cannot be permitted.

16. The plaintiffs have, in this application, sought interim reliefs. Para 37 of the application, which contains the prayer for interim reliefs, reads thus:

“37. In light of the foregoing, it is most humbly prayed that the following interim reliefs may be granted by this Hon’ble Court:

a. An order of *ad interim* injunction restraining the Nos. 1 and 2, their directors, employees, officers, servants, agents, associate and group companies and all others acting for and on their behalf from using, making, selling, distributing, advertising (including on the Defendant Nos. 1 and 2s’ websites and on third party e-commerce websites), exporting, importing and offering for sale, or in any other manner, directly or indirectly, dealing in any product (in any form), including Palbociclib either in API or any other form or in its pharmaceutically acceptable salt, that infringes the subject matter of Indian Patent Nos. 218291;



b. An order of *ad interim* injunction directing Defendant No. 3 to:

i. delist and permanently remove all advertisements/links relating to the infringing product Palbociclib API in powder form sold by the Defendant Nos. 1 and 2, or any of its directors, employees, officers, servants, agents, associate and group companies and all others acting for and on their behalf, from its platform and on the websites of the Defendant Nos. 1 and 2, and in the future, not permit any user/seller to offer for sale, advertise and sell the infringing Palbociclib products on the said websites without any due authorisation or permission from the Plaintiffs;

ii. cease all existing orders, whether collected in the past or present or in future, placed through the Defendant No. 3's website pertaining to the infringing product Palbociclib API in powder form sold by the Defendant Nos. 1 and 2

c. An order directing the Defendant Nos. 1 and 2 to remove any references to the products/drugs covered and/or claimed under the subject matter of the suit patent, Indian Patent No. 218291 (Palbociclib) including from their websites and write to third party websites wherein the said drugs are being advertised under the name of the Defendant Nos. 1 and;

d. An order directing the Defendants to disclose before this Hon'ble Court all details, including its books of account and statements of profit to elucidate details of all transactions made by the Defendants concerning Palbociclib API or any of its form till date; and

e. Any other Order(s) as this Hon'ble Court



may deem fit and proper in the facts and circumstances of the case.”

17. In view of the aforesaid, the following interim directions are passed, to remain in force till the next date of hearing or pending further orders passed by this Court:

(i) Defendant Nos. 1 and 2 are restrained from making, selling, distributing, advertising, exporting or importing or in any manner directly or indirectly dealing with any product, which has, as an ingredient, Palbociclib or any pharmaceutically acceptable salt thereof, as would infringe the plaintiffs’ suit patent IN 218291.

(ii) Defendant Nos. 1 and 2 are further directed to remove, from their websites, any indication that they are marketing or offering for sale Palbociclib or any pharmaceutically acceptable salt thereof, forthwith.

(iii) Defendant Nos. 1 and 2 are directed to remove any references to products claimed under the subject matter of the suit patent IN 218291 from their websites and to ensure that the said product is not sold or advertised by them through any third party’s websites.

(iv) Defendant No. 3 is directed to delist and permanently remove all advertisements and names relating to Palbociclib API in powder form sold by the Defendant Nos. 1 and 2, or any of its employees, officers, servants, agents, associate and group companies from its platform.

(v) Defendant Nos. 1 and 2 are further directed to disclose, to this Court, the details regarding the earnings



made by them by sale of their Palbociclib products, under cover of an appropriate affidavit. The said details should the said defendants so choose, may be furnished in a confidential form.

18. The application stands allowed accordingly.

C.HARI SHANKAR, J

OCTOBER 21, 2021

r.bararia