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

+ **CS(COMM) 459/2022**

SUN PHARMACEUTICAL INDUSTRIES LTD. Plaintiff

Through: Mr. Sachin Gupta with Ms. Jasleen
Kaur, Ms. Yashi Agrawal and
Ms. Swati Meena, Advocates.

versus

VENSAT BIO & ORS.

..... Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

% **19.12.2022**

I.A. 10340/2022(O-XXXIX R-1 & 2 of CPC)

1. The present suit has already been settled between the plaintiff and the defendants no.1 and 2 and a compromise decree was passed on 28th November, 2022.
2. In so far as the defendant no.3 is concerned, the counsel for the plaintiff submits that the defendant no.3 was served on 17th July, 2022, when the representative of the plaintiff visited the premises of the defendant no.3 along with a Local Commissioner. As per the affidavit of service filed on behalf of the plaintiff, a complete set of paper book was served on the defendants on 17th July, 2022 at the time of execution of the Commission.
3. Counsel appeared on behalf of the defendant no.3 on 13th October, 2022 and 9th November, 2022. However, none appeared on behalf of the defendant no.3 on 28th November, 2022. Today also, none appears on behalf



of the defendant no.3.

4. Counsel for the plaintiff submits that the plaintiff is seeking reliefs of permanent injunction against the defendant no.3 from using the trade names 'ORISON/ ORISON PHARMA/ ORISON PHARMACEUTICALS' and the declaration of the plaintiff's trade mark 'SUN/ SUN PHARMA' as a well known mark.

5. Counsel for the plaintiff has placed reliance on the order dated 24th April, 2006 passed in CS(COMM) 1333/2005 in ***Intel Corporation v. Dinakaran Nair and Ors.***, wherein in similar circumstances, the suit has been decreed against the defendants.

6. From the plaint, it can be seen that the plaintiff started business of marketing pharmaceutical products under the trade name 'SUN/ SUN PHARMA/ SUN PHARMACEUTICALS' in the year 1978. It markets drugs and formulations in over 150 countries of the World and has 45 manufacturing sites in 6 continents and 20 research centres with over 30,000 strong multi-cultural work forces from over 50 different nationalities. The plaintiff is ranked as no.1 pharmaceutical company in India in a total of 11 specialities and is the world's 4th largest generic pharmaceutical company.

7. The plaintiff has more than 52 registrations in India for the trade mark/ label 'SUN/ SUN PHARMA/ SUN PHARMACEUTICALS' in various classes. The earliest registration was granted in the year 1983. The plaintiff also has more than 143 international registrations for the 'SUN' formative marks in different classes in various countries including U.S.A and European Union, and various 'SUN' formative domain name registrations used internationally. The earliest domain name registration was granted in the year 1997.



8. The trade name 'SUN' appears on all of the plaintiff's products, packaging, promotional materials and stationery and even on the office buildings of the plaintiff.

9. The plaintiff has also placed on record statement of sales for the period 1992 to 2021 under the trade name 'SUN/ SUN PHARMA/ SUN PHARMACEUTICALS'. The annual sales turnover of the plaintiff in the financial year 2020-2021 is to the tune of Rs. 33,139 crores. The plaintiff has also incurred expenditure of Rs. 750 Crores in the advertisements and promotions of its products in the corresponding year.

10. The plaintiff has been vigilantly protecting its statutory and common law rights in the trade name 'SUN/ SUN PHARMA/ SUN PHARMACEUTICALS' and has secured injunction and rectification orders against various parties using trade mark/trade name deceptively similar to that of the plaintiff's trade mark/trade name.

11. From the averments made in the plaint and the documents filed along with the plaint, it is clear that the plaintiff is a leading pharmaceutical company in the world. For more than three decades, the plaintiff is the leader in the marketing of pharmaceutical products. The plaintiff has acquired tremendous good will and reputation over the years in the pharmaceutical market.

12. The defendant no.3 was served with a complete set of paper book on 17th July, 2022. Thereafter, the counsel appeared on behalf of the defendant no.3 on 13th October, 2022 and 9th November, 2022. However, the defendant no.3 neither appeared in the suit on the last two dates of hearing, nor has he filed the written statement. Therefore, the defendant no.3 has been unable to point out any rationale for using the trade names 'ORISON/ ORISON



PHARMA/ ORISON PHARMACEUTICALS’.

13. There is merit in the submission of the plaintiff that the word ORISON is in reality a single word. However, while pronouncing, it breaks into two parts ‘ORI’ and ‘SON’. Clearly, the defendant no.3 is using the trade names ‘ORISON/ ORISON PHARMA/ ORISON PHARMACEUTICALS’ similar to the plaintiff’s trade names ‘SUN/ SUN PHARMA/ SUN PHARMACEUTICALS’.

14. The defendant no.3 is also engaged in the business of marketing pharmaceutical products like the plaintiff. There would be a likelihood of confusion in the pharmaceutical market if the defendant continues to use the aforesaid trade names.

15. Accordingly, a decree of permanent injunction is passed against defendant no.3 in terms of paragraph 48(a) and 48(b) restraining the defendant no.3 from using the impugned trade names ‘ORISON/ ORISON PHARMA/ ORISON PHARMACEUTICALS’ or any other trade mark/trade name deceptively similar to the plaintiff’s trade names ‘SUN/ SUN PHARMA/ SUN PHARMACEUTICALS’. The declaration of the mark ‘SUN/ SUN PHARMA’ as a well-known mark in terms of paragraph 48(c) of the plaint is also granted.

16. The prayers for delivery up, damages and costs in paragraph 48(d), 48(e) and 48(f) are not pressed.

17. Decree sheet be drawn up in terms of the above.

18. All the pending applications stand disposed of.

AMIT BANSAL, J.

DECEMBER 19, 2022/at