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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 223/2023**
DR REDDY S LABORATORIES LIMITED

..... Plaintiff

Through: Mr. Ranjan Narula, Mr. Shashi Pratap
Ojha and Ms. Shivangi Kohli,
Advocates.

versus

NEUTEC HEALTHCARE PVT. LTD

..... Defendant

Through:

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER
22.02.2024

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I.A. 4218/2024 (Application under Order VIII Rule 10 of CPC)

1. This application has been filed under Order VIII Rule 10 read with Order XIII A of Code of Civil Procedure, 1908 (“CPC”) seeking judgment against the defendant who has been proceeded *ex parte*.
2. It was noted earlier in order dated 11th January, 2024, that the defendant was served on 17th May, 2023 but neither written statement has been filed nor response to the application and there is no counsel who has appeared on behalf of defendant.
3. In this view of the matter, counsel for plaintiff seeks a judgment under Order VIII Rules 10 of Code of Civil Procedure, 1908.
4. In these circumstances and in consonance with the provision under Order VIII Rule 10 CPC, plaintiff would be entitled a judgment in relation to relief



sought.

5. This Court had already *vide* order dated 24th April, 2023, issued an *ad interim* injunction in favour of the plaintiff, against the defendant restraining him from using the impugned mark 'PACTRIN' and the trade dress of the defendant being deceptively similar to that of the plaintiff along with other directions.

6. The plaint had been filed for restraining infringement of the plaintiff's well-known and registered trademark 'PRACTIN' which had been illegally adopted using a deceptively similar mark of 'PACTRIN' (impugned mark).




7. Both these marks were used for the same formulation i.e. *cypiroheptadine*.

8. This Court had noted in the order dated 24th April, 2023, that the defendant intended to ride upon the goodwill and reputation of the plaintiff's well-known trademark which was phonetically and visually identical to the defendant's product.

9. The said formulation of the plaintiff is for treatment for *inter alia* allergic infections. Further, the packaging/get up/layout/ trade dress of the plaintiff 'PRACTIN' strip was also copied by the defendant which is deceptively similar.

10. Plaintiff's trademarks were registered in class-5 with details given below:-





Trade mark	Registration number	Filing Date	Status/Validity
PRACTIN	457754	30/07/1986	Registered, valid until July 30, 2027
	1053804	22/10/2001	Registered, valid until October 22, 2031
	1053805	22/10/2001	Registered, valid until October 22, 2031
	1053809	22/10/2001	Registered, valid until October 22, 2031

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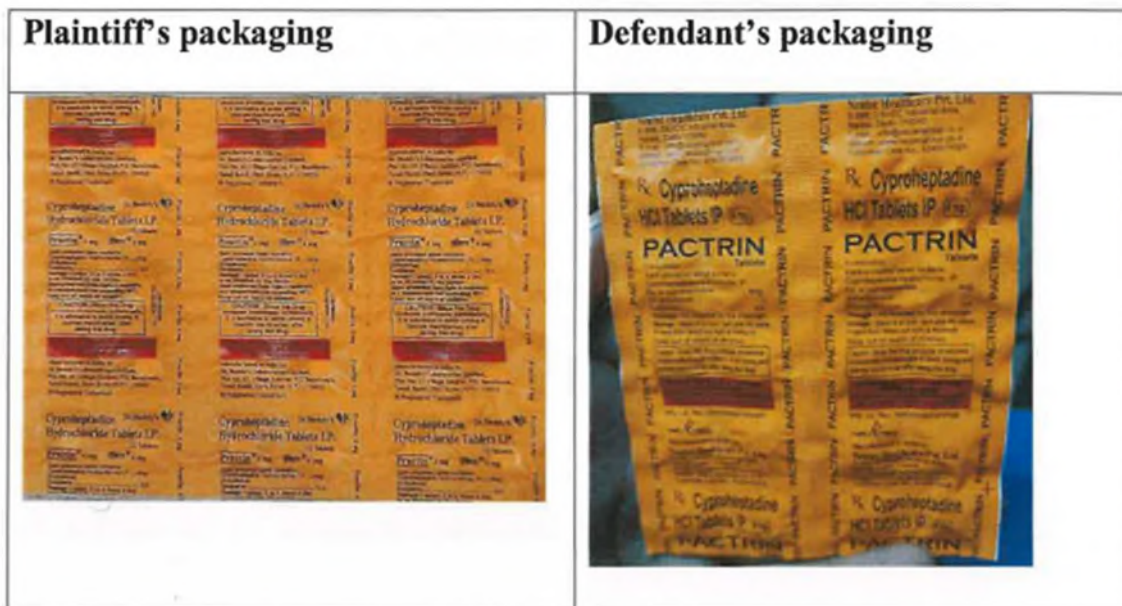
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	1053810	22/10/2001	Registered, valid until October 22, 2031
	1053834	22/10/2001	Registered, valid until October 22, 2031
VITAPRACTIN	3571246	15/06/2017	Registered Valid until June 15 th , 2027

11. It is noted that not only had the defendant adopted an identical mark, both phonetically and visually, but also copied the colour scheme of the plaintiff's strip packaging to pass off its products, demonstrating bad faith. The comparative of the plaintiff packaging and the defendant's packaging is represented below:



12. The defendant had deliberately adopted a deceptively similar mark for the same medicinal product. It was averred by plaintiff that defendant was a habitual infringer, and plaintiff had filed a suit being CS(COMM) 3/2021 seeking restraint against use of the mark “NEW-NISE”. At the first hearing, the defendant appeared and gave an undertaking that they will not use the mark, and a settlement was arrived at. A decree was granted in favour of the plaintiff on 10th March 2021.

13. As part of the settlement, Clause I, the defendant had undertaken that the Plaintiff was free to take any future action as they deemed fit in case of any violation of the settlement terms and/or future violations/infringements and that the defendant shall be liable for exemplary damages in case of any such violation.

14. In view of the decision in *Puma SE v. Ashok Kumar*, 2023 SCC OnLine Del 6764, and the earlier decision in *Hindustan Unilever Limited v. Reckitt Benckiser India Limited*, 2014 SCC OnLine Del 490, courts usually grant notional or compensatory damages, unless there are extenuating circumstances,



and overwhelming evidence of wrong doing, when punitive damages can be awarded.

15. In *Koninlijke Philips and ors v. Amazestore and Ors 2019:DHC:2185* the Court laid down certain standards for grant of damages, as part of the said standards, this situation would be of a repeated knowing infringer causing minor/major impact to the plaintiff. In which case, costs plus partial/compensatory damages are to be awarded.

16. Although the Plaintiff had tentatively assessed damages at Rs. 2,00,00,000/- (Two Crores Only) and had incurred expenses amounting to Rs. 4,15,000/- (Four Lakh Fifteen Thousand Only) as costs towards fee of local commissioner and counsel, reliance by the plaintiff is placed on Rule 20 of the Delhi High Court Intellectual Property Rights Division Rules, 2022 for punitive/Exemplary damages on the basis of “*degree of intention/ neglect underlying the infringement*”.

17. Considering that despite notice being served pursuant to Order dated 24th April 2023, the defendant has chosen not to appear for almost about 11 months now. It is evident that the defendant is evading the process of the Court.

18. In view of the same, a decree be up in terms of para 36 (i), (ii) & (iii) of the prayer sought in the plaint which is given below:

i. An order for permanent injunction restraining the Defendant, its Directors, officers, servants, employees, dealers, agents, distributors, representatives and all other persons acting on their behalf from manufacturing, marketing, selling, supplying and offering for sale, advertising, directly or indirectly medicinal and pharmaceutical preparations under the trade mark PACTRIN and/or any other mark deceptively similar



and/or in any manner whatsoever doing any other thing as may be likely to cause infringement of the Plaintiffs trade mark registration for the mark PRACTIN in class 5 as mentioned in paragraph 11 of the plaint;

ii. An order for permanent injunction restraining the Defendant, their Directors, officers, servants, employees, dealers, agents, distributors, representatives and all other persons acting on their behalf from manufacturing, marketing, selling, supplying and offering for sale, advertising, directly or indirectly medicinal and pharmaceutical preparations under the deceptively similar PACTRIN strip packaging and/or a colourable imitation or substantial reproduction of the Plaintiffs PRACTIN strip packaging as described in the paragraph No. 14 & 17 of the Plaint, amounting to infringement of copyright thereto;

iii. An order for permanent injunction restraining the Defendant, its Directors, officers, servants, employees, dealers, agents, distributors, representatives and all other persons acting on their behalf from manufacturing, marketing, selling and offering for sale, advertising, directly or indirectly medicinal and pharmaceutical preparations under the trade mark P ACTRIN and its strip packaging in any manner whatsoever and/ or any other mark deceptively similar to the Plaintiffs PRACTIN mark/strip packaging as may be likely to cause confusion or deception amounting to passing off their medicinal products and business as and for those of the Plaintiff;

19. Taking into account all the facts and circumstances, this Court is of the opinion that plaintiff is entitled to damages to the extent of Rs. 15,00,000/- (Rupees Fifteen Lakhs Only). This would be appropriate, which hopefully shall serve as a deterrent to the defendant from indulging in future infringements/passing off.

20. Decree sheet be drawn up accordingly.



21. Accordingly, suit is disposed of. Pending applications, if any, are rendered infructuous.
22. The date already fixed stands cancelled.
23. Order be uploaded on the website of this Court.

ANISH DAYAL, J

FEBRUARY 22, 2024/RK/ig