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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 904/2022, I.A. 22240/2022, I.A. 22242/2022, I.A. 1930/2023 & I.A. 11220/2023

SUN PHARMA LABORATORIES LIMITED Plaintiff
Through: Ms.Surya Rajappan and Mr.
Kapil Wadhwa, Advs.

versus

AVIGHNA MEDICARE PRIVATE LIMITED & ORS.
..... Defendants
Through: Ms. Archana Sahadeva, Ms.
Anjuri Saxena and Mr. Siddharth Raj
Choudhary, Advs. for D-1
Ms. Ayushi Upadhyay, Adv. for D-2

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

% **ORDER**
03.07.2023

I.A. 11220/2023 (under Order I Rule 10(2) read with Section 151 of the CPC)

1. Ms. Surya Rajappan, learned Counsel for the plaintiff, by this application, seeks permission to delete Defendant 2, in view of an affidavit filed by the defendant.
2. Learned Counsel for the defendant has no objection. Accordingly, Defendant 2 stands deleted from the arrays of parties.
3. The application stands allowed accordingly.



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4. The disputes between the parties stand amicably resolved under the aegis of the Delhi High Court Mediation and Conciliation Centre and settlement agreement dated 26 May 2023 is on record.

5. The terms of settlement read thus:

“a) That a Decree of permanent injunction be granted in favour of the Plaintiff under Paragraphs (A) & (B) of the Prayer clause in the Plaint restraining Defendant No. 1, its business associates, partners/promoters, directors, proprietors, officers, subsidiaries, affiliates, franchisees, manufacturers, family members, servants, agents, dealers, distributors, stockists, licensee and/or anyone acting for and on its behalf from selling, offering to sell, manufacturing, advertising, promoting or in any other manner using the Impugned Marks “DOSELA” and "ATENTRUE" and/or any other mark identical or deceptively similar to the Plaintiffs registered trademarks "DUZELA" or “ATTENTROL” with respect to goods falling under Class 5 and/or any cognate and allied goods either as a trademark or part of a trademark, sub-brand, trade name, or part of a trade name, corporate name, email, domain name or part of a domain name, or in any other manner, so as to result in Infringement and/or Passing Off and/or Unfair Competition except as permitted under the present settlement agreement;

b) That the Defendant No. 1 acknowledges the Plaintiff’s exclusive rights in the trademarks "DUZELA" and "ATTENTROL" for which the Plaintiff holds trademark registrations and which have acquired tremendous goodwill and reputation and associated exclusively with the Plaintiff, both within the trade as well as in public and are well-known, and undertakes not to challenge the Plaintiff’s registrations or any future applications for the said trademarks in any class, at any time in the future;

c) That the Defendant No. 1 undertakes to forthwith cease further manufacturing and use of the Impugned Mark "DOSELA" and to destroy all infringing products/material bearing the Impugned Mark “DOSELA” and/or any deceptively similar mark to that of the Plaintiffs well known "DUZELA" trademarks, including tablet strips, labels, cartons, packaging material, name



plates, publicity material like pamphlets, fliers, hoardings, sign boards, stationary, etc., in the presence of the Plaintiff's representative, within fourteen (14) days of signing of the present settlement agreement. Accordingly, Defendant No. 1 undertakes to furnish a duly signed compliance letter on its letterhead to the Plaintiff containing the details of the destroyed goods within seven (7) days from the date of such destruction,

d) That the Defendant No. 1 further undertakes to immediately cease further manufacturing and use of the Impugned Mark "ATENTRUE" but is granted the limited permission to exhaust the current stock of "ATENTRUE" already manufactured and lying with Defendant No. 1 within a period of three (3) months from signing of the present agreement. Details of the current stock of "ATENTRUE" are provided in the table (hereinafter "Table 1") below;

| Batch | Quantity (In strips of 10 tablets each) | Manufacturing Date | Expiry Date |
|-----------|---|-----------------------|----------------|
| T-0012/22 | 9455 | Apr-22 | Mar-24 |
| T-0446/22 | 9215 | Sep-22 | Aug-24 |

e) That Upon expiry of the three (3) month period granted for exhaustion of the current stock of products under the Impugned Mark "ATENTRUE", Defendant No. 1 undertakes to destroy all remaining stock of the impugned products in the presence of the Plaintiff's representative within a period of fourteen (14) days from the expiry of the three (3) month period as mentioned in clause (d) hereinabove. Accordingly, Defendant No. 1 undertakes to furnish a duly signed compliance letter on its letterhead to the Plaintiff with regard to such destruction containing the details of the destroyed goods within seven (7) days from the date of such destruction;

f) That the Defendant No. 1 states that it had outsourced manufacturing of the products under the Impugned Mark "DOSELA" to Defendant No. 3 (M/s Vidhyasha Pharmaceuticals) and of the products under the Impugned Mark "ATENTRUE" to Defendant No. 4 (Lucent Biotech Ltd.) in the present suit. Defendant No. 1 undertakes to place no further orders for manufacturing of the products under the Impugned Marks "DOSELA" and "ATENTRUE" with Defendants No. 3 & 4 in the present suit or any other third-party manufacturer;

g) That the Defendant No. 1 states that it has never engaged Defendant No. 2 (Truecure Healthcare Pvt. Ltd.) for manufacturing



and/or marketing of its products under the Impugned Marks "DOSELA" and/or "ATENTRUE" or any other product. Defendant No. 1 categorically states that it has no connection whatsoever with Defendant No. 2 and an appropriate affidavit stating the same has been furnished to the counsel for the Plaintiff for taking appropriate steps. A copy of the said Affidavit issued by Defendant No. 1 is annexed as "ANNEXURE - E" to the present agreement. That based on the said assertion by the Defendant No. 1, the Plaintiff shall move an appropriate application for deletion of Defendant No. 2 from the array of the parties.

h) That the Defendant No. 1 further states that the documents filed by the Plaintiff along with the present suit to identify and implead Defendant No. 2 as a manufacturer of the impugned products are third-party online listings of the products under the Impugned Marks "DOSELA" and "ATENTRUE". The online listing of the impugned product "DOSELA" is available at <https://www.1mg.com/drugs/dosela-400mg-tablet-773124> and of the impugned product "ATENTRUE" is available at <https://www.1mg.com/drugs/atenttrue-50mg-tablet-773612>. To the best of Defendant No. 1's knowledge and as per records maintained by the company, Defendant No. 1 states that the said listings which offer for sale the impugned products under the Impugned Marks "DOSELA" and "ATENTRUE" incorrectly state that Defendant No. 2, i.e., "Truecure Healthcare Private Limited", is the manufacturer/marketer of the said products.;

i) That the Defendant No. 1 undertakes to withdraw its Trade Mark applications for the Impugned Marks being Application No. 5224103 for "DOSELA" in Class 05 with application date 26.11.2021 and Application No. 5300675 for "ATENTRUE" in Class 05 with application date 27.01.2022 and any other such trademark applications filed by it for the Impugned Marks "DOSELA"/ "ATENTRUE" and furnish proof of filing of such withdrawal applications before the Trade Marks Registry to the Plaintiff within fifteen (15) days of signing of the present agreement. Defendant No. 1 further undertakes that it shall not file any applications for the Impugned Marks "DOSELA"/"ATENTRUE" and /or any other trade mark which is identical with or deceptively similar to the Plaintiff's well-known "DUZELA" or "ATTENTROL" trademarks before the Trade Marks Registry;

j) That the Defendant No. 1 further undertakes to issue an appropriate letter within three (3) days of signing of the present settlement agreement to the third party online pharmacies specified in "ANNEXURE - F" to the present settlement agreement



whereon the products under the Impugned Mark "DOSELA" is listed to immediately takedown all relevant listings of the impugned products. Defendant No. 1 further undertakes to furnish a copy of the said letter to the Plaintiff within five (5) days of its issuance to the online pharmacies;

k) With respect to the Impugned Mark "ATENTRUE", post the expiry of the 3-month period as envisaged in Clause (d) herein above, the counsels for the Plaintiff shall, within three (3) days of expiry of the said 3 months period, furnish to Defendant No. 1 in writing, a list of additional third-party online pharmacies along with the specific URLs, if any, apart from those listed in "ANNEXURE - G" to the present settlement agreement, whereon the products under the Impugned Mark "ATENTRUE" are listed. Upon receipt thereof. Defendant No. 1 shall within three (3) days of receipt, issue an appropriate letter to the third party online pharmacies to immediately takedown all relevant listings of the impugned products under the mark "ATENTRUE". In the event that no list of additional online pharmacies is provided by the Plaintiff's counsel to Defendant No. 1 within the stipulated time of three (3) days. Defendant No. 1 shall issue the aforesaid letter to the third-party online pharmacies listed in Annexure-G only. Defendant No. 1 further undertakes to furnish a copy of the said letter and emails to the Plaintiff within five (5) days of its issuance to the online pharmacies.

1) That a Decree of permanent injunction be granted in favour of the Plaintiff under Paragraphs (A) & (B) of the Prayer clause in the Plaint restraining Defendants No. 3 & 4, their business associates, partners/promoters, directors, proprietors, officers, subsidiaries, affiliates, franchisees, manufacturers, family members, servants, agents, dealers, distributors, stockists, licensee and/or anyone acting for and on their behalf from selling, offering to sell, manufacturing, advertising, promoting or in any other manner using the Impugned Marks "DOSELA" and "ATENTRUE" and/or any other mark identical or deceptively similar to the Plaintiff's registered trademarks "DUZELA" or "ATTENTROL" with respect to goods falling under Class 5 and/or any cognate and allied goods either as a trademark or part of a trademark, sub-brand, trade name, or part of a trade name, corporate name, email, domain name or part of a domain name, or in any other manner, so as to result in Infringement and/or Passing Off and/or Unfair Competition;

m) That the Defendants No. 3 & 4 acknowledge the Plaintiff's exclusive rights in the trademarks "DUZELA" and "ATTENTROL" for which the Plaintiff holds trademark



registrations and which have acquired tremendous goodwill and reputation and associated exclusively with the Plaintiff, both within the trade as well as in public and are well-known, and undertake not to challenge the Plaintiff's registrations or any future applications for the said trademarks in any class, at any time in the future;

n) That the Defendant No. 3 states that it is the contract manufacturer of the products under the Impugned Mark "DOSELA" for Defendant No. 1. Defendant No. 3 thus has no right, claim or title in the Impugned Marks "DOSELA" and/or "ATENTRUE";

o) That the Defendant No. 3 further states that it has no manufactured stock of the products under the Impugned Mark "DOSELA" lying with it as on date;

p) That the Defendant No. 3 undertakes to forthwith cease manufacture and use of the products under the Impugned Mark "DOSELA" and states that it has no infringing material bearing the Impugned Mark "DOSELA" and/or any deceptively similar mark to that of the Plaintiffs well-known "DUZELA" trademarks, including labels, cartons, packaging material, name plates, etc. in its possession;

q) That the Defendant No. 4 states that it is the contract manufacturer of the products under the Impugned Mark "ATENTRUE" for Defendant No. 1. Defendant No. 4 thus has no right, claim or title in the Impugned Marks "DOSELA" and/or "ATENTRUE";

r) That the Defendant No. 4 further states that it has no manufactured stock of the products under the Impugned Mark "ATENTRUE" lying with it as on date;

s) That the Defendant No. 4 further states that it is in possession of some packaging material to the extent of 1117 (One Thousand One Hundred and Seventeen) cartons and 1.8 kilograms of foil bearing the Impugned Mark "ATENTRUE" as on date of signing the present settlement agreement;

t) That the Defendant No. 4 undertakes to forthwith cease manufacture and use of the products under the Impugned Mark "ATENTRUE" and to destroy all infringing material bearing the Impugned Mark "ATENTRUE" and/or any deceptively similar mark to that of the Plaintiff's well-known "ATTENTROL" trademarks, including cartons and foil, as specified in clause (s)



hereinabove, in the presence of the Plaintiff's representative, within seven (7) days of signing of the present settlement agreement. Accordingly, Defendant No. 4 undertakes to provide the list of destroyed packaging material as mentioned in Clause (s) of the present Agreement on its letter head (duly signed), to the Plaintiff or its Advocate within seven (7) days from the date of such destruction;

u) That in consideration of the above acknowledgments, statements, and undertakings by Defendants No. 1, 3 & 4, the Plaintiff agrees to waive and forego its claims in paragraphs (C), (D), (E) and (F) of the Prayer clause in the Plaint. This waiver shall not, however, preclude the Plaintiff from enforcing its claim of costs and damages in the Plaint in the event that any of the statements made herein are found to be wrong/false or in the event of a breach of any of the undertakings given herein by any of the Defendants.

v) It is agreed by the Parties that the Parties shall jointly request the Hon'ble Court to accept the aforementioned undertakings of the Second Party and decree the suit being C.S. (Comm.) No. 904 of 2022 in terms of the prayers set out in Paragraph (A) & (B) of the Prayer clause of the Plaint, whilst binding the Second Party to the undertakings given hereinabove in the present Settlement Agreement.

w) That the contents of the present Settlement Agreement have been read over to both the parties in their vernacular language (Hindi) by the Mediator and both the Parties have understood and agreed to the same.

x) The Parties agree that they have executed the present Settlement Agreement by their free will and volition without any force or pressure from anybody. The Parties also agree that they have understood the contents of the present Settlement Agreement as the same have been explained to them by the Mediator and the respective Counsel, in the presence of each other and they have consented to the same in its true letter and spirit, and as such they shall not dispute the same ever in future.

y) The Parties agree that they shall abide by the terms and conditions set out in the present Settlement Agreement and shall not dispute the same hereinafter in the future. The Parties further agree that the statements made by them in this Settlement Agreement shall be taken as their respective undertakings to the Hon'ble Court and the defaulting party shall be held liable for contempt of court under the Contempt of Courts Act, 1971.”



6. The parties are represented by learned Counsel who undertake on behalf of the respective clients to remain bound by the terms of settlement. This Court has perused the terms of settlement and found them to be legal and in order.

7. Accordingly, nothing survives for adjudication in the suit.

8. The suit stands disposed of in terms of the aforesaid settlement agreement dated 26 May 2023.

9. The plaintiff shall be entitled to refund of the Court fees, if any, deposited by it.

C.HARI SHANKAR, J

JULY 3, 2023/ar

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