

# Sun Pharmaceutical Industries Ltd vs Dwd Pharmaceuticals Ltd on 19 May, 2022

**Author: Navin Chawla**

**Bench: Navin Chawla**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(COMM) 328/2022

SUN PHARMACEUTICAL INDUSTRIES LTD

..... Plaintiff

Through: Mr.Sachin Gupta & Ms.Jasleen Kaur,  
Advs.

versus

DWD PHARMACEUTICALS LTD

..... Defendant

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% 19.05.2022

1. This is an application seeking exemption from making advance service of the suit to the defendant. It is alleged that the said service has not been made as it is apprehended that the Defendant may on service of the notice, flood the market with the infringing medicines. An application for appointment of a Local Commissioner is also filed alongwith the suit.

2. Having considered the contents of the application, the same is allowed. The Plaintiff is exempted from making an advance service of the suit to the Defendant.

3. The present application has been filed seeking exemption from filing clearer typed copies of the documents. The same is allowed, subject to just exceptions. However, the plaintiff must file better typed copies of the documents within a period of four weeks from today.

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4. Let the plaint be registered as a suit.

5. Issue summons to the Defendant to be served through all permitted modes upon filing of requisite process fee.

6. The summons to the Defendant shall indicate that a written statement to the plaint shall be positively filed within 30 days from the date of receipt of summons. Alongwith the written statement, the Defendant shall also file an affidavit of admission/denial of the documents of the

Plaintiff, without which the written statement shall not be taken on record.

7. Liberty is given to the Plaintiff to file a replication within 15 days of the receipt of the written statement. Alongwith the replication, if any, filed by the Plaintiff, an affidavit of admission/denial of documents of the Defendant, be filed by the Plaintiff, without which the replication shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

8. List before the Court on 24th August, 2022.

9. Issue Notice to the Defendant, to be served through all permissible modes, returnable on 24th August, 2022. Reply to the application be filed by the defendant within four weeks of service of notice. Rejoinder thereto, if any, be filed by the plaintiff within two weeks of service of the reply on it.

10. The Plaintiff, in the plaint asserts that it is a registered proprietor of the trademark - FORZEST under registration no. 1171650 dated 04.02.2003 in class 5 for pharmaceutical and medical preparations. It is asserted that the Plaintiff has been continuously, openly and extensively using the trademark - FORZEST since 2003 and has annual sales of over Rs. 187.53 lakhs in the year 2020-2021. The Plaintiff has also given the sale figures of the medicines sold under the abovementioned trademark from the year 2004-05 to 2020-21 in a tabular form. The Plaintiff asserts that it gained knowledge of the Defendant's trademark - FOLZEST only in May 2022 through an application which was filed by the Defendant/respondent seeking registration of its mark FOLZEST. Immediately the application for registration filed by the Defendant was opposed by the Plaintiff on 04.05.2022. In May 2022, the Plaintiff also came across Defendant's products being sold under the said trademark - FOLZEST on various e- pharmacies/interactive websites.

11. The learned counsel for the plaintiff submits that while the medicine sold by the Plaintiff is for treatment of erectile dysfunction in men, the medicine being sold by the Defendant is a multivitamin. He submits that, therefore, confusion that would be caused due to such deceptively similar mark shall cause irreparable harm to the general public, which cannot be redeemed.

12. Having considered the above averments and submission, I am of the opinion that the Plaintiff has made a prima facie case for grant of injunction. The balance of convenience also lies in the favour of the Plaintiff and, if relief is not granted at this stage, irreparable loss would be caused to the Plaintiff.

13. Accordingly, the Defendant, its Directors, assignees in business, distributors, dealers, stockists, retailers/chemists, servants and agents, are restrained from manufacturing, selling, offering for sale, advertising, or directly or indirectly dealing in medicinal preparations under the impugned mark FOLZEST or any other trade mark deceptively similar to the Plaintiff's trademark FORZEST till the next date of hearing.

14. Compliance of Order XXXIX Rule 3 be made within ten days from today.

15. For the averments and submissions recorded herein above, I am further of the opinion that a Local Commissioner needs to be appointed to visit the factory premises of the Defendant situated at DWD Pharmaceuticals Ltd., 308/5, Village & Post: Polcha (Rania), Tal: Savli, Dist: Vadodara - 391780, Gujarat.

16. I appoint Mr. Vinay Singh Bist, Advocate, Chamber No.283, Block- II, Delhi High Court, (Mob. No. 9711670192) as a Local Commissioner to visit the Defendant's abovementioned premises. The Local Commissioner shall seize all the medicines bearing the impugned mark - FOLZEST, after making an inventory of the same. The Local Commissioner shall be entitled to break open locks in case the Defendant refuses to give access to the Local Commissioner of the abovementioned premises or part thereof. The seized articles shall be handed over to the Defendant on superdari basis with an undertaking that the same shall be produced before this Court as and when so directed. The Local Commissioner is permitted to take photographs and videograph the proceedings, if required. The Local Commissioner is also permitted to take assistant of the police of the concerned area, if so required. Sample packaging and product shall be collected by the Local Commissioner and produced before this Court alongwith his report.

17. The Local Commissioner may be accompanied by two authorized representatives of the Plaintiff.

18. The Defendant is directed to cooperate in the execution of the commission. The Defendant is also directed to give access to the Local Commissioner to its accounts, either in a hard copy form or in an electronic form. The Local Commissioner shall file the same along with his report.

19. The fee of the Local Commissioner is fixed at Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand only) to be paid by the Plaintiff at this stage.

20. The application is allowed in the above terms.

21. This order may not be uploaded on the website of the Delhi High Court for a period of one week. A copy of this order be given dasti to the counsel for the plaintiff under the signatures of the Court Master.

NAVIN CHAWLA, J MAY 19, 2022/rv/U.