

Intervet International B.V. & Anr vs Vcare Medicines & Anr on 6 September, 2023

Author: Prathiba M. Singh

Bench: Prathiba M. Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(COMM) 630/2023 and I.A.

INTERVET INTERNATIONAL B.V. & ANR.

Through: Mr. Pravin Anand

Malhotra, Mr. Ad

Advocates (M- 88

versus

VCARE MEDICINES & ANR.

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% 06.09.2023

1. This hearing has been done through hybrid mode. I.A.17271//2023 (for exemption)

2. This is an application seeking exemption from filing originals/certified/cleared/typed or translated copies of documents, left side margins, electronic documents, etc. Original documents shall be produced/filed at the time of Admission/Denial, if sought, strictly as per the provisions of the Commercial Courts Act and the DHC (Original Side) Rules, 2018.

3. Exemption is allowed, subject to all just exceptions.

4. Accordingly, the application is disposed of.

I.A.17270/2023 (for additional documents)

5. This is an application seeking leave to file additional documents under the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (hereinafter, 'Commercial Courts Act'). The Plaintiff, if it wishes to file additional documents at a later stage, shall This is a digitally signed order.

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6. Application is disposed of.

I.A.17272/2023 (u/S 12A of the Commercial Courts Act)

7. This is an application seeking exemption from instituting pre- litigation mediation. In view of the urgent orders which are being sought as also in view of the decision in Chandra Kishore Chaurasia v. R A Perfumery Works Private Ltd, 2022/DHC/004454, the application is allowed and disposed of.

I.A.17273/2023 (exemption from advance service to the Defendant No.

2)

8. The present application has been filed by the Plaintiff seeking exemption from advance service to the Defendant No. 2- Nissan Chemical Corporation. It is stated that the Plaintiffs have instituted the present proceedings after the consent of Defendant No. 2 in terms of Section 109 of the Patents Act, 1970. Exemption is allowed, subject to just exceptions.

9. Application is disposed of.

CS(COMM) 630/2023

10. Let the plaint be registered as a suit.

11. Issue summons to the Defendants through all modes upon filing of the Process Fee.

12. The summons to the Defendants shall indicate that the written statement to the plaint shall be positively filed within 30 days from date of receipt of summons. Along with the written statement, the Defendants shall also file an affidavit of admission/denial of the documents of the Plaintiffs, without which the written statement shall not be taken on record.

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13. Liberty is given to the Plaintiffs to file the replication within 15 days of the receipt of the written statement(s). Along with the replication, if any, filed by the Plaintiff, an affidavit of admission/denial of documents of the Defendants, be filed by the Plaintiffs, 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.

14. List before the Joint Registrar for marking of exhibits on 7th November, 2023. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

15. List before Court on 26th February, 2024.

I.A.17269/2023 (u/O XXXIX Rules 1 & 2 CPC)

16. The Plaintiff No.1-Intervet International B.V. along with its Indian subsidiary Plaintiff No. 2-Intervet India Pvt. Ltd. (hereinafter, 'the Plaintiffs') have filed the present suit seeking protection and enforcement of the Indian Patent Number No. '283279' ('suit patent') against the Defendant No.1-Vcare Medicines.

17. The bibliographic details of the suit patent are as follows:

Indian Patent No.
Indian Patent Appl. no.
Title
Patent holder
Priority date
Date of filing of 4th March 2005
international application

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18. The Plaintiffs' case is that it acquired an exclusive license for the said patent vide agreement dated 18th August, 2008 from M/s Nissan Chemical Corporation, a Japanese Company, impleaded as Defendant No. 2 in the present suit. It has been averred that by the said agreement, Defendant No. 2 granted to the Plaintiff No. 1, an exclusive non-transferable and indivisible license both for product development and for commercialisation for all the products mentioned in Schedule B.

19. Schedule B titled 'Nissan Patents' consists of a PCT patent bearing no. P.C.T JP 2005-004268 dated 4th March 2005, which is the corresponding Japanese patent application of the suit patent. Defendant No.2 has been impleaded in the suit as a proforma Defendant in terms of Section 109 of the Patents Act, 1970.

20. The Plaintiffs' case is that the suit patent which is for a Markush formula and compounds disclosed therein. One of the compounds disclosed and claimed is a product named 'FLURALANER', which is a veterinary product for treatment of tick fever including ticks and fleas in dogs and animals. 'FLURALANER' is one of the leading products of the Plaintiffs in this segment,

and the name 'FLURALANER' was allotted by the WHO as an International Nonproprietary Name ('INN') as per WHO Drug Information vol. 27, No. 1 (2013). The chemical composition of the said product is as under:-

"(±)4-[5-(3,5-dichlorophenyl)-5-(trifluoromethyl)-4,5- This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 16/09/2023 at 17:08:57 dihydro-1,2-oxazol-3-yl]-2-methyl-N-{2-oxo-2-[(2,2,2-trifluoroethyl)amino]ethyl}-benzamid-e".

21. After the allotment of the INN name in 2013, the product 'FLURALANER' has also been sold in several other countries including in India.

22. The submission of Id. Counsel for the Plaintiff Mr. Anand is that 'FLURALANER' is sold under the trademark 'Bravecto' in several variants and forms. The modified formulations of 'FLURALANER' are also used for treating dogs, cats, livestock animals i.e. poultry and cattle. In respect of poultry and cattle, the trademark 'Exzolt' is used.

23. 'FLURALANER' formulations are available both in aqueous and non-aqueous form. The FDA approval for the Plaintiffs' product in the form of chewable tablets for dogs was granted in 2014 both in the European Union and the US. Thereafter, in 2016, the product in the form of topical solution has been approved for cats and dog puppies, and in 2020, 1-month chews of 'FLURALANER' for dogs have also been approved.

24. The year-wise sales in India have also been set out in the plaint, showing that in 2022, sales exceeded Rs. 28 crores for the chewable tablet form of 'FLURALANER' and Rs.28 crores of the solution form. The This is a digitally signed order.

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25. The Plaintiffs' grievance is that Defendant No. 1-Vcare Medicines, a proprietary concern, is openly advertising, manufacturing and selling the patented product on its own website, as well as on platforms like IndiaMart and other directory listings. Mr. Anand Id. Counsel submits that a perusal of the website listings reveal that the Defendant No. 1 is charging a huge amount for selling and manufacturing the Plaintiffs' product. Additionally, reliance is placed upon the email dated 26th July 2023 wherein the Defendant No. 1 claims that the price of 50 grams of the 'FLURALANER' product would be Rs.95,000/- + 18% GST.

26. An investigation was also got conducted in July 2023 that revealed that the Defendant No. 1 is openly manufacturing and selling this product. The Plaintiffs have placed on record call transcripts dated 27th July 2023 to point out the manner in which the Defendant No.1 is carrying out its activities.

27. Further reliance is also placed on a similar order passed by this Court in CS(Comm) 425/2023 titled Intervet International B.V and Anr. v. Veko Care Pvt. Ltd. wherein vide order dated 2nd June, 2023, an interim injunction was granted protecting the rights of the Plaintiffs against similar manufacturers and sale by other third parties. The relevant extract of the said order is as follows:

"23. Upon becoming aware of Defendant No. 1's infringing activities, the Plaintiffs conducted further investigation and found that Defendant No. 1 has not yet commenced marketing the product domestically. Instead, they are currently soliciting inquiries and This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 16/09/2023 at 17:08:57 actively advertising their business and products. Reliance is placed on the investigator's report annexed with the Plaint.

24. Defendant No. 1 has no authorisation or permission to develop Fluralaner product under the brand name 'Fluraline'. Offering for sale and exporting the same prima facie constitutes infringement of Plaintiff's suit patent as the exclusive right to manufacture the same vests only with Plaintiff No. 1 and Defendant No. 2.

25. In view of the above, the Court finds that Plaintiffs have made out a prima facie case in their favour and in case no ex-parte ad-interim injunction is granted Plaintiffs will suffer an irreparable loss; balance of convenience also lies in favour of Plaintiffs and against Defendants. Accordingly, till the next date of hearing, Defendant No. 1 and any one acting for or on their behalf are restrained from making, using, selling, distributing, advertising, exporting, offering for sale, and in any other manner, directly or indirectly, dealing in any product, that infringes Indian Patent No. 283279, including 'Fluralaner' under the brand name 'Furaline'."

28. The Court has perused the website entries and listings of the Defendant No. 1 that clearly show that the Defendant No.1 is offering Plaintiffs' product- 'FLURALANER'. In addition, the Defendant No. 1 is also describing the same by the name 'Bravecto' which is the Plaintiffs' trademark. The extract of the said website is set out below:-

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29. The investigator's affidavit dated 27th July 2023 also shows that the Defendant No. 1 is involved in the manufacture and sale of a number of APIs including 'FLURALANER'.

30. Considering the above facts and circumstances, the Plaintiffs have made out a prima facie case for grant of an ex-parte injunction. Further, considering that the Plaintiffs' product is a pharmaceutical preparation for veterinary products, irreparable harm would be caused to the Plaintiffs if the injunction is not granted. Balance of convenience is also in favour of the Plaintiffs keeping in view the nature of the infringing activity of the Defendants.

31. Till the next date of hearing, the Defendant No.1 shall stand restrained from manufacturing, selling and offering any medicinal preparation that This is a digitally signed order.

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32. The Defendant No. 1 shall also stand restrained from using the mark 'Bravecto', 'Exzolt' and any other deceptively similar mark belonging to the Plaintiffs.

33. Compliance under Order XXXIX Rule 3 within one week of the present order.

34. List before the Court on 26th February, 2024.

PRATHIBA M. SINGH, J.

SEPTEMBER 6, 2023 mr/dn This is a digitally signed order.

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