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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION (L) NO.29333 OF 2023

IN

COM IPR SUIT (L) NO.28833 OF 2023

**Centaur Pharmaceuticals Pvt. Ltd.**

**...Applicant /  
Plaintiff**

*Versus*

**SB Lifesciences & Anr.**

**...Defendants**

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Mr. B.N. Poojari, Nidhi Bangera and Rahul Poojari i/b. Asian Patent  
Law for the Plaintiffs.  
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**CORAM : R.I. CHAGLA J.**  
**DATE : 25TH OCTOBER, 2023.**

**ORDER :**

1. In the present Interim Application, the Applicants/Plaintiffs seek to move for *ex-parte ad-interim* reliefs against the Defendants for the reasons set out in paragraph 29 of the plaint.
2. This is an action for infringement of the Applicants/Plaintiffs' registered trade mark combined with a cause of action of passing-off goods for which a Leave Petition has been filed.

Till, the Leave Petition is allowed the present application for ad-interim relief is restricted to the cause of action for infringement of Trade Mark.

3. The Plaintiffs have stated that in or about April 1978, the Plaintiffs' originally conceived, coined and adopted an inherently distinctive word "SINAREST" as a trade mark to be used in relation to medicinal and pharmaceutical preparations and similar goods, and after ascertaining its availability for its use and registration, they commenced actual and commercial use by manufacturing and/or marketing and/or dealing with said goods. It is stated that the Plaintiffs' trade mark "SINAREST" was registered under No.361066 dated 24.04.1980 under the Trade & Merchandise Marks Act, 1958 in Class 5 claiming its use since April 1978. A copy of Legal Proceedings Certificate issued by the Ld. Registrar of Trade Marks in respect of the Applicants'/Plaintiffs' trade mark registration No.361066 in Class 5 is tendered as Exhibit A1 to the Plaint.
4. The Plaintiffs have stated that by virtue of continuous and extensive use, reliable quality products and due to extensive sales promotion carried on by their predecessor-in-title and the

Plaintiffs, the subject goods bearing the trade mark “SINAREST” have accrued immense reputation and goodwill amongst the trade and the general public. The Plaintiffs’ products are meant for *sinus* related ailments and there are 16 extensions which are all meant for treatment of *sinus* related ailments. The Applicants / Plaintiffs’ have relied on documents, such as, certificate of trade mark registration, statement of year wise sales figures, sales invoices and invoices for getting packaging materials in the Plaint which establish that the trade mark “SINAREST” has become distinctive of the Applicants/Plaintiffs’ said goods and that they have acquired exclusive proprietary rights in the trade mark “SINAREST”. The Applicants/Plaintiffs’ Chartered Accountants’ Certificate certifying its annual sales figures and promotional expenses in respect of their products bearing the trade mark “SINAREST” and its extensions is at Exhibit E to the Plaint.

5. During the application, it is brought to my notice that the sales figures of the Applicants/Plaintiffs’ “SINAREST” products during the year 2022-2023 is Rs.2,68,07,80,981/-. Photographs of the Applicants/Plaintiffs’ product cartons bearing the trade mark “SINAREST” and its extensions are at

Exhibits A4 to A17 to the Plaint. Copies of representative sales invoices relating to the sale of the Applicants/Plaintiffs' said goods bearing the trade mark "SINAREST" and its extensions are at Exhibits F1 to F39 to the Plaint. Having perused the aforementioned documents, I am satisfied with the Applicants/Plaintiffs' claim made in the Plaint that the trade mark "SINAREST" has acquired status of a well-known trade mark.

6. According to the Applicants/Plaintiffs, in the first week of September 2023, their sales representatives came across a medicinal and/or pharmaceutical preparation also meant for treating *sinus* related ailments manufactured by the Respondent/Defendant No.1 and marketed by the Respondent/Defendant No.2 bearing the mark "SINARESS". The Applicants/Plaintiffs stated that the mark "SINARESS" is deceptively similar to their trade mark "SINAREST". One of the members of their sales team purchased a sample of the Respondents/Defendants' product bearing the impugned mark "SINARESS" from one of the medical stores in Sangamner.
7. Mr.Poojari, learned Counsel for the Applicants / Plaintiffs has submitted that the impugned mark "SINARESS" bears a close structural, visual and phonetic resemblance with the

Applicants/Plaintiffs' trade mark "SINAREST" and its use by the Respondents/Defendants in respect of the said goods or similar goods has strong likelihood of deception and confusion leading to infringement of the Applicants/Plaintiffs' registered trade mark "SINAREST" and passing-off action. The Respondents/Defendants have merely replaced the last alphabet "T" in the Applicants/Plaintiffs' trade mark "SINAREST" with alphabet "S" which makes no difference and there is every likelihood of the impugned mark being mistaken for the Applicants/Plaintiffs' trade mark "SINAREST". He has submitted that such minor alterations do not make the rival trade marks dissimilar. He has submitted that the impugned mark is being used in respect of the same goods for which the Applicants/Plaintiffs have obtained the trade mark registration and in respect of which the Applicants/Plaintiffs' trade mark is in use. He has submitted that the Respondents'/Defendants use of the impugned trade mark in respect of the impugned goods amounts to infringement of the Applicants'/Plaintiffs' registered trade mark and passing-off action.

8. Mr.Poojari has further submitted that in such circumstances it is absolutely just and necessary that an *ex-parte ad-interim*

order be passed restraining the Respondents/Defendants from committing infringement of the Applicants'/Plaintiffs' registered trade mark. He has submitted that considering the dishonest conduct of the Respondents/Defendants, the Applicants / Plaintiffs apprehend that if the Respondents / Defendants are given notice of the present application, there is a strong likelihood that the Respondents/Defendants would remove the impugned goods from their possession, custody and/or control and sell or part with possession thereof or dump their goods in the market and the purpose of making the present application will be defeated.

9. I have heard the submissions in detail and perused the records. *Prima facie* it appears that the Applicants/Plaintiffs are the registered proprietor of the trade mark "SINAREST" and have acquired immense goodwill and reputation in the same. *Prima facie*, there is no doubt that the Respondents' / Defendants impugned mark "SINARESS" is nearly identical with and/or deceptively similar to the Applicants'/Plaintiffs' registered trade mark. Mere replacing of last alphabet "T" in the Applicants'/ Plaintiffs' trade mark "SINAREST" with alphabet "S" in the impugned mark "SINARESS" doesn't make

the impugned trade mark distinctive or dissimilar to the Applicants'/Plaintiffs' registered trade mark "SINAREST". The rival marks are being used for identical products, i.e. medicinal and pharmaceutical preparations. In my opinion, the likelihood of confusion and deception between the rival trade marks and rival goods is inevitable. In matters such as these it is necessary to pass a prompt order of injunction not only to protect the interest of the Applicants/Plaintiffs, but also that of the public at large, particularly considering that the product in this case is a pharmaceutical product. In these circumstances, a strong *prima facie* case for the grant of ad-interim reliefs is made out. Unless reliefs as prayed for are granted, the Applicants/Plaintiffs are likely to suffer irreparable injury which cannot be compensated in terms of money. The balance of convenience is also in favour of the Applicants/Plaintiffs.

10. In view of what is stated in paragraph 25 of the Plaint and in view of the above, I am satisfied that the object of granting the following reliefs would be defeated if notice of this application is given to the Respondents/Defendants. There shall accordingly be an *ad-interim* order in terms of prayer clauses (a) and (d) of the Interim Application, which reads as

follows:

- (a). Pending the hearing and final disposal of the suit, an order and injunction of this Hon'ble Court restraining the Respondents by themselves and/or their servants, agents, representatives and/or any person(s) claiming under or through them from infringing the Applicants' well-known trademark "SINAREST" registered under No.361066 in class 05 at Exhibit-A1 to plaint by adopting and/or using in any manner the mark "SINARESS" or any mark identical with and/or similar to the Applicants' trademark "SINAREST" as trademark or otherwise in respect of Medicinal and/or Pharmaceutical preparations or similar goods or services allied and cognate to the Medicinal and Pharmaceutical preparations or similar goods.
- (d). Pending the hearing and final disposal of the suit Court Receiver, High Court, Bombay or any other fit and proper person as Receiver of the manufactured stock of Medicinal and/or Pharmaceutical preparations or similar goods in any form bearing or intended to bear the mark "SINARESS" or any mark identical with and/or similar to



the Applicants' trademark "SINAREST", and such other articles, packaging materials, and other paraphernalia used and employed by the Respondents in committing infringement and passing-off by manufacturing, packing, selling, advertising and distributing the Medicinal and/or Pharmaceutical preparations or similar goods in any form bearing or intended to bear the offending mark "SINARESS" or any mark identical with and/or similar to the Applicants' trademark "SINAREST" with all powers under Order XL, Rule 1 of the Code of Civil Procedure, 1908, with directions to seize and take into custody all materials, finished goods, semi-finished goods, labels, and/or packed materials, wherever they are found and the Respondents be ordered and decreed to deliver up to the Applicant for destruction all such labels or catalogues or packing materials or wrappers bearing or intended to bear the offending mark "SINARESS" or any reproduction thereof.

11. The Court Receiver, High Court, Bombay is appointed with the following powers and directions, viz. –

(a) All powers under Order 40 Rule 1 and Order 39

Rule 7, except the power of sale;

- (b) A direction to visit and search all premises of the Respondents/Defendants, forcibly breaking open locks, if necessary; and, also where necessary, with police assistance.
- (c) A direction to seize and seal in the Respondents'/ Defendants' premises all the offending materials, including cartons, packing, dyes, machinery, printing equipment and other materials of all description that carry the impugned mark;
- (d) A direction to make an inventory of all the material, equipment, etc.
- (e) The Court receiver shall execute this Order at the address of the Respondent/Defendant No.2 situate at P.No.8/503, Kanchan Tower, Sector 25, Nerul, Navi Mumbai – 400076, Maharashtra.

12. In view of the extant post-pandemic situation, and for the effective, expeditious and practical implementation of this order at the location of the Respondent/Defendant No.1 in Uttarakhand, there will be a need for the appointment of an Additional Special

Receiver:

- (a) The Advocate for the Applicants has given the name of the advocate who can be appointed as Additional Special Receiver to assist the Court Receiver attached to this Court.
- (b) Mr.Chandrakant Kobnak, Advocate is appointed as Additional Special Receiver in respect of the Respondents' premises in Uttarakhand to execute the commission in terms of this order.
- (c) The fee of the Additional Special Receiver for executing this commission is fixed at Rs.35,000/- per day or part thereof. This fee will be paid by the Applicants/Plaintiffs in the first instance, but the Applicants/Plaintiffs are at liberty to seek these costs at the final hearing of the suit.
- (d) It is clarified that the Court Receiver, High Court, Bombay also stands appointed, and that the appointment of Mr.Chandrakant Kobnak, Advocate is only for convenience.
- (e) The Additional Special Receiver will submit his report/s by email to the Court Receiver, High

Court, Bombay at the email ID: crcvr-bhc@nic.in.

(f) The contact details of the Additional Special Receiver are as follows:

(g) For execution and implementation of this Order, the following directions are passed :

(i) The Additional Special Receiver and Court Receiver are empowered and authorized, acting on an authenticated copy of this order, to take assistance of the local police authorities in the execution of this commission;

(ii) The Police authorities concerned are directed to act on production of an authenticated copy of this order by the Court Associate or a digitally signed copy of this order;

(iii) The Court Receiver will issue the necessary letter of authority to enable the local police to act;

(iv) The Additional Special Receiver and the Court Receiver are directed to make inventory of

all infringing goods bearing the impugned mark “SINARESS”.

(v) The Additional Special Receiver and the Court Receiver may, if necessary, break open any locks with the assistance of the police;

(vi) The Additional Special Receiver and the Court Receiver are to visit the locations of the Respondents/ Defendants in the manner stated above as also at such other places as may be pointed out by the representative/s of the Applicants'/Plaintiffs during the execution of this order, and make inventory of all infringing products/material of the Respondents/ Defendants;

(vii) The products will be retained in the Respondents/Defendants premises for the present.

13. The concerned Senior Police Inspector / Station House Officer /Circle Inspector of the local police station shall extend full co-operation to the Court Receiver and the Additional

Special Receiver on production of a digitally signed copy of this order.

14. In the facts and circumstances of the case, the Court Receiver, High Court, Bombay will not insist upon production of a hard copy of this order, but will act on production of a digitally signed copy.
15. The order is not to be uploaded until the Court Receiver, High Court, Bombay and the Additional Special Receiver execute the commission as above.
16. The Applicants/Plaintiffs will comply with the provisions of Order 39 Rule 3 within 14 days of the Court Receiver and the Additional Special Receiver completing their commission under this Order.
17. The Advocates for the Applicants/Plaintiffs will lodge the digital copy of this order with the office of the Court Receiver within five days of such copy being made available. Upon the same being lodged with the Court Receiver, compliance with Rule 596 of the Bombay High court O.S.) Rules is dispensed with.
18. Liberty to the Respondents/Defendants to apply for a variation, modification or recall of this order after at least seven clear

working days' notice to the Advocates for the Applicants/Plaintiffs.

19. The Additional Special Receiver will submit their report by email to the Office of the Court Receiver by 05 December 2023.
20. The Court Receiver will submit a report to the Court on or before 12 December 2023.
21. The above Interim Application to be listed on 13<sup>th</sup> December 2023.
22. This order will continue until 14th December, 2023.
23. This order will be signed by the Private Secretary / Personal Assistant of this Court. All concerned will act on production of a digitally signed copy of this order.

**[R.I. CHAGLA J.]**