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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO. 2514 OF 2016**

IN

SUIT (L) NO. 860 OF 2016

Centaur Pharmaceuticals Private Limited ...Plaintiffs

Versus

M/s. Shri Ganga Agencies & Another ...Defendants

Mr. B.N. Poojari, *i/b Asian Patent Law*, for the Plaintiffs.
Mr. Anil Mishra, for Defendant No. 2.

CORAM: G.S. PATEL, J
DATED: 20th October 2016

PC:-

1. Mr. Poojari seeks to move after notice for the reliefs against Defendant No. 1 in this action in trade mark infringement combined with the cause of action in passing off.

2. As against Defendant No. 2, Mr. Poojari does not press for the reliefs since a statement is made that the 2nd Defendant was the manufacturer for and under instructions of the 1st Defendant. The 2nd has since ceased manufacture and supply of the product in question and has put this in writing in a letter addressed to the Plaintiff after the present Suit was filed. In view of this, Mr. Poojari states that he does not press the Suit as against Defendant No. 2.

The Defendant No. 2 is ordered to be deleted as party-Defendant to the Suit.

3. The Plaintiff is a pharmaceutical company. The case is that in September 1997, the Plaintiff conceived, coined and adopted **KOFAREST** as a trade mark in respect of a medicinal preparation for alleviating cough and bronchial ailments. The trade mark application is opposed. The Plaintiff has, however, registered variants such as **COFAREST**. This mark is registered. There is also a registration of **KOFAREST** as a label mark. The product is sold *inter alia* as a syrup.

4. The Plaintiff says that it has taken assignments between 2002 and 2006 and has also received permission from the Food & Drugs Administration in Goa for manufacturing products under these marks. The Plaintiff has used its mark so far as **KOFAREST** since the year 2000. There is a certified statement of figures of sales and expenses annexed. These figures are indeed considerable, for the year 2008-2009 it was in excess of Rs. 10 crores.

5. According to the Plaintiff, in April 2016 it found the 1st Defendant using the mark **KOFREST** as a mark in respect of a rival cough syrup. A cease and desist notice was issued on 27th May 2016. The correspondence since indicates that the 1st Defendant has refused to comply.

6. A representation of the Plaintiffs product is annexed. This include the label as also the mark. Both products are cough syrup.

There is no doubt that the two marks are structurally, visually and phonetically similar and that the Defendants' adoption of the mark is well after the Plaintiff.

7. There being a sufficient *prima facie* case made out in both infringement and passing off, I will grant the relief set out in prayer clauses (a) and (b) of the Notice of Motion, which read as follows:

“(a) Pending the hearing and final disposal of the suit, an order and injunction of this Hon'ble Court restraining the Defendants by themselves and/or their servants, agents, representatives and/or any person(s) claiming under or through them from infringing the Plaintiffs' trade marks “COFAREST” registered under No. 938051 at Exhibit “D2” to the plaint and “KOFAREST” registered under Nos. 974144, No. 1155188 and No. 1155189 in class 05 at Exhibits “D3”, “D4” and “D5” to the plaint by adopting and/or using in any manner the mark “KOFREST” or any mark identical with and/or deceptively similar to the Plaintiffs' registered trade marks “COFAREST” and/or “KOFAREST” as trade mark or otherwise in respect of medicinal and/or pharmaceutical preparations or similar goods in any form;

(b) Pending the hearing and final disposal of the suit, an order of this Hon'ble Court restraining the Defendants by themselves and/or their servants, agents, representatives and/or any person(s) claiming under or through them from passing off medicinal and/or pharmaceutical preparations or any goods by adopting and/or using in any manner the mark “KOFREST” or any

mark identical with and/or deceptively similar to the Plaintiffs' trade mark "KOFAREST" as trade mark or otherwise in respect of medicinal and/or pharmaceutical preparations or similar goods or any goods in any form."

8. Affidavit in Reply to be filed and served on or before 25th November 2016. Affidavit in Rejoinder, if any, to be filed and served on or before 2nd December 2016.
9. List the Notice of Motion for hearing and final disposal in the week of 5th December 2016.

(G. S. PATEL, J.)