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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(COMM) 818/2024

MANKIND PHARMA LIMITED

.....Plaintiff

Through: Mr. Rajiv Nayar, Sr. Advocate with
Mr. Ankur Sangal, Mr. Ankit
Arvind, Mr. Shashwat Rakshit and
Ms. Nidhi Pathak, Advocates

Versus

**SANSHIV HEALTH TECH PRIVATE LIMITED
& ANR.**

.....Defendants

Through: None

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

% **20.09.2024**

I.A. 40011/2024 (*pre-litigation mediation*)

1. The plaintiff *vide* the present application seeks exemption from instituting pre-litigation mediation.
2. Considering the averments made in the present application wherein the plaintiff seeks urgent ad-interim reliefs as also appointment of Local Commissioners and in view of *Yamini Manohar vs. T.K.D. Krithi 2023 SCC OnLine 1382* and *Chandra Kishore Chaurasia vs. R. A. Perfumery Works Private Limited 2022:DHC:4454-DB*, the plaintiff is exempted from instituting pre-litigation mediation.
3. Accordingly, the present application is allowed and disposed of.

I.A. 40014/2024 (*exemption*)

4. Exemption allowed as sought, subject to all just exceptions.

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5. The application stands disposed of.

I.A. 40015/2024 (*exemption from advance service*)

6. The plaintiff *vide* the present application seeks exemption from advance service upon the defendants.

7. Learned senior counsel for the plaintiff submits that considering the position involved, particularly since appointment of Local Commissioner(s) for search and seizure at the premises of the defendants are being sought, there is a likelihood that the apprehensions of the plaintiff that evidence might be disposed will become a reality in case advance service is affected and therefore, an exemption from effecting advance service is necessary.

8. For the reasons stated in the application as also taking into account the aforesaid factors and in the interest of justice, the plaintiff is granted exemption from effecting advance service upon the defendant.

9. Accordingly, the present application is allowed and disposed of.

I.A. 40013/2024 (*extension from filing court fees*)

10. The plaintiff *vide* the present application seeks a further period of three weeks for filing the requisite court fee.

11. However, learned senior counsel for the plaintiff undertakes to make good the deficient court fees during the course of the day.

12. For the reasons stated in the present application as also the undertaking given by the learned senior counsel, the plaintiff is directed to make good the deficient court fees during the course of the day.

13. The Registry is directed to list the matter before the Court, if the requisite court fee is not filed within one week.



14. Accordingly, the present application is allowed and disposed of.

I.A. 40012/2024 (*additional documents*)

15. The plaintiff *vide* the present application seeks time of thirty days to file additional documents.

16. The plaintiff will be at liberty to file additional documents within thirty days, *albeit*, strictly as per the provisions of the Commercial Courts Act, 2015 and Delhi High Court (Original Side) Rules, 2018.

17. Accordingly, the present application is disposed of.

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18. The plaintiff by way of the present suit seeks permanent injunction restraining infringement of copyright, passing off, infringement of trade mark, unfair trade practice, rendition of accounts, damages, etc. against the defendants.

19. Let the plaint be registered as a suit.

20. Upon filing of the process fee, issue summons of the suit to the defendants through all permissible modes returnable before the Joint Registrar on 18.12.2024.

21. The summons shall state that the written statement(s) be filed by the defendants within a period of *thirty days* from the date of the receipt of the summons. Written statement(s) be filed by the defendants along with affidavit(s) of admission/ denial of documents of the plaintiff, without which the written statement(s) shall not be taken on record.

22. Replication(s) thereto, if any, be filed by the plaintiff within a period of *fifteen days* from the date of receipt of written statement(s). The said replication(s), if any, shall be accompanied by with affidavit(s) of admission/ denial of documents filed by the defendants, without which the



replication(s) shall not be taken on record within the aforesaid period of *fifteen days*.

23. If any of the parties wish to seek inspection of any document(s), the same shall be sought and given within the requisite timelines.

24. List before the Joint Registrar for completion of pleadings on 18.12.2024. It is made clear that if any party unjustifiably denies any document(s), then it would be liable to be burdened with costs.

25. List before the Court on 27.01.2025.

I.A. 40009/2024 (*Order XXXIX rule 1 & 2 CPC, 1908*)

26. The plaintiff *vide* the present application seeks an *ex-parte ad-interim* injunction against the defendants.

27. As per pleadings before this Court and arguments addressed in support thereof by the learned senior counsel for plaintiff, the case of the plaintiff is as under:-

27.1 The plaintiff, after commencing its business in the year 1986 for medicinal and pharmaceutical goods under the name Mankind Pharma, through its founder has been carrying on its business for pharmaceutical products as Mankind Pharma Limited, which was incorporated in the year 1991. The plaintiff started working as a fully integrated pharmaceutical company in the year 1995. Since then, the plaintiff has been formulating, developing, commercializing, and delivering affordable and accessible medicines which are satisfying the urgent medical needs.

27.2 The plaintiff is the fourth largest pharmaceutical company of India and is engaged in the manufacture and supply of medicinal, pharmaceutical and consumer healthcare products across India and globally. The plaintiff has the sales turnover of approximately Rs.9,264



Crores for the year 2023-24 and is the number one prescription drug company in India by volumes.

27.3 The plaintiff today has an employee base of more than 23,000 employees spaced over 46 destinations worldwide. The plaintiff has a number of over-the-counter products bearing brands/ trademarks like Manforce, Caldikind, Unwanted 72 days, Health Ok, Prega News, Acne Star, Gas-O-Fast, Kabz End, etc. which have acquired extensive goodwill and reputation amongst the relevant members of trade and public.

27.4 The plaintiff also regularly invests in its Research-and Development (R&D) activities and aims at providing superior quality products, pioneering in the field of novel drug delivery systems, new molecule research and API development. Its R&D centre is located at Manesar and is administered by more than 600 scientists from diverse fields. The plaintiff currently has more than 50 projects in pipeline and more than 5 drug discovery projects.

27.5 The plaintiff adopted the trademark 'CALDIKIND' for pharmaceutical and medical preparation under Class 5 for its calcitriol, calcium and zinc capsules in the year 2007. Since then, it has been continuously and extensively using trademark 'CALDIKIND' in relation to its pharmaceutical products.

27.6 Due to the efficacy, cost effectiveness, and widespread availability of the plaintiff's product under the trademark 'CALDIKIND', the said product quickly became the preferred multivitamin product for doctors, medical staff, pharmacists and consumers alike.

27.7 Subsequently in the year 2017, the plaintiff also introduced another variant of 'CALDIKIND' specifically for children, in order to improve



calcium absorption in their body and strengthen their bones. The said variant was launched under the trademark 'CALDIKIND-P', which includes calcium, phosphorus, magnesium, D-mannose, zinc and vitamin D3 suspension. As the product 'CALDIKIND-P' was created for children and their needs, the plaintiff created and adopted an original and distinctive trade dress/ label for its product 'CALDIKIND-P' having a bright yellow-light colour scheme and a unique arrangement of selected elements such as the mango device and milk being poured down at the bottom part of the packaging designed the trade dress/ label of 'CALDIKIND-P' in the year 2017.

27.8 The trade dress created and adopted for the plaintiff's product is reproduced as under:-



27.9 The plaintiff had applied for and obtained registrations over the trademark 'CALDIKIND' in Class 5 on 16.07.2007 having registration no. 1578946. Such registration is renewed, valid and subsisting. The plaintiff is also the owner of the copyright of the artistic work of the



plaintiff's trade dress  as well.

27.10 The plaintiff's product under the plaintiff's trade dress alongwith the trademark 'CALDIKIND-P' is readily available in hospitals, pharmacies and through various third-party websites such as Amazon, Flipkart, Apollo Pharmacy, 1 Mg, Netmeds, etc.

27.11 The plaintiff's product has quickly become one of the biggest products of the plaintiff. There are numerous videos uploaded on the internet reviewing the product and describing the health benefits of the plaintiff's product popularity thereof under the plaintiff's trade dress along with the trademark 'CALDIKIND-P'. The goodwill and reputation of the plaintiff's product under the plaintiff's trade dress along with the trade mark 'CALDIKIND-P' can be gauged from the sales turnover in the last three financial years which were Rs. 9.006 crores, Rs. 10.83 crores and Rs. 12.33 crores.

27.12 The plaintiff came to know of the aforesaid product of the defendants under the impugned packaging in the first week of September 2024 when they discovered that they are engaged in the manufacturing and sale of impugned pharmaceutical products. The defendants are using the trade dress/ label/ artwork/ trade mark for their product 'CALIKA-P' syrup, which is deceptively similar to the plaintiff's trade dress/ label/ artwork/ trade mark for the product 'CALDIKIND-P' syrup as they have copied all the essential elements of the plaintiff's trade dress in order to



come as close as possible plaintiff's product, draw an association with the plaintiff's product and gain unlawful advantage in the market. The placement of the list of ingredients at the top of the trade dress/ label, the placement of the trade mark 'CALIKA-P' below the list of ingredients and depiction of flowing milk on the bottom left of the trade dress/ label are all in a similar fashion.

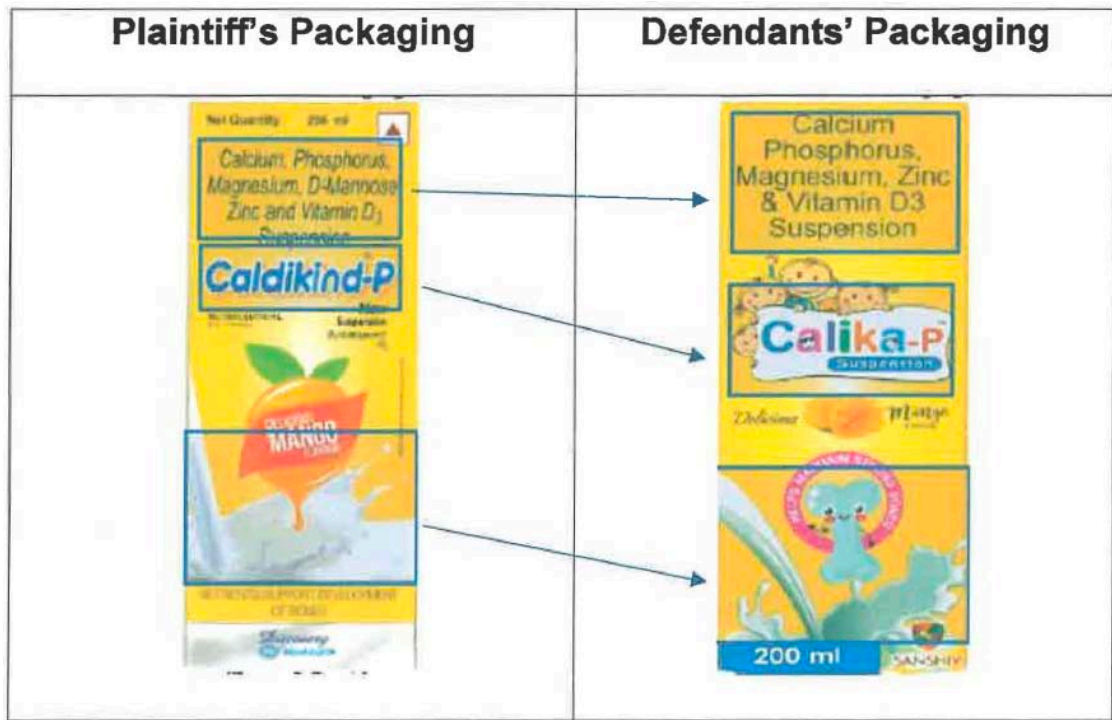
27.13 The defendants are attempting to ride upon the goodwill and reputation of the plaintiff's product by using the impugned trade dress and impugned trade mark for identical product. Consumers who are well aware about the plaintiff's product, can end up mistakenly purchase the product of the defendants under the impugned packaging since they can be easily misled into buying them due to the similarities involved.

27.14 The above is bound to cause confusion about the source of the said product, more so since they are operating through the same trade channel, trade members, industry people and customers. The defendants are unauthorized users.

27.15 Since, as per settled law confusion of source or product between pharmaceutical goods may produce physically harmful results to purchasers, therefore a greater protection is required than in the ordinary case to avoid any possibility of confusion, more so, since in the present case pharmaceutical goods are specifically formulated for children.

28. This Court has heard the submissions advanced by the learned senior counsel for the plaintiff and gone through the pleadings as also perused the documents on record.

29. A comparative analysis of the competing products of the parties are hereinbelow:



30. This seems to be a clear case of the defendants trying to come as near as possible to the plaintiff since there is no reason or occasion for them to have adopted the very same trade dress/ label/ artwork/ trade mark for their product 'CALIKA-P' syrup lest they want the members of the general public to believe that they and their products are emanating from the house of the plaintiff.

31. The defendants are clearly attempting to ride upon the goodwill and reputation of the plaintiff's product by using the impugned trade dress and impugned trade mark for identical product.

32. Visually, there is no iota of difference inter se the trade dress/ label/ artwork/ trade mark for defendants' 'CALIKA-P' syrup from that of the plaintiff. Therefore, the likelihood of confusion is more since the defendants are also dealing in the same products through the same trade channels and are targeting the same set of customers, in the present case, it



is for the children. As the competing products are pharmaceutical preparations, it would be in interest of the general public if proactive steps are taken for restraining the defendants.

33. As the facts are pertaining to pharmaceutical products, in view of what is held in *Cadila Health Care v. Cadila Pharmaceuticals Ltd* AIR 2001 SC 1952, *Heinz Italia & Anr. v. Dabur India Ltd.* (2007) 6 SCC 1, *Brihan Karan Sugar Syndicate Private Limited vs. Yashwantrao Mohite Krushna Sahakari Sakhar Karkhana* (2024) 2 SCC 577 and *Brittania Industries Ltd. v. ITC India Ltd.* (2021) SCC OnLine Del 1489, this Court is to be more cautious and stringent while dealing with matters relating to such pharmaceutical products since there is a likelihood of confusion arising in the minds of general public, if the competing trade dress, trade mark and design of the defendants are allowed to subsist and/or continue.

34. Therefore, exercising such due diligence and circumspection as per the settled law and in view of the factual matrix involved, especially as the defendants are guilty of blatantly adopting and using the impugned trade dress and design, the rights and interest of the plaintiff needs protection.

35. The plaintiff has, thus, been able to make out a *prima facie* case with the *balance of convenience* for grant of an *ad interim ex-parte injunction* in their favour and against the defendants. In case the defendants are not restrained by way of an *ad interim ex-parte* injunction, there is a likelihood of the plaintiff suffering *irreparable harm, loss, injury and prejudice* which cannot be compensated for in terms of money.

36. Accordingly, till the next date of hearing, the defendants, their proprietors, partners or directors, as the case may be, their principal



officers, servants, distributors, dealers and agents, and all others acting for and on behalf of the defendants are restrained from selling, offering for sale, advertising, directly or indirectly dealing with the goods and services



under the impugned trade dress/ label and the impugned trade mark 'CALIKA – P' or any other trade dress/ label or trade mark which may be identical to or deceptively similar to the plaintiff's trade



dress/ label and trade mark 'CALDIKIND'.

37. Upon filing of the process fee, issue notice to the defendants by all permissible modes returnable before the Joint Registrar on 18.12.2024.

38. Reply, if any, be filed within a period of *thirty days* from the date of service. Rejoinder thereto, if any, be filed within a period of *fifteen days* thereafter.

39. The provisions of Order XXXIX Rule 3 CPC be complied within two weeks.

40. List before the Court on 27.01.2025.



I.A. 40010/2024 (Order XXVI Rule 9 CPC, 1908: Appointment of Local Commissioners)

41 The plaintiff *vide* the present application seeks appointment of Local Commissioner(s) to visit the premises of the defendants.

42 Learned senior counsel for the plaintiff submits that the defendants are aware of the plaintiff and its products and the infringing materials placed on record are clear evidence of the intention of the defendants to ride upon the goodwill and reputation of the plaintiff. The plaintiff believes that the infringing products are stocked at the locations set out in the memo of parties filed with the plaint and the defendants are likely to remove all physical evidence or deny their involvement in the infringing activities.

43 In view of the aforesaid as also considering the factual matrix involved, and most relevantly, in order to preserve the counterfeit and infringing materials involved, in the considered opinion of this Court, it is deemed appropriate to appoint Local Commissioner(s) to visit the premises of the defendants.

44 Accordingly, the following are appointed as Local Commissioners with a direction to visit the premises of the defendants as specified against their names:

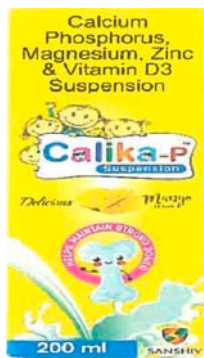
S. No.	Local Commissioners	Location
1.	Mr. Vikrant Chawla, Advocate [+91-9818384438]	Sanshiv Health Tech Private Limited Shop no-3, plot no-45, Ground Floor, Omkar Apt, Poorna Road, Dwarka, Nashik-422001



2.	Mr. Utkarsh, Advocate [+91-9871926153]	Smayan Healthcare Private Limited Plot no 26-27, HPSIDC Industrial Area Village - Davni, Baddi, Solan – 173205, Himachal Pradesh
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45 The Local Commissioners are to execute the commission in the premises of the defendants with the following directions:-

- a) The each of the Local Commissioners be accompanied by a representative of the plaintiff and/ or its counsel, who shall be permitted to enter into the premises of the defendants.
- b) The Local Commissioner(s) to seize, pack and seal the infringing products and other material bearing the impugned trade



dress and impugned mark 'CALIKA-P' and/ or any other marks which are identical and/ or deceptively and confusingly



similar to the plaintiff's trade dress and trade mark 'CALDIKIND-P' and handover the same on *Superdari* to the respective defendants upon the said defendants giving an



‘Undertaking’ that they shall not tamper with or remove the sealed products as also shall in compliance of the order of this Court, as and when passed, produce the sealed products under *Superdari*.

c) Each of the Local Commissioners is permitted to take photocopies and/ or screenshots of all the books of accounts including ledgers, cashbooks, bill books, purchases and sales records or any document(s) deemed necessary found in the premises of the defendants, etc. for placing the hard copies or e- copies thereof on record.

d) Each of the Local Commissioners is permitted to make video recording of execution of the commission at the premises of the defendants in compliance of the present order.

e) Each of the Local Commissioners is permitted to take the assistance of the Station House Officer [SHO] of the local Police Station within whose jurisdiction the premises of the defendants are situated. The said SHO is directed to render and provide all and every necessary assistance and protection to the Local Commissioner, if as and when sought for ensuring unhindered and effective execution of the commission at the premises of the defendants in compliance of the present order.

f) If the premises of the defendant(s) is found under lock(s), the Local Commissioner is permitted to break open the said lock(s) in the presence of the SHO/ any designated police officer from the local Police Station.

46 The fee of each of the Local Commissioner is fixed at *Rs.1,50,000/- [Rupees One Lakh Fifty Thousand Only]* in addition to all the related



expenses for travel as also any other miscellaneous out of pocket expenses for execution of the commission. All the aforesaid expenses shall be borne by the plaintiff and paid in advance to the Local Commissioner(s).

47 The commission be executed within a period of *ten days* from today, i.e. on or before 30.09.2024.

48 The report of each of the Local Commissioners be filed within a period of *two weeks* from the date of the execution of the commission.

49 A copy of this order be provided to the Local Commissioners.

50 Accordingly, the application is allowed and disposed of.

Dasti.

SAURABH BANERJEE, J.

SEPTEMBER 20, 2024/So