

(2023) 02 DEL CK 0181

In the Delhi High Court

Case No : Civil Suit (COMM) No. 86 Of 2023, I.A. No. 3659 Of 2023

Novartis AG & Anr

APPELLANT

Vs

Novaegis (India) Private Limited

RESPONDENT

Date of Decision : 24-02-2023

Acts Referred:

Code Of Civil Procedure, 1908 — Order 39 Rule 1, Order 39 Rule 2

Citation : Caseno?Dated?Casename?Councel?File No????

Hon'ble Judges : C.Hari Shankar, J

Bench : Single Bench

Advocate : Mamta Rani Jha, Abhijeet Rastogi, Mamta Bhadu, Abhay Tandon?

Judgement

C.Hari Shankar, J

CS(COMM) 86/2023 & I.A. 3659/2023

1. The plaintiff, in the present suit, alleged infringement, by the defendant, of the registered trademark of the plaintiff by use of the defendant's .

2. By order dated 20th February 2023, ad interim interlocutory reliefs were granted by this Court. While issuing summons in the suit and notice in the application filed by the plaintiff in I.A. 3130/2023 filed by the plaintiff under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (CPC).

3. Subsequently, the parties have arrived at an amicable resolution of the dispute between them. They have placed on record an undertaking dated 24th February 2023, signed by Mr. Chauhan Mohmad Moshin, director of the defendant, whereby the defendant has agreed to suffer a decree of injunction in terms of prayers b to d in para 47 of the plaint and to undertake as under:

1. "The Defendant acknowledges the intellectual property rights of the Plaintiffs in the trade mark/trade name NOVARTIS, as well as the exclusive right of the Plaintiffs to use the said mark as a trade mark/trade name/house mark/corporate name in relation to its goods and services.

2. The Defendant further undertakes to file appropriate request with the Trade Marks Registry for withdrawal of its trade mark application no. 4222559 for the mark NOVAEGIS/ within 1 week of this undertaking. The said trade mark application shall be deemed to withdrawn.

3. The Defendant has confirmed that it has not filed any other trade mark, copyright or trade name applications before any concerned authority for the word/name/mark NOVAEGIS either by itself or part thereof, nor it has filed any such application containing word/name/mark which may be deceptively similar to the trade mark/trade name/corporate name NOVARTIS of the Plaintiffs.

4. The Defendant undertakes that it shall not use the mark NOVAEGIS/ or any other mark as a domain name/trade mark/trade name/part of the corporate name in future as may be phonetically, visually, and structurally deceptively similar to the trade mark/trade name NOVARTIS of the Plaintiffs.

5. The Defendant undertakes to file appropriate application seeking change of its company name Novaegis (India) Private Limited before the Registrar of Companies within 7 days from the date of this undertaking under intimation to the Plaintiffs' or its counsel about the changed company name/mark adopted by the Defendant and undertakes that the company name containing the impugned mark NOVAEGIS shall not remain on Register of the Company beyond 7 days from the signing of this undertaking nor it shall be used in future "earlier known as Novaegis".

6. The Defendant undertakes that it shall not adopt any trade mark/domain name/trade name or company name which may be visually, phonetically or structurally deceptively similar to the Plaintiffs' trade marks/trade name NOVARTIS.

7. The Defendant undertakes and agrees that it shall dispose of the existing stock of medicines bearing the mark NOVAEGIS/ having the value of INR 24,97,517.69 as detailed in para 6 of the I.A. No. 3659 of 2023 within 60 days from the date of this undertaking.

8. The Defendant undertakes that the products bearing the mark NOVAEGIS/ already in circulation in the market are as per the following details including batch number, date of manufacture and expiry date with the sale value of the product.

Product Name

Batch

Mfg

Exp

Qty

Sale Value

AEZOR ASP 150 CAP

MC22908

Jul-22

'08/24

7020

98280

AEZOR ASP 75 CAPS

NIPL2EZ01

Jun-22

'07/24

18780

201885

AEZOR ASP 75 CAPS

NIPL2EZ02

Sep-22

'10/24

19290

206403

AEZORE GOLD 10 CAPS

MC21639

Jun-21

'07/23

10110

131430

AEZORE GOLD 10 CAPS

MC221014

Aug-22

'09/24

10040

145580

BACTOXIME 200 DT

TAB

CT22241G

Sep-22

'10/24

4960

156240

CETNYX 5 TAB

T-22067

Apr-22

'05/24

4930

21199

CETNYX M TAB

AT-21302C

Oct-21

'11/23

5660

56600

CETNYX M TAB

AT-22181A

May-

22

'06/24

5640

56400

ESCIFRESH LC TAB

MT214496

Aug-21

'09/23

10000
68000
ESCIFRESH LC TAB
MT225740
Oct-22
'11/24
10130
87118
ESCIFRESH PLUS 10
TAB
MT214495B
Aug-21
'09/23
10040
86344
ESCIFRESH PLUS 10
TAB
MT224919
Aug-22
'09/24
10050
75375
ESCIFRESH PLUS 5 TAB
MT222249
Mar-22
'04/24
10190
61140
GOUTLESS 40 TAB
T211426R

Aug-21
'09/23
2870
25830
GOUTLESS 40 TAB
T222016
Sep-22
'10/24
4950
44550
ITRAGIS 100 CAP
C-22014
May-
22
'06/24
2310
51924.18
ITRAGIS PURE 100MG
ITR2201
Dec-21
'01/24
4900
222313
LEVEPREX-500
TABLETS
T221764
Aug-22
'09/24
4980
92130

LEVEPREX-500

TABLETS

T222254

Oct-22

'11/24

9970

169490

MEDRIX 16 TAB

T210600

Apr-21

'05/23

5580

103230

MEDRIX 8 TAB

T220826

May-

22

'06/24

4970

59640

MEDRIX 8 TAB

T221649

Aug-22

'09/24

9880

108680

NEBIZEST 2.5 TAB

T220823

May-

22

'06/24
4980
39840
NEBIZEST 5 TAB
T222242
Oct-22
'11/24
9840
108240
NEBIZEST AM TAB
T221624
Aug-22
'09/24
9940
124250
NEOMYLIN 2ML INJ
22LJ10B
Oct-22
'03/24
20000
85000
NEOMYLIN 2ML INJ
22LL01F
Dec-22
'05/24
20000
60000
NEOMYLIN D TAB
NIPL2ND02
Nov-22

'04/24

19300

463200

NOVAGLIM M1

TABLET

293AA02

Aug-22

'09/24

3410

44500.5

NOVAGLIM M1

TABLET

293AA02

Aug-22

'09/24

3130

40846.5

NOVAGLIM M2

TABLET

293AB02

May-

22

'06/24

5590

77142

NOVAGLIM MV 1.3 TAB

NIPL1NV01

May-

21

'06/23

9150
143655
NOVAGLIM MV 1.3 TAB
NIPL2NV01
Aug-22
'09/24
9080
142556
NOVAGLIM MV 2.3 TAB
NIPL2NG01
May-
22
'06/24
8850
137175
NOVAGLIM MV 2.3 TAB
NIPL2NG02
Sep-22
'10/24
9000
127800
NOVAGLIM MV 2.3 TAB
NIPL2NG03
Sep-22
'10/24
9900
140580
PEPFREE 20 TAB
MOT22387
Sep-22

'10/24
9640
60732
PEPFREE ED CAP
AC-22085A
May-
22
'06/24
5680
62480
PEPFREE ED CAP
AC-22152A
Oct-22
'11/24
5470
57435
PULMOZEST TAB
T222402
Nov-22
'12/24
4950
126225
ROZUNIX 10 TABLETS
T212567
Dec-21
'01/24
4970
39760
ROZUNIX 10 TABLETS
T222279

Oct-22
'11/24
4960
39680
ROZUNIX 20 TABLET
T221950
Sep-22
'10/24
4980
54780
ROZUNIX 5 TABLETS
T210063
Feb-21
'03/23
4900
29400
ROZUNIX 5 TABLETS
T-22239
Dec-22
'01/25
2950
20650
ROZUNIX GOLD 10
CAPS
MC21669
Jul-21
'08/23
10160
213360
TELGIS 40 TABLETS

T211887
Oct-21
'11/23
9980
64870
TELGIS 40 TABLETS
WTGS322001
Sep-22
'10/25
14700
117600
TELGIS AM TABLETS
NIPL2GT01
Dec-21
'01/24
9440
88736
TELGIS AM TABLETS
NIPL2TG02
Oct-22
'11/24
9280
87232
TELGIS CH 40 TAB
T221918
Sep-22
'10/24
4710
47100
TELGIS M 25 TAB

MT213234

Jun-21

'07/23

10040

80320

TELGIS M 25 TAB

MT224392

Jul-22

'08/24

9980

95808

TELGIS M 50 TAB

MT214509B

Aug-21

'09/23

10120

91080

TELGIS M 50 TAB

MT230546

Dec-22

'12/24

10130

103326

TELGIS TRIO TABLETS

NIPL2TR01

Jan-22

'02/24

9250

95275

TELGIS TRIO TABLETS

NIPL2TR02

Oct-22

'11/24

9050

103170

TENYZ 20 TABLET

T211272

Jul-21

'08/23

9900

64350

TENYZ M 500 TAB

T211338

Jul-21

'08/23

4900

53900

TENYZ M 500 TAB

T222737

Dec-22

'01/25

4970

57155

ULTRAMEXX TAB

41UTA22002

Aug-22

'09/24

12990

126652.5

XECTUS 50 TAB

BD22085N

Dec-21

'01/24

9120

100320

XECTUS 50 TAB

BD23197A

Sep-22

'10/24

9800

102900

XECTUS M 500 TAB

BD22694D

May-

22

'06/24

9850

144795

XECTUS M 500 TAB

BD23211C

Sep-22

'10/24

9790

141955

ZESTIER 50 TAB

T220789

May-

22

'06/24

9910

158560

ZESTIER M 500 TAB

T220813

May-

22

'06/24

4940

177840

9. The Defendant further undertakes that the new stock of medicine having the value of INR 4,65,000 as detailed in para 6 of the I.A. No. 3659 of 2023 admittedly manufactured in January 2023 shall not be released in the market bearing the injuncted mark/trade name/corporate name NOVAEGIS/."

4. The plaintiff through Ms. Mamta Rani Jha, learned Counsel has agreed, in view of the aforesaid undertaking, to forego its claim for damages and costs.

5. As such, nothing survives for adjudication in the suit.

6. The suit shall stand decreed in terms of the afore-noted undertaking submitted by the defendant by which the defendant shall remain bound.

7. Let a decree sheet be issued accordingly. The plaintiff would be entitled to refund of the Court fees, if any, deposited by it.

8. Pending applications stand disposed of accordingly.