
(2014) 01 BOM CK 0081

In the Bombay High Court

Case No : Notice of Motion No. 1472 of 2013 in Suit No. 710 of 2013

Wockhardt Limited

APPELLANT

Vs

Eden Healthcare Pvt. Ltd.

RESPONDENT

Date of Decision : 28-01-2014

Acts Referred:

Trade Marks Act, 1999 — Section 154, 18(1), 19, 23, 27(2)

Citation : (2014) 59 PTC 200 : (2014) 58 PTC 14

Hon'ble Judges : S.J. Kathawalla, J

Bench : Single Bench

Advocate : Virag Tulzapurkar, Senior Advocate, Mr. Ajit Jamsandekar, Ms. Nidhi Singh and Ms. Smriti Churiwal, instructed by M/s. Vidhii Partners, Advocate for the Appellant; Sanjeev Hariakar, Advocate for the Respondent

Judgement

S.J. Kathawalla, J.—The above Suit is filed by the Plaintiff to prevent the acts of infringement and passing off committed by the Defendant by the use of the mark SPASGAN. The Plaintiff is seeking, inter alia, reliefs of injunction, delivery up, damages and/or accounts of profit, etc. The above Notice of Motion is taken out by the Plaintiff, seeking temporary injunction against the Defendant from infringing the Plaintiffs mark SPASGAN and/or passing off the products of the Defendant as and for those of the Plaintiff. The Plaintiff claims to be the Proprietor of the registered mark SPASGAN. The Defendant is using an identical mark SPASGAN.

2. On 23rd August, 2013, the Plaintiff made an ex parte application seeking reliefs of injunction and appointment of Court Receiver in respect of the cause of action for infringement, which reliefs were granted. The Plaintiff had also filed a Petition seeking Leave under Clause XIV of the Letters Patent, Bombay, to combine the cause of action for passing off along with the cause of action for infringement which was heard and finally allowed on 30th March, 2013, and ad-interim relief restraining the Defendant from passing off its goods as those of the Plaintiff by use of the mark SPASGAN was also granted. The Notice of Motion is

now taken up for final hearing.

3. The submissions advanced on behalf of the Plaintiff are set out hereunder:

3.1 The subject matter of the present Suit is the trademark SPASGAN and the Defendant is using an identical mark SPASGAN. Both, the Plaintiff and the Defendant are using the mark in respect of pharmaceutical preparations. The marks are identical and are used in respect of identical goods.

3.2 The application for registration of the mark SPASGAN was made by the Plaintiffs predecessor in title on 22nd April, 1996, claiming user of the mark since 1st January, 1991. The actual registration of the same was granted by the Registrar of Trade Marks, after following the due process of law under the Trade Marks Act, 1999 ("the Act") on 16th March, 2004.

3.3 The Plaintiff became the owner of the mark by virtue of the Deed of Assignment dated 31st March, 1999, by which the right, title and interest along with the goodwill in the mark was assigned in favour of the Plaintiff. The Plaintiff has taken steps and got the registration of the mark renewed from time to time. The last renewal of the mark is for a period of ten years from 23rd March, 2006.

3.4 The relevant application under the Act is filed in the Registry of Trade Marks to record the name of the Plaintiff in the Register of Trade Marks. The said application is pending. It is submitted that in view of the judgment of the Division Bench of this Court in the case of Parksons Cartamundi Pvt. Ltd. 41/B, Lalbauag Industrial Estate, Dr. Ambedkar Road, Lalbaug, Mumbai-400012 Vs. Suresh Kumar Jasraj Burad, and the judgment of the Learned Single Judge of this Court in SKOL Breweries Ltd. Vs. Som Distilleries and Breweries Ltd. and Another, , the Plaintiff by virtue of the Deed of Assignment has right, title and interest along with the goodwill in the mark SPASGAN and even though the recordal of the Deed of Assignment in the records of the Registry and the name of the Plaintiff as the subsequent Proprietor of the trademark SPASGAN is still pending, the registration of the mark is valid and subsisting and the Plaintiff is entitled to maintain the present Suit for infringement as well as for passing off. The registration certificate in respect of the said mark SPASGAN is at Exhibit-A2 to the Complaint and the registration is with effect from 22nd April, 1996. The user claimed by the predecessor in title of the Plaintiff in the application for registration is 1st January, 1991.

3.5 It is submitted that apart from the registration of the mark SPASGAN in India, the Plaintiff is also the registered Proprietor of the mark SPASGAN in Russia and Ukraine where the products of the Plaintiff under the mark SPASGAN are widely sold and in use as set out in paragraph 3 of the Complaint. It is further submitted that the Plaintiffs medicinal products under the trademark SPASGAN are exclusively exported to Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Moldova, Russia, Ukraine and Uzbekistan for sale, the details of which are set out in paragraph 16 of the Complaint. The Plaintiff has used the mark extensively and continuously because of which the mark SPASGAN is solely and exclusively

associated by the members of the public and the trade with the Plaintiff, and the goodwill and reputation generated, by the extensive use and promotional efforts undertaken by the Plaintiff, is owned by the Plaintiff.

3.6 The Defendant is using the identical impugned mark SPASGAN for its pharmaceutical product as shown at Exhibit-N to the Plaint. The Defendant had in fact made an application for the registration of the mark SPASGAN but the same was abandoned by the Defendant. The fact that the Defendant is using the mark SPASGAN and that the application made for registration of the mark SPASGAN was abandoned by the Defendant is admitted by the Defendant. It is therefore an admitted position that the identical mark is being used by the Defendant in respect of identical goods.

3.7 That once the marks are identical and are used in respect of identical goods then no further enquiry is required in a suit for infringement. In view of the provisions of Section 29(3) of the Act, it has to be presumed that the use of the identical mark in respect of identical goods is likely to cause confusion on the part of the public. The Plaintiffs mark having been registered as of 22nd April, 1996, the Defendant cannot be said to be unaware of the same, since the Defendant is in the same pharmaceutical business. The Defendant was also the subsequent applicant for the identical mark SPASGAN, which application is admittedly abandoned by the Defendant. There is no valid reason for the Defendant to adopt an identical mark as that of the Plaintiff. Confusion and deception is bound to occur because the mark is phonetically, visually and structurally identical. In view thereof, pending the hearing and final disposal of the Suit, the Notice of Motion be allowed in terms of prayer clauses (a) and (b) of the Notice of Motion.

4. The Defendant has in the affidavit-in-reply contended that (i) the Defendant has used the mark SPASGAN since 1998 through its predecessor in title and therefore the Defendant is the prior user of the mark SPASGAN and therefore such use must be protected; (ii) the Plaintiffs name is not recorded in the Register of Trade Marks; and (iii) the Plaintiff is not selling its goods bearing the mark SPASGAN in India and the use is only in respect of the goods which are exported bearing the mark SPASGAN, and therefore there is no use of the mark in India to maintain the present action against the Defendant.

4.1 The learned Advocate for the Defendant has submitted that he is only reiterating the above three submissions and has nothing else to add.

5. In response to the above submissions, the learned Senior Advocate appearing for the Plaintiff has taken this Court through the affidavit-in-rejoinder filed by the Plaintiff, wherein the above submissions raised by the Defendant in its affidavit-in-reply have been dealt with and it is submitted that the response of the Plaintiff in its rejoinder to the defence raised by the Defendant establishes beyond any doubt that the submissions of the Defendant are false and frivolous and cannot be accepted.

6. I have considered the submissions advanced on behalf of the parties. I have examined the Complaint, its annexures, the product of the Plaintiff bearing its registered mark SPASGAN and the product of the Defendant bearing the impugned mark SPASGAN and the affidavit-in-reply of the Defendant and the documents produced by the Defendant and also the affidavit-in-rejoinder filed by the Plaintiff. The impugned mark is identical to the registered mark of the Plaintiff. The impugned mark SPASGAN is used by the Defendant in respect of pharmaceutical goods which fall in Class 5 in which the mark of the Plaintiff is registered. The Defendant has admitted the use of the mark in respect of pharmaceutical goods.

7. The Plaintiff is claiming rights in the mark SPASGAN by virtue of the Deed of Assignment dated 31st March, 1999, executed in favour of the Plaintiff by its predecessor in title. The Plaintiff has filed the necessary application under the Act with the Registry of Trade Marks for recording the assignment and the name of the Plaintiff as the subsequent Proprietor of the mark SPASGAN. In fact, the Plaintiff has also renewed registration of the mark for a period of ten years from 23rd March, 2006. The Plaintiff has produced on record the relevant document in respect of the same. However, it is contended on behalf of the Defendant that since the Plaintiff's name is not recorded in the Register, the Plaintiff is not entitled to any relief. In response, the learned Senior Advocate appearing for the Plaintiff has relied on the decisions of this Court in *Parksons Cartamundi Pvt. Ltd.* (supra) and *SKOL Breweries Ltd. v. Som Distilleries and Breweries Ltd.* and another (supra) wherein it is held that a person who has acquired title to a trademark by assignment or transmission cannot be non-suited for want of title per se on the ground that the assignment or transmission is not entered in the Register. In view thereof, I agree with the submission made on behalf of the Plaintiff that the right, title and interest along with the goodwill in the mark has vested in the Plaintiff by virtue of the Deed of Assignment dated 31st March, 1999, and even though the recording of the Deed of Assignment in the records of the Registry and the name of the Plaintiff as the subsequent proprietor of the Trademark is still pending, it does not bar the present action for infringement. Therefore, the Plaintiff as the proprietor of the registered mark is entitled to file the Suit for the infringement of the registered mark even though the application for recording of the Deed of Assignment in its favour is pending in the Registry of Trade Marks.

8. What needs to be next determined is whether the Plaintiff is entitled to claim use of the mark from the date of application for registration of the mark though the actual commercial use of the mark is subsequent? The application for registration of the mark SPASGAN was made by the predecessor in title of the Plaintiff on 22nd April, 1996, claiming user of the mark since 1st January, 1991. The actual registration of the same was granted by the Registrar of Trade Marks after following the due process of law under the Act on 16th March, 2004. The mark has been renewed from time to time and the certified entry relating to the registration of the mark SPASGAN clearly shows that the mark is valid and

subsisting on the Register. The Defendant is claiming the user of the mark since 1998, which the Defendant claims is prior to the actual use of the mark by the Plaintiff in commerce and therefore the Defendant is claiming prior rights in the mark.

9. By virtue of the provisions of Section 18(1) of the Act, any person is entitled to make an application for registration of the mark used or proposed to be used by him claiming to be the proprietor of the same. Section 18(1) of the Act reads as under:

18. Application for registration - (1) Any person claiming to be the proprietor of a trade mark used or proposed to be used by him, who is desirous of registering it, shall apply in writing to the Registrar in the prescribed manner for the registration of his trade mark.

10. Thus, it is very clear that for making a claim to proprietorship in the mark while making the application for registration it is not necessary to use the mark and the claim of proposed use is sufficient. However, in the present case actual use of the mark was claimed in the application for registration since 1st January, 1991, as is apparent from the legal proceedings certificate produced by the Plaintiff.

11. The provisions of Section 23 of the Act are very clear on the aspect of the "date of registration of the mark, and the same read as under:

23. Registration- (1) Subject to the provisions of Section 19, when an application for registration of a trade mark has been accepted and either-

(a) the application has not been opposed and the time for notice of opposition has expired; or

(b) the application has been opposed and the opposition has been decided in favour of the applicant, the Registrar shall, unless the Central Government otherwise directs, register the said trade mark and the trade mark when registered shall be registered as of the date of the making of the said application and that date shall, subject to the provisions of Section 154, be deemed to be the date of registration.

12. By virtue of the provisions of Section 23 of the Act, the registration of the mark relates back to the date of the application and the statutory right in the mark, after registration, is conferred on the registered proprietor with effect from the date of the application, which in the present case is with effect from 22nd April, 1996. Therefore, under the Act, the exclusivity in the mark, on registration, is granted with effect from the date of application for registration.

13. In the present case, the Defendant has stated that the Defendant has started the use of the mark in the year 1998, which it is alleged is prior to the actual use of the mark SPASGAN by the Plaintiff in the market but subsequent to the date of the application for registration of the mark by the Plaintiff. Thus the Defendant is

claiming common law rights in the mark by prior use of the same but after the date of the application for registration of the mark by the Plaintiff.

14. If the statutory rights of the registered proprietor relate back to the date of the application for registration, then obviously the Defendant cannot make an adverse common law claim to the statutory right of the registered proprietor by alleging that the mark is used in commerce by him prior to the registered proprietor but subsequent to the date of application for registration by the registered proprietor. If such argument is accepted then the provisions of Section 23 will be meaningless and it will be easy for a rival trader to adopt and use any mark which is applied for by the competitor and start use of the same prior to actual use of the mark by the registered proprietor and claim rights adverse to the registered proprietor. This kind of situation will render the registration of the mark itself meaningless. In the present case apart from the prior date of application for registration i.e. 22nd April, 1996, the Plaintiff has made a claim of actual use of the mark since 1st January, 1991, in the application for registration of the mark itself.

15. Further, the Apex Court in Meghraj Biscuits Industries Ltd. Vs. Commissioner of Central Excise, U.P., , has held in paragraph 18 of the judgment that,

On reading the above quoted paragraphs from the above judgment, with which we agree, it is clear that the effect of making the registration certificate applicable from retrospective date is based on the principle of deemed equivalence to public user of such mark. This deeming fiction cannot be extended to the Excise Law. It is confined to the provisions of Trade Marks Act.

16. The Division Bench of this Court in Medical Technologies Limited Vs. Neon Laboratories Limited and The Registrar of Trade Marks, has followed the Apex Court judgment in Meghraj Biscuits Industries Ltd. (supra).

17. Further, the vested rights can be claimed by the Defendant only in accordance with the provisions of Section 34 of the Act which read as follows:

34. Saving for vested rights.- Nothing in this Act shall entitle the proprietor or a registered user of registered trade mark to interfere with or restrain the use by any person of a trade mark identical with or nearly resembling it in relation to goods or services in relation to which that person or a predecessor in title of his has continuously used that trade mark from a date prior-

(a) to the use of the first-mentioned trade mark in relation to those goods or services be the proprietor or a predecessor in title of his; or

(b) to the date of registration of the first mentioned trade mark in respect of those goods or services in the name of the proprietor or a predecessor in title of his;

whichever is the earlier, and the Registrar shall not refuse (on such use being proved), to register the second mentioned trade mark by reason only of the

registration of the first mentioned trade mark.

18. The Defendant has not satisfied any of the conditions of Section 34 of the Act. The Defendant has alleged that use of the mark by the Defendant is since 1998. Even if it is considered that the Defendant has actually used the mark since 1998, which is denied by the Plaintiff, still the Defendant cannot take the benefit of the provisions of Section 34 of the Act because the registration of the mark SPASGAN in the name of the Plaintiff relates back to 22nd April, 1996. The alleged use of the mark SPASGAN by the Defendant is from 1998 which is admittedly subsequent to the date of registration of the mark of the Plaintiff i.e. 22nd April, 1996, and therefore the conditions of Section 34 of the Act are not satisfied by the Defendant. A bare reading of Section 34 of the Act in my view, makes it clear that in order to avail the benefit of Section 34 of the Act, the use of a trademark by a person other than the registered proprietor, must be prior to the date of use by the registered proprietor or the date of the registration, whichever is earlier. As far as the provisions of Section 34(a) of the Act are concerned, the defence taken by the Defendant does not fall within the ambit of the provisions of Section 34(a) of the Act because the principle of deemed public user shall apply even when the claim of prior user is to be considered. Therefore, no case is made out by the Defendant to take benefit of the provisions of Section 34 of the Act and seek protection thereunder.

19. Thus, once the registration of the mark is granted to the registered proprietor, the registered mark is deemed to be used publicly from the date of the application for registration of the mark and the rival trader cannot claim any rights in common law in the mark by virtue of the use of the mark subsequent to the date of the application but prior to the actual use of the mark in commerce by the registered proprietor, because the deemed public user of the registered mark commences on the date of the application for registration of the registered mark. Therefore, in the present case the prior user of the mark SPASGAN shall be of the Plaintiff and not the Defendant. In any event, the registration of the Plaintiffs mark is of a date prior to the date on which the Defendant commenced use of the impugned mark. Therefore, the submission of the learned Advocate for the Defendants that the Defendant is entitled to prior rights in the mark by reason of its claim that the use of the mark by the Defendant is prior to the actual use of the mark by the Plaintiff in commerce, cannot be accepted. Hence, the Plaintiff is entitled to claim use of the mark from the date of the application for registration of the mark though the actual commercial use of the mark is subsequent.

20. The Defendant has next contended that since the Plaintiff is not selling its goods bearing the mark in India and the use is only in respect of export of the goods bearing the mark SPASGAN, there is no use of the mark in India to maintain the present action against the Defendant.

21. The statutory rights in the mark are conferred on the registered proprietor once the mark is registered by virtue of the provisions of the Act. Once the mark

is registered, the proprietor of the registered mark gets an exclusive right to use the same in respect of the goods or services for which it is registered, subject to the provisions of the Act. By virtue of the provisions of Sections 28 and 29 of the Act, the registered proprietor gets a right to sue any rival trader if, inter alia, there is any use of identical or similar mark in respect of identical or similar goods and services for which the mark is registered. There is no requirement under the Act to use the mark prior to enforcing the rights under the Act to prevent the use of the rival mark. What is required to sue for infringement under the Act is the registration of the mark. Once the mark is registered under the Act, then a suit for infringement will certainly lie under the Act without requiring the registered proprietor to show the actual commercial use of the mark. The principle of deemed public user of the mark by virtue of prior registration will also apply in the present scenario and the Suit for infringement of trade mark will be maintainable.

22. In any case, there is no restriction or provision under the Act that the registered mark has to be used only in India and thus, any use for export of goods or services bearing the mark also constitutes use of the mark in India. The provisions of Section 56 of the Act are very clear on the aspect of use of the mark for export and the same read as under:

56. Use of trade mark for export trade and use when form of trade connection changes, (1) The application in India of trade mark to goods to be exported from India or in relation to services for use outside India and any other act done in India in relation to goods to be so exported or services so rendered outside India which, if done in relation to goods to be sold or services provided or otherwise traded in within India would constitute use of a trade mark therein, shall be deemed to constitute use of the trade mark in relation to those goods or services for any purpose for which such use is material under this Act or any other law. (2) The use of a registered trade mark in relation to goods or services between which and the person using the mark any form of connection in the course of trade subsists shall not be deemed to be likely to cause deception or confusion on the ground only that the mark has been or is used in relation to goods or services between which and the said person or a predecessor in title of that person a different form of connection in the course of trade subsisted or subsists.

23. The provisions of Section 56 of the Act are interpreted by the Division Bench of this Court in *Cadila Pharmaceuticals Limited Vs. Sami Khatib*, wherein it is held that,

50. Section 56 of the Trade Marks Act, 1999, reads as under:

Dr. Tulzapurkar submitted that the point has been considered by a Division Bench of this Court to which one of us (S.J. Vazifdar, J.) was a party in the case of *M/s. Maxheal Pharmaceuticals (India) v. Shalina Laboratories Pvt. Ltd.* in Appeal No. 88 of 2005 in Notice of Motion No. 2638 of 2004 in Suit No. 2663 of 2004 dated 16th February, 2005. However, the applicability of section 56 was not decided by

the Division Bench. This is clear from paragraph 7 of the judgment where the Division Bench stated that it was not necessary for it to dwell on the point as the point taken by the appellant in that matter was raised for the first time only in the appeal.

Our attention was not invited to any other judgment under the said Act on the point. We must, therefore, deal with this question on principle.

51. It is admitted that the appellant applies the impugned mark to the goods in India which are thereafter exported. The impugned mark has thus been applied to the appellant's goods within the meaning of section 56. Had the mark been applied in relation to goods to be sold within India, it would undoubtedly have constituted use of the trade mark in India. By virtue of section 56, the application in India of the trade mark, although to goods to be exported from India, is deemed to constitute use of the trade mark in relation to the said goods "for any purpose for which such use is material under the Trade Marks Act, 1999, or any other law". The plain language of section 56, therefore, constitutes the application in India of trademarks even to goods to be exported from India as use of the trade mark in relation to those goods for any purpose for which such use is material under the Act or any other law.

The use of a trade mark is relevant for more than one reason. It is relevant to a party seeking to establish goodwill and reputation in a mark in an action for passing off. It is also relevant, even if it is not necessary, to establish the act of infringement or passing off.

52. There is little doubt that the use of a trade mark within section 56 can be relied upon to maintain an action for infringement. Section 28 of the Act gives to the registered proprietor of the trade mark, the exclusive right to "use" the trade mark in relation to the goods or service in respect of which the trade mark is registered and to obtain relief in respect of infringement thereof in the manner provided by the Act. Section 29 enumerates various circumstances that would constitute infringement of registered trademarks by the use thereof by a person who is not entitled to use the same. For instance, Section 29 of the Act provides that a registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of a permitted use, "uses" in the course of trade, a mark which is identical with or deceptively similar to the registered trade mark. Section 29(2) provides that a registered trade mark is infringed by a person who not being a registered proprietor or a person using by way of a permitted use, uses in the course of trade, a mark which because of the factors enumerated therein is likely to cause confusion on the part of the public or which is likely to have an association with the registered trade mark. Section 29(6)(c) expressly provides that for the purpose of section 29, a person uses a registered mark if he, inter-alia, imports or exports goods under the mark.

53. Thus section 56 would clearly apply to an action for infringement if the trade mark is applied in India to goods to be exported from India as the same is

deemed to constitute use of a trade mark in relation to those goods for any purpose for which such use is material under the Act.

54. The position would be no different in the case of a passing off action. Whether passing off is considered to be an action under the said Act in view of section 27(2) or not makes little difference in view of the concluding words of section 56 "or any other law". Even in a passing off action, the use of the impugned mark by the defendant is important. It is one of the factors which even if not necessary, entitles a plaintiff to maintain an action for passing off. There is no warrant for limiting the ambit of section 56 which is in consonance with the intention of the Legislature to protect intellectual property rights. There is nothing in the plain language of section 56 that supports Mr. Dwarkadas' alternative submission that section 56 is restricted to the protection of the statutory right of infringement and does not apply to an action for passing off.

A Court must tread carefully and be slow to imply a restriction which does not appear from the words in a statute.

24. Thus by virtue of the deemed equivalent public user of the mark as held by the Apex Court in Meghraj Biscuits Industries Ltd. (supra) and by the Division Bench of this Court in Medical Technological Led. (supra) and by virtue of the provisions of Section 56 of the Act, the Suit for infringement will be maintainable even if the use of the mark is only for export purpose. As held by the Division Bench in Cadila (supra), the Suit for passing off will also be maintainable by virtue of the provisions of Section 56 of the Act even though the mark is used by the proprietor of the mark in respect of export of his goods and there is no actual use of the mark in India. The use of the mark for the export of goods constitutes use of the mark in India, to maintain the action for infringement and passing off.

25. Therefore, there is no merit in the argument of the Learned Advocate for the Defendant that the Suit for infringement and passing off is not maintainable because the Plaintiff is only exporting its goods and not using the mark in India.

26. Once it is held that the action for infringement and passing off is maintainable and the Defendant has not established its alleged prior use of the mark in accordance with the provisions of Section 34 of the Act, prima facie, then the use by the Defendant of the impugned mark is in clear infringement of the Plaintiffs registered trademark. The mark used by the Defendant is SPASGAN which is identical to the registered mark SPASGAN of the Plaintiff. The rival marks are used in respect of identical goods i.e. pharmaceutical preparations. Once the marks are identical and are used in respect of identical goods then no further enquiry is required in a suit for infringement. In view of the provisions of Section 29(3) of the Act, it will have to be presumed that the use of the identical mark in respect of identical goods is likely to cause confusion in the minds of the public. The Plaintiffs mark having been registered as of 22nd April, 1996, the Defendant cannot be said to be unaware of the same, since the Defendant is in the same pharmaceutical business. Importantly, the Defendant was also the

subsequent applicant for the identical mark SPASGAN, which application is admittedly abandoned by the Defendant. There appears to be no valid reason for the Defendant to adopt an identical mark as that of the Plaintiff. Confusion and deception is bound to occur because the mark is phonetically, visually and structurally identical.

27. The Plaintiff has produced substantial evidence on record to establish the sales and promotional activities carried on by the Plaintiff to promote the goods bearing the mark SPASGAN. Prima facie, the Plaintiff has established that the mark is solely and exclusively associated with the Plaintiff and that the Plaintiff has goodwill and reputation in the mark SPASGAN. An identical mark in respect of identical goods will certainly create confusion and deception in the market, more so when both the parties are dealing in pharmaceutical products.

28. In the circumstances, I am prima facie satisfied that the Defendant is infringing the registered trademark of the Plaintiff SPASGAN and is also passing off its goods as and for the goods of the Plaintiff and/or enabling others to do so. The balance of convenience also heavily lies in favour of the Plaintiff. In the present case the rival products are pharmaceutical goods and public interest also requires to be safeguarded by the grant of reliefs in favour of the Plaintiff.

29. Therefore, pending the hearing and final disposal of the Suit, interim reliefs are granted in the following terms:

(i) That pending the hearing and final disposal of the present Suit the Defendant by itself, its servants, agents, distributors, or any other person claiming through or under the Defendant is restrained by a temporary order and injunction of this Court from in any manner using, manufacturing, marketing and/or selling, exporting or importing, offering or exposing or advertising for sale or procuring to be sold, any product under the impugned trademark SPASGAN or any other mark deceptively similar to the registered mark SPASGAN of the Plaintiff, so as to infringe the registered trade mark of the Plaintiff bearing registration No. 705110 in Class 5 of the Fourth Schedule to the Trade Marks Rules;

(ii) That pending the hearing and final disposal of the present Suit the Defendant by itself, its servants, agents, distributors, or any other person claiming through or under the Defendant is restrained by a temporary order and injunction of this Court from in any manner using, manufacturing, marketing and/or selling, exporting or importing, offering or exposing or advertising for sale or procuring to be sold, any product under the impugned trademark SPASGAN or any other mark deceptively similar to the registered mark SPASGAN, so as to pass off the goods of the Defendant as and for the goods of the Plaintiff and/or enable others to pass off the same.

30. The ad-interim order dated 23rd August, 2013, in respect of the appointment of Court Receiver is also confirmed, and shall operate and remain in force pending the hearing and final disposal of the present Suit. The Notice of Motion is disposed of accordingly.