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

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Date of Decision: 22nd July, 2026

+ CS(COMM) 552/2024 & I.A. 32616/2024

OPELLA HEALTHCARE GROUP

.....Plaintiff

Through: Mr. Peeyoosh Kalra, Ms. V. Mohini
and Ms. Aarti Aggarwal, Advocates.

versus

PURECA LABORATORIES PVT LTD

.....Defendant

Through: Defendant is *ex parte*.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

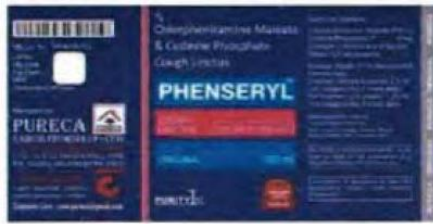
I.A. 4622/2025

1. This application is filed on behalf of the Plaintiff under Order XIII-A of the Commercial Courts Act, 2015 read with Rule 27 of Delhi High Court Intellectual Property Rights Division Rules, 2022 seeking summary judgment. Despite service, there was no representation on behalf of the Defendant and vide order dated 20.07.2026, Defendant was set *ex parte*.

2. Present suit is instituted on behalf of the Plaintiff under Sections 134 and 135 of the Trade Marks Act, 1999 ('1999 Act') and Section 51 of the Copyright Act, 1957 ('1957 Act') seeking *inter alia* a decree of permanent injunction restraining the Defendant from using the mark PHENSERYL and



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and/or any other mark identical/deceptively

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similar to Plaintiff's marks PHENSEDYL, and



in any manner whatsoever, amounting to infringement and/or passing off.

3. Case of the Plaintiff as set out in the plaint is that it adopted the mark PHENSEDYL in 1954 in respect of pharmaceutical products for treating running nose, watery eyes, sneezing, throat irritation etc. Product under the mark PHENSEDYL was first introduced internationally in 1950s and in India, in 1995. Plaintiff also adopted a unique and distinctive packaging/trade dress for the said product. Trademark PHENSEDYL was registered in favour of the Plaintiff on 21.07.1954 in Class 05 for "*pharmaceutical preparations and substances for human use and veterinary use*" and registration has been renewed upto 31.07.2030. Plaintiff has also

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secured registrations in the marks and in Class 05 and the registrations are valid and subsisting. In India, products under the PHENSEDYL marks are sold by Rhone Poulenc India Ltd., sub-



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licensor of the Plaintiff since 1995 and Abbott Healthcare Pvt. Ltd. since 2010, through a sub-licensor Piramal Healthcare (now Piramal Pharma Limited).

4. Aggrieved by Defendant's adoption of the marks PHENSERYL and



and trade dress/packaging



which according to the Plaintiff were deceptively similar to Plaintiff's marks and trade dress, Plaintiff filed the present suit and vide *ex parte* ad interim order dated 09.07.2024, Court restrained the Defendant and all others acting on its behalf from selling its products under the impugned marks and trade dress/packaging. Interim injunction order has continued till date.

5. Mr. Peeyoosh Kalra, learned counsel for the Plaintiff submits that Plaintiff is the registered proprietor of the PHENSEDYL marks and has statutory right to use the same exclusively and restrain third parties from their use, unauthorizedly. After service of summons, Defendant filed a written statement in November, 2024 and the defence taken was registration



in the imugned marks PHENSERYL and as also the copyright in the artistic work of the label mark. Plaintiff filed rectification petitions *C.O. (COMM.IPD-TM) 92/2024* under Sections



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47(1)(A) and 57 of 1999 Act for rectification of the impugned marks bearing registration No.3791026 in Class 05 on account of phonetic and visual deceptive similarity to Plaintiff's marks as also *C.O. (COMM.IPD-CR) 9/2024* under Section 50 of 1957 Act read with Rule 71(1) of the Copyrights Rules, 2013 for rectification of the Register of Copyright for removal of registration in favour of the Defendant under No.A-130319/2019. These petitions were allowed by this Court vide judgment dated 12.11.2024 and both registrations have been cancelled and direction has been issued to rectify the registers and to the best of the knowledge of the Plaintiff, the judgment has not been challenged.

6. It is, therefore, urged by Mr. Kalra that there being no other defence in the written statement, no useful purpose will be served in recording oral evidence and continuing with the suit since there is no real prospect of the Defendant defending the claims made in the plaint and possibly, for this reason Defendant has stopped appearing in the matter.

7. Heard Mr. Kalra and examined his submissions.

8. Plaintiff is a Corporation existing under Laws of France and is a part of the Sanofi Group, which is stated to be one of the largest pharmaceutical groups in the world and has diversified into a wide range of therapeutic solutions. Plaintiff adopted the mark PHENSEDYL in 1954 in respect of a syrup used to treat allergic symptoms such as sneezing, throat infection etc. The mark was used in India for the first time in 1995 and Plaintiff also adopted a unique trade dress/package for selling its products. In order to secure statutory rights in the marks, Plaintiff obtained registrations as follows:-



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S. No.	Trade Mark	Registration No. / Dated	Class	Goods	Status
1.	PHENSEDYL	165059 July 21, 1954	5	'pharmaceutical preparations and substances for human use and veterinary use'	Registered and valid upto July 21, 2030.
2.	फेन्सिडिल	789677 February 2, 1998	5	'pharmaceutical products'	Registered and valid upto
3.		795369 March 17, 1998	5	Pharmaceutical products in Class 05'	Registered and valid upto March 17, 2028

9. In India, Plaintiff has widely advertised and marketed its products and has garnered immense goodwill and reputation. The goodwill of the Plaintiff/Sanofi Group is reflected from the net sales during the period 2014-2023 as follows:-

Year	Net Sales (In Euro Millions)	Net Sales (In INR crores) (approx.)
2014	31,380	2,84,058
2015	34,060	3,08,318
2016	33,809	3,06,046
2017	35,072	3,17,479
2018	34,463	3,11,966
2019	36,126	3,27,020



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2020	36,041	3,26,251
2021	37,761	3,41,820
2022	42,997	3,89,218
2023	43,070	3,89,879

10. The distinctive packaging adopted by the Plaintiff comprises a unique colour combination of blue and pink and Plaintiff has a copyright in the original 'artistic work' under the 1957 Act. Between 2020 to 2023, Plaintiff's PHENSEDYL products have earned net revenues as follows:-

Year	Net Sales India (INR)
2020	3,080,477,752
2021	2,379,223,341
2022	3,478,126,566
2023	3,312,647,927

11. It is stated in the plaint that in March, 2024, Plaintiff came across



trademark registration of the mark in Class 05 in favour of Director of the Defendant and while user was claimed from 01.12.2016, there were no supporting documents with the trademark application and significantly, Plaintiff's marks PHENSEDYL and

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were cited as conflicting marks. Yet the imugned marks proceeded to registration erroneously and this Court has rightly cancelled the registrations.



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12. In a nutshell, the case of the Plaintiff is that it is a prior adopter, continuous user and registered proprietor of the PHENSEDYL trademarks in Class 05. Defendant has adopted deceptively similar marks for identical products and trade channels and consumer base being common, there is every likelihood of confusion. It needs no reiteration that in the field of pharmaceuticals, confusion has no place. In ***Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd., (2001) 5 SCC 73***, the Supreme Court observed that public interest would support lesser degree of proof showing confusing similarity in case of trademarks in respect of medicinal products as against other non-medicinal products. Drugs are poisons, not sweets. Confusion between medicinal products may, therefore, be life threatening, not merely inconvenient. Noting the frailty of human nature and pressures on doctors, there should be as many clear indicators as possible to distinguish two medicinal products from each other. In a nutshell, the Supreme Court held that the threshold of measuring confusion must be different in pharmaceutical products as compared to other products.

13. Defendant was set *ex parte* on 20.07.2026 and none has appeared even today. Perusal of written statement shows that the sole defence of the Defendant is that the impugned mark and the artistic work in the impugned trade dress are registered in its favour. As noted above, on the Plaintiff filing rectification petitions, the Court has cancelled both the registrations by a detailed judgment dated 12.11.2024 and as per the Plaintiff, Defendant has not challenged the said judgment till date. Defendant has not traversed this position and therefore, the judgment has attained finality.

14. It is relevant to note that in the judgment dated 12.11.2024, Court has observed that Plaintiff has various trademark registrations under Class 05 in



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the mark PHENSEDYL, which are valid and subsisting and usage of the marks dates back to 21.07.1954 and that Plaintiff has substantially demonstrated the usage through sales under the marks. Significantly, Court has rendered certain crucial findings in favour of the Plaintiff i.e., Plaintiff has been operating, marketing and selling its products in India through its sub-licencees, Rhone Poulenc India Ltd., since 1995 and Abbott Healthcare Pvt. Ltd. since 2010 and it is manifest that in India, Plaintiff has extensively, continuously and regularly used its trademarks PHENSEDYL/

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PHENSEDYL/ and ; Defendant has claimed user since 01.12.2016 but there is no supporting evidence on record to substantiate this position and the sole defence of the Defendant is its registrations in the trademarks and copyright and a blanket denial of resemblance in the rival marks; Plaintiff is a prior user since 1995 while use of the Defendant as claimed is only from 2016; the rival marks are visually and phonetically similar; dark blue colour in the trade dress/packaging and white font to depict the names are prominent and dominant parts of both the marks in the artistic works; Defendant has attempted to bring its packaging as close as possible to that of the Plaintiff; the products i.e., cough syrups are similar; and Defendant's marks are likely to cause confusion and give a general impression that they have an association with the Plaintiff and consumers and members of trade are likely to be confused or deceived. Relying on several judicial precedents, Court has cancelled the registrations. With these observations and findings of the Co-ordinate Bench, the issue of



deceptive similarity in the rival marks and trade dresses/packaging is settled. For the ease of reference, comparative of the rival marks/products/trade dresses is as follows:-

PLAINTIFF'S PRODUCT	DEFENDANT'S PRODUCT
	
	 



15. Mr. Peeyoosh Kalra is therefore right in contending that the Defendant has no real prospect of defending the claims of the Plaintiff and succeeding in the suit and therefore, no useful purpose will be achieved in proceeding to record *ex parte* evidence. In this context, I may allude to some useful observations of this Court in ***Su-Kam Power Systems Ltd. v. Kunwer Sachdev and Another, 2019 SCC OnLine Del 10764***, as follows:-

“90. To reiterate, the intent behind incorporating the summary judgment procedure in the Commercial Court Act, 2015 is to ensure disposal of commercial disputes in a time-bound manner. In fact, the applicability of Order XIII A, CPC to commercial disputes, demonstrates that the trial is no longer the default procedure/norm.

91. Rule 3 of Order XIII A, CPC, as applicable to commercial disputes, empowers the Court to grant a summary judgement against the defendant where the Court considers that the defendant has no real prospects of successfully defending the claim and there is no other compelling reason why the claim should not be disposed of before recording of oral evidence. The expression “real” directs the Court to examine whether there is a “realistic” as opposed to “fanciful” prospects of success. This Court is of the view that the expression “no genuine issue requiring a trial” in Ontario Rules of Civil Procedure and “no other compelling reason.....for trial” in Commercial Courts Act can be read mutatis mutandis. Consequently, Order XIII A, CPC would be attracted if the Court, while hearing such an application, can make the necessary finding of fact, apply the law to the facts and the same is a proportionate, more expeditious and less expensive means of achieving a fair and just result.

92. Accordingly, unlike ordinary suits, Courts need not hold trial in commercial suits, even if there are disputed questions of fact as held by the Canadian Supreme Court in Robert Hryniak (supra), in the event, the Court comes to the conclusion that the defendant lacks a real prospect of successfully defending the claim.”

16. The case of the Plaintiff is covered on all four corners in law by the aforesaid judgment insofar as the question of passing a summary judgment is concerned. Plaintiff has established the registrations of the PHENSEDYL marks and deceptive similarity of the rival marks and trade dresses/packages is evident from a bare comparison of the marks and



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moreover, there is already a judicial finding on this aspect in the judgment dated 12.11.2024. The rival goods i.e., cough syrups are identical and there is every likelihood of confusion amongst members of public since trade channels and consumers are common. Plaintiff has succeeded in making out a case of infringement of its registered PHENSEDYL trademarks under Section 29 of the 1999 Act. Clearly, Defendant has adopted the impugned marks as also the impugned trade dress/packaging to come as close as possible to Plaintiff's marks and trade dress, a finding already rendered in the judgment dated 12.11.2024 and apparent from the nature of the marks and the trade dress. It is apparent that Defendant wants to encash on the immense goodwill and reputation of the Plaintiff, evident from sales turnover for which invoices, promotional material, annual reports of the Plaintiff/Sanofi Group for the period 2018-2023 have been placed on record. The only objective of the Defendant in imitating was to represent to the public that its goods are associated with the Plaintiff and this is causing irreparable harm and injury to the goodwill of the Plaintiff as also distinctive character of the PHENSEDYL marks and amounts to passing off.

17. For all the aforesaid reasons, I am of the view that Plaintiff has made out a case for summary judgment and relegating the Plaintiff to lead *ex parte* evidence will be an exercise in futility as the Defendant has no real prospect of defending Plaintiff's claims in the suit.

18. Application is allowed and disposed of.

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19. In light of the order passed in I.A. 4622/2025, the suit is decreed in terms of paragraph 38 (a) to (e) of the plaint since Plaintiff gives up the reliefs claimed in paragraph 38 (f) to (h).



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20. Registry is directed to draw up the decree sheet.
21. Suit stands disposed of along with pending application.

JYOTI SINGH, J

JULY 22, 2026/YA