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

+ **CS(COMM) 336/2025**

MODI-MUNDIPHARMA PVT. LTD.Plaintiff

Through: Mr. Pravin Anand, Ms. Prachi
Agarwal, Mr. Manan Mondal and
Ms. Elisha Sinha, Advs

versus

AGROSAF PHARMACEUTICALS PVT. LTD. & ANR.

. ...Defendants

Through: None

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

09.04.2025

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I.A. 9335/2025-Exp from pre institution mediation

1. *Vide* the present application under *Section 12A* of the Commercial Courts Act, 2015, read with *Section 151* of the Code of Civil Procedure, 1908 (*CPC*), the plaintiff seeks exemption from pre-litigation mediation.

2. Considering the averments made in the present application, as also since the plaintiff is seeking an *ex parte ad interim* injunction, and in view of the order passed by the Hon'ble Supreme Court in *Yamini Manohar v. T.K.D. Krithi* 2024 (5) SCC 815, which has been followed by a Division Bench this Court in *Chandra Kishore Chaurasia v. R. A. Perfumery Works Private Limited* 2022:DHC:4454-DB, the plaintiff is exempted from instituting pre-litigation mediation.

3. Accordingly, the present application stands disposed of.

I.A. 9337/2025-Exp

4. Exemption allowed, subject to all just exceptions.

5. The application stands disposed of.

I.A. 9334/2025-Addl.doc.

6. *Vide* the present application under *Order XI Rule 1(4)* read with *Section 151* of the CPC, the plaintiff seeks leave of this Court to file additional documents.

7. The plaintiff will be at liberty to file additional documents at a later stage, *albeit*, after initiating appropriate steps, strictly as per the provisions of the Commercial Courts Act, 2015 read with *Section 151* of the CPC and the Delhi High Court (Original Side) Rules, 2018.

8. Accordingly, the present application stands disposed of.

I.A. 9336/2025-U/S 149 CPC

9. *Vide* the present application under *Section 149* read with *Section 151* of the CPC the plaintiff is seeking leave of this Court to file the deficit Court fee at a belated stage.

10. For the reasons stated in the present application, it is deemed appropriate to grant *five days* to the plaintiff for filing the deficit Court fee.

11. The present application stands disposed of.

CS(COMM) 336/2025

12. The plaintiff seeks permanent injunction for infringement of its trademark under the Trade Marks Act, 1999 (*the Act*) against the defendants.

13. Let the plaint be registered as a suit.

14. Upon filing of the process fee, issue summons of the suit to the defendants through all permissible modes, returnable before the learned Joint Registrar on 15.07.2025.

15. Needless to say, it shall be specified in the summons that the written statement(s) shall be filed by each of the defendants within a period of *thirty days* from the date of the receipt of the summons. Written statement(s) shall be accompanied by affidavit(s) of admission/ denial of documents of the plaintiff, without which the written statement(s) shall not be taken on record.

16. 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 also be accompanied by 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*.

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

18. List before the learned Joint Registrar for marking exhibits of documents on 15.07.2025. It is made clear that if any party unjustifiably denies any document(s), then such party would be liable to be burdened with costs.

I.A. 9333/2025-Stay

19. *Vide* the present application under *Order XXXIX, Rules 1 and 2* of the CPC the plaintiff is seeking the following reliefs:

“i. An order of injunction restraining the Defendants, their directors/ partners, servants and agents, distributors, wholesalers, dealers, retailers or any other person acting for and on their behalf from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in any manner

with regard to the products and/ or services bearing the trademark AGROCONTIN by itself or with other words or variants, which are identical or deceptively similar to the CONTIN series of trademarks, including but not limited to NITROCONTIN®, amounting to infringement of the Plaintiff's registered trademarks as mentioned in the Plaint and in the list of trade mark registrations; and

ii. An order of injunction decree for permanent injunction restraining the Defendants, their directors/ partners, servants and agents, distributors, wholesalers, dealers, retailers or any other person acting for and on their behalf directly or indirectly, as the case may be, from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in any manner with regard to the products and/ or services bearing the trademark AGROCONTIN, or a pink and white trade dress which is deceptively similar to the trade dress of the Plaintiff's product NITROCONTIN and further restraining them from reproducing, printing or publishing any label or packaging, which is a colourable imitation or a substantial reproduction of the artistic features as that of the Plaintiff's products being sold under the Plaintiff's CONTIN series of trademarks, including but not limited to NITROCONTIN® and depiction of the same in artistic writing style, layout, get up, colour scheme including but not limited to the pink and white colour combination, along with its other essential features, and arrangement in any material form constituting infringement of the Plaintiff's copyright therein; and

iii. An order of injunction restraining the Defendants, their directors/ partners, servants and agents, distributors, wholesalers, dealers, retailers or any other person acting for and on their behalf from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in any manner with regard to the products and/ or services bearing the trademark AGROCONTIN or a pink and white trade dress which is deceptively similar to the trade dress of the Plaintiff's product NITROCONTIN or with other words or variants or

any other mark/ logo and the depiction of the same in artistic writing style, layout, get up, colour scheme along with its other essential features, and arrangement in any material form, which may be identical with or deceptively similar to the Plaintiff's products and Plaintiff's trademarks/ logos in relation to goods and services identical or related/ allied/cognate, including but not limited to the CONTIN series of trademarks, NITROCONTIN®, or doing any other thing as is likely to lead to passing off of the Defendants' goods and/ or business as or those of Plaintiff's; and

iv. An order of injunction restraining the Defendants, their directors/ partners, servants and agents, distributors, wholesalers, dealers, retailers or any other person acting for and on their behalf from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in any manner with regard to the products and/ or services bearing the trademark AGROCONTIN or a pink and white trade dress which is deceptively similar to the trade dress of the Plaintiff's product NITROCONTIN or with other words or variants or any other mark/ logo and the depiction of the same in artistic writing style, layout, get up, colour scheme along with its other essential features, and arrangement in any material form, which may be identical with or deceptively similar to the Plaintiff's products and Plaintiff's trademarks/ logos in relation to goods and services identical or related/ allied/cognate, including but not limited to the CONTIN series of trademarks, NITROCONTIN®, or doing any other thing amounting to dilution and tarnishment of the Plaintiff's trademarks, get up, colour combination etc; and

v. An order directing removal from all online platforms, e-commerce websites etc., of all the impugned material of the Defendants pertaining to AGROCONTIN including the products, labels, promotional literature or any other material bearing the CONTIN series of trade marks/ logos including but not limited to NITROCONTIN®; and

vi. An order directing the Defendants to file statements of accounts and assets on affidavit within a period of two weeks from service of notice of the present application, and restraining the Defendants from disposing off or dealing with its assets in a manner which may adversely affect the Plaintiff's ability to recover damages, costs or other pecuniary remedies which may be finally awarded to the Plaintiff; and

vii. Pass an ex-parte ad-interim orders in terms of prayers 31 (i)-(vi) above, pending the hearing and disposal of the present application; and

viii. Any further orders as this Hon'ble Court may pass in favour of the Plaintiff and against the Defendants."

20. As per the plaint, the plaintiff/ Modi-Mundipharma Pvt. Ltd. is a company incorporated under the Indian Companies Act, 1956. The plaintiff is part of the Modi group of companies which is one of the largest industrial conglomerates in India with its interests spread across diverse business ventures including pharmaceuticals, health & nutrition, cosmetics, personal care, power generation, sugar industries and pharmaceutical operations.

21. The mark of the plaintiff '**CONTIN**' in isolation was adopted in the year 1989, the same was adopted as a suffix by the plaintiff in the year 1982.

22. The mark '**CONTIN**' was inspired by the patented '**CONTINUS**' drug delivery technology developed by the research centre of Mundipharma AG, and which process was developed and patented in 1972 by the plaintiff in India.

23. The plaintiff is the registered proprietor of '**NITROCONTIN**' in Class 5 of the Act for pharmaceutical, veterinary and sanitary substances

etc. Additionally, the plaintiff has more than 80 trademarks which are registered for pharmaceutical, veterinary products etc. in Class 5 of the Act bearing '**CONTIN**' as a common feature in the same including PHYLLOCONTIN, NITROCONTIN, CORBUCONTIN, FECONTIN-F, MORCONTIN, TAMCONTIN, PYRicontin, INDICONTIN etc. The plaintiff has spent huge sums of monies on advertisement of the trademark and earned huge profits therefrom.

24. The defendant no.1/ Agrosaf Pharmaceuticals Pvt. Ltd, as per the website of the Ministry of Corporate Affairs, it is a private limited company limited, bearing Company Identification Number U21000UP2024PTC201078, registered with the Registrar of Companies Kanpur. It was incorporated on 15.04.2024.

25. The defendant no.2/ Jineka Healthcare Pvt. Ltd., is a private limited company, bearing Company Identification number U85110UR2014PTC000984, registered with the Registrar of Companies Uttarakhand.

26. The plaintiff recently, in the end of January 2025 came across the defendant no.1's medicinal product for nitro glycerine controlled release tablets of 2.6 mg and 6.4 mg under the impugned mark '**AGROCONTIN**', which are being sold through the defendant no.1's website <https://www.b2b.agrosafphannaceuticals.com/> and physical stores across India. The mark AGROCONTIN employs the use of the mark '**CONTIN**' which is a prominent feature appearing in several of the '**CONTIN**' series of trademarks of the plaintiff.

27. Learned counsel for the plaintiff in support of the above submits that upon further examination by the plaintiff it was discovered that the

defendant no. 1's product under the impugned mark AGROCONTIN was being used for the same formulation as their NITROCONTIN product, i.e., Nitroglycerin tablets 6.4 mg. As such, he prays that an *ex parte ad interim* injunction may be granted in favour of the plaintiff considering the factum that the products in question are pharmaceutical preparations.

28. This Court has heard the learned counsel for the plaintiff and perused the documents on record as well.

29. On comparing the impugned mark of the defendant no.1, this Court is of the *prima-facie* view that the said impugned mark is phonetically similar to that of the mark of the plaintiff since the suffix '**CONTIN**' is verbatim same to that of the plaintiff registered mark. It gives an impression that the medicine of the defendant no.1 under the impugned mark AGROCONTIN is also coming/ belonging to the house of the plaintiff, particularly since it is also manufacturing, offering for sale and selling various medicines under the '**CONTIN**' trademarks.

30. Further, the defendants being in the same line of business as the plaintiff would have been aware of the plaintiff, its '**CONTIN**' trademarks and its long usages. Under such circumstances, there was no justifiable reason to adopt the similar sounding impugned mark. Therefore, allowing the defendants to continue with the impugned mark can lead to a likelihood of confusion in the minds of general public as regards to the association of the defendants' marks with that of the plaintiff. To avoid such situation(s), particularly in the case of pharmaceutical products, it is essential for this Court to adopt a stringent approach for judging the possibility of any such likelihood of confusion and exercise due diligence, circumspection and to be more careful.

31. As such, in view of the aforesaid there exists a *prima-facie* case in favour of the plaintiffs and with *balance of convenience* in their favour and they will incur *irreparable loss and injury* if an *ex parte ad interim* injunction is not granted in their favour.

32. Accordingly, till the next date of hearing, the defendants, their directors/ partners, servants and agents, distributors, wholesalers, dealers, retailers or any other person acting for and on their behalf are restrained from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in any manner with regard to the products and/ or services bearing the trademark 'AGROCONTIN' by itself or with other words or variants, which are identical or deceptively similar to the CONTIN series of trademarks of the plaintiff.

33. On the plaintiff taking requisite steps within a period of one week, issue notice to the defendants by all permissible modes, returnable on 28.08.2025.

34. Reply(s) be filed within *four weeks* with advance copy to counsel for plaintiff. Rejoinder(s) thereto, if any, be filed on or before the next date of hearing.

35. The provisions of *Order XXXIX Rule 3* of the CPC be complied with within *five days*.

36. List before this Court on 28.08.2025.

SAURABH BANERJEE, J

APRIL 9, 2025/Ab