



JITENDRA SHANKAR NUJASURE  
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION (L) NO.18933 OF 2024  
IN  
COM IPR SUIT (L) NO.18086 OF 2024  
WITH  
LEAVE PETITION (L) NO.18811 OF 2024

Les Laboratories Servier and Anr.

...Applicants /  
Plaintiffs

*Versus*

Sefier Life Science Private Ltd.

...Defendant

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Hiren Kamod, C.A. Brijesh, Ishith Arora (Thru. V.C.), Karan Khiani, Aditya Mahadevia and Prem Khullar i/b. Rashmi Singh and Karan Khiani for the Applicants / Plaintiffs.

Priyanka Kothari, Saurabh Kansal (Thru V.C.) and Raghav Vij (Thru V.C.) i/b. Ashish P. Agarkar for the Defendant.

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CORAM : R.I. CHAGLA J.

DATE : 19TH JULY, 2024.

ORDER :

1. By this Interim Application, the Applicant / Original Plaintiff has sought ad-interim relief / interim relief restraining the Defendants from using in any manner whatsoever, upon or in relation



to their business, the mark SEFIER/ and/or any other mark identical with or deceptively similar to the Plaintiff No. 1's registered trade mark 'SERVIER' under registration Nos. 1263241, 1263242, 2938961, 3761809, 307176 and 3622531, so as to infringe the same. Further, ad-interim / interim relief is sought restraining the Defendant from using in any manner whatsoever, upon or in relation



to their business, the mark SEFIER/ and/or any other mark identical with or deceptively similar to the Plaintiff No. 1's registered trade mark 'SERVIER' so as to pass off their business as and for that of the Plaintiffs or in any manner convey a connection with the Plaintiffs.

2. In view of the Defendant being served and represented through Counsel, the Leave Petition (L) No.1811 of 2024 under Clause XIV of Letters Patent Act is allowed.

3. The Plaintiffs states that Plaintiff Nos.1 and 2 form part of the SERVIER group of companies. The SERVIER group is the second largest French research-based pharmaceutical group in the

world. The SERVIER group develops, manufactures and markets drugs for the treatment of cardiovascular, oncology, diabetes and venous diseases among others and has its presence in 150 countries including India.

4. It is stated that SERVIER is an international and independent pharmaceutical group governed by a non-profit foundation, with headquarters in Suresnes, France. Since the opening of SERVIER's first laboratory in 1954, it has been committed to therapeutic progress to serve patient needs with the help of healthcare professionals. SERVIER strives to provide future generations with a world where quality healthcare is available and accessible to all. Corporate growth at SERVIER is driven by its continuous pursuit of innovation in 4 areas of excellence: oncology, cardiometabolism, neuroscience and immuno-inflammation. SERVIER is a leading force in cardiology -number 5 worldwide - and oncology has become a top priority in recent years; SERVIER also manufactures high-quality generic drugs. Extracts from the Plaintiff's website that provide detailed overview of its extensive global activities and financial information have been annexed at Exhibit A @ pg. 78 to 143 of the Plaintiff.

5. SERVIER's research centres are continuously involved in creating, testing and developing new medicinal products, which are manufactured and packaged in its production centres around the world. SERVIER is present in about 150 countries with more than 22,000 employees all over the world. SERVIER had 5.3 billion Euro sales revenue as of September 30, 2013. These results reflect the positive performance of SERVIER's medicines in the international market. SERVIER, through its affiliates including 'Biofarma', the Plaintiff Nos. 1 and 2 herein, have been carrying on a reputed business internationally over the years.

6. It is stated that specifically, in relation to India, Plaintiff No. 2 has been in existence since 1986. India has always been a very important country for SERVIER group because of its unique geographical location, its size and its significantly high population. Plaintiff No. 2 is well-respected in the medical fraternity for its original products of high quality, strong scientific base and ethical promotion.

7. The Plaintiff No. 1 has applied for and secured trade mark registration for the word mark "SERVIER" and SERVIER

formative trade marks in classes 1, 3, 5, 7, 9, 10, 16, 35, 36, 39, 40, 41, 42, 44 and 45. The Plaintiffs have reproduced a table comprising of the particulars of the Plaintiffs' trade mark registrations at paragraph 14 of the Plaint. Additionally, the Plaintiff No.1 has also applied for and secured registrations of the trade mark/name 'SERVIER' in numerous countries / jurisdictions worldwide including in African countries such as Algeria, Kenya, Madagascar, Morocco, Namibia and Mozambique.

8. The Plaintiff states that the Plaintiffs' goods and services under the trade mark/name SERVIER command tremendous popularity and have been extensively sold the world over. To demonstrate its goodwill and reputation in respect of its goods and services under the trade mark/name SERVIER, the Plaintiffs have produced the following documents along with the Plaint:

(a) A statement of the Plaintiff No. 1 's worldwide revenues from the year 2018 to 2023 and extracts from the Plaintiff No. 1's Annual Reports for the years 2018 to 2023 supporting the figures

provided in the statement set out at paragraph 15 read with Exhibit E of the Plaintiff;

(b) A statement of the Plaintiffs' revenues in India from the years 2018 to 2023 are set out at paragraph 16 of the Plaintiff;


(c) Sales invoices raised by Plaintiffs towards sales of the goods and / or services bearing the trade mark "SERVIER" in international and domestic markets (annexed at Exhibits F and G of the Plaintiff);

(d) Few specimens of the promotional material in respect of the Plaintiffs' goods / services bearing the trade mark "SERVIER" are set out at paragraph 17 read with Exhibit H to the Plaintiff;

(e) WHOIS extracts for the Plaintiffs' domain name [www.servier.com](http://www.servier.com), are set out at paragraph 18 read with Exhibit I to the Plaintiff.

(f) Printouts from the Plaintiffs' social media accounts on Facebook, LinkedIn and Twitter are set out at paragraph 18 read

with Exhibit J to the Plaintiff.

9. In or about September 2023, the Plaintiffs claim to have become aware of the Defendant's use of a nearly identical and deceptively similar mark/name SEFIER/  in respect of an identical business as that of the Plaintiffs viz. pharmaceutical products. The Defendant is also using the said impugned trade mark as a part of its impugned domain name [www.sefierlifescience.com](http://www.sefierlifescience.com) and that the Defendant is applying the impugned mark to its impugned goods listed on its website as well on third party platforms such as [www.tradeindia.com](http://www.tradeindia.com). The extracts of which are annexed at Exhibit L of the Plaintiff.

10. Plaintiff No. 1 through its Advocates addressed a cease-and-desist notice dated 27<sup>th</sup> September 2023 to the Defendant calling upon it to cease all objectionable use of the impugned trade mark. The Plaintiffs' Advocates received a letter/response dated 12<sup>th</sup> October 2023 from the Defendant's Advocates attempting to justify the Defendant's dishonest adoption and use of the mark/name "SEFIER", alleging that there is no phonetic similarity between the

marks “SEFIER” and “SERVIER” and refusing to give up use of the impugned mark/name. However, at paragraph 3 of the letter/response the Defendant suggested that it was open to discussions for amicable resolution of the matter.

11. From October 2023 to February 2024, after the receipt of the said response from the Defendant’s Advocates, there were discussions/emails exchanged between the Advocates for the Plaintiffs and the Defendant wherein the Defendant’s Advocates kept assuring the Plaintiffs that upon receiving instructions from the Defendant, the matter can be settled. However, the said communication came to no aid of the Plaintiffs as there was no actual response and/or willingness from the Defendant’s side to settle the matter.

12. In May 2024, the Plaintiffs undertook searches through the online records of the Trade Marks Registry, where they came across the Defendant’s trade mark applications for registration of the trade mark/name “SEFIER LIFE SCIENCE PRIVATE LIMITED”, details whereof are provided hereinbelow.



Trade Mark	Application No. / Date of filing Application	Class
SEFIER LIFE SCIENCE PRIVATE LIMITED	6261051 (filed on January 15, 2024)	5
SEFIER LIFE SCIENCE PRIVATE LIMITED	6261050 (filed on January 15, 2024)	10
SEFIER LIFE SCIENCE PRIVATE LIMITED	6261052 (filed on January 15, 2024)	35
SEFIER LIFE SCIENCE PRIVATE LIMITED	6261053 (filed on January 15, 2024)	42
SEFIER LIFE SCIENCE PRIVATE LIMITED	6261054 (filed on January 15, 2024)	44

13. The Plaintiff has accordingly filed the present Suit on 13th June, 2024 and took out present Interim Application against the Defendant.

14. The Defendant has filed Affidavit in Reply dated 4th July, 2024 in response to the Plaintiffs Interim Application.

15. Mr. Kamod, the learned Counsel appearing for the Plaintiff has submitted that, the Plaintiff No. 1 is the registered proprietor of the trade mark "SERVIER" and that the present case pertains to the infringement of the Plaintiffs word mark "SERVIER" by the Defendant's use of the impugned trade mark "SEFIER" word

*per se*. He has submitted that this is not a case of infringement of a label mark. He has submitted that this Court needs to only compare the rival word marks “SERVIER” and “SEFIER”. He submits that a bare perusal of the Plaintiffs’ trade mark “SERVIER” and the Defendant’s impugned trade mark “SEFIER” leaves no manner of doubt that the rival trade marks are phonetically, aurally, visually and structurally similar. He has submitted that similarity between the rival trade marks also becomes apparent from the fact that the starting letters and the ending letters of the rivals marks are the same and hence there is a greater chance of confusion and deception.

16. Mr. Kamod has placed reliance upon the decision of the Division Bench of this Court in *Macleods Pharmaceuticals Ltd. v. Union of India*,<sup>1</sup> wherein this Court has considered and laid down principles / tests for assessing deceptive similarity laid down in various key authorities including the landmark judgment of the Supreme Court in *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.*<sup>2</sup>. The Supreme Court has listed the factors for deciding the question of deceptive similarity. He has placed reliance upon

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1 2023 SCC OnLine Bom 408

2 (2001) 5 SCC 73.

paragraph 35 of the said decision wherein the Supreme Court has set out the factors to be considered. Further, the Supreme Court has rejected the principles that dissimilarities in essential features in devices and composite marks are more important than some similarities.

17. Mr. Kamod has submitted that the pertinent factor in the present case is that goods involved are medicinal and pharmaceutical preparations. In *Cadila Pharmaceutical (Supra)*, the Supreme Court has observed that where medicinal products are involved, the test to be applied for assessing the violation of trade mark law is not at par with cases involving non-medicinal products. The Supreme Court has held that a stricter approach should be adopted while applying the test to judge the possibility of confusion of one medicinal product for another by the consumer and that public interest would support less degree of proof in showing confusing similarity between the trade marks in respect of medicinal products as against non-medicinal products. The Supreme Court has observed that stringent measures should be adopted in order to prevent likelihood of confusion in respect of medicinal products since confusion between medicinal products may be life-threatening and not merely inconvenient.

18. Mr. Kamod has placed reliance upon the decision of this Court in *Macleods Pharmaceuticals Ltd. (Supra)* and in particular paragraph 25 thereof, which lays down the principles which are emerging from the decisions set out for assessing of deceptive similarity in medicinal or a pharmaceutical product as the impugned trade mark. The Supreme Court has laid down amongst the principles viz. that when a medicinal or pharmaceutical product is involved as the impugned trade mark, the Court may not speculate as to whether there is a probability of confusion between the marks. Mere existence of the slightest probability of confusion in case of medicinal product marks, requires that the use of such mark be restrained. Further, in arriving at a conclusion with respect to the similarity and confusion between medicinal products, the same should be examined from the point of view of an ordinary common man of average intelligence instead of that of a specialised medicinal practitioner. The primary duty of the Court is towards the public and the purity of the register. Duty of the Court must always be to protect the public irrespective of what hardship or inconvenience it may cause to a particular party whose trade mark is likely to deceive or cause confusion.

19. Mr. Kamod has submitted that from the aforementioned

decision and test and principles of deceptive similarity laid down therein it would lead to an unmistakable conclusion that the Plaintiffs' trade mark "SERVIER" and the Defendant's trade mark "SEFIER" are deceptively similar.

20. Mr. Kamod has submitted that the use by the Defendants of the impugned trade mark as part of its trade name / corporate name amounts to infringement of Plaintiffs trademark under Section 29(5) of the Trademarks Act, 1999. He has submitted that the Defendants impugned trademark "SEFIER" forms an essential part of its impugned corporate name / trade name *Sefier Life Science Private Limited*. The remaining words "*Life*", "*Science*", "*Private*" and "*Limited*" taken individually or together do not form an essential part of the Defendant's corporate name / trade name. He has submitted that the Defendant's use of the impugned trade mark "SEFIER", which is nearly identical with and / or deceptively similar to the Plaintiffs' registered SERVIER trade marks, as a part of its impugned corporate name / trade name and which is dealing in the same goods for which the Plaintiff No. 1 has secured registration of its SERVIER trade marks amounts to infringement of the Plaintiffs' registered SERVIER trade marks.

21. Mr. Kamod has placed reliance upon the judgment of this Court *Pizza Hut International LLC Vs. Pizza Hut India Pvt. Ltd.*<sup>3</sup> He has submitted that in the said decision, the use of another trade mark in the corporate name / trade name amounts to infringement. He has submitted that in the present case the Defendant's use of impugned corporate name / trade name "SEFIER" LIFE SCIENCE PRIVATE LIMITED amounts to infringement of Plaintiffs registered SERVIER trade marks.

22. Mr. Kamod has submitted that the Defendant's use of the impugned trademark "SEFIER" as a house mark amounts to an infringement of the Plaintiffs' registered trademark. He has submitted that the Defendant has contended that its using product identification marks which are completely different from its house mark and thus there is no likelihood of confusion. He has submitted that once this Court concludes that impugned trade mark "SEFIER" used by the Defendant, albeit as a house mark, is deceptively similar to the Plaintiffs' registered trade mark "SERVIER", a case for infringement is made out and an order of ad-interim injunction must follow. He has placed reliance upon Section 29 of the Trademarks

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<sup>3</sup> *2002 SCC OnLine Bom 688*

Act, 1999 and submitted that all that has to be seen is whether the Defendant is using a mark in the course of its trade and in such a manner as to render the use of the mark likely to be taken as being used as a trade mark. The fact that is a house mark makes no difference.

23. Mr. Kamod has submitted that the difference in get-up / pricing / packaging of rival drugs is not a relevant consideration. He has placed reliance upon the decision of the Division Bench of this Court in *Medley Laboratories (P) Ltd., Mumbai and Ors. vs. Alkem Laboratories Limited*<sup>4</sup>, wherein the Division Bench of this Court observed that once the Court concludes that the rival trade marks are deceptively similar, the other factors, viz., the packing being different, number of tablets contained in the competing packaging is not the same, prices are not identical and/or the goods being sold on doctor's prescription are altogether irrelevant and immaterial. This has also held by the Supreme Court in *Cadila Pharmaceutical Ltd. (Supra)* relying upon its earlier decision in *Kaviraj Pandit Durga Dutt Sharma vs. Navaratna Pharmaceutical Laboratories*<sup>5</sup>.

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<sup>4</sup> 2002 SCC OnLine Bom 425

<sup>5</sup> AIR 1965 SC 980

24. Mr. Kamod has further submitted that merely because the Defendant's goods are sold under prescription / schedule H drugs cannot by itself be considered a sufficient protection against confusion. He has submitted that it is common knowledge that consumers often place order for prescription drugs with chemists over the phone and that often the hand written prescriptions are difficult to read. It is a settled principle of law that physicians, doctors and chemists are not immune to confusion or mistake. He has placed reliance upon *Cadila Pharmaceutical Ltd.(Supra)* and *Medley Laboratories Ltd. (Supra)* in this context.

25. Mr. Kamod has submitted that the Defendants claim to be only exporting its goods and not selling any goods bearing the impugned trade mark in India is an irrelevant factor as the Defendant's use of the impugned mark for export amounts to use in India. He has placed reliance upon Section 56 of the Trademarks Act, 1999. He has submitted that the Defendant has applied the impugned trademark to its impugned goods within India, although the same are exported from India, the Defendant's such use is deemed to constitute use of the impugned trade mark in relation to the impugned goods in India. He has placed reliance upon the



decision of the Division Bench of this Court in *Cadila Pharmaceuticals Ltd. v. Sami Khatib of Mumbai*<sup>6</sup>.

26. Mr. Kamod has submitted that the contention of the Defendant that the word “SEFIER” is descriptive has no substance. The Defendant in the present case is not using the impugned trademark “SEFIER” in a descriptive sense and the Defendant is claiming exclusivity in the impugned trade mark. The Defendant’s own trade mark applications under trade marks “SEFIER LIFE SCIENCE PRIVATE LIMITED” leave no manner of doubt of its intention to use the impugned trade mark in a trade mark sense.

27. Mr. Kamod has submitted that the Defendant’s impugned mark “SEFIER” may have some meaning in French language, however this makes no difference.

28. Mr. Kamod has submitted that the Defendant’s contention that their registered trade mark “SERVIER” is not a word of common language is without any substance. He has submitted that the Plaintiffs are seeking protection in respect of the trademark

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<sup>6</sup> 2011 SCC OnLine Bom 484

SERVIER and not over any word of common language. Further, the Defendant's contention that the Plaintiffs trademark SERVIER is not a coined term and that the Plaintiffs cannot claim monopoly over a word of common language is misconceived. He has submitted that on the one hand the Defendant alleges that the Plaintiffs cannot claim exclusivity in their trade mark because the same is a word of common language / not distinctive, however, on the other hand, the Defendant has itself filed trademark applications for the impugned trademark. He has submitted that doctrine of estoppel squarely applies to the present case. The Defendant having itself filed trademark applications for the impugned trademark cannot be permitted to approbate and reprobate. He has placed reliance upon the decision of this Court in *Pidilite Industries Ltd. v. Riya Chemys*, in this context.

29. Mr. Kamod has submitted that the Defendant has dishonestly adopted the impugned trademark which is evident from the frivolous explanation given by the Defendant for adopting the impugned trade mark viz. that the impugned trade mark, "SEFIER" resembles to the French word "se-fier" which means "to trust" or "to

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<sup>7</sup> 2022 SCC OnLine Bom 5077

rely on”. Further, the Defendant has contended that it is selling its preparations in African countries where different languages are spoken including *inter alia* French. He has submitted that this justification of adopting the impugned mark is farfetched and appears to be an afterthought. Judicial notice has been taken of parties such as the present Defendant who after copying the trade marks, try and explain their conduct and to look out for means to justify the adoption of their infringing trade marks. It is settled law that once the impugned trade mark is held to be deceptively similar to trade mark of the prior registered proprietor, no amount of justification, even if it is plausible, is capable of defending infringement of trade mark of such prior user.

30. Mr. Kamod has submitted that the Defendant has filed trademark applications on 15th January, 2024 only after receipt of the Plaintiffs’ cease and desist notice on 27<sup>th</sup> September 2023, which shows the dishonesty on the part of the Defendant. He has submitted that the Defendant does not have any tenable defence to the Plaintiffs present Suit and has therefore raised various frivolous and contradictory contentions in the Affidavit in Reply to somehow justify its use of the impugned trade mark.

31. Mr. Kamod has submitted that the Plaintiffs have a strong case for grant of ad-interim reliefs. There is no question of delay as the Plaintiffs immediately upon coming across the Defendant's use of the impugned trade mark "SEFIER" and the impugned trade name / corporate name and impugned domain name containing the impugned trade mark "SEFIER", addressed a cease and desist notice dated 27th September 2023 to the Defendant. After receiving the Defendant's response dated 12th October 2023, there were discussions/emails exchanged between the counsel for Plaintiffs and Defendant between October 2023 to February 2024, which eventually failed. After coming across the Defendant's trade mark applications for the impugned trade mark in May 2024, the Plaintiffs filed the present Suit on 13th June 2024. Accordingly, the Plaintiffs submit that there been no delay in filing the present Suit and Interim Application.

32. Mr. Kamod has submitted that assuming that there has been any delay whatsoever, it is settled law that mere delay by itself is not a sufficient defence to an ad-interim application for injunction in a suit for infringement of trade mark. Ultimately, in intellectual property rights matters, the Court is really protecting the interest of

the general public and consumers and hence delay, if any, cannot come in the way of grant of ad-interim injunction. In this context he has relied upon the decision of this Court in *Anglo-French Drugs & Industries Ltd. v. Eisen Pharmaceutical Company Pvt. Ltd.*,<sup>8</sup> wherein it was observed that if the Court is *prima facie* satisfied that the rival trade marks are similar and the adoption is dishonest, a prompt order of injunction must follow, especially at the ad-interim stage.

33. Mr. Kamod has submitted that the Plaintiffs in the present Suit has made out strong prima facie case for grant of ad-interim relief as the Defendant's impugned trademark "SEFIER" is deceptively similar to the Plaintiffs' registered trademark "SERVIER". Further, the Defendant has applied the impugned trademark "SEFIER" to the same goods and is using the impugned trade mark "SEFIER" as a part of its trade name of the same business in respect for which the Plaintiffs have secured registration and for which they have been using their trade mark "SERVIER". The Defendant's use of impugned trade mark "SEFIER" in respect of medicinal and pharmaceutical preparations amounts to infringement of the Plaintiff's registered "SERVIER" trade marks. Accordingly, ad-interim

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8 *1996 SCC OnLine Bom 580*

relief of injunction against the Defendant be granted. The balance of convenience is in favour of the Plaintiffs and against the Defendant. Unless reliefs as prayed for are granted, the Plaintiffs will suffer irreparable injury which cannot be compensated in terms of money.

34. Ms. Priyanka Kothari, the learned Counsel for the Defendant has submitted that the Plaintiffs have alleged infringement on the basis of alleged similarity in one word in the name of the Defendant Company, while there is no claim of similarity in the names of actual products offered for sale. She has placed reliance upon the products offered by the Plaintiffs and Defendants and along with its composition which has been annexed at document A to the brief synopsis on behalf of the Defendant and reproduced in the table form part of paragraph 2 of the said brief synopsis. She has submitted that a perusal of the table, shows that even the composition of medicine is different, thus ruling out the possibility of any confusion.

35. Ms. Kothari has submitted that had there been any similarity the Trade Mark Registry would have raised the objection. The Plaintiff has not even raised an objection to advertisement of the Defendant's trade mark in registration application and thus creating

estoppel against the Plaintiff from claiming the injunction.

36. Ms. Kothari has submitted that the Plaintiff instead of objecting to the Defendant's trademark application for registration has directly filed the present Suit in the Court. She has submitted that the Defendant has already received trademark registration for **"SEFIER LIFE SCIENCE PRIVATE LIMITED"** in 3 classes, hence there is no scope of confusion among marks as not objected to by the Registry.

37. Ms. Kothari has submitted that the Defendant does not offer its products for sale in India, but in Africa, yet the cause of action of infringement is being brought before this Court for alleged infringement that never occurred in India. She has submitted that the Plaintiff is clearly for a claim of loss of anticipated profit, that may occur to the Plaintiffs, should the Defendant choose to sell in India and the same cannot be decided at this juncture and interim application deserves to be dismissed on this ground alone.

38. Ms. Kothari has submitted that the Plaintiff has failed to file any document or evidence to remotely suggest that any person

has got confused because of the alleged deceptive similarity between the two marks or that the Defendant is selling their products in India.

39. Ms. Kothari has submitted that the drugs offered by the Plaintiffs and Defendant have to be prescribed by a medical practitioner, especially, for the treatment of an ailment as serious as cancer, cardiac or diabetes. Hence it is difficult to accept that the said medical practitioner is likely to be confused between the marks of the Plaintiffs and the Defendant.

40. Ms. Kothari has further submitted that under Section 29(5) Trademarks Act infringement would amount when Defendant uses such registered trademark of Plaintiff as his trade name or part of his name or name of his business concern or part of the name of his business concern, dealing in goods or services in respect of which the trade mark is registered. Thus, the registered trade mark "SERVIER" or any other registered trademarks of the plaintiff would be infringed under Section 29(5), if the Defendant was found to be using "SERVIER" or any other registered trademark of the Plaintiff as part of its trade name. In the present case, the Plaintiff has not alleged, nor is there any evidence, that the Defendant is using



"SERVIER" or any other registered trademark of the Plaintiff as part of its name. The Defendant is using "Sefier" as part of the corporate name of Defendant Company, which does not constitute infringement. She has placed reliance upon the decision of the Delhi High Court in *Mankind Pharma Ltd v. Chandra Mani Tiwari and Another*<sup>9</sup>.

41. Ms. Kothari has further submitted that although the allegation pertains to a word in the company's name, the products and their names are entirely different. The Defendant sells its products in aluminum strips of capsules, whereas the Plaintiffs sell their product in bottles. Moreover, the colour schemes of both products are completely different. Therefore, there is no similarity in the getup of either the packaging or the product itself.

42. Ms. Kothari has submitted that there is no phonetically similarity between "Sefier Life Science" and "Servier." The pronunciation and phonetics of the two marks are notably different. The Defendant's mark "Sefier" pronounced "**Suh-fee-er**" differs phonetically from Plaintiff's mark "Servier" pronounced "**Se-Vee-ay**".

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<sup>9</sup> 2018 SCC OnLine Del 9678)

43. Ms. Kothari has submitted that the medicines sold by the Defendant are prescription drugs, which cannot be purchased over the open counter without a prescription, thus chances of any confusion do not exist. She has submitted that the composition/salt of products offered by the Defendant are different than that of the Plaintiffs, except one, however, even that one product apart from it being a prescription drug, the packaging, and the name is completely different ruling out even any remote possibility of alleged confusion. Thus, the class of user who will go and buy a prescription drug, cannot be expected to take completely different salt as alleged by Plaintiffs.

44. Ms. Kothari has submitted when deciding the question of similarity in goods, the nature and composition of the goods, their respective use, functions, the trade channels and trade dress through which they are bought and sold are matters for consideration. The Defendant's mark has a completely different nature and composition of goods and the way the services are offered. These surrounding circumstances should be considered while deciding the present application.

45. Ms. Kothari has placed reliance upon the decision of the Calcutta High Court in *Hindustan Development Corporation Ltd. v. Deputy Registrar of Trade Marks*<sup>10</sup>, in support of her submission that the Plaintiff is misusing this principle to claim undue advantage against other fellow members of the trade. She has submitted that the trademark should be viewed as a whole rather than dissected in parts and in this context she has placed reliance upon the decision of this Court in *M/S. South India Beverages Pvt. Ltd versus General Mills Marketing*<sup>11</sup>.

46. Ms. Kothari has submitted that under trademark law overall impression and distinctiveness of the mark are derived from its entirety, not isolated elements. When "SEFIER" is viewed entirely, "Sefier Life Science" possesses its unique and unmistakable identity that is separate from "Servier."

47. Ms. Kothari has submitted that word SEFIER is derived from French language which means Trust and the Plaintiff cannot claim exclusivity over the word of common language as observed by the *High Court of Delhi in Institute of Directors V/s. Worlddevcorp*

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<sup>10</sup> 1954 SCC OnLine Cal 228

<sup>11</sup> (FAO (OS) 389/2014)

***Technology and Business Solution Pvt Ltd & Ors<sup>12</sup>.***

48. Ms. Kothari has submitted that it is a well-known legal dictum that no one can exercise proprietary rights over generic words. She has placed reliance upon the Delhi High Court judgment in Panacea Biotec Ltd. v. Recon Ltd., 1996 SCC Online Del 508. She has submitted that the contention that the Plaintiffs hold proprietary rights over the words is futile and baseless.

49. Ms. Kothari has submitted that without prejudice and in the alternate the Defendant will require about 12-15 months to change the name in the event this Court is not persuaded with the arguments of the Defendant.

50. Ms. Kothari has submitted that the prayer in the Interim Application be rejected.

51. Having considered the submissions, in my view, the Plaintiff has established that they are part of the SERVIER group of companies and that SERVIER is an international and independent pharmaceutical group governed by a non-profit foundation. SERVIER is presently in about 150 countries with more than 22,000 employees

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<sup>12</sup> [CS(COMM)611/2023]

all over the world. Further, the Plaintiff No.1 is a registered proprietor of the word mark SERVIER which has secured trade mark registration in Classes 1, 3, 5, 7, 9, 10, 16, 35, 36, 39, 40, 41, 42, 44 and 45. The secured registrations are in numerous countries / jurisdictions worldwide including in African countries such as Algeria, Kenya, Madagascar, Morocco, Namibia and Mozambique.

52. Further, from the material on record which includes worldwide revenues of Plaintiff No.1 from 2018 to 2023 as well as sales invoices raised by the Plaintiffs towards sale of goods and / or services bearing the trade mark SERVIER in international and domestic markets and the promotional material, in respect of the Plaintiffs goods / services bearing the trade mark SERVIER, there is no manner of doubt that the Plaintiffs goods and services under the trademark SERVIER command enormous popularity and goodwill and reputation.

53. The Defendant is using as part of its trade name the word SEFIER in respect of identical business as that of the Plaintiffs. The Defendant is also using the impugned trade mark as part of its impugned domain name [www.sefierlifescience.com](http://www.sefierlifescience.com) and that the

Defendant is applying the impugned mark to its impugned goods listed on its website as well as on third party platforms such as [www.tradeindia.com](http://www.tradeindia.com). In my prima facie view, the impugned trade mark SEFIER and Plaintiffs' trademark SERVIER are nearly identical and / or deceptively similar.

54. I do not find any merit in the submission on behalf of the Defendant that the rival marks are phonetically and visually different and / or the Defendant's mark SEFIER has a distinctive pronunciation of the alphabet 'F', whereas the Plaintiffs registered trade mark SERVIER has distinctive pronunciation of the alphabet 'V'. Further, the Defendant's contention that the mark is not "SEFIER" but "SEFIER LIFE SCIENCE" which is used along with a stylized device of 'S' is in my prima facie view irrelevant as the essential and prominent feature of the mark is "SEFIER" which is deceptively similar to the Plaintiff's trademark "SERVIER".

55. I find much substance in the submission on behalf of the Plaintiffs that for the purpose of trade mark infringement especially of a word mark, the Court needs to only compare the rival word marks "SERVIER" and "SEFIER". A bare perusal of the Plaintiffs' trade

mark “SERVIER” and the Defendant’s impugned trade mark “SEFIER” leaves no manner of doubt that the rival trade marks are phonetically, aurally, visually and structurally similar. This becomes apparent from the fact that the starting letters and the ending letters of the rivals marks are the same and hence there is a greater chance of confusion and deception.

56. In the present case the goods involved are medicinal and pharmaceutical products. Thus, a stricter approach is to be adopted to judge the possibility of confusion of one medicinal product for another by the consumer. This has been laid down by the Supreme Court in *Cadila Pharmaceutical Ltd. (Supra)* as well as by this Court in *Macleods Pharmaceuticals Ltd. (Supra)*. In *Macleods Pharmaceuticals Ltd. (Supra)*, this Court has laid down the principles and rules of comparison of medicinal or pharmaceutical products. Amongst the principles is that the similarity and confusion between the products should be examined from the point of view of an ordinary common man of average intelligence instead of that of a specialized medicinal practitioner. Further, the Court may not speculate as to whether there is a probability of confusion between the marks and mere existence of the slightest probability of confusion

in case of medical product marks, requires that the use of the mark be restrained. This being more so since the primary duty of the Court is towards the public and the purity of the register. The mark must be compared as a whole and relevant consideration must be structural resemblance as well as similarity in idea and that meticulous comparison is not the correct way.

57. I do not find merit in the contention on behalf of the Defendant that Section 29(5) of the Trade Marks Act will not apply as the Defendant is not using the Plaintiffs' mark as part of its trade name or in dealing in goods or services in respect of which the trade mark is registered. The use by the Defendant of the impugned trade mark as part of its trading name does amount to infringement of the Plaintiffs' registered trade mark under the said provision. The Defendant's impugned trade mark "SEFIER" forms an essential part of its corporate name / trade name Sefier Life Science Private Ltd. and that "SEFIER" is nearly identical with and / or deceptively similar to the Plaintiff's registered trade mark "SERVIER" and that the Defendant is dealing in same goods for which the Plaintiff No.1 has secured registration of its trade mark. The remaining words 'Life', 'Science', 'Private' and 'Limited' taken individual or together do not



form an essential part of the Defendant's corporate name / trade name.

58. It has been held by this Court in *Pizza Hut International LLC (Supra)* that use of impugned corporate name or trading style amounts to an infringement of the Plaintiffs trade mark.

59. I also do not find merit in the contention on behalf of the Defendant that the Defendant is using the impugned trade mark SEFIER as house mark and that nobody looks at the house mark and that the customers placed order for the goods by referring to the product identification mark and not the house mark. Once this Court is of the prima facie view that the impugned trade mark SEFIER used by the Defendant albeit of house mark, is deceptively similar to the Plaintiffs' registered trademark SERVIER, a case for infringement is made out and an order for ad-interim injunction must follow.

60. The Defendant has sought to contend that there is a difference in get-up / pricing / packaging of rival products and that is required to be taken in to consideration. However, this overlooks the decision of the Division Bench of this Court in *Medley Laboratories*

*(P) Ltd., Mumbai and Ors. (Supra)* that once the rival trademarks are deceptively similar, the aforementioned factors are altogether irrelevant and immaterial.

61. Further, the Defendant's submission that as the Defendant's goods are sold under medical prescription / schedule H drugs there will be no confusion or mistake is misconceived. It is well settled that physicians, Doctors and chemists are not immune to confusion or mistake. This has been held by the Supreme Court in *Cadila Pharmaceutical Ltd. (Supra)* as well as by this Court in *Medley Laboratories Ltd. Mumbai (Supra)*.

62. The Defendant claims to be selling and exporting its goods bearing the impugned trade mark in African countries and hence the Defendant has contended that it is not infringing the Plaintiffs trade mark. This contention overlooks Section 56 of the Trademarks Act, 1999 which provides that by the Defendant applying the impugned trade mark to its impugned goods in India, although the same are exported from India, the Defendant's use is deemed to constitute use of the impugned trade mark in relation to the impugned goods in India. This has also been held by the Division

Bench of this Court in *Cadila Pharmaceuticals Ltd. V/s. Sameer Khatib, Mumbai (Supra)*.

63. I do not find merit in the Defendants contention that the Plaintiffs trade mark SERVIER is not a coined term and that the Plaintiffs cannot claim monopoly over a word of common language. The Defendant has not been able to produce any material to show that the Plaintiffs trade mark is not coined or not distinctive. Such contention is accordingly liable to be rejected.

64. A contention has been raised on behalf of the Defendant during the arguments that the Plaintiffs are a non profit organization and that they are estopped from claiming the relief of the infringement of their trade marks and passing off against the Defendants. A bare perusal of the Plaint shows that the SERVIER group is an international and independent pharmaceutical group governed by a non-profit foundation. Neither the Plaintiff No.1, which is the registered proprietor of SERVIER trademark internationally as well as in India, nor Plaintiff No.2 which is a private limited company incorporated in India under the provisions of Companies Act, 2013 are non profit organization. Thus, this

contention on behalf of the Defendant is meritless.

65. I prima facie find that the Defendant has dishonestly adopted its mark SEFIER. This is evident from the explanation of the Defendant where it has sought to justify the adoption by contending that the impugned trade mark SEFIER resembles the French word “se-fier” which means “to trust” or “to rely on”. Such explanation in my prima facie view is farfetched and an after thought. I find from the trade mark application of the Defendant which was on 15<sup>th</sup> January, 2024 i.e. shortly after receipt of Plaintiffs’ cease and desist notice dated 27<sup>th</sup> September, 2023, that there is dishonesty on the part of the Defendant.

66. The decisions relied upon by Ms. Kothari are distinguishable on facts and hence are inapplicable in the present case.

67. There is no merit in the contention of the Defendant that there has been delay in the Plaintiffs application filed for ad-interim relief. It can be seen from the fact that immediately after the Plaintiffs came across the Defendant’s use of the impugned mark,

they addressed a cease and desist notice dated 27th September, 2023 to the Defendant. After receipt of the response of the Defendant on 12th October, 2023, there were discussions / emails exchanged between the Advocates of the Plaintiffs and Defendant between October, 2023 to February, 2024, which eventually failed to resolve the disputes. After coming across the applications made by the Defendant for registration of the impugned trademark in May, 2024 the Plaintiffs immediately resorted to filing the present Suit on 13th June, 2024 seeking restraint of the infringement of their mark by Defendants impugned trade mark. In any event it has been held by this Court in *Anglo-French Drugs & Industries Ltd. (Supra)* that if the Court is *prima facie* satisfied that the rival trade marks are deceptively similar and the adoption is dishonest, a prompt order of injunction must follow, especially at the ad-interim stage.

68. I find from the material on record that the Defendant has not been able to justify as to when it has started using the mark. The Plaintiff has made out a strong *prima facie* case of visual, phonetic and structural similarities between the rival marks and that the Defendant's adoption of the impugned trade mark is neither honest nor genuine.

69. Thus, in my view, the Plaintiffs are entitled to the grant of ad-interim relief as sought for in the Interim Application. The balance of convenience is also in favour of the Plaintiff and that unless the reliefs as prayed for are granted, the Plaintiffs will suffer irreparable injury which cannot be compensated in terms of money.

70. In view thereof, the ad-interim relief is granted in terms of prayer Clause (a) and (b) which read thus:-

(a) that pending the hearing and final disposal of the Suit, the Defendant by themselves, their promoters, assigns, successors-in-interest, licensees, franchisees, partners, directors, representatives, servants, distributors, employees, agents etc. or anyone associated with them be restrained by an order and injunction of this Hon'ble Court from using in any manner whatsoever, upon or in relation to their



business, the mark SEFIER/ LIFE SCIENCE and/or any other mark identical with or deceptively similar the Plaintiff No. 1's registered trade mark 'SERVIER' under registration Nos. 1263241, 1263242, 2938961, 3761809, 307176 and 3622531, so as to infringe the same;

(b) that pending the hearing and final disposal of the Suit, Defendant by themselves, their promoters, assigns, successors-in-interest, licensees, franchisees, partners, directors, representatives, servants, distributors, employees, agents etc. or anyone associated with them be restrained by an order and

injunction of this Hon'ble Court from using in any manner whatsoever, upon or in relation to their



business, the mark SEFIER/ and/or any other mark identical with or deceptively similar the Plaintiff No. 1's registered trade mark 'SERVIER' so as to pass off their business as and for that of the Plaintiffs or in any manner convey a connection with the Plaintiffs;

71. Ms. Kothari has at this stage sought stay of the implementation of this Order in order to change the name of the Defendant Company without prejudice to the Defendant's rights and contentions. Having arrived at the finding in this Order that the Plaintiff has made out a strong prima facie for grant of ad-interim relief, this Order cannot be stayed and the Defendant is at liberty to apply to this Court as and when it proposes to change its name.

72. The Interim Application shall be placed for final hearing and disposal on 27th August, 2024.

[ R.I. CHAGLA J. ]