

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 20 of 2015

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

For hearing of CMA No.176/2015

15.01.2015

Mr. Faisal Siddiqui and Muhammad Vawda, advocate for the plaintiff.

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Learned counsel for the Plaintiff contends that the Plaintiff is a researched based Generic Pharmaceutical Company and manufacturing a pharmaceutical drug in the name of “CEFIGET”, amongst other, which is semi-synthetic third generation cephalosporin antibiotic. Plaintiff has been granted certificates of registration of trademark of the subject drug from the Trade Mark Registry, Karachi which are enclosed as Annexures C to C-4 at pages 73 to 81 with the memo of plaint. Copyright of the Artistic Work (Label Design) of subject drug of the Plaintiff is duly registered with Intellectual Property Organization of Pakistan, and Annexure ‘D’ at page-107 to the plaint is certificate of registration. Learned counsel for the Plaintiff contended that the Defendant while infringing the trademark and copyright of Artistic Work (Label Design) are selling similar medicine in the name of “MEDIGATE” on similar and identical packing. Learned counsel for the Plaintiff has drawn my attention to the comparison of both the drugs which are available at Annexure ‘E’ at page 119 and claimed that a legal notice was served upon the Defendant for infringement of packing, design, artistic work and colour scheme of the Plaintiff’s subject drug “CEFIGET”, which was replied on behalf of Defendant on 21.9.2014. Copy of legal notice and its reply are enclosed as Annexure ‘F’ to ‘F-3’ at pages 129 to 139 respectively. Relevant portion of reply to the legal notice for infringement of copyright of “CEFIGET” received from the Defendant to the Plaintiff is being reproduced as under:-

“Our produce MEDIGATE is registered by Drug Regularity Authority with Drug Registration number 071680 and the packing material is designed under “The Drugs (Labeling and Packing Rules, 1986)” Section (3) Manner of labeling is concentrated especially during designing. So there is a no resemblance between MEDIGATE and Cefiget labeling and packing at all.

The main difference is in the Monogram and main design of the label and pack.

The second main difference in the pack size as we are providing water for reconstitution within the Pack.

Third difference is the Bottle type as we are presenting it in Glass bottles which consist of one bottle for Dry Suspension and one for Water and you are presenting it in Plastic bottle. We followed the rules of labeling and packing.

As for as your letter is concern you might get idea from strawberry as we are presenting it in strawberry flavor and we mentioned it on the pack and may be your flavor is too strawberry and you mentioned there as well. The strawberry and its color is not prohibited to be mentioned on pack by Drug Regularity Authority of Pakistan”.

Learned counsel for the Plaintiff to press his application for interim orders has relied on an order in a similar nature Suit No.2625/2014 and copy of the said order has been placed on record. I have gone through the record, the Defendants are situated in Peshawar and they were served through TCS on 12.1.2015. The Defendant in reply to legal notice suggests that the Defendant is contesting the two designs as different and claiming that their design carry a different artistic work from the artistic work of the Plaintiff in many ways. In the order placed on record from suit No.2625/2014, the Defendants have conceded to the demand raised by the Plaintiffs in their legal notice on the question of similarity in the packing and design of product. The Plaintiff has also claimed damages for the infringement of the design. Therefore, before passing any restraining order with directions to restrain the Defendant from manufacturing, distributing, exporting and marketing on the ground of infringement of label, design of the Plaintiff, I believe that one final notice may be sent to the Defendants, who are stationed at Peshawar and they were served through TCS on 12.1.2015. In case they failed to attend the case on the next date CMA No.176/2015 shall be allowed, which may adversely affect the entire business of the Defendants. Issue fresh notice through TCS to the Defendant and also send copy of this order for hearing on **6.2.2015** at **11:00** a.m.

JUDGE

SM