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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 706/2023 and I.A. 19586-19590/2023**

GLAXO GROUP LIMITED Plaintiff
Through: Ms. Tanya Varma Mr. Vardan Anand
& Ms. Parkhi Rai, Advs. (M:
9540132363)

versus

PRECADO HEALTHCARE PRIVATE LIMITED AND
ANR. Defendants
Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

ORDER
% **06.10.2023**

1. This hearing has been done through hybrid mode.

I.A. 19589/2023 (for exemption)

2. This is an application filed by the Plaintiff seeking exemption from filing originals/cleared/certified/translated copies of documents with proper margins, etc. Original documents shall be produced/filed at the time of Admission/Denial, if sought, strictly as per the provisions of the Commercial Courts Act, 2015 and the DHC (Original Side) Rules, 2018.

3. Exemption is allowed, subject to all just exceptions. Accordingly, the application is disposed of.

I.A. 19587/2023 (for additional documents)

4. This is an application filed by the Plaintiff seeking leave to file additional documents under the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (hereinafter, 'Commercial Courts Act'). The Plaintiff, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of the



Commercial Courts Act and the DHC (Original Side) Rules, 2018.

5. Application is disposed of.

I.A. 19588/2023 (u/S 12A of the Commercial Courts Act)

6. This is an application filed by the Plaintiff seeking exemption instituting pre-litigation mediation. Considering that the Plaintiff seeks urgent *ex-parte* relief, and in view of the orders passed in *Chandra Kishore Chaurasia v. R A Perfumery Works Private Ltd, 2022/DHC/004454*, the application is allowed and disposed of.

I.A. 19590/2023 (for sealed cover)

7. This is an application by the Plaintiff seeking permission to file documents in a sealed cover. The sealed cover is taken on record which contains turnover and advertising figures. Let the same be filed in the Registry and maintained in a sealed cover.

CS(COMM) 706/2023

8. Let the plaint be registered as a suit.

9. Issue summons to the Defendants through all modes upon filing of Process Fee.

10. The summons to the Defendants shall indicate that the written statement to the plaint shall be positively filed within 30 days from date of receipt of summons. Along with the written statement, the Defendants shall also file an affidavit of admission/denial of the documents of the Plaintiff, without which the written statement shall not be taken on record.

11. Liberty is given to the Plaintiff to file the replication within 15 days of the receipt of the written statement(s). Along with the replication, if any, filed by the Plaintiff, an affidavit of admission/denial of documents of the Defendants, be filed by the Plaintiff, without which the replication shall not



be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

12. List before the Joint Registrar for marking of exhibits on 24th November, 2023. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

13. List before Court on 22nd March, 2024.

I.A. 19586/2023 (u/O XXXIX Rules 1 & 2 CPC)

14. The present suit has been filed by Plaintiff-Glaxo Group Ltd. seeking protection of the packaging/trade dress of its well-known product name 'AUGMENTIN' used for pharmaceutical and medicinal preparations.

15. The Plaintiff is one of the leading pharmaceutical companies in the world, which has a large number of well-known brands as part of its bouquet.

16. It is averred that the Plaintiff-GSK has a rich legacy dating back to the year 1715. GSK's impressive global presence extends to more than 150 countries, where it operates commercial activities. It is averred that the company's dedication to research and development is evident through its continuous emphasis on innovation and excellence.

17. GSK claims to produce and deliver a staggering 1.8 billion packs of medicines in 2021-22. For the past eight years, it is claimed that the Plaintiff has received the prestigious number one ranking in the Access to Medicine Index, which evaluates pharmaceutical companies worldwide based on their efforts to enhance medicine accessibility in developing regions.

18. During the financial year 2021-22, the Plaintiff has achieved significant accolades, ranking 1st in the vaccines self-pay market segment and the dermatology segment in the country. It has also earned the



distinction of being the 2nd ranked multi-national pharmaceutical company and the 5th largest pharmaceutical company in terms of volume sales in India.

19. GSK avers that it provides various pharmaceutical products in India, including AUGMENTIN, CALPOL, COBADEX CZS, NEOSPORIN, CEFTUM, SUPACEF, ELTROXIN, BETNOVATE, and T-BACT. Their manufacturing unit is stated to be located in Nashik, Maharashtra, spread over 47 acres and manufactures tablets, creams, and ointments.

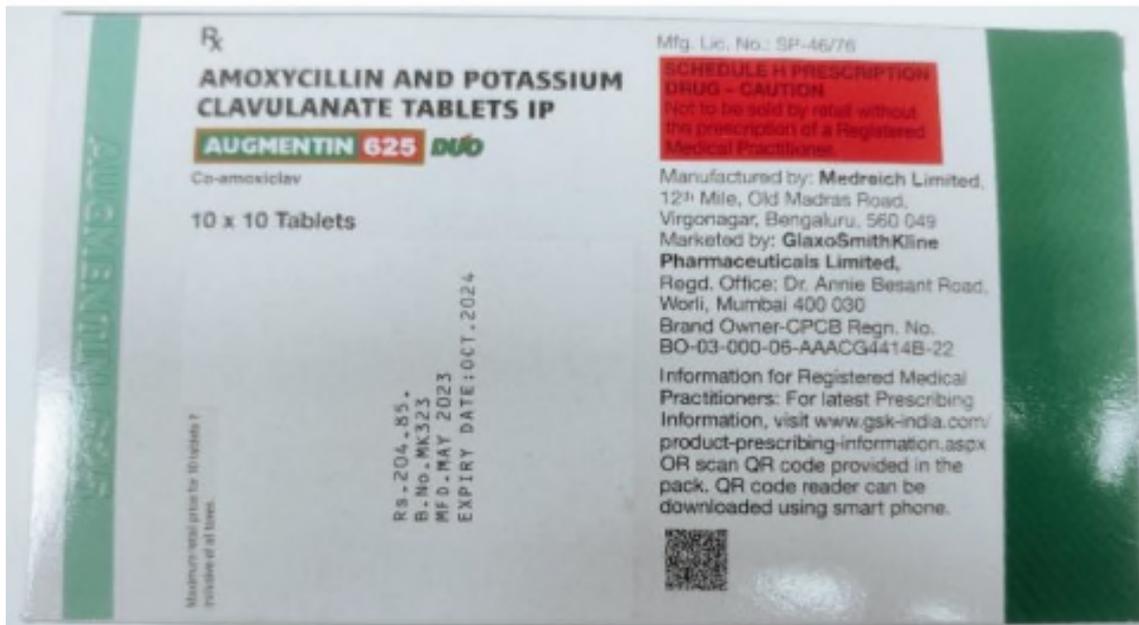
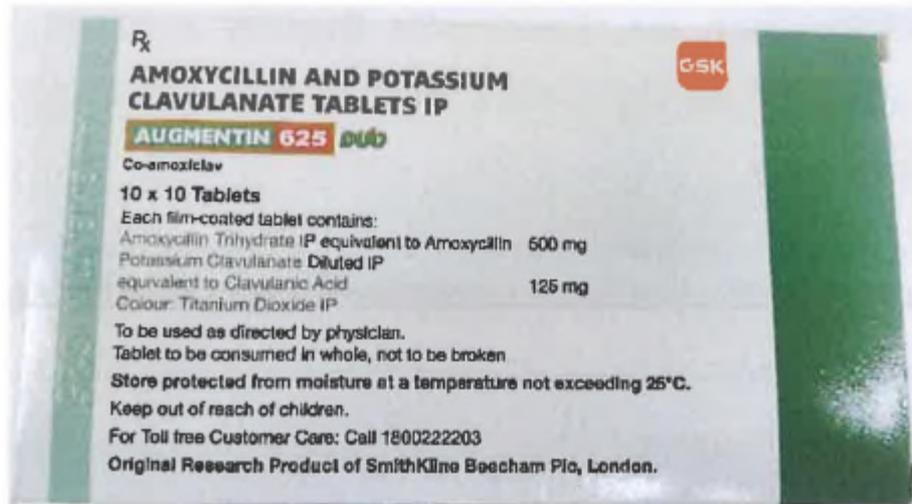
20. One of the most popular products of the Plaintiff is the product under the mark 'AUGMENTIN' which was launched in 1982 in the U.K. It is a combination drug of Amoxicillin Potassium Clavulanate, and is sold in various doses.

21. There are several variants of the 'AUGMENTIN' product including, AUGMENTIN DUO, AUGMENTIN DDS, AUGMENTIN ES, AUGMENTIN 625, AUMENTIN 625 DUO etc.

22. The product under the mark 'AUGMENTIN' is stated to have been launched in India in 1994. The mark 'AUGMENTIN' is registered as a word mark. The details of the Indian registration for the mark 'AUGMENTIN' are below:

Trademark	Registration No.	Date of Registration	Class	Valid till
AUGMENTIN	354687	23.10.1979	05	23.10.2027

23. The packaging used by the Plaintiff is a broad green and white colour scheme which is set out herein below:





24. The present suit relates to the imitative packaging launched by the Defendants under the mark 'AMOXYDUO 625'.

25. Defendant No. 1- Precado Healthcare Private Limited, which is based in Mumbai, is engaged in marketing and selling of products manufactured under the impugned imitative packaging. The products are being manufactured by Defendant No. 2-GG Nutritions based in Baddi distt., Himachal Pradesh.

26. It is averred that in December 2022, the Plaintiff discovered the Defendants' product, AMOXYDUO-625, on Defendant No. 1's website. The Defendants' products are also listed on the B2B website www.indiamart.com.

27. The Plaintiff sent a legal notice to Defendant No. 1 on 29th December 2022 regarding the unauthorized use of the green and white packaging associated with the Plaintiff's AUGMENTIN trademark. Despite sending a follow-up letter on 27th January 2023, the Plaintiff received no response.



28. In September 2023, the Plaintiff found the impugned products being sold in physical stores in New Delhi and purchased AMOXYDUO-625 on 28th September 2023, with the purchase invoice included in the proceedings.

29. Heard. The competing packagings of the Plaintiff and Defendants are extracted below:

<i>Plaintiff's packaging</i>	<i>Defendants' packaging</i>



30. While the Defendants' mark 'AMOXYDUO' differs from the Plaintiff's mark, the manner in which the packaging has been created, with the same green & white combination, and green red & white combination for writing of the mark shows that the same has been made deliberately to come as close to the Plaintiff's 'AUGMENTIN' packaging.

31. In fact, when the products of the Plaintiff and the Defendants are stacked together, it would be difficult to distinguish between the two products. Considering the fact that the Plaintiff's product 'AUGMENTIN' is used both in rural and urban areas, the difference in the word mark 'AUGMENTIN' and 'AMOXYDUO' is insufficient to distinguish, due to the near identity in packaging. Moreover, there is a reasonable possibility of even chemists dispensing the Defendants' products as a replacement or a similar product with that of the Plaintiff.

32. It is well recognised and even judicially settled that in the case of pharmaceutical products, confusion is to be avoided at all costs. In *Cadila Health Care v. Cadila Pharmaceuticals Ltd AIR 2001 SC 1952*, it was held that a stricter approach is required in cases of medicinal preparations and products since any confusion between the respective medicinal products is likely to have a disastrous effect on public health. The Supreme Court



observed that even a remote chance of confusion in pharmaceutical medicines products has to be avoided. The relevant paragraphs of the judgment read as follows:

*“39. Public interest would support lesser degree of proof showing confusing similarity in the case of trade mark in respect of medicinal product 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 the pressures placed by society on doctors, there should be as many clear indicators as possible to distinguish two medicinal products from each other. **It is not uncommon that in hospitals, drugs can be requested verbally and/or under critical/pressure situations. Many patients may be elderly, infirm or illiterate. They may not be in a position to differentiate between the medicine prescribed and bought which is ultimately handed over to them.**”*

*40. [...] 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. While confusion in the case of non-medicinal products may only cause economic loss to the plaintiff, **confusion between the two medicinal products may have disastrous effects on health and in some cases life itself. Stringent measures should be adopted specially where medicines are the medicines of last resort as any confusion in such medicines may be fatal or could have disastrous effects. The confusion as to the identity of the product itself could have dire effects on the public health.**”*

33. Therefore, the level of tolerance allowable for confusion among consumers is very low in pharmaceutical products, and cannot be easily condoned.



34. Considering the above judgment in *Cadila (supra)*, the Plaintiff has made out a prima facie case for grant of an ex-parte injunction. Balance of convenience also lies in favour of the Plaintiff, further, if the injunction order is not granted, irreparable harm would be caused to the Plaintiff.

35. Accordingly, considering that the Defendants' product is a colourable imitation of the Plaintiff's trade dress and packaging, an *ex-parte* injunction is granted restraining the Defendant Nos. 1 and 2- Precado Healthcare Pvt. Ltd. and GG Nutritions, from using the manufacturing, selling, offering for sale, advertising any pharmaceutical preparations in the impugned green and white packaging or any other packaging which is a colourable reproduction or a substantial imitation of the packaging of Plaintiff's product under the mark/name 'AUGMENTIN'.

36. It is made clear, however, that the Defendants are not enjoined from using the mark 'AMOXYDUO', so long as the same is in sold/manufactured in a packaging which is not confused with or imitative of the Plaintiff's product packaging.

37. Ld. Counsel for the Plaintiff submits that the Defendants also have listings on IndiaMart. It is directed that a copy of this order be communicated by Ld. Counsel for the Plaintiff to IndiaMart. Upon receipt of the present order, IndiaMart would take down the said listings within 72 hours.

38. Compliance of Order XXXIX Rule 3 CPC within a week.

39. List on the dates fixed above.

PRATHIBA M. SINGH, J

OCTOBER 6, 2023

dj/dn