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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 958/2024 & I.A. Nos. 43437/2024, 43438/2024,
43439/2024, 43440/2024, 43441/2024, 43442/2024 & 43443/2024
MANKIND PHARMA LIMITEDPlaintiff

Through: Mr. Chander M. Lall, Senior
Advocate with Mr. Ankur Sangal,
Mr. Ankit Arvind, Mr. Shashwat
Rakshit and Ms. Nidhi Pathak,
Advocates.
(M): 8826757095
Email: nidhi.pathak@khaitanco.com

versus

AQUAKIND LABS LLP & ORS.Defendants
Through: None.

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER
% **25.10.2024**

I.A. 43442/2024 (Exemption from filing original and certified copies of documents)

1. The present is an application under Section 151 of the Code of Civil Procedure, 1908 ("CPC"), on behalf of the plaintiff, seeking exemption from filing original/certified, typed, translated and fair copies of the documents.
2. Exemption is granted, subject to all just exceptions.
3. Plaintiff shall file legible, clear, and translated copies of the documents, on which the plaintiff may seek to place reliance, before the next

(Signature)
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date of hearing.

4. Accordingly, the present application is disposed of.

I.A. 43439/2024 (Exemption from instituting Pre-Institution Mediation)

5. The present is an application under Section 12A of the Commercial Courts Act, 2015, read with Section 151 of CPC, seeking exemption from undergoing Pre-Institution Mediation.

6. Having regard to the facts of the present case and in the light of the judgment of Supreme Court in the case of *Yamini Manohar Versus T.K.D. Keerthi*, 2023 SCC OnLine SC 1382, and Division Bench of this Court in *Chandra Kishore Chaurasia Versus RA Perfumery Works Private Ltd.*, 2022 SCC OnLine Del 3529, exemption from attempting Pre-Institution Mediation, is granted.

7. Accordingly, the application stands disposed of.

I.A. 43443/2024 (Exemption from advance service to the defendants)

8. The present is an application under Section 151 CPC, seeking exemption from advance service to the defendants.

9. The plaintiff seeks urgent interim relief, and has also sought appointment of Local Commissioners. Therefore, in the peculiar facts and circumstances of this case, exemption from effecting advance service upon the defendants, is granted.

10. For the reasons stated in the application, the same is allowed and disposed of.

I.A. 43440/2024 (Application seeking leave to file additional documents)

11. This is an application under Order XI Rule 1(4) read with Section 151 CPC, as amended by the Commercial Courts Act, 2015, seeking leave to file additional documents.

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12. The plaintiff, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of Commercial Courts Act, 2015, and the Delhi High Court (Original Side) Rules, 2018.

13. The application is disposed of, with the aforesaid directions.

I.A. 43441/2024 (Application seeking enlargement of time for filing Court Fees)

14. The present is an application for extension of time for filing the Court Fees.

15. Learned Senior Counsel appearing for the plaintiff submits that the requisite Court Fees shall be filed within a period of two weeks from today, owing to the Court holidays.

16. Accordingly, liberty is granted to the plaintiff to file the Court fees within a period of two weeks from today.

17. With the aforesaid directions, the present application is disposed of.

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18. Let the plaint be registered as suit.

19. Upon filing of the process fee, issue summons to the defendants by all permissible modes. Summons shall state that the written statement be filed by the defendants within thirty days from the date of receipt of summons. Along with the written statement, the defendants shall also file affidavit of admission/denial of the plaintiff's documents, without which, the written statement shall not be taken on record.

20. Liberty is given to the plaintiff to file replication within thirty days from the date of receipt of the written statement. Further, 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

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replication shall not be taken on record. If any of the parties wish to seek inspection of the documents, the same shall be sought and given within the timelines.

21. List before the Joint Registrar (Judicial) for marking of exhibits, on 18th December, 2024.

22. List before the Court on 10th March, 2025.

I.A. 43437/2024 (Application under Order XXXIX Rules 1 and 2 CPC)

23. The present suit has been filed for permanent injunction restraining the defendants from infringement of trade mark, passing off, unfair trade practice, rendition of accounts, damages etc.

24. Learned counsel for the plaintiff submits that the plaintiff is filing the present suit to restrain the defendants from using the trade mark/trade name/“AQUAKIND”, which is identical/ deceptively similar to plaintiff’s registered trade mark “MANKIND”/”KIND” and other “KIND” formative trademarks.



25. It is submitted that the trade mark “MANKIND” was adopted by the plaintiff’s founder/Chairman—Mr. Ramesh Juneja in the year 1986 for medicinal and pharmaceutical goods, when he commenced the pharmaceutical business under the name ‘Mankind Pharma’. The plaintiff through its founder has been using the said trade mark ever since the date of adoption and later the plaintiff company – ‘Mankind Pharma Limited’ was incorporated in the year 1991.

26. It is further submitted that the plaintiff started working as a fully integrated pharmaceutical company in the year 1995. Since then, the plaintiff has been formulating, developing, commercializing, and delivering affordable and accessible medicines that satisfy urgent medical needs.

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27. It is submitted that the plaintiff has grown exponentially for various products under the trade mark/trade name “MANKIND” since its adoption and use in the year 1986. As a part of its ever-expanding high quality product portfolio, the plaintiff has been expanding its product portfolio to different segments.

28. It is further submitted that the plaintiff is the registered proprietor of the well-known trade mark “MANKIND”. The said trade mark is registered in all 45 Classes for various goods and services. The plaintiff first registered the trade mark “MANKIND” vide trade mark registration no. 647871 dated 7th March 1995 in Class 5 claiming use since 1st January 1986. An illustrative list of the plaintiff’s “MANKIND” trade marks in relevant classes, as given in the plaint, is reproduced as under:-

S. NO	Trade Mark	Reg. No.	Class	Date of Reg.
1.	MANKIND	5645154	5	13/10/2022
2.		657871	5	07/03/1995
3.		2468879	5	30/01/2013

4.		2510537	5	09/04/2013
5.		2061279	35	30/11/2010
6.		2510565	35	09/04/2013
7.	MANKIND	2245094	44	07/12/2011
8.		2510558	44	09/04/2013

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29. It is submitted that the plaintiff has, for the last three decades coined, adopted and used several trademarks with the suffix “KIND” in relation to medicinal and pharmaceutical goods. The plaintiff was the first to use the trade mark “KIND” in the pharmaceutical industry.

30. It is further submitted that over the years, the plaintiff has adopted more than 300 “KIND” formative trademarks wherein “KIND”, as a suffix forms an essential part of the plaintiff’s trademarks. Some of such trademarks are HUMANKIND, HEPAKIND, GLYKIND, AMLOKIND, SORRIKIND, LIPIKIND, ATEKIND, URIKIND, GATIKIND, DENTAKIND, THERMOKIND, NUROKIND, CLOPIKIND, TEXAKIND, CEFAKIND, METROKIND, VOMIKIND, MAXIKIND, VERMIKIND, HERPIKIND etc.

31. It is submitted that the plaintiff’s goodwill and reputation over its “KIND” family of trademarks has made the said trademarks distinctive and a symbol of high-quality products. Due to the goodwill and reputation generated by the plaintiff on account of its extensive use of the “KIND” family of trademarks, the public exclusively associate any goods and services with the trade mark containing the suffix “KIND” in relation to the pharmaceutical industry with the plaintiff alone.

32. It is further submitted that to secure statutory rights over the “KIND” formative trademarks, the plaintiff has applied and secured registrations over various such trademarks. An illustrative list of the plaintiff’s “KIND” trade marks in relevant classes, as given in the plaint, is reproduced as under:

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S. NO	Trade Mark	Reg. No.	Class	Date of Reg.
1.	KIND	2458013	44	10.01.2013
2.	HEPAKIND	780841	5	4.12.1997
3.	GLYKIND	1091518	5	02.04.2002

4.	AMLOKIND	1091520	5	02.04.2002
5.	SORRIKIND	1091521	5	02.04.2002
6.	LIPIKIND	1091524	5	02.04.2002
7.	ATEKIND	1091526	5	02.04.2002
8.	URIKIND	3069649	5	01.10.2015
9.	GATIKIND	1126978	5	19.08.2002
10.	DENTAKIND	1132395	5	10.09.2002
11.	THERMOKIND	1177228	5	21.02.2003
12.	NUROKIND	2457848	1	10.01.2013
13.	TEXAKIND	1186848	5	28.03.2003
14.	CEFAKIND	1192873	5	21.04.2003
15.	CLOPIKIND	1179122	5	28.02.2003
16.	METROKIND	1204934	5	09.06.2003
17.	VOMIKIND	1237543	5	17.09.2003

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33. It is submitted that all the above-mentioned registrations are valid, subsisting and in full legal force and have been renewed from time to time.

34. It is further submitted that the plaintiff's trade mark "MANKIND" and other "KIND" formative trademarks and their variants have garnered such goodwill and reputation in the market owing to their continuous, extensive and long standing use that any use of the identical/deceptively similar trade mark/trade name by any entity for any goods and services, would amount to dilution of the plaintiff's well-known trade mark and result in infringement of plaintiff's trade mark "MANKIND" and the "KIND" formative trademarks.

35. It is submitted that the products and services of the plaintiff under the trade mark/trade name "MANKIND" have acquired tremendous goodwill and reputation in India and all over the world, and the plaintiff's trade mark "MANKIND" has also been declared as a "well-known" trade mark by the Registrar of Trade Marks under Rule 124 of the Trade Marks Rules, 2017.

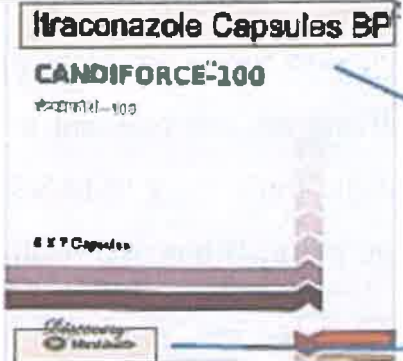

36. It is further submitted that in view of the aforesaid circumstances, the plaintiff has sole and exclusive rights in and over the trade mark/ trade name "MANKIND" and "KIND" formative trademarks and that any use of the trade mark, which is identical or similar to the plaintiff's trade mark in respect of any goods and/or services, would tantamount to infringement and passing off of the plaintiff's trade mark.

37. It is submitted that recently in the first week of October 2024, the representative of the plaintiff became aware about the use of the impugned

trade mark/ trade name 'AQUAKIND' by the defendants
for pharmaceutical products.

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38. It is further submitted that the plaintiff was shocked to see that the defendants are using the impugned trademarks/ trade name containing the suffix “KIND” which is exclusively associated with the plaintiff for pharmaceutical products. The defendants’ trade mark is also deceptively similar to plaintiff’s well-known trade mark/ trade name “MANKIND”. A comparison between the plaintiff’s and the defendants’ impugned trade mark/trade name, as given in the plaint, is reproduced as under:-

PLAINTIFF'S TRADE MARK	DEFENDANTS' TRADE MARK
<p style="text-align: center;">MANKIND</p> <p style="text-align: center;">KIND</p>	<p style="text-align: center;">AQUAKIND</p>
	

39. It is submitted that the aforesaid use of the impugned trademarks/ trade name by the defendants for identical goods as that of the plaintiff, containing the suffix “KIND” for which the plaintiff has registration along with several other registered “KIND” formative trademarks, is in clear violation of the statutory and common law rights of the plaintiff’s in its well-known trade mark “MANKIND” and “KIND” formative trademarks.

40. It is further submitted that the plaintiff came across the defendant no. 1’s application bearing application no. 6040767 for the impugned

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trademarks/trade name- **AQUAKIND LABS** in the last week of April 2024, which was filed on proposed to be used basis on 27th July, 2023 in Class 5, when the same was published in the Trade Mark Journal No. 2139. However, since the plaintiff could not find any product of the defendants in the market or online, the plaintiff filed a notice of opposition against the impugned application and diligently proceeded with the opposition proceedings.

41. It is submitted that the defendants thereafter on 1st October 2024 filed its evidence affidavit under Rule 46 of the Trade Marks Rule 2017, and produced documents to show alleged use of the impugned trademarks/ trade mark. The defendants have filed documents to show the alleged use only from August 2023. Such documents are not relevant as the plaintiff is the prior user and prior registrant of the trade mark “MANKIND” and “KIND” formative trademarks. Hence, the plaintiff has approached this Court at the earliest.

42. It is further submitted that the dishonesty of the defendants is evident as by using the trade mark/trade name “AQUAKIND”, the defendants are trying to ride upon the goodwill and reputation of the plaintiff. The trade mark “KIND” and its formative trademarks are exclusively associated with the plaintiff and the defendants are trying to draw an association with the plaintiff.

43. It is submitted that the defendants’ impugned trademarks/trade name is visually, structurally and phonetically similar to plaintiff’s well-known trade mark “MANKIND” and “KIND” formative trademarks of the plaintiff, and the same is likely to cause confusion and deception among the traders,

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distributors and buyers as the “KIND” formative trade marks for pharmaceutical products/business are associated with the plaintiff alone. The aforesaid fact is also confirmed by this Court in several orders passed over the years.

44. It is further submitted that the defendants’ adoption and use of the impugned trademarks/trade name is *mala fide ab initio*, as the plaintiff’s trademark “MANKIND” and “KIND” formative trademarks had already garnered tremendous goodwill and reputation much before incorporation of the defendants. The plaintiff was one of the top 5 pharmaceutical companies in India even before the defendants were incorporated. Before the defendants’ adoption of the impugned trademarks, the plaintiff was a well-established player in the pharmaceutical market and the trade mark “MANKIND” had become a well-known trade mark.

45. It is submitted that being so, the defendants cannot provide any justification for the adoption of the impugned trademarks/tradename, that is not only deceptively similar to the plaintiff’s well-known trade mark but also has the suffix “KIND”. The adoption and use of the impugned trademarks/trade name is a blatant and slavish imitation of plaintiff’s well-known trade mark “MANKIND” and “KIND” formative trademarks. Such adoption and use are with dishonest intention to attain illicit gains by riding upon the goodwill and reputation of the plaintiff.

46. It is further submitted that use of the said impugned trademarks/ trade name by the defendants for identical goods cannot be permitted. The defendants’ use of the said trademarks being dishonest, that too in the pharmaceutical industry is liable to be injuncted forthwith.

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47. It is further submitted that the relief of grant of injunction is all the more important as the goods/business in question are pharmaceutical and medicinal. It is a settled law that confusion of source of product between pharmaceutical goods may produce physically harmful results to purchasers and that greater protection is required for pharmaceutical goods than in the ordinary case.

48. It is submitted that the defendants' trademarks/trade name "AQUAKIND"/ "AQUAKIND LABS LLP/


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are deceptively similar to the plaintiff's registered trade mark "MANKIND"/ "KIND" and "KIND" formative trademarks. Moreover, the defendants are using the said trade mark for identical goods/business. Such use of the deceptively similar trade mark for identical goods/business, is likely to cause confusion and deception in the market and amongst the consumers.

49. In the above circumstances, the plaintiff has demonstrated a *prima facie* case for grant of injunction and, in case, no *ex parte ad interim* injunction is granted, the plaintiff will suffer an irreparable loss. Further, balance of convenience also lies in favour of the plaintiff, and against the defendants.

50. Accordingly, till the next date of hearing, the defendants, their proprietors, partners or directors, as the case may be, its principal officers, servants, distributors, dealers and agents, and all others acting for and on behalf of the defendants, are restrained from selling, offering for sale, advertising, directly or indirectly dealing in any goods and services under

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the impugned trade mark/ trade name “AQUAKIND”/ “AQUAKIND LABS
LLP”  and or any other trade mark/trade name as
may be identical to or deceptively similar with the plaintiff’s registered
trademarks “MANKIND” and/ or “KIND” formative trademarks and their
variants thereof, so as to cause infringement as well as passing off of the
plaintiff’s trademarks.

51. Issue notice to the defendants by all permissible modes upon filing of
the Process Fee, returnable on the next date of hearing.
52. Let reply be filed within a period of four weeks.
53. Rejoinder thereto, if any, be filed within two weeks, thereafter.
54. Compliance of Order XXXIX Rule 3 CPC, be done, within a period
of two weeks.
55. List before the Court on 10th March, 2025.

I.A. 43438/2024 (Application for appointment of Local Commissioners)

56. The present application has been filed on behalf of the plaintiff under
Section 135 of the Trade Marks Act, 1999 read with Order XXVI Rules 9
and 10 read with Section 151 CPC, seeking appointment of Local
Commissioners.

57. It is submitted that in order to preserve evidence of infringement, it is
necessary that Local Commissioners be appointed to visit the premises of
the defendants.

58. Accordingly, the following directions are issued:

I Mr. Shikhar Yadav, Advocate, (Mob. No. 9899514609), is appointed
as Local Commissioner, with a direction to visit the following premises of
the defendants:


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Aquakind Labs LLP c/o Suneel Kumar Srivastava

Gata No. 33, Barsana Dham

Village Aaraji Padri Sahab Urf Rakha,

School ki Boundary Ke Pa Rakha Road

Fatehgarh, Farrukhabad

Uttar Pradesh - 209601

Email – aquakindlabs@gmail.com

II Mr. Arijeet Shukla, Advocate, (Mob. No. 9886789419), is appointed as Local Commissioner, with a direction to visit the following premises of the defendants:

Aquakind Labs LLP

31/3/11, Ramaiyaji Puram

Dalibagh, Tilak Marg

Lucknow - 226001

Email – aquakindlabs@gmail.com

III The learned Local Commissioners, along with a representative of the plaintiff's and their counsel, shall be permitted to enter upon the premises of the defendants mentioned hereinabove, or any other location/premises, that may be identified, during the course of commission, in order to conduct the search, and seize products which are being marketed by the defendants.

IV After seizing the infringing material, the same shall be inventoried, sealed, and signed by the learned Local Commissioners, in the presence of the parties, and released on *superdari* to the defendants, on their undertaking to produce the same, as and when further directions are issued, in this regard.

V The learned Local Commissioners shall also be permitted to make

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copies of the books of accounts, including ledgers, cash books, stock registers, invoices, books, etc., in so far as they pertain to the infringing products.

VI Further, the learned Local Commissioners shall be permitted to undertake/arrange for photography/videography of the execution of the commission.

VII Both the parties shall provide assistance to the learned Local Commissioners, for carrying out the aforesaid directions.

VIII In case, any of the premises are found locked, the learned Local Commissioners shall be permitted to break open the lock(s). To ensure an unhindered and effective execution of this order, the Station House Officers (“SHOs”) of the respective local Police Stations, are directed to render all assistance and protection to the Local Commissioners, as and when, sought.

IX The fee of the learned Local Commissioners, to be borne out by the plaintiff, is fixed at ₹ 2,00,000/- (Rupees Two Lacs) each. The plaintiff shall also bear all the expenses for travel/lodging of the Local Commissioner and other miscellaneous out-of-pocket expenses, for the execution of the commission. The fee of the Local Commissioners shall be paid in advance by the plaintiff.

X The Local Commission shall be executed within a period of two weeks from today. The Local Commissioners shall file the report within a period of two weeks from the date, on which the commission is executed.

59. The order passed today, shall not be uploaded for a period of two weeks.

60. In terms of the foregoing, the present application stands disposed of.

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61. *Dasti* under signatures of the Court Master


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MINI PUSHKARNA, J

OCTOBER 25, 2024

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