

NOTICE OF MOTION

IN THE HIGH COURT OF DELHI AT NEW DELHI

To,
Mr. Gaurav Barathi
Counsel for the Defendants
GLA Law Offices
C-129, IInd Floor
Lajpat Nagar -I
New Delhi
9810526981, 011 - 46569494

IN THE MATTER OF:

C.S. (OS) No.2279 of 2009

Bristol-Myers Squibb Company & Anr.

...Plaintiffs

VERSUS

Mr. M. Adinarayan & Anr.

...Defendants

Sir,

The enclosed application in the aforesaid matter is being filed on behalf of the Plaintiffs and is listed on 6th June, 2012 or any other date thereafter. Please take notice accordingly.

THROUGH



ANAND ANDANAND
Advocates for Plaintiffs
B-41, NIZAMUDDIN EAST
NEW DELHI-110 013. INDIA
Tel: 011-43353000

New Delhi
Dated: 5th July, 2012

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IN THE HIGH COURT OF DELHI AT NEW DELHI

To,
The Deputy Registrar
High Court of Delhi
New Delhi

C.S. (OS) No.2279 of 2009

Bristol-Myers Squibb Company & Anr.

...Plaintiffs

Versus

Mr. M. Adinarayan & Anr.

...Defendants

Sir,

Will you kindly treat the accompanying application as an urgent one in accordance with the High Court Rules and Orders.

The grounds for urgency are:

That a Application under Order 39 Rule 2A read with Section 151 of the Code of Civil Procedure, 1908 seeking urgent orders of this Hon'ble Court is being filed.



New Delhi
Dated: 5 July, 2012

ANAND ANDANAND
Advocates for Plaintiffs
B-41, NIZAMUDDIN EAST
NEW DELHI-110 013. INDIA
Tel: 011-43353000

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IN THE HIGH COURT OF DELHI AT NEW DELHI
I.A. No. 2075 of 2012

IN
C. S. (OS) No. 2279 of 2009

Bristol-Myers Squibb Company
345 Park Avenue
New York, New York 10154-0037
USA

...Plaintiff No.1

Bristol-Myers Squibb India Pvt Ltd.
1st Floor, "A" Block, Shivasagar Estate
Dr. Annie Besant Road, Worli,
Mumbai 400 018

...Plaintiff No.2

Versus

Mr. M. Adinarayan
Company Secretary & G.M. (Corp Affairs)
Narco Pharma Limited
'NATCO HOUSE', Road No. 2,
Banjara Hills,
Hyderabad - 500 033.

... Defendant No.1
/Contemnor No.1

Narco Pharma Limited
Narco Pharma Limited
'NATCO HOUSE', Road No. 2,
Banjara Hills,
Hyderabad - 500 033

...Defendant No.2
/Contemnor No.2

**APPLICATION UNDER ORDER 39 RULE 2A READ WITH
SECTION 151 OF THE CODE OF CIVIL PROCEDURE, 1908**

The Plaintiffs, above named, respectfully submit as follows;

1. The Plaintiffs have filed the present suit for permanent injunction restraining infringement of Indian Patent No. 203937, unfair competition, damages, rendition of accounts and delivery up etc. and the same is pending before this Hon'ble Court.

2. The Plaintiffs had filed the present suit in the year 2009 as they had a real and reasonable apprehension that the Defendants/Contemnors were going to launch a generic version of DASATINIB in complete

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disregard of the Plaintiffs existing and valid patent No. 203937. The Plaintiffs rely on the contents of the plaint and the same are not repeated for the sake of brevity.

3. The Defendants/Contemnors, however, took a contrary stand in the present suit and stated on oath in their Written Statement that they had no intention to manufacture a generic version of DASATTINIB. They further stated that they had no intention of using the brand name 'DASANNAT' for the said generic product. They further stated that they had not even applied for marketing approval and such a product did not exist. They further stated that the advertisements for the impugned product on various websites were not theirs. The said statements made on oath are contained in paragraph 3G(a), 3G(c), 16-17,23,24,26-27 and 29 of the Written Statement and are not being repeated for the sake of brevity.

4. It is respectfully submitted that in the month of June, 2012 the Defendants surreptitiously launched the impugned product under the brand name 'DASANNAT' in the markets, which infringes Patent No. 203937, despite their contrary stand taken on oath in their Written Statement.

5. The Plaintiffs immediately approached this Hon'ble Court at the first instance and filed I.A. No. 11521 of 2012 under Order 39 Rule 1&2 read with Section 151 CPC seeking temporary injunction restraining the Defendants/Contemnors from manufacturing and selling the product 'DASANNAT' or any other product that contains DASATTINIB or in any other manner infringes the Plaintiff's patent no. 203937. The contents of

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the said Application are relied on and not repeated for the sake of brevity.

6. By its order dated 13th June, 2012, this Hon'ble Court while considering I.A. No. 11521 of 2012 was pleased to restrain the Defendants as follows:

"In the meanwhile, the Defendants shall remain bound by the stand taken by them in their Written Statement, particularly in paras 26 27 and 29."

A copy of the order dated 13th June, 2012, is filed with the present Application.

7. It is respectfully submitted in contumacious disregard and disobedience of the aforementioned order of this Hon'ble Court, the Defendants during the summer vacation flooded the market with the impugned product which infringes Patent No. 203937 and the Plaintiffs were constrained to file I.A. No. 11607/2012 under Order 39 Rules 1&2 of the Code of Civil Procedure. The Plaintiff relies on the said Application and the contents are not repeated for the sake of brevity.

8. By its order dated 22nd June, 2012, this Hon'ble Court was pleased to pass an ad interim order in favour of the Plaintiffs restraining the Defendants as follows;

"Considering the overall facts and circumstances of the case and the statement made, in the meanwhile, the defendants are restrained from manufacturing and selling the product which infringes the plaintiffs' registered patent No. 203937 in any manner"

A copy of the order dated 22nd June, 2012 is filed in the present proceedings.

9. It is respectfully submitted that the Defendants/Contemnors are fully aware of the above orders dated 13th June, 2012 and 22nd June, 2012, passed by this Hon'ble Court as the same were passed in the presence of the counsel for the Defendants.

10. It is respectfully submitted that nevertheless, in flagrant and contumacious disregard and disobedience of the orders dated 13th June, 2012 and 22nd June, 2012 of this Hon'ble Court and their own stand taken on oath before this Hon'ble Court, the Defendants continue to flood the market with the impugned product and thus continue to infringe the Plaintiffs rights by manufacturing, selling, offering for sale and/or advertising and exporting the impugned product across the country.

11. Furthermore, The contumacious acts of the Defendants/Contemnors have been confirmed through an investigation conducted at the behest of the Plaintiffs.

(a) The Plaintiffs have been able to procure the impugned product 'DASANAT' from the following Distributors/CNF Agents;

S.No.	Distributor/CNF Agent	Location	Date of Purchase
1.	Impex India	Delhi	4 th July, 2012
2.	Adeline Medical Stores	Kolkata	5 th July, 2012
3.	Gupta Agencies Pharmaceutical Distributors	Chandigarh	5 th July, 2012

The original invoice showing purchase from Impex India, Delhi is filed with the present application. The scanned copy of the invoice showing

purchase from Adeline Medical Stores, Kolkata and Gupta Agencies is filed herewith.

(b) It is believed that the Defendants have also launched 20mg tablets of the impugned product on or after the order dated 22nd June, 2012 passed by this Hon'ble Court. The Plaintiffs, have also purchased 'DASANAT' 20mg from Gupta Agencies Pharmaceutical Distributors, Chandigarh.

(c) It is respectfully submitted that the Defendants are further selling and exporting the impugned product through various online website portals, which have no territorial restrictions, such as:

- (i) <http://www.indiamart.com/pharmavision/anti-cancer-tablets.html>;
- (ii) <http://www.indiamart.com/oddwayinternational/blood-cancer-drugs.html>;
- (iii) <http://www.oddwayinternational.com/anti-cancer-drugs-oncology/generic-sprycel-dasanat-tablet-dasatinib-50mg-natco>;
- (iv) <http://whitepharmaceuticals.tradeindia.com/dasanat-dasatinib-50mg-1103525.html>;
- (v) <http://upharspecialitypharma.tradeindia.com/dasanat-50mg-1109814.html>;
- (vi) <http://www.tradeindia.com/p382059/Dasanat-50mg-Tablet.html>; and
- (vii) <http://www.exportersindia.com/trade/offier-india/dasanat-dasatinib-indian-tablets-912961.htm>

Thus, it is evident that with each passing moment that the Defendants are increasing their infringing activities in contumacious disregard and disobedience of the orders dated 13th June, 2012 and 22nd June, 2012 of this Hon'ble Court. The printouts from the above listed websites are filed herewith.

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12. It is respectfully submitted that the Defendants impugned product 'DASANAT' infringes the Plaintiff's Indian Patent No. 203937, as is evident from the Affidavit of Dr. SV Iswaran, filed in the present proceedings. A copy of the said Affidavit is also filed along with the present Application.

13. It is humbly submitted that the Defendants are not only blatantly violating the orders of this Hon'ble Court but have also concealed and suppressed material facts and thus, mislead this Hon'ble Court. A perusal of the impugned product shows that the Defendants had applied for and obtained a manufacturing licence 13/JA/2010 for the generic version of DASATTINIB during the pendency of the present suit in the year 2010. The Defendants, however, failed to inform this Hon'ble Court of the said development, in particular in light of the statements made in paragraph 3(G)(a) of the Written Statement

14. It is submitted that the misconduct and bad faith of the Defendants is further highlighted from the fact that while obtaining a manufacturing and marketing approval the Defendants concealed information from the Drug Controller as regards the subsistence and validity of the Plaintiffs patent, for which a show cause notice dated 20th June, 2012, has been issued by the Drug Controller, Utrakand which has been filed in the present proceeding.

15. It is respectfully submitted that in the present case the Defendants have at every juncture deliberately misled this Hon'ble Court and have given false statements on oath, which in itself is punishable under law. It is further submitted that the Defendants are further willfully disobeying

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the orders and directions of this Hon'ble and thus interfering in the course of justice.

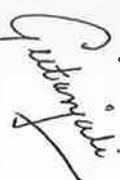
16. It is respectfully submitted that such conduct undermines the rule of law and is therefore not to be tolerated. It totally nullifies the interim relief granted to the Plaintiffs by this Hon'ble Court by orders dated 13th June, 2012 and 22nd June, 2012 and defeats the very purpose of the same, causing irreparable loss and damage to the Plaintiffs. It is respectfully submitted that the said acts of the Defendants/Contemnors in manufacturing, selling, distributing, offering for sale and/or advertising, exporting the impugned 'DASANNAT' not only amounts to infringement of the Plaintiffs statutory rights but is in flagrant and contumacious disregard and disobedience of the orders of this Hon'ble Court. It is submitted that such behavior of the Defendants/Contemnors must be treated with the highest degree of severity and ought not to be tolerated.

PRAYER

17. It is therefore, prayed that this Hon'ble Court may be pleased to;
- (i) Order attachment of the property of the Contemnors;
 - (ii) Award appropriate compensation to the Petitioners;
 - (iii) Take other appropriate action in accordance with law

AND

Any further orders as this Hon'ble Court may deem fit in the facts and circumstances of this case be passed to uphold the sanctity of law.



Anand and Anand
New Delhi
Dated: 5 July, 2012
Advocates for the Plaintiff

IN THE HIGH COURT OF DELHI AT NEW DELHI
(Ordinary Original Civil Jurisdiction)

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I.A. No. of 2012

In
C.S. (OS) No.2279 of 2009

Bristol-Myers Squibb Company & Anr.

...Plaintiffs

Versus

...Defendants

Mr. M. Adinarayan & Anr.

AFFIDAVIT OF MR. PHEROZE KHAN, AGE ABOUT 53 YRS,
S/O MR. NOSHIR PHEROZESHAW KHAN, MANAGING
DIRECTOR OF BRISTOL-MYERS SQUIBB INDIA PRIVATE
LIMITED,C/O BRISTOL-MYERS SQUIBB INDIA PRIVATE
LIMITED,PENINSULA TOWERS 'A',7TH FLOOR PENINSULA
CORPORATE PARK,GANPATRAO KADAM MARG,LOWER
PAREL, MUMBAI 400 013.PRESENTLY AT NEW DELHI.

I, the above named deponent do hereby solemnly affirm and declare as
under:

1. That I am the constituted attorney of the Plaintiffs and am
conversant with the facts and circumstances of the present case and
competent to swear this affidavit.

2. I have read the contents of the accompanying Application under
Order 39 Rule 2A read with Section 151 of the Code of Civil Procedure
and I say that the contents therein are true on the basis of information
received and derived from records maintained in the ordinary course of
business, and legal advise received and believed to be true and nothing
material nor relevant has been concealed therefrom.

3. I adopt the contents of the accompanying Application as part and
parcel of my affidavit the same not being reproduced herein for the sake
brevity.

Pheroze Khan
DEPONENT

VERIFICATION

05 JUL 2012

Verified at New Delhi on this day 5th of July, 2012, that the contents of
the above affidavit are true and correct, that no part of it is false and
nothing material has been concealed therefrom.

M. Adinarayan
DEPONENT



05 JUL 2012

Pheroze Khan

05 JUL 2012

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IN THE HIGH COURT OF DELHI AT NEW DELHI

I.A. No. 11521/2012 in CS(OS)No. 2279/2009

Briatal Myers Company and Ors

...Plaintiff

Through: Mr. Sudhanshu Batra, Sr. Advocate with

Mr. Praveen Anand, Adv

Versus

....Respondent

Mr. M Adinarayan & Anr.

Through: Mr. Gaurav Barathi, Adv

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

I.A.No. 11521/2012 in CS(OS)No.2279/2009

By this application filed under Order 39 Rule 1 and 2 of CPC, the plaintiffs seek directions to restrain the defendants from manufacturing and selling the product 'DASANAT' or any other product that contains 'DASATTINIB' or in any other way infringes plaintiff's patent No.203937.

Arguing the stay application, Mr. Batra, learned Senior Advocate appearing for the plaintiffs has drawn attention of this court to paras 26-27 and 29 of the written statement to point out that the Defendants in the written statement itself have taken a stand that they do not intend to sell, distribute, advertise or in any manner deal with the products that infringes Patent No. 203937 and also they do not intend to launch a generic version of DASATTINIB under the brand name DASANAT. The submission made by the counsel for the plaintiffs is that with the said stand taken by the Defendants in their Written Statement now they cannot launch their product under the name DASANAT, and if they succeed in doing so then the same will be in utter violation and infringement of Plaintiffs' Patent No 203937.

Notice. Mr. Gaurav Barathi counsel for the Defendants enters appearance and strongly opposes the present Application. Counsel states that copy of this Application has not been supplied to him. Counsel also submits that this matter is ripe

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for trial and issues have already been framed, and therefore, this court may not grant any injunction in favour of the plaintiffs.

I have heard learned counsel for the parties.

Let reply to the Application be filed by the Defendants within a period of three weeks. Rejoinder, if any, be filed by the Plaintiffs within a period of two weeks thereafter.

In the meanwhile, the Defendants shall remain bound by the stand taken by them in their Written Statement, particularly in paras 26, 27 and 29.

List the matter before the regular bench on 01.08.2012 for consideration of the present Application.

June 13, 2012

KAILASH GAMBHIR, J.

Sd/-