

* **HIGH COURT OF DELHI : NEW DELHI**

Judgment pronounced on: 16.08.2011

+ **CS(OS) No.900/2008**

SOCIETE DES PRODUITS NESTLE, S.A. & ANR.

.....Plaintiffs

Through: Ms. Mamta Rani with Mr. Sumit
Rajput, Adv.

Versus

M/S. PRAYAG NUTRI PRODUCTS PRIVATE LTD. & ANR.

.....Defendants

Through: NEMO.

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

1. Whether the Reporters of local papers may
be allowed to see the judgment?
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported
in the Digest? Yes

MANMOHAN SINGH, J.

1. The plaintiffs have filed the present suit for permanent injunction restraining infringement of its registered trademark, copyright, passing off, dilution, rendition of accounts of profits and delivery up etc.

2. Plaintiff No. 1 is a company existing under the laws of Switzerland, having its registered office at 1800, Vevey Canton of Vaud,

Switzerland. The plaintiff No.2, Nestle India Limited, is a company incorporated under the Companies Act, 1956, having its registered office at M-5A, Connaught Circus, New Delhi.

3. It is averred in the plaint that the Nestle is a leading manufacturer of chocolate and confectionery and one of its products is marked as **MUNCH** which is used by the plaintiffs in relation to wafer biscuit with chocolate layer. In India these products are manufactured by plaintiff No.2. It is also stated that plaintiff No.1 is the proprietor of the trademark **MAGGI** and plaintiff No.2 is its licensee. Apart from the common law proprietary right, plaintiff No.1 also has right to the exclusive use of the trademark **MAGGI** internationally as well as in India. The detail of the registration of plaintiffs' trademark **MAGGI** in India is given below:

Mark	Regn No.	Dated	Class	Goods
MAGGI (word)	253467	06.12.1968	30	Seasonings for soups, sauces, gravies, meat and vegetable products for food, flours, vermicelli, spaghetti, macaroni, sauces, spices and condiments
MAGGI (word)	578343	03.08.1992	30	Farinaceous products and cereals and related products
MAGGI (word)	578342	03.08.1992	29	Meat and meat products

4. It is averred in the plaint that in April, 2008 the plaintiffs

came to know that the defendants are selling substandard wafer biscuits covered with choco layer in infringing packages under the trademark **MAGIC** which is deceptively similar to and an imitation of the trademark **MAGGI** and **MUNCH** packaging pertaining to the plaintiffs.

5. The case of the plaintiff is that the plaintiffs are also engaged in the business of manufacturing and selling, amongst others, various culinary products such as noodles, sauce, soups etc. under the trade mark **MAGGI** in various international markets since 1974. These goods, in India, are being manufactured and sold by the plaintiff No.2. The plaintiff No.1 is the proprietor of the trade mark **MAGGI** having exclusive right to use thereof and the plaintiff No.2 is its licensee, authorized to use thereof in India.

6. It is stated in the plaint that on account of extensive amount of sales promotion campaigns undertaken by the plaintiffs with regard to the trademark **MAGGI** it has acquired formidable goodwill and reputation amongst number of public and trade and has become household brand name of the plaintiffs. The said trademark **MAGGI** is known internationally.

7. The case against the defendant is that the defendant has adopted and used the trademark **MAGIC** in the packaging which is deceptively similar to the plaintiffs' registered trademark **MAGGI** and **NESTLE MUNCH** packaging. The defendants are selling their choco

coated wafer under the trademark **MAGIC** and in packaging it is similar to the plaintiffs packaging in terms of its colour combination, layout, getup and arrangement of features.

8. The case of the plaintiffs is that the two trademarks **MAGGI** and **MAGIC** are deceptively similar as the defendants are using the trademark **MAGIC** in the similar fashion which is visually similar to the font, colour, style of the trademark **MUNCH**. The plaintiff is claiming the copyright in the packaging of **MUNCH** within the meaning of Section 2(c) of the Copyright Act, 1957. It is stated that the design was created by the author namely Mr. Prasanta Mukherjee in the course of his employment with JWT, an advertising agency engaged by the plaintiffs for consideration. Both the author as well as the advertising agency has assigned the copyright in the artistic in favour of the plaintiff No.2. The said documents are marked as Ex. PW-1/6. As regards the trademark is concerned it is stated by the plaintiffs that the said trademark has been widely advertised in modern media and is being used in the distinctive packaging for the last several years in relation to the wafer, biscuit with choco layer. The plaintiffs have given the statement of annual sales figures as well as promotion expenditure in the affidavit adduced as evidence. The contention of the plaintiffs is that the defendants are selling spurious and substandard wafer biscuit covered with choco layer in the infringing packaging under the trademark **MAGIC** which is

deceptively similar to the trademark **MAGGI** and **MUNCH** packaging pertaining thereto of the plaintiffs.

9. When the ex party order was passed against the defendants on 12.05.2008, the court also appointed the Local Commissioner to visit the premises of the defendants. The report of the Local Commissioner dated 19.05.2008 reveals the huge recovery of the infringing goods and packaging from the premises of the defendants. The details of the same are given as under:

SL. No.	IMPUGNED PACKAGING MAGIC	QUANTITY (KG)
1.	Magic Laminates (Re.1)	464.01
2.	Magic Laminates (Re.1)	505.422
3.	Magic Laminates (Re.2)	459.74
4.	MAGIC Primary Packaging (Re.2)	470.00
5.	MAGIC Final Packing (Re.2)	276.00
	Total	2175.17

10. The said report of the Local Commissioner is exhibited as PW-1/9. Admittedly the trademark **MAGGI** is a registered trademark for variety of goods including food article. The way the defendant is using the trademark **MAGIC** with the similar colour combination, getup and layout and arrangement of features, it is clear that the same have

been taken up from the plaintiffs **MUNCH** packaging and, therefore, when it is used in the fashion the defendants are using even the mark **MAGIC** becomes deceptively similar to the mark of the plaintiffs mark **MAGGI**. In case the mark adopted and used by the defendants is allowed there would be confusion and deception in the market. There is no doubt that the said act is done by the defendants with mala fide intention for the purpose of en-cashing the goodwill and reputation of the plaintiffs' trademark **MAGIC** and **NESTLE MUNCH** packaging.

11. Thus, the conduct of the defendants is not honest as the defendants have apparently kept in mind the trademark **MAGGI** and the packaging of the **MUNCH** before their adoption and user. No valid justification has been given by the defendants for the same. The defendants were proceeded ex parte vide order dated 02.09.2009 and the interim order was also made absolute. The plaintiffs have adduced the ex parte evidence by filing of an affidavit of Venita Gabriel who has referred the following documents:

- (a) Power of attorney dated 10.08.2008 marked as Ex. PW1/1 and PW1/2.
- (b) Packaging of NESTLE MUNCH marked as Ex. PW-1/3.
- (c) The legal proceedings certificate of the trademark **MAGGI** bearing registration No. 578343 in Class 30 is marked as Ex. PW-1/4 and the registration No. 578342 as Ex. PW-1/5.
- (d) The assignment of copyright in favour of plaintiff No.2 is marked as Ex. PW-1/6.

(e) The infringing packaging of the defendant marked as Ex. PW-1/7.

(f) The investigation report dated 28.04.2008 marked as Ex. PW-1/8.

(g) The report of the Local Commissioner marked as Ex. PW-1/9.

12. After having considered the pleadings, the documents and the evidence adduced by the plaintiff this court is fully satisfied that the plaintiffs have made a strong prima facie case for passing off permanent injunction against the defendants. Even otherwise, the evidence and averments made by the plaintiffs in the plaint have been un-rebutted.

13. In these circumstances, the suit of the plaintiffs is decreed in terms of prayer A to D of para 27 of the plaint. As far as the destruction of the goods are concerned which are lying at the premises of the defendant the same shall be destroyed by the defendants in the presence of the representative of the plaintiffs by fixing a date and time for the purpose of the destruction.

14. It is now almost well settled by this court starting from **Time Incorporated v. Lokesh Srivastava & Anr.** 2005 (30) PTC 3 that the court should make its endeavours to deprecate the dishonesty especially to discourage the law breakers who have also willfully absent themselves from the court. This has been done by the courts by awarding punitive damages which has its genesis from American concept of punitive damages which is akin to the penalty or having penal effect in the damage

jurisprudence. The said damages are discretionary but are awarded in the cases where the court find that the defendants conduct are ex facie dishonest.

15. In view of the above, the plaintiffs are entitled for the punitive damages to the tune of Rs. 2 lac. The plaintiffs are also entitled for the cost of the suit.

MANMOHAN SINGH, J.

AUGUST 16, 2011
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