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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(OS) 2353/2007

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***Order delivered on: 14.11.2011***

M./S. GORA MAL HARI RAM LTD. .... Plaintiff

Through : Mr. Sushant Singh and Mr. P.C.  
Arya, Advs.

versus

M/S. ASHIQUE EXPORTS PVT. LTD. .... Defendant

Through

**CORAM:**

**HON'BLE MR. JUSTICE G.S.SISTANI**

**G.S.SISTANI, J. (ORAL)**

1. Plaintiff has filed the present suit for permanent injunction, infringement of trade mark, damages, delivery up.
2. On the first date of hearing i.e. 30.11.2007 while granting *ex parte ad interim injunction* summons in the suit and notice in the application were issued. On 1.12.2008 the defendant entered appearance. Thereafter written statement was filed. As none appeared on behalf of the defendant on 4.2.2009, 25.2.2009 and 4.3.2009, defendant was proceeded *ex parte* on 4.3.2009 and injunction order was made absolute. Subsequently, I.A.No.5713/2009 was filed by the defendant seeking recall of the order dated 14.3.2009, which application was allowed on 14.9.2009. Thereafter on 24.5.2010 the defendant was again proceeded *ex parte*. Plaintiff has filed *ex parte* evidence of one Mr. Vinod Kumar, Director of the plaintiff company. Copy of the

Resolution in his favour is marked as Exhibit PW-1/1. In the said affidavit Mr. Vinod Kumar has deposed that plaintiff is the proprietor of the registered trade mark 555 vide registration no.11989 in Class 3 in respect of soap and detergent powder for laundry use. The said trade mark has been continuously renewed from time to time and is valid and subsisting in the register of Trade Mark Registry. A copy of the trade mark registration certification in favour of the plaintiff company has been exhibited as PW-1/2. This witness has further deposed that registered trade mark 555 is being used by the plaintiff uninterruptedly since the year 1924. The said trade mark enjoys an enviable goodwill and reputation in the market on account of its perpetual, long continuous use. The product of the plaintiff is distinct on account of its packaging material, which is evident from the huge sales of the said goods. It is further deposed that the said trade mark of the plaintiff is a well known mark and is a household name with regard to washing soap/detergent powder for washing clothes. The annual turnover by way of sales of the company runs into crores of rupees. The sale and advertisement figures have been exhibited as Ex.PW-1/4. The sales figures for the years 1991-92 upto the year 2006-2007 are as under:

| YEAR    | Sales in Cores of Rupees |
|---------|--------------------------|
| 1991-92 | 22.29                    |
| 1993-94 | 21.87                    |
| 1994-95 | 28.73                    |
| 1995-96 | 28.36                    |
| 1996-97 | 32.98                    |

|         |       |
|---------|-------|
| 1997-98 | 30.76 |
| 1998-99 | 39.25 |
| 1999-00 | 57.60 |
| 2000-01 | 53.92 |
| 2001-02 | 56.81 |
| 2002-03 | 70.97 |
| 2003-04 | 67.25 |
| 2004-05 | 62.26 |
| 2005-06 | 65.70 |
| 2006-07 | 59.22 |

3. This witness has also deposed that plaintiff has incurred large amounts on advertisements and promotion of its products in the newspapers, televisions, hoardings, slides, radio. The expenditure incurred on advertisement in the last fifteen years are as under:

| YEAR    | Sales in Cores of Rupees |
|---------|--------------------------|
| 1991-92 | 47.07                    |
| 1993-94 | 90.93                    |
| 1994-95 | 47.60                    |
| 1995-96 | 21.05                    |
| 1996-97 | 37.45                    |
| 1997-98 | 44.55                    |
| 1998-99 | 61.01                    |
| 1999-00 | 64.23                    |
| 2000-01 | 76.21                    |
| 2001-02 | 36.94                    |
| 2002-03 | 31.11                    |
| 2003-04 | 40.83                    |
| 2004-05 | 41.06                    |
| 2005-06 | 45.60                    |
| 2006-07 | 21.26                    |

4. It is next deposed by this witness that on account of the fact that plaintiff has been continuously promoting its goods and business under the trade mark 555, plaintiff has spent enormous amounts of money on its publicity and further on account of its excellent quality and high standards of manufacturing, the trade mark of the plaintiff has acquired a secondary meaning which denotes the plaintiff and its goods exclusively. A copy of the sample/packaging material has been exhibited as Ex.PW-1/3. This witness also deposed that defendant is engaged in manufacturing and marketing bar soaps under the identical trade mark 555 of the plaintiff. A copy of packaging material used by defendant has been exhibited as PW-1/5. This witness has further deposed that defendant has filed an application no.1019883 dated 25.6.2005 for registration of a closely resembling mark Super Wash 555 in Class 3 in respect of Washing Soap. The said application for the mark Super Wash 555 was advertised in Trade Marks Journal No.1338 and was made available in the public only on 4.5.2006. The said application was opposed by the plaintiff by filing of notice of opposition bearing no.MAS-230855. Copy of notice of opposition has been exhibited as Ex.PW-1/6.
5. Learned counsel for the plaintiff submits that trade mark of the plaintiff has become distinctive indicium of the plaintiff and the plaintiff's said goods and business thereunder. The purchasing public and members of the trade, associate and identify the goods of the plaintiff with the plaintiff as the said trade mark of the plaintiff has

become synonymous with the goods and business of the plaintiff. Counsel further submits that since the plaintiff is the proprietor of the said trade mark both - under statutory law and under common law – nobody can be permitted to use or deal with the trade mark 555 or any other identical or deceptively similar trade mark and also the essential feature in relation to the allied and cognate goods. Counsel next submits that defendant has adopted and used the trade mark of the plaintiff 555 out of greed and with a view to take advantage and to confuse the members of public and, thus, defendant is guilty of infringement of trade mark under Section 29 of Trade Marks Act. Counsel also submits that impugned adoption of the trade mark by defendant is dishonest, tainted, ill-motivated and with a view to confuse and deceive public. It is submitted by learned counsel for the plaintiff that defendant is trying to encash in on the hard built reputation and goodwill of the plaintiff under the trade mark 555 and wishes to ride on the goodwill of the plaintiff. Plaintiff, thus, also prays for punitive damages.

6. Learned counsel for the plaintiff submits that numeral and alphabet can acquire distinctiveness and status of a well known trade mark. Counsel for the plaintiff has relied upon ***National Bell Company and Gupta Industrial Corporation v. Metal Goods Manufacturing Company Ltd. and Anr.***, reported at AIR 1971 898, wherein the Apex Court had held that numerical trade mark '50' is worthy of protection. Counsel further submits that once the plaintiff has been able to show that trade mark 555 is a registered trade mark the

plaintiff is entitled to protection under Section 29 of Trade Mark Act.

7. Learned counsel for the plaintiff has further relied upon ***Kaviraj Pandit Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories***, reported at AIR 1965 SC 980, wherein the Apex Court while drawing out a distinction between the infringement and passing off has held that in case of infringement of an identical trade mark no further question would arise to be proved by the plaintiff.
8. Learned counsel for the plaintiff has also relied upon ***Time Incorporated v. Lokesh Srivastava and Anr.***, reported at 2005 (30) PTC 3, wherein this Court has held that time has come when the Court should grant punitive damages in order to teach lessons to the law breakers who have chosen to earn on the reputation of others.
9. I have heard counsel for the plaintiff and also examined the affidavit by way of evidence filed by the plaintiff. There is no rebuttal to the evidence, which has been led by the plaintiff. Plaintiff has been able to establish that trade mark 555 is a registered trade mark of the plaintiff and defendant has adopted and used the trade mark of the plaintiff 555 out of greed and with a view to take advantage and to confuse the members of public and, thus, defendant is guilty of infringement of trade mark under Section 29 of Trade Marks Act. In the case of ***Hero Honda Motors Ltd. vs. Shree Assuramji Scooters***, 2006 (32) PTC 117 (Del), this court noticing that the defendant had chosen to stay away from the proceedings of the Court felt that in such case punitive damages need to be awarded, since otherwise the defendant, who appears in the court and submits its account books

would be liable for damages whereas a party which chooses to stay away from the Court proceedings would escape the liability on account of the failure of the availability of account books. In Microsoft Corporatin vs. Deepak Raval MIPR 2007 (1) 72, this Court observed that in our country the Courts are becoming sensitive to the growing menace of piracy and have started granting punitive damages even in cases where due to absence of defendant, the exact figures of sale made by them under the infringing copyright and/or trademark, exact damages are not available. The justification given by the court for award of compulsory damages was to make up for the loss suffered by the plaintiff and deter a wrong doer and like-minded from indulging in such unlawful activities. In Larsen and Toubro Limited vs. Chagan Bhai Patel : MIPR 2009( 1) 194, this court observed that it would be encouraging the violators of intellectual property, if the defendants notwithstanding having not contested the suit are not burdened with punitive damages. I am satisfied that in case the suit is not decreed there is every likelihood of deception and confusion amongst the public. I am also satisfied that it is a fit case for grant of punitive damages. Accordingly, plaintiff would be entitled to punitive damages in the sum of Rs.5.00 lakhs.

10. Suit is accordingly decreed with costs. Let a decree sheet be drawn up accordingly.

**G.S.SISTANI,J**

**NOVEMBER 14, 2011**

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