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

+ CS(OS) 1220/2009

HENKEL INDIA LTD. Plaintiff
Through Mr. N. Mahabir with Dr. Sheetal
Vohra, Advocates
versus

MR. CHANDAN CHHABRA
AND ANR. Defendants
Through None

% Date of Decision: 3rd January, 2013.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J (Oral):

1. Present suit has been filed seeking injunction to restrain infringement of copyright in plaintiff's packaging material, rendition of accounts and damages. The prayer clause in the plaint is reproduced hereinbelow:-

“(i) An order for permanent injunction restraining the Defendant, their partners or proprietors as the case may be, its officers, servants, agents and representatives from manufacturing, selling, offering for sale or advertising directly or indirectly in India or overseas, in a packaging in which the product UJALA White is being sold or any other deceptively similar packaging, thereby restraining infringement of copyright in the packaging of the Plaintiff's in its product Mr. White.

(ii) An order for delivery up of all goods, dies, packaging, blocks, cartons, labels and any other material bearing the get up and packaging of its product UJALA White to the authorized representative of the Plaintiff's for the purposes of destruction etc;

(iii) An order for costs of the proceedings;

(iv) An order for rendition of accounts of profits made by the Defendants/damages to be awarded to the Plaintiffs and against the Defendants on account of use of the trade marks Mr. White and the packaging;

(v) For such other further order or orders as this Hon'ble court may deem fit and proper in the facts and circumstances of the present case."

2. At the outset, learned counsel for the plaintiff states that he is confining his prayer in the present suit only to prayer (i) in the plaint, namely, for a permanent injunction restraining the defendants, their partners, officers, servants, agents and representatives from selling their product in a packaging material similar to that of the plaintiff.

3. On 25th September, 2009, this Court had directed the defendants to be proceeded ex-parte as none had appeared for them despite service. Consequently, present suit is taken up for hearing and disposal ex parte.

4. The relevant facts of the present case are that plaintiff is a subsidiary of Henkel AG & Co. KGaA, a German company, that manufactures products sold in around 125 countries. In 2008 the turnover of plaintiff's parent company was 14.10 billion € with a profit of 780 million €. Plaintiff's parent company manufactures various brands such as Pril, Henko, Fa, Margo, Mr. White, Chek etc. The plaintiff's business areas include

laundry and home care, beauty and personal care products.

5. Plaintiff's parent company vide a Licence Agreement dated 20th December 2005 granted plaintiff the right to use, sell and market mid range detergent products under the trademark 'MR. WHITE'. It is stated in evidence of Mr. Pranab Roy, Constituted Attorney of plaintiff company that the plaintiff developed packaging to sell its goods under the mark 'MR. WHITE' promising 'long lasting whiteness'. The sales figures of the plaintiff's product 'MR. WHITE' in India during the years 1999 to 2009 are as under:-

<i>Year</i>	<i>Amount in Rs.(MINR)</i>
<i>1999</i>	<i>142</i>
<i>2000</i>	<i>283</i>
<i>2001</i>	<i>399</i>
<i>2002</i>	<i>485</i>
<i>2003</i>	<i>377</i>
<i>2004</i>	<i>352</i>
<i>2005</i>	<i>456</i>
<i>2006</i>	<i>639</i>
<i>2007</i>	<i>634</i>
<i>2008</i>	<i>576</i>
<i>2009 (UPTO 31/5/09)</i>	<i>327</i>

6. During the third week of June 2009, the Plaintiff through its representative, became aware about the defendants selling their product 'Ujala White' in parts of North India including New Delhi. The plaintiff has placed on record samples of the plastic packaging in which the plaintiff's

product 'MR. WHITE' and defendants' product 'Ujala White' are being sold.

7. Having heard learned counsel for the plaintiff and having perused the paper book, this Court finds that the similarities between plaintiff's packaging and defendants' packaging are as under:-

<i>PLAINTIFFS PACKAGING</i>	<i>DEFENDANTS PACKAGING</i>
<i>FRONT SIDE</i>	<i>FRONT SIDE</i>
<i>On the top there is a dark blue border.</i>	<i>On the top there is a dark blue border.</i>
<i>At the top left corner there are red, yellow and blue stripes on a two shades of green background.</i>	<i>At the top left corner there are red, yellow and blue stripes on a two shades of green background.</i>
<i>New Improved is written with black colour on yellow stripe.</i>	<i>New Improved is written with black colour on yellow stripe.</i>
<i>With Whiteness Boosters is written in white colour on blue stripe.</i>	<i>With Whiteness Boosters is written in white colour on blue stripe.</i>
<i>In the middle there is white and light blue oval wherein blue colour is in the border and white in the middle</i>	<i>In the middle there is white and light blue oval wherein blue colour is in the border and white in the middle.</i>
<i>Mr. White is written in slanting script in red colour having blue shadow.</i>	<i>Ujala White is written in slanting script in red colour having blue shadow.</i>
<i>There is a blue strip underneath Mr. White on which Long Lasting Whiteness is written in white colour.</i>	<i>There is a blue strip underneath Mr. White on which Long Lasting Whiteness is written in white colour.</i>
<i>There is a device of half cut lemon on bottom right side.</i>	<i>There is a device of half cut lemon on bottom right side.</i>
<i>There are three stripes along with the lemon device. The top</i>	<i>There are three stripes along with the lemon device. The top</i>

<i>stripe is in red colour on which With The Power of is written in white colour. The second stripe is of yellow colour on which Lemon is written in green colour and the third stripe is in blue colour on which Blue is written in white colour.</i>	<i>stripe is in red colour on which With The Power of is written in white colour. The second stripe is of yellow colour on which Lemon is written in green colour and the third stripe is in blue colour on which Blue is written in white colour.</i>
<i>There are three blue circles at the bottom of device of lemon from which white rays are emanating.</i>	<i>There are three blue circles at the bottom of device of lemon from which white rays are emanating.</i>
<i>On the bottom left corner are two stripes. The top stripe is of red colour wherein Quality & are written in white colour. The bottom stripe is of green colour on which responsibility is written in white colour. The word Henkel is written on these stripes.</i>	<i>On the bottom left corner are two stripes. The top stripe is of red colour wherein Quality & are written in white colour. The bottom stripe is of green colour on which responsibility is written in white colour. The word Burj is written on these stripes.</i>
<i>On bottom right corner Mr. White is written in red colour and white shadow is emanating therefrom.</i>	<i>On bottom right corner Ujala White is written in red colour and white shadow is emanating therefrom.</i>
BACK SIDE	BACK SIDE
<i>On the top there is a dark blue border.</i>	<i>On the top there is a dark blue border.</i>
<i>The background is divided in two shades, the top being green and the bottom being blue.</i>	<i>The background is divided in two shades, the top being green and the bottom being blue.</i>
<i>On top left are three stripes along with the lemon device. The top stripe is in red colour on which With The Power of is written in white colour. The second stripe is of yellow</i>	<i>On top left are three stripes along with the lemon device. The top stripe is in red colour on which With The Power of is written in white colour. The second stripe is of yellow</i>

<i>colour on which Lemon is written in green colour and the third stripe is in blue colour on which Blue is written in white colour. Below it is another blue stripe on which With Whiteness Boosters is written in white colour.</i>	<i>colour on which Lemon is written in green colour and the third stripe is in blue colour on which Blue is written in white colour. Below it is another blue stripe on which With Whiteness Boosters is written in white colour.</i>
<i>There are three blue circles at the bottom of device of lemon from which white rays are emanating.</i>	<i>There are three blue circles at the bottom of device of lemon from which white rays are emanating.</i>
<i>On the top right Mr. White is written in slanting script in red colour having White shadow.</i>	<i>On the top right Mr. White is written in slanting script in red colour having White shadow.</i>
<i>There is a blue strip underneath Mr. White on which Long Lasting Whiteness is written in white colour.</i>	<i>There is a blue strip underneath Mr. White on which Long Lasting Whiteness is written in white colour.</i>
<i>Photographs of shirts, half cut lemon and front packaging are present.</i>	<i>Photographs of shirts, half cut lemon and front packaging are present.</i>
<i>There is similarity in script. For example Plaintiffs packaging states- Mr. White-Giving your clothes not just 'Whiteness', but 'Long Lasting Whiteness'.</i>	<i>There is similarity in script. For example Defendants packaging states-New Improved Detergent Powder Gives your clothes not just 'Whiteness', but 'Long Lasting Whiteness.</i>

8. This Court is of the opinion that the plaintiff's packaging with its colour, pattern, arrangement, get up and lay out is an original artistic work within the meaning of Section 2(c) of The Copyright Act, 1957. Further, the defendants' packaging material for its product 'Ujala White' is visually and structurally similar to that of the plaintiff's packaging material for its product 'MR. WHITE'. In fact, the defendants have copied the essential

features of the plaintiff's packaging. The points of dissimilarities between the two packaging are negligible. Accordingly, this Court concludes that the defendants have deliberately adopted the plaintiff's packaging so as to trade and encash upon the plaintiff's goodwill.

9. Consequently, to prevent infringement of the plaintiff's copyright in its packaging of 'MR. WHITE', defendants are permanently restrained from using similar packaging to that of 'MR. WHITE'.

10. The suit is accordingly decreed in terms of prayer (i) of the plaint. Decree sheet be drawn up accordingly.

MANMOHAN, J

JANUARY 03, 2013

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