

\$~28.

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

+ CS(COMM) 1485/2016

DHARAMPAL SATYAPAL SONS PVT LTD Plaintiff

Through : Ms.D. Neha, Adv. for Mr.Pravin Anand,
Adv.

versus

MR JAI SINGH KUNDALIA & ORS Defendants

Through : Mr.Rahul Vidani, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

ORDER

% **07.11.2016**

I.A. 13744/2016

This is an application filed by the plaintiff seeking enlargement of time in filing the Court fee.

Let the court fee be filed by the plaintiff within ten days from today, as prayed.

Application stands disposed of.

I.A. 13743/2016

Exemption allowed is allowed subject to all just exceptions.

Application stands disposed of.

I.A. 13742/2016.

This is an application filed by the plaintiff seeking leave of the Court to file additional documents on record.

Exemption allowed subject to all just exceptions.

Application stands disposed of.

CS(COMM) 1485/2016 & I.A. 13741/2016.

Plaintiff has filed the present suit for infringement of copyright, trade dress, layout, colour combination, get up, passing off and unfair trade practice, rendition of accounts of profit, delivery up, damages, etc.

As per the plaint, the plaintiff claims to be the registered proprietor of the trademark PULSE. The plaintiff's candies under the trademark PULSE were launched on 13.12.2014 and since then these candies have enjoyed tremendous popularity. The plaintiff has extracted sales figures with respect to the trademark PULSE. The plaintiff's candies under the trademark PULSE are sold in a unique packaging having a distinct layout, get up and colour scheme. The plaintiff has scanned rappers of PULSE in support of this averment. Essential features of PULSE Kachcha Aam product packaging has also been extracted in the plaint.

The grievance of the plaintiff is that the defendants are selling sweet candies having the flavour of raw mango with the mark TWEET and the trade dress, which is identical to the plaintiff's candies. In support of this averment, the plaintiff has scanned rappers of the candies of the defendants with the mark Tweet. The complaint of the plaintiff is that the defendant has deliberately adopted identical flavours, deceptively similar get up, colour scheme and layout for its candies under the mark Tweet, so as to induce consumers having average

intelligence and imperfect recollection that the goods being sold by the defendants are the goods of the plaintiff. This has led to the filing of the present suit.

Learned counsel for the defendants has entered appearance. At the outset he has submitted that the defendants are willing to change the trade dress. The matter was then passed over on two occasions to enable counsel for the defendants to seek instructions. At the third call, learned counsel for the defendants submits that the defendants are willing to suffer a decree in terms of para 42(a) to (c) provided that:

- i. the plaintiff allows the defendants to exhaust the existing stock of Tweet candy with the impugned trade dress within six weeks from today:
- ii. the plaintiff agrees not to object to the defendants' selling its Tweet candy under the trademark Tweet; *and*
- iii. the plaintiffs shall describe the contents in terms of flavour '*Kachha Aam Spicy Candy*'.
- iv. Plaintiff will not claim costs and damages

Learned counsel for the plaintiff has also sought instructions and agreed to the terms suggested by the counsel for the defendants. Counsel submits that the plaintiff would have no objection in the defendants using the trademark Tweet and the description of the product.

Accordingly, present suit stands decreed in favour of the plaintiff and against the defendants in terms of para 42(a), (b) and (c) of the plaint. The plaintiff gives up the relief claimed against the defendants in para 42(d), (e) and

(f) of the plaint. The defendants will file an affidavit along with supporting documents within one week from today clearly stating the details of the existing stock available with the defendants after supplying an advance copy thereof to the counsel for the plaintiff. As agreed, the existing stock with the mark Tweet will be sold by the defendants within six weeks. Thereafter all the stationery, rappers and any other material bearing the trade dress Tweet shall be destroyed by the defendants in the presence of the representative of the plaintiff within two weeks, after completion of six weeks.

Learned counsel for the plaintiff submits that since the matter has been resolved through mediation of the Court, the plaintiff is entitled to refund of court fees in terms of Section 16 of the Court Fees Act. Once the court fee is deposited by the plaintiff, an appropriate certificate for refund shall be issued to the plaintiff.

I.A. 13741/2016 (O XXXIX R 1 & 2 CPC)

Application stands disposed of in view of the order passed in the suit.

G.S.SISTANI, J

NOVEMBER 07, 2016

msr