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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(COMM) 350/2017

DABUR INDIA LIMITED

..... Plaintiff

Represented by: Ms. Akansha Singh, Adv.

versus

M/S HUMAN CARE LIFESCIENCES LLP & ANR

..... Defendant

Represented by: Mr. Divij Soni, Adv. for D-1
with AR Archit Mittal in
person for D-1.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER
10.11.2017

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Parties have settled the matter before the Delhi High Court Mediation and Conciliation Centre on 25th July, 2017 on the following terms and conditions:

1. The Second and Third Party, as claimed in the suit by the First Party, acknowledge First Party to be the registered proprietor of DABUR RED toothpaste label/packaging and also acknowledge validity of trade mark registrations pertaining thereto. The Second and Third Parties, as claimed in the suit by the First Party, acknowledge that DABUR RED toothpaste label as depicted in para 6 of the plaint to be original artistic works and the First Party is the owner of the copyright in the said labels.

2. *The Second and Third Party undertake not to manufacture, sell, offer for sale, in India or abroad or export, advertise in any manner including on the internet, directly or indirectly deal in toothpaste or any other goods under the impugned HCL RED toothpaste label/packaging or any other label/packaging that may be deceptively similar to or colourable imitation of DABUR RED toothpaste label/packaging amounting to infringement of registered trade mark and/or infringement of copyright.*

3. *The Second and Third Party undertake not to manufacture, sell, offer for sale, in India or abroad or export, advertise in any manner including on the internet, directly or indirectly deal in toothpaste or any other goods under the impugned HCL RED toothpaste label and/or carton and/or packaging and/or get-up and/or trade dress or any other label and/or carton and/or packaging and/or get-up and/or trade dress as may be identical or deceptively similar with DABUR RED toothpaste label and/or carton and/or packaging and/or get-up and/or trade dress as may lead to confusion or deception amounting to passing off of the goods/business of the Second and Third Party as that of the First Party or may constitute acts of unfair competition.*

4. *The Second Party confirms that before it was served with the interim orders passed in the present suit, the Second Party had already sold a total number of 15636 toothpaste (tubes) the label / packaging of which have been claimed by the First Party to be similar to colourable imitation of Dabur Red Toothpaste label / packaging / get up / trade dress, under batch No.HR01 manufactured in November, 2016, and thereafter, neither the Second nor Third Party has manufactured nor they are in possession of any infringing containers / cartons, packaging, labels, printing materials, printing cylinders, blocks, dyes, point of sale materials, advertisement or publicity material, if any, as of today.*

5. *The Second and Third Party have conveyed that they have no plan to manufacture or deal in toothpaste with similar to / or colourable imitation of Dabar Red Toothpaste's label / packaging / get up / trade dress in present or future.*

6. *The Second and Third Party confirm that no trade mark or copyright application for registration of the HCL RED toothpaste label/packaging or any other label/packaging that is deceptively similar to the DABUR RED toothpaste label / packaging has been filed by the Second or Third Party.*

7. *In view of the undertaking given hereinabove by the Second and Third Party, the First Party does not wish to press for its claim of damages and rendition of account as prayed for in the plaint. However, the Second and Third Party undertake to compensate the First Party with a sum of INR 20 Lakhs as admitted liability for damages claimed to be suffered by the First Party, if they are held to be committing breach of any of the undertakings in future by this Hon'ble Court.*

The Second and Third Party have paid a cheque of Rs.50,000/- (Rupees Fifty Thousand Only) to the First Party as token damages by way of cheque bearing no. 766498 dated 25.07.2017 drawn on Punjab National Bank, Tropical Building, Connaught Place, Delhi-110001. The photocopy of the cheque is annexed herewith as ANNEXURE-C.

8. *The abovementioned undertaking has been tendered by Shri Archit Mittal S/o Shri B.B.Mittal, authorised representative of Human Care Lifesciences LLP having address at I-51, West Patel Nagar, New Delhi- 110008 and Shri Vivek Rattewal, S/o Shri Haridas (Proprietor) of Sant Pharmaceuticals having address at Kh. No. 46/6/1/1, Firozpur Banger, Industrial Area Kharkhoda, Sonapat-131001, and the same shall be binding on the Second and Third Parties, their servants, agents, franchisee, assigns in business, their dealers, stockist and successor-in-interest, for all times to come.*

9. *That the parties to the settlement have agreed that this Hon'ble Court may be pleased to pass decree in terms of the prayer clause of the plaint leaving the parties to bear their own respective costs. The terms of the present settlement may also be ordered to form part of the decree.*

10. *The Hon'ble Court may consider refund of the court fees to the First Party in terms of the Section 16 of the Court Fees Act 1870 read with Section 89 of CPC, 1908.*

11. *By signing this Settlement Agreement the parties hereto state that they have no further claims or demands against each other of any nature whatsoever subject to the adherence of the present Settlement Agreement and all the disputes and differences have been amicably settled by the Parties hereto through the process of Mediation, voluntarily and of their own free will and accord.*

12. *This Settlement Agreement is entered into between the parties through their free will, without any coercion, undue influence or any other pressure in presence of their counsels.*

13. *That the parties undertake before the Hon'ble Court to abide by the terms and conditions set out in the agreement and not to dispute the same hereinafter in future.*

The settlement agreement is signed by Shri B.K. Gupta, authorized representative of the plaintiff Dabur India Ltd. authorization in whose favour is at Annexure A to the settlement agreement. Mr. B.K. Gupta is present in Court and is identified by the learned counsel. He affirms the settlement arrived at between the parties on behalf of the plaintiff and undertakes that the same would be complied with. The settlement

agreement has also been signed by Shri Archit Mittal, authorized representative of the defendant No.1 authorization in whose favour is annexed as Annexure B to the settlement agreement. Shri Archit Mittal is present in Court and is identified by the learned counsel and affirms the settlement arrived at between the parties and undertakes to abide by the terms of settlement on behalf of defendant No.1. The settlement agreement is also signed by Shri Vivek Rattewal, proprietor of defendant No.2, hence competent to enter into agreement on behalf of defendant No.2.

Consequently, suit is decreed in terms of the settlement noted above. Decree sheet will incorporate the terms of settlement. Court fees be returned to the plaintiff under Section 16 of the Court Fees Act.

IA 5853-5854/2017

Disposed of as infructuous.

NOVEMBER 10, 2017
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MUKTA GUPTA, J.

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