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

+ **CS(COMM) 1445/2016 & I.A. 13197/2016**

TATA SONS LIMITED & ORS. Plaintiffs

Through: **Mr. Achuthan Sreekumar with
Mr. Karan Kamra, Advocates**

versus

M/S MAYURI BEVERAGES Defendant

Through: **None**

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Date of Decision: 9th November, 2017

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Since none has appeared for the defendant despite publication, it is proceeded ex-parte and the ad-interim injunction order dated 24th October, 2016 is confirmed.

2. At this stage, learned counsel for the plaintiffs states that in view of the judgment of this Court in *Satya Infrastructure Ltd. & Ors. Vs. Satya Infra & Estates Pvt. Ltd.*, 2013 SCC OnLine Del 508, the present suit should be decreed qua the relief of injunction. The relevant portion of the said judgment relied upon by learned counsel for the plaintiff is reproduced hereinbelow:-

“I am of the opinion that no purpose will be served in such cases by directing the plaintiffs to lead ex parte evidence in the form of affidavit by way of examination-in-chief and which invariably is a repetition of the contents of the plaint. The plaint otherwise, as per the amended CPC, besides being verified, is also supported by affidavits of the plaintiffs. I fail to fathom any reason for according any additional sanctity to the affidavit by way of examination-in-chief than to the affidavit in support of the plaint or to any exhibit marks being put on the documents which have been filed by the plaintiffs and are already on record. I have therefore heard the counsel for the plaintiffs on merits qua the relief of injunction.”

3. Learned counsel for the plaintiff further states that he has instructions not to press for any relief other than the relief of permanent injunction and costs, as prayed for in para 55(i), (ii) and (iii) of the plaint.

4. The relevant facts of the present case as pointed out by learned counsel for the plaintiff are as under:-

A. The present suit has been instituted on behalf of the plaintiffs seeking a permanent injunction against the defendant from infringing and passing off its registered trademarks, from diluting and tarnishing its trademarks, including the reliefs of delivery up, rendition of accounts, damages and costs.

B. The plaintiff no.1 company namely, Tata Sons Limited is derived from the surname of the plaintiff's founder, Shri Jamsetji Nusserwanji Tata which is a rare patronymic name possessing the distinctiveness of an invented word. The said plaintiff, for its own

business activities and those of its group companies, subsidiaries and the companies promoted by it, has continuously and consistently been using the trademark/trade name 'TATA' and its various permutations and combinations thereon, since its inception in the year 1917 whereas the use of the name/trade mark TATA by the predecessors-in-business of the plaintiff no.1 company dates back to the year 1868.

C. Plaintiff no.2 company is an associate company of plaintiff no.1 which focuses on branded natural beverages such as tea, coffee and water. The plaintiff no.3 company namely Nourish Co Beverages Ltd. was created in light of a joint venture between plaintiff no.2 and PepsiCo India Holdings Private Limited.

D. The plaintiff no.3 company aims to provide meaningful hydration solutions in the non-carbonated, ready-to-drink beverages segment in India and around the world. The product portfolio of the plaintiffs include: 'Himalayan', India's premiere natural mineral water brand, 'Tata Gluco Plus', a glucose based drink in an affordable cup format and 'Tata Water Plus', Nutrient Water that seeks to provide essential micronutrients.

E. The plaintiff no.3 company is manufacturing, selling, distributing and packaging India's first nutrient water under the brand name and trademark 'TATA WATER PLUS' which aims to mitigate nutritional gaps in the average Indian consumer by delivering 'Healthy Beverages for a Healthier India'.

F. An original and innovative concept in the area of health and nutrition, the nutrient water of the plaintiffs under the brand name 'TATA WATER PLUS' contains nutrients, such as copper which helps support body functions, and zinc with highlighted copy which helps strengthen the immune system. While it looks and tastes like normal water, every sip of 'TATA WATER PLUS' is packed with copper and zinc in a form that can be easily absorbed by the body.

G. The plaintiff no.1 company, Tata Sons Limited is the proprietor and owner of the well-known trademarks 'TATA' and 'TATA WATER PLUS'. Plaintiff nos.2 and 3 have been permitted by plaintiff no.1 company to use the trademark 'TATA WATER PLUS' vide a trademark license agreement dated 26th August, 2011. A copy of the said license agreement has been filed.

H. The plaintiff no.1, its group companies, its subsidiaries and the companies promoted are also the proprietor of the trademarks 'TATA WATER PLUS' and 'TATA' in Class 32 [*Beers; mineral and aerated waters and other non-alcoholic beverages; fruit beverages and fruit juices; syrups and other preparations for making beverages.*], the relevant class for the purposes of the present suit. A table detailing the trademark registrations of the plaintiffs in the said class are outlined in paragraph 19 of the plaint and printouts from the website of the Trademark Registry, Government of India as regards the same have been filed in the present proceedings.

I. The plaintiff no.1, its group companies, its subsidiaries and the companies promoted are also the proprietor of the trademarks ‘TATA WATER PLUS’ and ‘TATA’ in Class 16 [*Paper and cardboard; printed matter; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists’ materials; paintbrushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging; printers’ type; printing blocks.* A table detailing the trademark registrations of the plaintiffs in the said class are outlined in paragraph 20 of the plaint and printouts from the website of the Trademark Registry, Government of India as regards the same have been filed in the present proceedings.

J. As a result of the continuous and extensive use of the plaintiffs’ trademarks ‘TATA WATER PLUS’ and ‘TATA’, over a long period of time spanning a wide geographical area coupled with extensive promotion and publicity, the said trademarks have come to enjoy an unparalleled reputation and goodwill acquiring the status of a ‘well-known trademark’.

K. Being reputed and well-known trademarks, the marks ‘TATA WATER PLUS’ and ‘TATA’ embody an aura of pre-eminent excellence and are recognized irrespective of the class of goods or services for which they are used.

L. The cause of action against the defendant in the present suit first arose in September, 2016 when the plaintiffs from credible and reliable market sources learnt that the defendant entity through its proprietors, was manufacturing, selling and distributing packaged drinking water (pouches) under the infringing brand name/mark 'TAZA WATER PLUS'.

M. On the receipt of the said information, the plaintiffs through their legal representatives immediately instructed and engaged an independent investigator to ascertain the exact nature and extent of the infringing and illegal activities being carried out by the defendant entity. It is stated that the investigation as conducted on the defendant entity confirmed that it was indeed engaged in the manufacture, sale and distribution of packaged drinking water (pouches) under the infringing brand name/mark 'TAZA WATER PLUS'. It was further revealed that one bag of the impugned product containing 100 pouches bearing the infringing name and mark 'TAZA WATER PLUS'. The original affidavit of the independent investigator has been filed in the present proceedings.

N. The infringing activities of the defendant entity and its proprietor were also confirmed by the findings of the Local Commissioner appointed by the Hon'ble Court vide order dated 24th October, 2016. The said report of the Local Commissioner shows that there were a total of 165 gunny bags, containing 100 packed water

pouches (total 16,500 pouches) bearing the infringing name and mark 'TAZA WATER PLUS' seized. Likewise, there were also 2 full rolls of water packets (weighing 15 kgs each) and 4 half rolls of water packets (weighing 7 kgs each) lying at the premises of the defendant entity. The report of the Local Commissioner dated 3rd December 2016 and the photographs of the premises of the defendant entity have been filed in the instant proceedings.

O. A mere perusal of the photographs of the impugned product bearing the infringing brand name and mark 'TAZA WATER PLUS' as filed in the present proceedings show that the same is deceptively similar to the plaintiffs' well-known mark 'TATA WATER PLUS' and 'TATA'.

P. Further a mere comparison of the product packaging of the impugned products of the defendant entity bearing the infringing brand name and mark 'TAZA WATER PLUS' with the product of the plaintiffs under the brand name and mark 'TATA WATER PLUS' also brings to the fore the ulterior motive of the defendant entity and its proprietor of passing off its products as that of the plaintiffs. The defendant has adopted an identical trade-dress for its products.

Q. The plaintiffs' product packaging (pouch) on the front side features a broad brown colored strip on which the words 'TATA' and the word 'WATER' are written. The same is followed by narrow blue strip underneath on which the word 'PLUS' is written. The original

packaging of the plaintiffs' product under the brand name and mark 'TATA WATER PLUS' has been filed in the said proceedings.

R. The defendant entity has adopted an identical trade dress as that of the plaintiffs i.e. the brown and blue strips and even the font size and style in which the words appear on the product packaging of their product 'TATA WATER PLUS'. Photographs of the impugned products of the defendant entity bearing the infringing brand name and mark 'TAZA WATER PLUS' have been filed in the present proceedings. The original packaging of the plaintiffs and the packaging roll used by the defendant is reproduced hereinbelow:-

Plaintiffs



Defendant



S. There is no plausible explanation by the defendant entity for having adopted a deceptively similar mark 'TAZA WATER PLUS' and an identical trade dress as that of the plaintiffs' product under the brand name and mark 'TATA WATER PLUS'.

T. The said illegal and infringing activities on the part of the defendant entity are blatant manifestation of the *mala fides* on the part of the proprietor of the defendant entity to derive an unfair advantage, illegal profits and gains by creating a false impression amongst consumers/members of the trade that the impugned products bearing the infringing brand name and trademark 'TAZA WATER PLUS' emanate from the plaintiffs and that its activities have nexus, association, affiliation with or endorsement from the plaintiffs.

U. The illegal and infringing activities of the defendant entity assume a greater magnitude given the fact that the impugned product is packaged drinking water (pouches), which being of inferior quality, may lead to health issues which might even prove fatal. The plaintiffs have no control whatsoever over the activities of the defendant entity and will be held responsible for the same.

V. The activities of the defendant entity have also resulted in the erosion of the plaintiffs' reputation and in weakening of the value and strength of its brand name and trademarks 'TATA WATER PLUS' and 'TATA' amounting to dilution and tarnishment of the same.

5. In view of the averments made in the plaint, which remain uncontroverted, this Court is of the view that the plaintiff is entitled to the judgment in terms of the relief claimed for in para 55(i), (ii) and (iii) of the plaint. However, since the plaintiff has not established the quantum of damages, no relief in this regard can be granted. As noted above, the counsel for the plaintiff has also

not pressed for the said relief.

6. In view of the above, the suit is decreed in favour of the plaintiff and against defendants in terms of para 55 (i), (ii) and (iii) of the plaint along with the actual costs. The costs shall amongst others include the lawyers' fees as well as the amounts spent on purchasing the court fees. The plaintiff is given liberty to file on record the exact cost incurred by it in adjudication of the present suit, if not already filed. Registry is directed to prepare a decree sheet accordingly.

7. Consequently, the present suit and application stand disposed of.

MANMOHAN, J

NOVEMBER 09, 2017

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