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

+ **CS(COMM) 491/2018 & I.As. 2142/2018 AND 2144/2018**

PEPSICO, INC. Plaintiff
Through: Mr. Kunal Mimani, Advocate.

versus

**M/S. SAVIOR PAPER
AND POLYMER PVT. LTD.** Defendant
Through: None.

% Date of Decision: 13th September, 2018

**CORAM:
HON'BLE MR. JUSTICE MANMOHAN**

J U D G M E N T

MANMOHAN, J (Oral)

1. Present suit has been filed for permanent injunction restraining infringement of trademark and copyright, and passing off.
2. The prayer clause in the present suit is reproduced hereinbelow:-

“18. In the circumstances, the Plaintiff respectfully prays for:

(i) Trade Mark Infringement

A decree and order of permanent injunction to restrain the defendant, by itself, its directors, its agents, representatives, servants, men, distributors and all those acting in concert with it or on its behalf or claiming under or through it or otherwise howsoever, from using upon or in relation to its products the Impugned Marks and /or any other marks which may be identical and/or deceptively similar to the plaintiff's registered PEPSI marks and from infringing the plaintiff's statutory rights in the said PEPSI

marks;

(ii) **Passing off:**

An order of permanent injunction to restrain the defendant, by itself, its directors, its agents, representatives, servants, men, distributors and all those acting in concert with it or claiming under or through it or otherwise howsoever, from using the Impugned Marks and /or any other mark which may be identical and/or deceptively similar to the plaintiff's well-known PEPSI marks and from in any manner, passing off or attempting to pass off or causing, enabling or assisting others to pass off its business and products as and for the business and products of the plaintiff;

(iii) **Copyright Infringement:**

An order of permanent injunction to restrain the defendant, by itself, its directors, its agents, representatives, servants, men, distributors and all those acting in concert with it or claiming under or through it or otherwise howsoever, from infringing the plaintiff's copyright in the Three Field Device mark;

(iv) **Dilution**

A decree and order of permanent injunction to restrain the defendant, by itself, its directors, its agents, representatives, servants, men, distributors and all those acting in concert with it or on its behalf or claiming under or through it or otherwise howsoever, from indulging in any activity which dilutes the distinctive character of the plaintiff's PEPSI marks;

(v) **Delivery Up**

An order for delivery for destruction upon oath of all products including paper cups, packing material, stationery, carry bags, price stickers, visiting cards, billboards, brochures, promotional material, point of sale material, letter heads, cash memos, sign boards, sign posts, leaflets, cartons or any other things of whatsoever description and nature, bearing the Impugned Marks and /or any other marks which may be identical and/or deceptively similar to the plaintiff's PEPSI marks which would offend against the foregoing injunction;

(vi) **For an order and final decree of damages to the tune**

of Rs. 1,00,05,000/- in favour of the plaintiff and against the defendant;

(vii) For costs of this suit;

(vii) Any other and further reliefs as this Hon'ble Court may deem fit and proper to meet the ends of justice."

3. On 15th February 2018, this Court granted an ex parte ad interim injunction in favour of the plaintiff and against the defendants. The relevant portion of the said order is reproduced hereinbelow:-

"Consequently, till further orders, the defendant, its agents, representatives, servants, men, distributors and all those acting in concert with it or on behalf of it or claiming under or through it or otherwise howsoever, are restrained from using upon or in relation to its business and products the impugned marks including POPSI and/or any other mark or device which may be identical and/or deceptively similar to the registered mark PEPSI of the plaintiff in any manner whatsoever."

4. At the outset, learned counsel for plaintiff gives up prayers (v) and (vi) of the plaint. The statement made by learned counsel for plaintiff is accepted by this Court and plaintiff is held bound by the same.

5. Since the defendants have neither appeared nor filed a written statement, they are proceeded *ex-parte*.

6. Learned counsel for the plaintiff states that in view of the judgment of this Court in ***Satya Infrastructure Ltd. &Ors. Vs. Satya Infra & Estates Pvt. Ltd.***, the present suit should be decreed qua the reliefs in paragraph 18 (i) to (iv) and (vii) of the plaint of the plaintiff. The relevant portion of the judgment in ***Satya Infrastructure Ltd. &Ors.***

(Supra) relied upon by learned counsel for the plaintiffs 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.”

7. The contentions and submissions advanced by the learned counsel for the plaintiff are as under:-

- (i) The plaintiff is a corporation duly incorporated and existing under the laws of the State of North Carolina, USA and is in the business of manufacturing and distributing (on its own and through affiliates and subsidiaries across the world) non-alcoholic beverages, packaged drinking water and snack foods and is today one of the world's premier consumer products company. Its products include refreshment beverages; sports drinks; fruit juices and salted snacks and foods which are sold in almost every country in the world under various marks such as PEPSI, 7UP, MOUNTAIN DEW, AQUAFINA, SLICE, LAY'S, CHEETOS etc.

- (ii) The plaintiff's products under the PEPSI marks have been sold internationally since 1911 and in India since mid-1950's and that the plaintiff's marks have acquired reputation and high public recognition. It is further stated



that the three field device mark was adopted by the plaintiff for the first time in 1950's and has been used extensively and continuously since 1975. It is stated that the device mark constitutes as an original artistic work within the meaning of Section 2 (c) of the Copyright Act, 1957.

- (iii) The plaintiff is the owner of 4600 registration/applications worldwide and is the registered proprietor of the mark PEPSI in India in various classes under the Trademark Act, 1999. The earliest registration of the plaintiff in India dates back to 1943 and has been recognized as well known trademark by the Trademark Office in India. Plaintiff's also operate the website www.pepsi.in, which is accessible to users of the internet, all over the world including in India.
- (iv) The annual sales of soft drinks under PEPSI marks in India from 2013 till date has been in excess of INR 2743 crores and that the plaintiff has spent in excess of INR 998 crores since 2013 till date, for advertising and promoting its products under the PEPSI marks.

- (v) In September, 2016, the plaintiff became aware about use of the PEPSI marks by the defendant. Further, enquiries conducted by the plaintiff revealed that the defendant is in the business of manufacturing and supplying disposable paper cups under the impugned marks. Photographs of the said paper cups are reproduced hereinbelow:-



- (vi) The plaintiff addressed a legal notice dated 20th October, 2016, to the defendant, however the same could not be delivered. The Plaintiff's representative hand-delivered the legal notice on January 21, 2017. However, the defendants have not complied with the same. On further enquiries conducted by the plaintiff's in July, 2017 and September 2017 revealed that defendants continue to infringe the rights of the plaintiff under PEPSI marks.

- (vii) The adoption and use of the impugned marks by the defendant is motivated by mala fide/dishonest intention to trade upon and commercially benefit from the reputation and goodwill enjoyed by the plaintiff in its PEPSI marks.
- (viii) Use of the impugned marks which are virtually identical to the plaintiff's PEPSI marks, is motivated with a view to falsely portray that the products of the defendants is associated with the plaintiff's and to deceive the consumers into believing that the products of the defendant enjoy endorsement of the plaintiff.

8. In the opinion of this Court, the defendants have no real prospect of defending the claim as they have neither entered appearance nor filed their written statement or denied the documents of the plaintiffs. Further, the plaintiffs are the prior registered user of the trade marks and logo in question.

9. In view of the above, the suit is decreed in favour of the plaintiffs and against defendants in terms of paragraph 18 (i) to (iv) and (vii) of the plaint. The costs shall amongst others include the lawyer's fees as well as the amount spent on Court-fees. Registry is directed to prepare a decree sheet accordingly.

10. Consequently, the present suit and applications stand disposed of.

MANMOHAN, J

SEPTEMBER 13, 2018

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