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

+ **CS(COMM) 1213/2016**

HAVELLS INDIA LIMITED

..... Plaintiff

Through: Mr. Sudeep Chatterjee, Adv
Ms. Nupur Lamba Adv. and
Ms. Sonal Chhablani Adv.

Versus

PURI ELECTRICAL AND LTD.

..... Defendants

Through Ex parte

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Date of Decision: 31st July, 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 injunction restraining passing off, dilution, rendition of accounts, damages etc. The prayer clause in the suit is reproduced hereinbelow:-

A. Pass a decree of permanent injunction restraining the Defendants, their C&F Agents, dealers, distributors, retailers, representatives agents and assignees from in any manner selling the impugned MARIGOLD and POPPY series of ceiling fans or any other fans which is either identical or deceptively similar to the Plaintiffs' FUSION series or which are a colourable imitation or a substantial reproduction of the plaintiff's design, get-up, layout, trade

dress, pattern, shape, configuration and packaging in their FUSION series so as to result in passing off, acts of unfair competition, dilution of the rights of the plaintiffs.

- B. Pass a Decree of delivery up of all the impugned products, including ceiling fans and parts thereof, packaging of MARIGOLD and POPPY series ceiling fans, brochures, pamphlets, price list and any other material bearing infringing design, get-up and layout, trade dress, pattern, shape and configuration for the purpose of destruction and erasure;*
- C. Pass a decree of permanent injunction restraining the Defendants, their C&F Agents, dealers, distributors, retailers, representatives, agents and assignees from in any manner selling the impugned series of electrical products, especially sockets, switches and fan regulators & dimmers or any other electrical products which is either identical or deceptively similar to the Plaintiffs' REO series or which are a colourable imitation or a substantial reproduction of the plaintiff's design, get-up, layout, trade dress, pattern, shape, configuration and packaging in their REO series so as to result in passing off, acts of unfair competition, dilution of the rights of the plaintiffs.*
- D. Pass a Decree of delivery up of all the impugned electrical products, including sockets, switches and fan regulators & dimmers and parts thereof, packaging of such electrical products, brochures, pamphlets, price list and any other material bearing infringing design, get-up and layout, trade dress, pattern, shape and configuration for the purpose of destruction and erasure;*
- E. Pass a decree of rendition of accounts in favour of the Plaintiff on the profits that Defendants have earned and as may be disclosed by the Defendants. The Plaintiff undertakes to file additional court fee if on appropriate*

rendition of accounts by the Defendants a higher amount is found to be due and is directed by this Hon'ble Court;

F. Cost of the suit be awarded;

(i) Any such further order as this Court may deem fit and appropriate in the present facts and circumstances of the present case be passed in favour of the Plaintiff and against the Defendants.

2. At the outset, learned counsel for plaintiff gives up prayers (b), (d) and (e) of the prayer clause to the suit. The statement made by learned counsel for plaintiff is accepted by this Court and plaintiff is held bound by the same.

3. The present case was listed for the first time before the Court on 19th October, 2015. On the said date, the learned predecessor of this Court was pleased to issue notice in the injunction application and summons in the suit only.

4. Aggrieved by the same, the plaintiff filed an appeal being FAO(OS) No.597/2015. In the aforementioned appeal, the Division Bench vide order dated 29th October 2015, granted ex-parte ad interim injunction in favour of the plaintiff. The relevant portion of the ex-parte injunction order is reproduced hereinbelow:-

“.....the FUSION series of fans manufactured and sold by the appellant have been virtually copied by the respondent in respect of its series of fans sold under the names MARIGOLD and POPPY. series of switches which are sold and manufactured by the appellant under the mark 'REO' have also been virtually copied in its entirety by the respondent The design, getup, lay out, shape and configuration of the said products of the respondent is virtually identical to that of the appellant's said products.

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Consequently, the respondents, their agents, dealers, distributors, retailers, etc. are restrained from manufacturing/selling ceiling fans (under the marks MARIGOLD and POPPY or any other mark) which are either identical or deceptively similar to the appellant's FUSION series of ceiling fans insofar as the design, getup, pattern, shape and configuration are concerned. Similarly, the respondents, their agents, etc. are restrained from, in any manner, selling the series of electrical switches/sockets/fans/regulators and dimmers which are identical or deceptively similar in design, getup, layout, pattern, shape or configuration to that of the appellant's REO series of similar products.....”

(emphasis supplied)

5. The appeal being FAO(OS) No.597/2015 was disposed of by the Division Bench vide order dated 12th January, 2016 and the order of the injunction was transposed to be the order in the suit.
6. The defendants filed a Special Leave Petition bearing SLP No. 33203/2015 against order dated 29th October, 2015 and Special Leave Petition bearing SLP No.5420/2016 against the order dated 12th January, 2016. The Supreme Court disposed of the SLPs vide common order dated 12th July, 2016 with the direction to the Single Judge to expedite the disposal of the interim application.
7. This Court confirmed the interim order of injunction in favour of the plaintiff by order dated 4th November, 2016.
8. Subsequently, the defendants were proceeded ex-parte on account of their continuous non-appearance on 10th March, 2017.

9. In the plaint, it has been averred that the plaintiff is engaged in the electrical and power distribution equipment business. The plaintiff is a \$1.3 billion fast moving electrical goods(FMEG) company. It is averred that the plaintiff is the market leader in the manufacturing and trading of various types of fans.

10. It is further averred that the plaintiff has created a new and original range of fans under the series FUSION bearing original design, trade dress, get-up, lay-out, pattern, shape, configuration, colour scheme giving it a unique and aesthetic appearance for its ceiling fans.

The unique features of the series as mentioned in the plaint are:-

- Contemporary elegant design
- Metallic paint finish
- Decorative trims on motor cover, canopy & blades
- Double ball bearings
- Contrasting Coloured Blades
- Cylindrical Wedges upon blades
- Unique cylindrical design inside the wedges
- Unique trade dress, get-up, lay-out and pattern
- Unique overall appearance and shape
- Optimum performance even at low voltage
- The unique colour scheme.
- The completely unique and distinctive overall shape, configuration and look.

11. It is averred that the plaintiff's fans have acquired enormous amount of goodwill due to their aesthetic and rich appearance and are

in extensive use amongst all classes of purchasers including domestic purchasers, shops, showrooms, malls, hotels, restaurants, etc. It is further stated that the plaintiff's fans sold under the FUSION series due to their get up and have acquired distinctiveness as well as secondary meaning as to their source.

12. It is contended that the trade dress including the aforesaid unique features itself acts as a trade mark, as a brand identity of the plaintiff and customers who are familiar with the plaintiff and its products are immediately able to identify the Plaintiff's fans even without the name being depicted on it.

13. It is stated that the total sales of the goods fans under the mark FUSION was Rs.43.34 crores in the year 2014-15 and the money spent on advertisement was Rs.25.14 crore in the year 2014-2015.

14. It is stated that the plaintiff also created a new and original range of sockets, switches, fan regulators and dimmers under the series REO in the year 2011-2012 bearing original design, trade dress, get-up, layout, pattern, shape, configuration, colour scheme giving it a unique and aesthetic appearance.

15. It is stated that the total sales of the goods under the mark REO was Rs.90.05 crores in the year 2014-15 and the money spent on advertisement was Rs.96 lakhs in the year 2014-2015.

16. Learned counsel for the plaintiff states that the plaintiff's market representatives in October, 2015, stumbled upon some electrical products of the defendant no.3 under MARIGOLD and POPPY series identical to ceiling fans as that of the FUSION series and sockets, switches, fan regulators and dimmers identical to REO series of the

plaintiff's.

17. Learned counsel for the plaintiff states that the defendant no.1 was the largest distributor of the impugned product that were being manufactured by the defendant no.3 company. He states the plaintiff visited the website of defendant no.3 www.oreva.com. and was shocked to learn that the defendants had copied the entire series of products under the FUSION and REO marks of the plaintiff's.

18. He states that the essential/unique features had been imitated/dishonestly adopted by defendant no.3 with regards to plaintiff's fans under the FUSION series of fans and REO series of electrical products. The aforesaid essential features pointed out by learned counsel for plaintiff are reproduced hereinbelow:-

Adoption of Plaintiff's FUSION Series by Defendants

Description	Plaintiff's FUSION Series	Defendant's MARIGOLD & POPPY Series
Blades	Identical	Identical
Cylindrical wedges upon blades	Identical	Identical
Colour combinations/series	Identical	Identical
Decorative trims on motor cover, canopy & blades	Identical	Identical
Double ball bearings	Identical	Identical
Cylindrical design inside the	Identical	Identical

wedges		
Trade dress, get-up, lay-out and pattern	Identical	Identical
Overall Appearance and shape	Identical	Identical
Appearance of the fans in the Packaging	Identical	Identical

Adoption of Plaintiff's REO Series by Defendants

Description	Plaintiff's Series	Defendant's Series
Socket : 10/20A Twin Socket With Shutter		
Catalogue Number	AHEKCWW253	JST-1167
Overall Appearance and shape	Identical	Identical
Angular line/curve	Identical	Identical
Colour combinations	Identical	Identical
Measurements	Identical	Identical
Trade dress, get-up, lay-out and pattern	Identical	Identical
Appearance of the product in the Primary (Retail) Packaging	Laminated	Laminated
Appearance of the product in the Wholesale Packaging	Rectangular packaging	Rectangular packaging

Description	Plaintiff's Series	Defendant's Series
Socket : 6-16A Combined Socket		
Catalogue Number	AHEKUXW063	JST-1157
Overall Appearance and shape	Identical	Identical
Angular line/curve	Identical	Identical
Colour combinations	Identical	Identical
Measurements	Identical	Identical
Trade dress, get-up, lay-out and pattern	Identical	Identical
Appearance of the product in the Primary (Retail) Packaging	Laminated	Laminated
Appearance of the product in the Wholesale Packaging	Rectangular packaging	Rectangular packaging

Description	Plaintiff's Series	Defendant's Series
Socket : Multipurpose Socket W/O Shutter-For Two 2 Pin & 3 Pin		
Catalogue Number	AHEKPOW065	JST-1137
Overall Appearance and shape	Identical	Identical
Angular line/curve	Identical	Identical
Colour combinations	Identical	Identical
Measurements	Identical	Identical
Trade dress, get-up, lay-out and pattern	Identical	Identical
Appearance of the product in the Primary (Retail) Packaging	Laminated	Laminated
Appearance of the product in the Wholesale Packaging	Rectangular packaging	Rectangular packaging

Description	Plaintiff's Series	Defendant's Series
Socket : 6A 2 Pin Socket W/O Shutter		
Catalogue Number	AHEKPOW062	JST-1107
Overall Appearance and shape	Identical	Identical
Angular line/curve	Identical	Identical
Colour combinations	Identical	Identical
Measurements	Identical	Identical
Trade dress, get-up, lay-out and pattern	Identical	Identical
Appearance of the product in the Primary (Retail) Packaging	Laminated	Laminated
Appearance of the product in the Wholesale Packaging	Rectangular packaging	Rectangular packaging

Description	Plaintiff's Series	Defendant's Series
Socket :6A 3 Pin Socket With Shutter		
Catalogue Number	AHEKSWW063	JST-1117
Overall Appearance and shape	Identical	Identical
Angular line/curve	Identical	Identical

Colour combinations	Identical	Identical
Measurements	Identical	Identical
Trade dress, get-up, lay-out and pattern	Identical	Identical
Appearance of the product in the Primary (Retail) Packaging	Laminated	Laminated
Appearance of the product in the Wholesale Packaging	Rectangular packaging	Rectangular packaging
Description	Plaintiff's Series	Defendant's Series
Socket :6A 2 IN 1 Socket W/O Shutter-5pin		
Catalogue Number	AHEKPOW063	JST-1127
Overall Appearance and shape	Identical	Identical
Angular line/curve	Identical	Identical
Colour combinations	Identical	Identical
Measurements	Identical	Identical
Trade dress, get-up, lay-out and pattern	Identical	Identical
Appearance of the product in the Primary (Retail) Packaging	Laminated	Laminated
Appearance of the product in the Wholesale Packaging	Rectangular packaging	Rectangular packaging

Description	Plaintiff's Series	Defendant's Series
Switch: 32A - D/P One Way Switch		
Catalogue Number	AHESDIW321	JSH-1067
Overall Appearance and shape	Identical	Identical
Angular line/curve	Identical	Identical
Colour combinations	Identical	Identical
Measurements	Identical	Identical
Trade dress, get-up, lay-out and pattern	Identical	Identical
Appearance of the product in the Primary (Retail) Packaging	Laminated	Laminated
Appearance of the product in the Wholesale Packaging	Rectangular packaging	Rectangular packaging

Description	Plaintiff's Series	Defendant's Series
Switch: 16A Two Way Switch		
Catalogue Number	AHESXXW202	JSH-1057
Overall Appearance and shape	Identical	Identical
Angular line/curve	Identical	Identical
Colour combinations	Identical	Identical
Measurements	Identical	Identical
Trade dress, get-up, lay-out and pattern	Identical	Identical
Appearance of the product in the Primary (Retail) Packaging	Laminated	Laminated
Appearance of the product in the Wholesale Packaging	Rectangular packaging	Rectangular packaging

Description	Plaintiff's Series	Defendant's Series
Switch: 16A One Way Switch		
Catalogue Number	AHESXXW201	JSH-1037
Overall Appearance and shape	Identical	Identical
Angular line/curve	Identical	Identical
Colour combinations	Identical	Identical
Measurements	Identical	Identical
Trade dress, get-up, lay-out and pattern	Identical	Identical
Appearance of the product in the Primary (Retail) Packaging	Laminated	Laminated
Appearance of the product in the Wholesale Packaging	Rectangular packaging	Rectangular packaging

Description	Plaintiff's Series	Defendant's Series
Switch: 6A One Way Switch		
Catalogue Number	AHESXXW061	JSH - 1007
Overall Appearance and	Identical	Identical

shape		
Angular line/curve	Identical	Identical
Colour combinations	Identical	Identical
Measurements	Identical	Identical
Trade dress, get-up, lay-out and pattern	Identical	Identical
Appearance of the product in the Primary (Retail) Packaging	Laminated	Laminated
Appearance of the product in the Wholesale Packaging	Rectangular packaging	Rectangular packaging

Description	Plaintiff's Series	Defendant's Series
Switch: 6A Two Way Switch		
Catalogue Number	AHESXXW062	JSH - 1017
Overall Appearance and shape	Identical	Identical
Angular line/curve	Identical	Identical
Colour combinations	Identical	Identical
Measurements	Identical	Identical
Trade dress, get-up, lay-out and pattern	Identical	Identical
Appearance of the product in the Primary (Retail) Packaging	Laminated	Laminated
Appearance of the product in the Wholesale Packaging	Rectangular packaging	Rectangular packaging

Description	Plaintiff's Series	Defendant's Series
Switch: 6A One way Bell Push Switch		
Catalogue Number	AHESBXW061	JSH - 1027
Overall Appearance and shape	Identical	Identical
Angular line/curve	Identical	Identical
Colour combinations	Identical	Identical
Measurements	Identical	Identical
Trade dress, get-up, lay-out and pattern	Identical	Identical
Appearance of the product in the Primary (Retail) Packaging	Laminated	Laminated

Appearance of the product in the Wholesale Packaging	Rectangular packaging	Rectangular packaging
Description	Plaintiff's Series	Defendant's Series
Switch: 6A One Way Switch		
Catalogue Number	AHETWFW202	JSS-1347
Overall Appearance and shape	Identical	Identical
Angular line/curve	Identical	Identical
Colour combinations	Identical	Identical
Measurements	Identical	Identical
Trade dress, get-up, lay-out and pattern	Identical	Identical
Appearance of the product in the Primary (Retail) Packaging	Laminated	Laminated
Appearance of the product in the Wholesale Packaging	Rectangular packaging	Rectangular packaging

Description	Plaintiff's Series	Defendant's Series
Switch: 6A One Way Switch		
Catalogue Number	AHETOXW202	JSS-1327
Overall Appearance and shape	Identical	Identical
Angular line/curve	Identical	Identical
Colour combinations	Identical	Identical
Measurements	Identical	Identical
Trade dress, get-up, lay-out and pattern	Identical	Identical
Appearance of the product in the Primary (Retail) Packaging	Laminated	Laminated
Appearance of the product in the Wholesale Packaging	Rectangular packaging	Rectangular packaging

Description	Plaintiff's Series	Defendant's Series
Switch: 6A One Way Switch		
Catalogue Number	AHETWXW202	JSS-1307
Overall Appearance and shape	Identical	Identical
Angular line/curve	Identical	Identical

Colour combinations	Identical	Identical
Measurements	Identical	Identical
Trade dress, get-up, lay-out and pattern	Identical	Identical
Appearance of the product in the Primary (Retail) Packaging	Laminated	Laminated
Appearance of the product in the Wholesale Packaging	Rectangular packaging	Rectangular packaging

Description	Plaintiff's Series	Defendant's Series
Switch: 6A One Way Switch		
Catalogue Number	AHETOFW204	JSS-1367
Overall Appearance and shape	Identical	Identical
Angular line/curve	Identical	Identical
Colour combinations	Identical	Identical
Measurements	Identical	Identical
Trade dress, get-up, lay-out and pattern	Identical	Identical
Appearance of the product in the Primary (Retail) Packaging	Laminated	Laminated
Appearance of the product in the Wholesale Packaging	Rectangular packaging	Rectangular packaging
Description	Plaintiff's Series	Defendant's Series
1 Module Dimmer 450W		
Catalogue Number	AHEDEXW041	JR-1227
Overall Appearance and shape	Identical	Identical
Angular line/curve	Identical	Identical
Colour combinations	Identical	Identical
Measurements	Identical	Identical
Trade dress, get-up, lay-out and pattern	Identical	Identical
Appearance of the product in the Wholesale Packaging	Rectangular packaging	Rectangular packaging

Description	Plaintiff's Series	Defendant's Series
2 Module Fan Regulator		
Catalogue Number	AHERFXW002	JR-1217
Overall Appearance and shape	Identical	Identical
Angular line/curve	Identical	Identical
Colour combinations	Identical	Identical
Measurements	Identical	Identical
Trade dress, get-up, lay-out and pattern	Identical	Identical
Appearance of the product in the Wholesale Packaging	Rectangular packaging	Rectangular packaging
Description	Plaintiff's Series	Defendant's Series
1 Module Fan Regulator		
Catalogue Number	AHERFXW001	JR-1207
Overall Appearance and shape	Identical	Identical
Angular line/curve	Identical	Identical
Colour combinations	Identical	Identical
Measurements	Identical	Identical
Trade dress, get-up, lay-out and pattern	Identical	Identical
Appearance of the product in the Wholesale Packaging	Rectangular packaging	Rectangular packaging

Description	Plaintiff's Series	Defendant's Series
RJ-11		
Catalogue Number	AHEKRW111	JST-1187
Overall Appearance and shape	Identical	Identical
Angular line/curve	Identical	Identical
Colour combinations	Identical	Identical
Measurements	Identical	Identical
Trade dress, get-up, lay-out and pattern	Identical	Identical
Appearance of the product in the Primary (Retail) Packaging	Laminated	Laminated

Appearance of the product in the Wholesale Packaging	Rectangular packaging	Rectangular packaging
Description	Plaintiff's Series	Defendant's Series
Kit Kat Fuse		
Catalogue Number	AHEFPXW061	JSH-1087
Overall Appearance and shape	Identical	Identical
Angular line/curve	Identical	Identical
Colour combinations	Identical	Identical
Measurements	Identical	Identical
Trade dress, get-up, lay-out and pattern	Identical	Identical
Appearance of the product in the Primary (Retail) Packaging	Laminated	Laminated
Appearance of the product in the Wholesale Packaging	Rectangular packaging	Rectangular packaging

Description	Plaintiff's Series	Defendant's Series
Night Lamp		
Catalogue Number	AHEILIW061	JSH-1077
Overall Appearance and shape	Identical	Identical
Angular line/curve	Identical	Identical
Colour combinations	Identical	Identical
Measurements	Identical	Identical
Trade dress, get-up, lay-out and pattern	Identical	Identical
Appearance of the product in the Packaging	Rectangular packaging	Identical

19. Learned counsel for plaintiff further states that the adoption of the plaintiff's FUSION and REO series by the defendants was with intent to dilute the distinctive character of the plaintiff's brand.

20. The plaintiff has filed its *ex parte* evidence by way of affidavit of Mr. Sewak Ram (PW-1) authorized representative of the plaintiff and Mr. Rakesh Thukra (PW-2), general manager of the plaintiff

21. The plaintiff's witness (PW1) has proved certified copies of certificates of chartered accountants showing sales and advertisement expenses as exhibit PW1/6. The plaintiff's witness has also proved comparison report by third party of plaintiff's and the defendant's products as Exhibit-PW2/7.

22. Having heard learned counsel for plaintiff as well as having perused the papers, this Court is of the view that due to extensive use over substantial period of time, the plaintiff has acquired distinctiveness in the unique designs of the ceiling fans under the

FUSION series and switches and sockets under the REO series

23. Further, as the plaintiff's evidence has gone unrebutted, said evidence is accepted as true and correct. The Supreme Court in ***Ramesh Chand Ardawatiya Vs. Anil Panjwani, AIR 2003 SC 2508*** has held as under:-

"33. In the absence of denial of plaint averments the burden of proof on the plaintiff is not very heavy. A prima facie proof of the relevant facts constituting the cause of action would suffice and the court would grant the plaintiff such relief as to which he may in law be found entitled. In a case which has proceeded ex parte the court is not bound to frame issues under Order 14 and deliver the judgment on every issue as required by Order 20 Rule 5...."

24. Accordingly, present suit is decreed in accordance with the paragraph 59 (a) and (c) of the plaint along with the actual costs incurred by the plaintiff. The cost shall amongst others include the lawyers' fees, local commissioner's fee as well as the amounts spent on purchasing the court fees. Registry is directed to prepare a decree sheet accordingly.

MANMOHAN, J

JULY 31, 2018

sp/js/rn