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

+ **CS(COMM) 386/2017 & I.A. 6595/2017**

THE PROCTER & GAMBLE COMPANY Plaintiff
Through **Mr. Peeyoosh Kalra with**
Mr. Amol Dixit, Advocates
versus

MIDAS HEALTHCARE LIMITED
AND ORS Defendants
Through **None**

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

% **Date of Decision: 14th May, 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/perpetual injunction, rendition of accounts, passing off, delivery up and damages against the defendants. The prayer clause in the present suit is reproduced hereinbelow:-

"(a) Pass and pronounce a decree of permanent/perpetual injunction against infringement of Plaintiff's registered and well-known trade/service mark P&G, by restraining the Defendants, their promoters, assigns, relatives, successors-in-interest, licensees, franchisees, partners, representatives, servants, distributors, employees, agents etc. or anyone

associated with them from using the mark P&G/  /

 and/or any mark identical with or similar to the Plaintiff's trade/service mark P&G singularly or in conjunction with any other word or monogram/logo as a trade mark, service mark, house mark, trade name, trading style, corporate name, website, domain name, e-mail address, business card or otherwise in any manner whatsoever so as to infringe the Plaintiff's said registered trade/service mark;

(b) Pass and pronounce a decree of permanent/perpetual injunction restraining the Defendants, their promoters, assigns, relatives, successors-in-interest, licencees, franchisees, partners, representatives, servants, distributors, employees, agents etc. or anyone associated with them from

using the marks  /  and/or any mark identical with or similar to the Plaintiff's trade/service marks/name P&G and its trade dress/get up/colour scheme used in respect of in any manner whatsoever so as to pass off or enable others to pass off their business as that of the Plaintiff or in some manner convey a connection with the Plaintiff;

(c) Pass and pronounce a decree directing the Defendant Nos. 3, 4, 5 and 6, their promoters, assigns, relatives, successors-in-interest, licensees, franchisees, partners, representatives, servants, distributors, employees, agents etc. or anyone associated with them to file letters of withdrawal in

respect of the trade mark applications under  and

 under Nos. 2575662 and 2520586 with the Trade Marks Registry and restrain them from applying for or obtaining registrations before any competent body or government authority of the Plaintiff's trade/service mark/name P&G or any deceptive variation/s thereof, singularly or in conjunction with any other word(s) or

monogram/logo as a trade/service mark, house mark, trade name, trading style, corporate name, website, domain name, e-mail address or otherwise in any manner whatsoever in relation to their business/products/services;

(d) Pass and pronounce a decree directing the Defendants, their promoters, assigns, relatives, successors-in-interest, licensees, employees, agents etc. or anyone associated with them to deliver-up to the Plaintiff for destruction their entire stationery, letterheads, signage, reprographic material, brochures, literature or any other material for advertising, selling or marketing any goods and/or services bearing the

marks P&G/  /  and/or any mark similar to the Plaintiff's trade/service mark/name P&G;

(e) Pass and pronounce a preliminary decree for rendition of accounts directing the Defendants to produce before the Hon'ble Court or any person nominated/designated/appointed by this Hon'ble Court all accounts in general and invoices and sales figures in particular pertaining to the business

under the objectionable marks/names P&G/  /  ;

(f) Pass and pronounce a final money decree in favour of the Plaintiff and against the Defendants for payment of damages in the sum of Rupees INR 1,01,00,000 or in such higher sum as may be determined/ascertained pursuant to the rendition of accounts;

(g) award costs of the Suit; and

(h) Any other orders as this Hon'ble Court may deem appropriate in the facts and circumstances of the case."

2. Vide order dated 29th May, 2017 this Court granted an ex-parte ad interim injunction in favour of the plaintiff and against the defendants. The relevant portion of the order is reproduced hereinbelow:-

"Consequently, till further orders, the defendants, its promoters, assigns, successors-in-interest, licensees, franchisees, partners, directors, representatives, servants, distributors, employees, agents, carrying and forwarding agents etc. are restrained from using the well-known trade/service mark/trade name P&G /



or any deceptive variation/s thereof singularly or in conjunction with any other word or monogram/logo or label in any manner whatsoever upon and in relation to their products/services/business whether as a trade mark, service mark, trade name, corporate name, trading style or as website, domain name and e-mail address etc."

3. Vide order dated 27th November, 2017, the suit was decreed qua the plaintiff and defendant nos. 1, 3 to 6 in accordance with Para 40 (a) to (d) of the plaint and in terms of the settlement application being I.A. 13941/2017. Today, a typographical error in the order dated 27th November, 2017 has been corrected after initialing the same.

4. Vide order dated 5th March, 2018; defendant no.2 was served through publication. Since the defendant no. 2 has not entered appearance, it is proceeded ex parte.

5. 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., 2013 SCC OnLine Del 508** the present suit be decreed qua the reliefs in paragraph 40(a), (b) and (g) of the plaint.

The relevant portion of the said judgment 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.”

6. The relevant facts of the present case as pointed out by the learned counsel of the plaintiffs are as under :-

A) The plaintiff was established in 1837 and it's well known mark **P&G** was first registered in 1969 in Germany. In India, the plaintiff's earliest registration of its mark **P&G** is of 2003. The plaintiff is in the business of manufacturing and trading healthcare, personal care, personal hygiene, household products, cosmetics etc. The plaintiff's mark **P&G** and other P&G formative marks are registered under classes 5,3,10,16,21,35,41,42 under the Trade Marks Act, 1999.

B) The plaintiff has one of the largest and strongest portfolios of trusted, quality, leadership brands such as Always®, Ambi pur®, Areil®, Bounty®, Charmin®, Crest®, Dawn®, Downy®, Fairy®, Febreze®, Gain®, Gillette®,

Head & Shoulders®, Olay®, Oral B®, Pampers® and Pantene®. The plaintiff's acquisition of 'Gillette' in 2005 made it the largest consumer goods company in the world.

C) The plaintiff celebrated its 150th anniversary in 1987 and was ranked as the second oldest company amongst the 50 largest Fortune 500 Companies. It is also stated that in Forbes the plaintiff was Ranked 63rd on the list of the 'World's Most Reputable Companies' and 65th on the list of 'American's Most Reputable Companies'.

D) The mark P&G is arbitrary and distinctive as well as forms a prominent part of the plaintiff's corporate name and is its house mark. It is further stated that mark P&G also forms a part of plaintiff's website 'www.pg.com' and its domain names i.e. pgimprovinglife.com, pgeveryday.com, pgpro.com, pginvestor.com etc.

E) The plaintiff in the financial year 2015-2016, incurred expenditure of approximately Rs. 7000 crores towards advertising and promoting its subsidiaries under the mark P&G. In fact, it is stated that plaintiff incurred approximately 57 crores in advertising and promoting its pharmaceutical business in India. It is also stated that the annual revenue generated by the plaintiff in the financial year 2015-2016 from its subsidiaries under the mark P&G was in excess of Rs.10000 crores.

F) In March, 2017, the plaintiff came across the advertisement of the Defendants nos. 3,4,5 and 6's application under no.2520586 for registration of the mark  in class 5 of the Trade Marks Act, 1999 in respect of medicinal and pharmaceutical preparations.

G) During the course of investigation into the business activities of defendant No.3, it was revealed that the defendant No.2 manufactures products under the impugned marks which are then marked by defendant Nos.3 to 6. The plaintiff has filed a notice of opposition dated 15th March, 2017 against the registration of the mark  and the proceedings before the office of the Trade Mark Registry, New Delhi are pending adjudication.

H) The defendants are also falsely misrepresenting that they are operating the website www.pglifesciences.org which is deceptively similar to plaintiff's domains 'pg.com', 'pgimprovinglife.com', 'pghomesciences.com'.

7. Having heard learned counsel for the plaintiff and having perused the documents placed on record, this Court is of the opinion that the plaintiff has proved the facts stated in the plaint.

8. In the opinion of this Court, the defendant no. 2 has no real prospect of defending the claim as it has neither entered appearance nor filed its written statement or denied the documents of the plaintiff.

9. In view of the above facts, the suit is decreed in favour of the plaintiffs and against defendant no. 2 in terms of prayer clause

40(a), (b) and (g) of the plaint along with the actual costs. The costs shall amongst others include the lawyers' fees.

10. Registry is directed to prepare a decree sheet accordingly. Consequently, the present suit and applications stand disposed of.

MANMOHAN, J

MAY 14, 2018

sp/rn

