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

Date of Decision: 02nd March, 2023

+ CS(COMM) 178/2020

DHARAMPAL SATYAPAL FOODS LIMITED ...Plaintiff

Through: Mr. Rohin Koolwal, Advocate.

versus

MR. MEHUL BHAI KACHHADIYA AND ANR. ...Defendants

Through: None.

Defendants proceeded *ex-parte vide*
order dated 21st August, 2020.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

SANJEEV NARULA, J. (Oral):

BRIEF FACTS

1. The Plaintiff – Dharampal Satyapal Foods Ltd. (earlier ‘DS Confectionery Products Ltd.’), is part of ‘Dharampal Satyapal Group’ a diversified conglomerate established the year-1929, engaged in the business of food and beverage products, confectionery, mouth fresheners, paan masala, tobacco, agro-forestry, diary segment, hospitality, etc. Plaintiff’s diverse product portfolio includes several brands across various market segments, adopting trade names such as ‘PULSE’, ‘CATCH’, ‘PASS-PASS’, ‘TULSI’, ‘RAJNIGANDHA’, ‘CHINGLES’, etc. Plaintiff possesses trademarks registrations in several jurisdictions apart from India including United

Kingdom, Bhutan, Kuwait, etc. In India, Plaintiff has a variety of word and device mark registrations including trade-dress/ label, in their favour



(extracted below) as well as copyright registration (‘’)¹ under Section 2(c) of the Copyright Act, 1957 [hereinafter collectively “*PULSE marks*”]. ‘PULSE’ has been declared as a “well known trade mark” as defined under Section 2(1)(zg) read with criteria given in Section 11(6) and (7) of the Trademarks Act, 1999 [hereinafter “*Trademarks Act*”].² Details of trademark registrations in favour of Plaintiff are set out hereinbelow:

TRADE MARK APPLICATION NO.	TRADE MARK	CLASS	USE DATE	DATE OF APPLICATION
3188874	PULSE	32	01.10.2013	17.02.2016
3364213	PULSE	32	01.04.2013	16.09.2016
4232029	PULSE (word)	30	Proposed to be used	11.07.2019
3854010	PULSE SHOTS	30	01.04.2013	07.06.2018
2827909		30	01.04.2013	16.10.2014
3071704		30	01.04.2013	07.10.2015
3071705		30	01.04.2013	07.10.2015
3103619		30	01.04.2013	23.11.2015
3854008		30	01.04.2013	07.06.2018

¹ Copyright Application No. A-122599/2017.

² *Dharampal Satyapal Sons Private Limited v. Mr. Akshay Singhal & Ors.*, 2019:DHC:5346.

3854009		30	01.04.2013	07.06.2018
4232022	PULSE KACHCHA AAM (device) 	30	01.04.2013	11.07.2019
4232021	PULSE GUAVA (device) 	30	01.04.2013	11.07.2019
4232023	PULSE LITCHI (device) 	30	01.04.2013	11.07.2019
4232025	PULSE ORANGE (device) 	30	01.04.2013	11.07.2019
4232026	PULSE PINEAPPLE (device) 	30	01.04.2013	11.07.2019
2891666		30	01.04.2013	29.01.2015 (OPPOSED)
2827906	PULSE (word)	30	01.04.2013	16.10.2014 (OPPOSED)

2. Plaintiff's goods are sold under PULSE marks and trade-dress associated with 'PULSE' products. Plaintiff conceptualized and introduced their products in-and-around early 2013 with '*Kachcha Aam*' flavoured candy, under their umbrella brand 'PASS PASS' in the confectionery

segment. Later on, the company expanded their product range by launching candies in four distinctive flavours: Guava and Orange (introduced in 2016) and Pineapple and Litchi (introduced in 2017), featuring the tagline '*tangy twist*' accompanied with PULSE marks. Plaintiff also introduced a '*no salt sugar free*' variant of the candy as well as a sweetened drink variant bearing



the PULSE marks – ''. Trade-dress/ label adopted by Plaintiff for the aforesaid candies are reproduced below:

SL. No.	FLAVOURS	TRADE-DRESS ADOPTED
1.	Kachcha Aam with tangy twist	
2.	Guava with tangy twist	
3.	Orange with tangy twist	
4.	Pineapple with tangy twist	
5.	Litchi with tangy twist	
6.	No salt sugar free variant	

3. Plaintiff has continuously used their trademark 'PULSE' along with the

constituent trade-dress, which are inherently distinctive and have amassed immense goodwill and cachet amongst all classes of consumers. Plaintiff extensively advertised and invested considerable time and currency to market their products (specifically candies) bearing PULSE marks by way of print and other form of media since the year-2014.³

4. It is the case of the Plaintiff that around the first week of May 2020, while conducting a routine investigation, they first learnt about Defendant No. 1 – Mr. Mehul Bhai Kachhadiya (proprietor of ‘M/s Abhinandan Food Products’) and Defendant No. 2 – ‘M/s Mangal Krupa Food Products’ (partnership firm believed to be managed and operated by its partner – Defendant No. 1) advertising and selling candies in raw mango, tamarind, guava, and orange flavours, all bearing the mark ‘PULLS’ accompanied with similar trade-dress under ‘MR. CANDY’ trade/ brand name [hereinafter “*impugned marks*”]. The impugned marks are a bare imitation of Plaintiff’s well-known PULSE candies under their highly popular flavour (*such as* Kachcha Aam/ Raw Mango, Orange, Guava, etc.) with deceptively similar packaging as that of Plaintiff.

5. In order to ascertain the extent/ commercial outreach of the Defendants and their operations, Plaintiff conducted an online search and came across various infringing listings on IndiaMART, TradeIndia, GetDistributors, etc., which revealed that Defendants were established in the year-2016 and have since been operating the website ‘www.mangalkrupafoodproducts.com’ with

³ Details of advertisement and sales expenditure incurred by Plaintiff are given in paragraph No. 16 and 17 of the amended Plaint, respectively.

the sole objective of manufacturing candies and have a wide range of products including Butter Scotch Candy, Mr. Pan Center Filled Candy, Jeera Soda Candy, Love Heart Coffee Candy, Mix Fruit Candy under the brand name ‘MR. CANDY’.

6. The Plaintiff is aggrieved with Defendants’ bad-faith appropriation of their well-known PULSE marks in an attempt to deceive and mislead consumers into buying their candies under the mistaken belief that they are affiliated with or originate from the Plaintiff’s popular candies sold under the ‘PULSE’ trademark. They have then filed the instant lawsuit, *inter-alia*, seeking permanent injunction restraining infringement of Plaintiff’s registered well-known trademarks and labels/ trade-dress, copyrights, passing off, rendition of accounts, damages, delivery-up, among other ancillary reliefs.

PROCEEDINGS BEFORE THE COURT

7. On 17th June, 2020, while issuing summons, an *ex-parte ad-interim* injunction was granted in favour of Plaintiff. Operative portion of the said order reads as follows: -

“10. In the meanwhile, till the next date of hearing, the defendants, their partners or proprietors, principal officers, agents, associates, affiliates, sister concerns, distributors and all others acting on their behalf are restrained from manufacturing, selling, offering for sale, and advertising, directly or indirectly, the subject product i.e. fruit candies by using the infringing trademarks and/or packaging or any other packaging and/or trademark(s) which bears a deceptive resemblance to the plaintiff’s trademark and/or packaging.”

8. Ms. Vaishali Mittal, counsel for Plaintiff, on 30th June, 2020 informed

the Court of a communication received by her office on the same date, sent by one Mr. Ashokbhai Kachhadiya, proprietor of M/s. Mangalkrupa Food Products (Defendant No. 2) wherein he states that “[...] *due to family disputes, we have stopped manufacturing of Confectionary under Brand Name "PULLS" 2 years back*”.

9. The Defendants have neither joined the present proceedings, nor filed written statement(s) to the plaint. They were proceeded *ex-parte* and their right to file written statement stood closed *vide* order dated 21st August, 2020.

10. Plaintiff filed their *ex-parte* evidence by way of affidavit of one Mr. Saurabh Mishra, the Constituted Attorney of Plaintiff. In his affidavit, the said witness has deposed generally on the facts of the case and also tried to prove the claim of compensatory and exemplary damages.

ANALYSIS

11. The unrebutted allegations presented in the Plaint establish that the Plaintiff is the registered proprietor of the PULSE marks, maintaining valid and active registrations, a fact also proved by the documentation on record. The Defendants have not presented any evidence to contradict these claims. As per Section 28 of the Trademarks Act, the Plaintiff has the exclusive right to use the PULSE marks in connection with the goods for which they hold registrations, and to seek relief in the event of infringement. In fact, in **Mr. Akshay Singhal** (*supra*), the Court has held ‘PULSE’ to be a “well known mark” under Section 2(1)(zg) read with Section 11(6) of the Trademarks Act.

12. We now turn our attention to the competing marks involved in the present suit. It would thus be fitting to analyse and contrast Plaintiff's artistic creations against that of Defendants:

PLAINTIFF'S PRODUCTS	DEFENDANTS' PRODUCTS
	
	
	



13. As the comparison highlights, Defendants’ mark, trade dress, and overall visual impression are remarkably similar to Plaintiff’s, particularly in these specific features:

- 13.1. The manner of writing/ placement of ‘PULSE’ vis-à-vis Defendants’ ‘PULLS’ with identical shades of colour/ font outlining;
- 13.2. The manner of writing ‘PULLS’ in the centre of the packaging in slant orientation in white capital font;
- 13.3. The manner of cursive font of writing the tagline “Kaccha Aam with Masala Chatka” vis-à-vis Plaintiff’s “Kaccha Aam with Tangy Twist”, among other variants of the same;

13.4. The presence of the fruit device on the right corner side of the packaging;

13.5. The arrangement of elements on the cylindrical container of the packaging.

14. In view of the pleadings, documents as well as affidavit of evidence placed on record, the Court is of the view that affixation of marks deceptively similar to Plaintiff's PULSE marks on Defendants' goods has been done with the intention to unlawfully profit from and create unauthorised association with the goodwill and cachet enjoyed by Plaintiff's PULSE marks. Considering that all essential features of Plaintiff's PULSE marks have been copied in a deceptively similar manner by Defendants', in the Court's opinion, the likelihood of confusion and deception is clearly made out. Defendants have adopted deceptively similar marks/ trade-dress as that of Plaintiff's well-known marks, in relation to identical goods which are sold to the same end-use consumer base. Defendants have engaged in a fraudulent adoption, and a clear-cut case of trademark and copyright infringement and passing off is made out. The adoption of impugned marks identical to that of the Plaintiff's PULSE marks amounts to infringement. Defendants' use of impugned marks 'PULLS' along with the impugned trade dress and packaging will undoubtedly lead to significant losses, harm, and injury to the Plaintiff and public at large. Thus, Plaintiff is entitled to the relief of permanent injunction.

15. On damages, the Court is convinced that this is not a case of innocent adoption, and Defendants' conduct invites the award of damages. Considering that Defendants have not participated in the present proceedings, it is not

possible to accurately determine damage/ loss suffered by Plaintiff and consequently, compensatory damages that can be awarded. Nonetheless, Plaintiff has presented *ex-parte* evidence to support their claim of compensatory and exemplary damages and also argued that mere compensatory damages are inadequate, and Defendants' action also warrant award of punitive/ exemplary damages.

16. The Court has considered the evidence presented. Defendants' conduct certainly invites award of damages. Plaintiff has admitted that they cannot estimate actual damages and have proceeded on approximation. Computation of compensatory damages in the affidavit by way of evidence is on assumption of sales, which the Court does not find to be sufficient to uphold the amount. Co-ordinate Benches of this Court in *M/s General Electric Company v. Mr. Altamas Khan and Ors.*,⁴ and *Microsoft Corporation v. Yogesh Papat & Anr.*,⁵ have granted compensatory notional damages based on certain assumptions of sales. Considering the overall facts and circumstances of the case and the fact that Plaintiff's losses cannot be accurately quantified and also the fact that Defendant No. 2 has purportedly stopped manufacturing the impugned goods, award of nominal damages would be appropriate.

RELIEFS

17. The present suit is accordingly decreed in favour of Plaintiff and against Defendants No. 1 and 2 in terms of the relief of permanent injunction as

⁴ 2008 SCC OnLine Del 1794, ¶¶ 13 and 14.

⁵ 2005 SCC OnLine Del 216, ¶¶ 21.

sought in prayers (i), (ii), (iii), (iv), and (v) of the amended Plaintiff. Further, Defendants No. 1 and 2 jointly and severally shall also pay damages of INR 3,00,000/- to the Plaintiff.

18. The Plaintiff has paid Court fees and incurred legal expenses for instituting the present suit. Thus, in view of the judgment of the Supreme Court in *Uflex Ltd. v. Government of Tamil Nadu*,⁶ as well as in terms of the Commercial Courts Act, 2015 and Delhi High Court (Original Side) Rules, 2018 read with Delhi High Court Intellectual Property Division Rules, 2022, Plaintiff is held entitled to actual costs, recoverable jointly and severally from Defendants No. 1 and 2. Plaintiff shall file its bill of costs in terms of Rule 5 of Chapter XXIII of the Delhi High Court (Original Side) Rules, 2018 on or before 30th April, 2023. As-and-when the same is filed, the matter will be listed before the Taxing Officer for computation of costs.

19. Suit is decreed in these terms. Registry is directed to draw up the decree sheet.

20. Suit and pending applications are accordingly disposed of.

SANJEEV NARULA, J

MARCH 2, 2023

as
(Corrected and released on: 04th April, 2023)

⁶ 2021 SCC OnLine SC 738.