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

Date of Decision: 09th May, 2023

+ **CS(COMM) 368/2020**

SIRONA HYGIENE PRIVATE LIMITED

..... Plaintiff

Through: Mr. Vaibhav Vutts and Ms. Anupriya Bhyan, Advocates.

versus

FLIPKART INTERNET PRIVATE LIMITED & ORS.

..... Defendants

Through: Mr. Manish Jha and Mr. Dhruv Nayar, Advocates for D-1.
Mr. Vivek Ayyagari and Ms. Ramya Aggarwal, Advocates for D-2.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

I.A. 8909/2023 (joint application on behalf of Plaintiff and Defendant No. 1 under Order XXIII Rule 3 r/w Section 151 of the Code of Civil Procedure, 1908)

1. Parties jointly pray for a compromise decree under Order XXIII Rule 3 r/w Section 151 of the Code of Civil Procedure, 1908 (“CPC”), on terms detailed in Paragraph 2 of the present application.
2. The application is duly supported by affidavits of the authorised representatives of Sirona Hygiene Private Limited (Plaintiff) and Flipkart Internet Private Limited (Defendant No. 1). Counsel for both parties confirm the compromise, and pray that the suit be decreed as per terms mentioned in



Paragraph 2 of the application.

3. The Court has perused the terms of the compromise and finds the same to be lawful.

4. Accordingly, the present suit is decreed in favour of Plaintiff and against Defendant No. 1, in terms of paragraph No. 2 of the application, which shall form part of the decree.

5. Parties shall remain bound by the terms and conditions of the compromise as recorded in the application.

6. Decree sheet be drawn up.

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7. The present suit has been filed by the Plaintiff seeking injunction against infringement of its trademarks, passing off, rendition of accounts and damages. The Plaintiff claims to be the proprietor of the registered trademarks such as “SIRONA”, “BODY-GUARD” and “PEE-BUDDY” which are used for trade and business of products such as toiletries, personal care products and intimate hygiene products, details of which have been enumerated on Pages 27-33 of the plaint.

8. Plaintiff started as a partnership firm under the name & style of M/s First Step Projects, which was later reconstituted as First Step Digital Private Limited which took over the entire assets, rights, liabilities, obligations and other incidentals of the partnership firm. The name and style of First Step Digital Private Limited was subsequently changed to Sirona Hygiene Private Limited, the Plaintiff herein.

9. Plaintiff is engaged in business of manufacture, trade, marketing, and sale of toiletries, personal care products, intimate hygiene products and other goods and accessories relating to feminine hygiene and health. They sell



their goods through wholesale, retail outlets and online sales conducted through e-commerce portals and platforms. Plaintiff has been awarded multiple awards by entities such as Economic Times, Fortune Magazine and Ministry of Skill Development and Entrepreneurship (Government of India).

10. The grievance of the Plaintiff is that Defendants Nos. 3 to 14 fraudulently profess to sell the products of the Plaintiff and are wrongfully tagged onto the identification numbers and graphical user interfaces (GUIs) created by the Plaintiff on the platforms of Defendant Nos. 1 and 2, creating the impression that the counterfeit goods sold by Defendant Nos. 3 to 14 are the Plaintiff's goods. These actions constitute infringement of Plaintiff's intellectual property. The Defendants Nos. 1 and 2 facilitate, aid and abet the infringement of the rights of the Plaintiff by wrongfully tagging such traders/sellers on the identification numbers and Graphical User Interfaces. Defendant Nos. 3 to 10 (through Defendant No. 1) and the Defendant Nos. 11 to 13 (through Defendant No. 2) have been unlawfully tagged on the Graphical User Interfaces of the Plaintiff's products on their respective e-commerce portals. These Defendants make unlicensed use of copyrighted promotional material and their listing/tagging to sell to the consumers of the Plaintiff's products fake, sub-standard and cheap infringing copies. This leads to the commission of a string of other infringements and violations of laws including the infringement of the Plaintiff's copyright, design and patent rights; cheating and passing off fake goods in the guise of sale of its products, causing the exposure of the Plaintiff to unwarranted complaints and prosecutions for cheating and product liability claims.

11. As recorded in order dated 25 November 2020, Defendant Nos. 3 to 13 have been served. Defendant No. 14 is an unknown Defendant, and is



impleaded as Ashok Kumar. Despite service, Defendants No. 3 to 13 have not appeared or filed defence/written statement within the permitted time. Their right to file written statement ceases and they are proceeded *ex-parte*.

12. Mr. Vivek Ayyagari, counsel for Amazon Seller Services Private Limited (Defendant No. 2), on instructions, states that Defendant No. 2 is only an intermediary. Nonetheless, in the event Plaintiff were to inform Defendant No. 2 regarding instances of unauthorised use of Plaintiff's trademark on Defendant No. 2's e-commerce platform (amazon.in), they undertake to remove the listings by following the procedure as follows:

- (i) Plaintiff shall send an email through legal@vutts.com, the body of which must contain the specific URL(s) which violates its trademarks.
- (ii) Plaintiff shall use the subject line – “*Takedown of URL(s) – Sirona Hygiene Pvt Ltd vs. Flipkart Internet Pvt. Ltd. and Ors.*” while intimating Defendant No. 2.
- (iii) Plaintiff shall send the URL(s) to v.ayyagari@saikrishnaassociates.com.
- (iv) Upon receipt of the information in the manner specified above, Defendant No. 2 shall take down the infringing goods from its e-commerce portal amazon.in within 72 hours.
- (v) In the event, Defendant No. 2 is unable to remove the URL(s), it will intimate Plaintiff of the same within 48 hours.

13. Accordingly, the suit is decreed in favour of the Plaintiff and against Defendant No. 2 in the above terms. Decree sheet be drawn up.

14. We shall now deal with the contentions against Defendant Nos. 3 to

15. Plaintiff asserts trademark rights in marks “Sirona”, “Body-Guard”, “Pee-Buddy” and other related trademarks. Details of registration of



trademarks have been set out in Paragraph 4 of the plaint. Plaintiff's grievance against Defendants Nos. 3 to 13 is that they are traders/ sellers who profess to sell products of Plaintiff. Plaintiff alleges that the Defendants Nos. 3 to 13 are tagged on the online listings hosted by Defendant Nos. 1 and 2 web pages bearing serial numbers, identifications numbers and GUIs created by Plaintiff. This action constitutes infringement of Plaintiff's copyright, design rights, patent rights and other intellectual property rights. This GUI is used by Defendant Nos. 3 to 13 to promote, market and advertise their infringing/fake products.

16. No written statement has been filed by Defendant Nos. 3 to 13. The Court therefore considers it appropriate to pass a judgment under Order VIII Rule 10 of CPC against the Defendant Nos. 3 to 13 in terms of Prayer 43(vi) of the plaint, restraining them from passing off goods under the mark "Sirona", "Body-Guard", "Pee-Buddy" through e-commerce portals of Defendants Nos. 1 and 2, or through any other means. No other prayers against the said Defendants are being pressed.

17. Disposed of, along with other pending applications.

SANJEEV NARULA, J

MAY 9, 2023

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