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

Date of Decision: 15th March, 2024

+ CS(COMM) 486/2023
RSPL LIMITED

..... Plaintiff

Through: Mr. Ajay Amitabh Suman,
Mr. Shravan Kumar Bansal,
Mr. Deepak Srivastava, Mr. Rishabh
Gupta and Mr. Mankaran Singh,
Advocates.

versus

AGARWAL HOME PRODUCTS

..... Defendant

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. The Plaintiff, owner of the trademark “GHADI” and its formative variants, seeks a permanent injunction restraining the Defendant from infringement and passing off identical goods as that of the Plaintiff’s



through their trademark “**GHADI YAL**” [“*Impugned Trademark*”]. Both parties are engaged in an identical business of manufacture and sale of detergents, soaps and other products. Despite being served with summons in the suit and being restrained by an interim order, the Defendant has failed to contest the proceedings. Consequently, their defence has been closed, leading to *ex-parte* proceedings. This matter is now before the Court for final disposal.

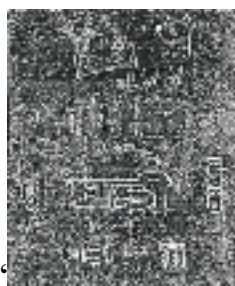


PLAINTIFF'S CASE

2. The Plaintiff is engaged in the business of manufacturing and marketing of washing soap, detergent powder, detergent cake, shampoo, hair oil, toothpaste, moisturizer, shaving cream, liquid hand wash, floor cleaner, liquid detergent, toilet cleaner and other allied and cognate goods.

3. The Plaintiff (through its predecessor) honestly conceived and adopted the device/label of "GHARI"/ "GHADI"/ "WATCH"/ "CLOCK" in the year 1955 in relation to soap and the wordmark "GHARI"/ "GHADI" in 1975 [*collectively, "GHADI Trademarks"*] in relation to washing soap, detergent powder, detergent cake, shampoo etc.

4. The Plaintiff is the registered proprietor of over 70 GHADI Trademarks in multiple classes, with approximately 16 registrations in Class 3 alone. They are also the original author of artistic works/ labels



“ ”,



“ ”,



“ ”,



“ ”,



“ ”,



“ ”,



“”, which are registered under Nos. A-60520/2002, A-60521/2002, A-61215/2002, A-61216/2002, A-67662/2004, A-80077/2007 and A-80078/2007, respectively.

5. Since the commencement of its business operations, the Plaintiff has continuously and uninterruptedly used the GHADI Trademarks and artwork in respect of its products. For promotion of its products, the Plaintiff has developed a website “www.gharidetergent.com” which contains extensive information about the Plaintiff’s products and business. Additionally, since 1993, the Plaintiff has undertaken substantial expenses for advertisement and promotions amounting to Rs. 847028.47 lakhs for the financial year 2020-21. To establish their reputation and goodwill, the Plaintiff has provided details of their sales volume between the years 1993-2021, with the turnover for the financial year 2020-21 being Rs. 5953 lakhs.

6. On account of their uninterrupted use and immense goodwill



acquired, the Plaintiff’s “” trademark was declared to be a well-known trademark by the Trade Mark Office through publication in Trade Marks Journal No. 1942 dated 24th February, 2020.

DEFENDANT’S IMPUGNED ACTIVITIES

7. In February, 2023, Plaintiff discovered application bearing No.



5554653 in class 3 for the registration of the trademark “” on a ‘proposed to be used’ basis, which was advertised in the Trade Marks Journal on 23rd January, 2023. The said application is in respect of detergent powder and detergent cake, liquid toilet cleaner, cleaning, polishing, scouring and abrasive preparations and soaps [“*Impugned Goods*”]. Immediately upon said discovery, on 14th February, 2023, the Plaintiff filed a notice of opposition against the said application.

8. Upon a subsequent search, the Plaintiff also found the wordmark “AGRAGHADIYAL” registered in favour of the Defendant under No. 4398088 in class 3 in respect of the Impugned Goods on a ‘proposed to be used’ basis. The Plaintiff, being aggrieved by the aforesaid registration, filed a cancellation petition being C.O. (COMM.IPD-TM) 142/2023 which was dismissed *vide* Order dated 03rd May, 2023. An appeal against the aforesaid dismissal is currently pending before the Division Bench. Consequently, Plaintiff is not pursuing the present suit against Defendant’s wordmark “AGRAGHADIYAL”, and is only seeking to restrain the



adoption and proposed use of the label/device mark “”.

9. The Plaintiff asserts that the Defendant has copied the essential



feature and prominent part of their trademark/label “”, and the same results in infringement of the registered trademarks and artwork as well as passing off the Impugned Goods as those of the Plaintiff. Such use of



the Defendant would cause immense confusion and is likely to erode the hard earned reputation of the Plaintiff.

PROCEEDINGS SO FAR

10. At the preliminary stage, on 21st July, 2023, alongside issuing summons, the Court granted an *ex-parte* ad-interim injunction restraining the Defendant from using the Impugned Trademark.

11. Despite service of summons on 20th August, 2023, the Defendant has failed to appear before this Court. Written statement was not filed within the permissible time and the overall condonable limit of 120 days from the date of service has also expired. As a result, their right to file written statement was closed on 30th January, 2024.

12. Additionally, no reply has been filed to the application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908. In these circumstances, the interim injunction passed on 21st July, 2023 was confirmed and directed to continue *vide* Order dated 11th December, 2023 till the pendency of the suit.

ANALYSIS AND FINDINGS

13. For deciding the case on merits, a comparison chart of the Plaintiff's registered trademark and the Impugned Trademark is provided below:

Plaintiff's trademark/label	Defendant's impugned trademark/label
	

14. In assessing the similarities between two composite trademarks, it is



imperative to undertake a comparison of the marks in their entirety to gauge the overall impression conveyed to the consumer. While individual elements do play a role in the analysis, it is the cumulative effect of these elements—the colour scheme, font style, and arrangement—that shapes the commercial and general impression of a trademark. In the instance case, the comparative analysis of the trademarks in question unequivocally reveals that the Impugned Trademark bears a deceptive resemblance to the Plaintiff's



established “GHADI”/ “ ” mark. The Defendant has replicated the essential visual features, including the distinctive colour scheme that is integral and essential to the Plaintiff’s brand identity. The salient positioning of the word “GHADI” in both marks, accompanied by a strikingly similar typographic style and colour palette, heightens the potential for consumer confusion. The addition of the terms “AGRA” and “YAL” in a significantly smaller font does little to mitigate the visual dominance of “GHADI”. This layout choice suggests a deliberate attempt to draw on the established reputation of the Plaintiff’s GHADI Trademarks. Thus, it becomes evident that the similarity extends beyond individual elements to the overall commercial impression created by the Defendant’s use, which appears to be a calculated move to evoke the established image of the Plaintiff’s product in the minds of consumers, potentially leading to mistaken connections between the two sources. The Impugned Trademark bears a deceptive similarity to the Plaintiff’s trademark/label that extends beyond mere visual resemblance; it is phonetically, and structurally similar, and captures the



same fundamental concept and essential features. The shared attributes are significant enough to potentially mislead or confuse the consumer regarding the origin or affiliation of the goods.

15. The Plaintiff holds an extensive portfolio of registrations, totalling approximately 16 registrations within class 3, for the GHADI Trademarks, as enumerated in the comprehensive list annexed to the plaint. Significantly,



the Plaintiff's " " mark has been officially recognized as a well-known mark by the Trade Marks Registry, a status corroborated by documentary evidence filed along with the plaint. The Defendant has sought to register the Impugned Trademark under the same class on a 'proposed to be used' basis, targeting goods identical to those associated with the Plaintiff's registered mark. Defendant's adoption for goods that are similar to Plaintiff's product range, heightens the risk of consumer confusion and dilution of the distinctiveness of Plaintiff's trademark.

16. It can, thus, be concluded from the afore-noted analysis that the Defendant's adoption of the Impugned Trademark is not in good faith. By emulating Plaintiff's registered trademark, the Defendant has attempted to capitalize on the Plaintiff's goodwill, reputation, and proprietary rights. Such conduct by the Defendant not only presents a serious risk of misleading the public but also suggests an intention to benefit from the Plaintiff's market presence. In the event that the Defendant proceeds to market products under the Impugned Trademark, consumers, particularly those unaware of the parties' non-affiliation, are likely to be deceived.



There exists a substantial likelihood that the public might erroneously believe in a non-existent business relationship between the parties, or even mistake the Defendant's products for those of the Plaintiff. This potential confusion encroaches upon the Plaintiff's statutory trademark rights.

17. As the Defendant's registration of the Impugned Trademark was on a 'proposed to be used' basis, and to the Plaintiff's knowledge, no products have yet been marketed under this mark yet, Mr. Suman prudently limits the scope of prayers made in the present lawsuit. He presses only for injunctive relief to prevent infringement and passing off, while waiving any claim to damages and costs.

18. Considering the Defendant's decision not to participate in the present proceedings, despite having adequate notice and knowledge of the same, the Plaintiff is entitled to a decree under Order VIII Rule 10 and Order XIII-A of the Code of Civil Procedure, 1908, applicable to commercial suits, read with Rule 27 of the Delhi High Court Intellectual Property Rights Division Rules, 2022. These legal frameworks collectively support rendering of a decree by default when a party, fully informed, opts not to contest the claims raised against them.

19. In light of the above, the suit is decreed in favour of the Plaintiff and against the Defendant in terms of paragraph No. 51 (a), (b) and (c) of the plaint.

20. Decree sheet be drawn up.

21. The suit, along with pending applications, is disposed of.

SANJEEV NARULA, J

MARCH 15, 2024/nk