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

% *Date of Decision: 09.07.2024*

+ **FAO(OS) (COMM) 127/2024, CM Nos.36668/2024, 36669/2024 & 36670/2024.**

VICKY AGGARWAL & ORS.

..... Appellants

Through: Mr Amit Sibal, Senior Advocate
with Mr Prashant Mehta and Mr
Raghav Marwaha, Advocates.

Versus

AB MAURI INDIA PVT. LTD.

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE SACHIN DATTA

VIBHU BAKHRU, J.

1. The appellants (nine in number) have filed the present appeal impugning a judgement dated 04.03.2024 (hereafter *the impugned judgement*) rendered by the learned Single Judge allowing the application [being I.A. No. 19498/2022] filed by the respondent (plaintiff in the suit) under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (hereafter *the CPC*) in CS (COMM) 810/2022 captioned *A.B. Mauri India Private Limited v. Vicky Aggarwal & Others*.

2. The respondent (hereafter referred to as *the plaintiff*) had filed the above-mentioned appeal, *inter alia*, seeking a decree of permanent injunction restraining the appellants (arrayed as defendants in the suit)



from infringing or passing off the plaintiff's registered trade mark 'TOWER' and other formative marks. The plaintiff had also sought a decree for rendition of accounts or in the alternative damages quantified at ₹2,00,00,000/-

3. The appellants were allegedly using the trade mark 'TOWER' in connection with the following products; (i) Monosodium Glutamate, Citric Acid and Tartaric Acids in Class 1; (ii) camphor tablets, camphor (not for medicinal use), iso-borneol tablets, thymol & menthol, burning slab etc. in Class 3; (iii) green raisins, dry fruits, processed or roasted nuts, fresh nuts, popcorns and pickles in Class 29; and, (iv) spices, seasoning, condiments and saffron in Class 30.

4. The learned Single Judge allowed the plaintiff's application and has, by the impugned judgment, interdicted the appellants from using the trade mark 'TOWER' in any form whatsoever for manufacture and sale of dry fruits including but not limited to pistachio, walnuts, cashew nuts and almonds.

5. The appellants being aggrieved by the said decision (impugned judgment) have preferred the present appeal.

FACTUAL CONTEXT

6. Appellant no.1 is an individual and carries on his business under the name of his proprietorship concern Hainey Global (arrayed as appellant no.4). He is engaged in the manufacture and trade of products such as Monosodium Glutamate and camphor etc. Appellant no.3 carries on his business under the name of his proprietorship concern – Modern Processing Works (arrayed as appellant no.9). Appellant no.6



is a company incorporated on 13.09.2021 under the provisions of the Companies Act, 2013. Appellant nos.5,7 and 8 are partnership firms constituted by appellant nos.1 and 2 as partners.

7. The plaintiff claims that it was incorporated on 31.03.1960 as ‘Indian Yeast Company’. In the year 1996, it changed its name to ‘Burns Philip India Pvt. Ltd.’ and in the year 2004 it once again changed its name to its current name – AB Mauri India Pvt. Ltd. The plaintiff claims that it is a part of a heritage that spans over 150 years as the AB Mauri division of Associated British Foods PLC. Associated British Foods PLC (ABF) of London, United Kingdom is a diversified international food ingredient and retail group that operates through various business segments.

8. The plaintiff claims that the AB Mauri division of the said group has its operations in more than thirty countries.

9. The plaintiff claims that AB Mauri has invested in TOWER branded products in India, Bangladesh, Bhutan, Nepal and Pakistan over several years.

10. The plaintiff claims that it is the owner of several registered trademarks. A tabular statement setting out the trade marks as well as their current status is set out below:

Trade Mark	Application Number/ Date	Class	Goods	Status
TOWER BRAND	222079 01/05/1964	30	Edible Yeast and Yeast included in class 30.	Registered



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	606483 10/09/1993	30	Cakes, cakes gel, pastry, confectionery, yeast, baking powder, bread, bread improver east.	Removed
	725133 04/10/1996	30	Cake mix, cake powder, cake paste included in class 30.	Removed
	725134 04/10/1996	01	Ingredients in the preparation of cake and bakery preparations viz. glycerol mono stearate powder.	Removed
	725135 04/10/1996	30	Ingredients in the preparation of cake and bakery preparations viz. glycerol mono stearate powder.	Registered
	725136 04/10/1996	30	Ingredients in the preparation of cake and bakery preparations viz. glycerol mono stearate powder.	Registered
	725137 04/10/1996	30	Yeast and similar ingredients in the preparation of cake and similar bakery preparations.	Removed



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	725138 04/10/1996	30	Gels-emulsifiers humectants, stabilizers and similar ingredients in the preparation of cake and other bakery preparation.	Registered
	725139 04/10/1996	30	Flavouring agents in the preparation of cake and similar Bakery preparation falling under.	Removed
	7251341 04/10/1996	30	Flavouring agents in the preparation of cake and similar Bakery preparation falling under class 30.	Registered
	7251342 04/10/1996	30	Food flavouring agents in the preparation of cake and similar bakery preparation falling under class 30.	Registered
	7251343 04/10/1996	30	Flavouring agents in the preparation of cake and similar bakery preparation falling under class 30.	Registered



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	7251344 04/10/1996	30	Flavouring agents in the preparation of cake and similar bakery preparation falling under class 30.	Registered
	7251345 04/10/1996	30	Cake mix, cake powder, cake paste, and similar bakery preparations.	Registered
TOWER	2213663 30/09/2011	1	Chemical preparations and substances for use in the food and beverage industry; food and beverage additives, preservatives and ingredients used in the manufacture of beverages or foodstuffs, including bakery goods; calcium propionate; ascorbic acid (synthetic vitamin C); bread improver (enzymes, emulsifiers, gums, yeast starters); dough improvers, dough leaveners, mold inhibitors, sweeteners, glucose, starch,	Registered



			enzymes, organic and inorganic acids, flavour improvers, nutrients for use with yeast, raw salt.	
TOWER	2213664 30/09/2011	29	Milk products; butter; butter blend: cream/pastry margarine; bakers cream; instant custard powder; edible fats; edible oils; oil substitute; shortening; fat containing mixtures for bread slices; fatty substances for the manufacture of edible fats.	Registered
TOWER	2213665 30/09/2011	30	flour and preparations made from cereals; bakery products; bakery mixes; snack foods; yeast including dry yeast, wet yeast and block yeast; yeast extracts; yeast products for food; yeast tablets and yeast in pill form; bread improvers bread pastry; brioche; pancakes; biscuits; soy bread; cakes; cake mixes; muffin mixes; pies; sugar confectionary, flour confectionery; custard; fruit slices; fruit jellies; pastry dough; bread dough; stuffing mix; salt for	Opposed



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			cooking; pasta containing eggs; baking powder; edible decorations for cakes; aromatic preparations for food; preparation for stiffened whipped cream.	
	2374913 06/08/2012	1	Chemical preparations and substances for use in the food and beverage industry; food and beverage additives, preservatives and ingredients used in the manufacture of beverages or foodstuffs, including bakery goods; calcium propionate; ascorbic acid (synthetic vitamin c); bread improver (enzymes, emulsifiers, gums, yeast starters); dough Improvers, dough leaveners, mold inhibitors, sweeteners, glucose, starch, enzymes organic and inorganic acids, flavour improvers, nutrients for use with yeast, raw salt; releasing agents; release agents for use in baking; emulsifiers; chemical	Registered



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			seasonings for food manufacture.	
	2374915 06/08/2012	29	Milk products; butter; butter blend; cream/pastry margarine; bakers cream; instant custard powder; edible fats; edible oils; oil substitute; shortening; fat containing mixtures for bread slices; fatty substances for the manufacture of edible fats; gelatine; flavourings (other than essential oils) for meat, milk and milk products; preparations used as additives for meat, milk and milk products; additives (nonmedicated) for foodstuffs; preparations for use as dietetic additives for food for human consumption; protein preparations for use as additives to foodstuffs for human consumption (other than adapted for medical purposes).	Opposed
	2374916 06/08/2012	30	flour and preparations made from cereals; . bakery products; bakery mixes; egg free cake, bread and bakery mixes; egg free mixes;	Opposed



			snack foods; yeast including dry yeast, wet yeast and block yeast; yeast extracts; yeast products for food; yeast tablets and yeast in pill form; bread Improvers; cake improvers; cake gels and conditioners; bread; pastry; brioche; pancakes; biscuits; brownies; donuts; cookies; pizza bases; soy bread; cakes; sponge; sponge cakes; cake mixes; sweet good mixes; dessert products; muffins; muffin mixes; pies; sugar confectionary; flour confectionery; custard; fruit slices; fruit jellies; pastry dough; bread dough; stuffing mix; salt for cooking; pasta containing eggs; baking powder; edible decorations for cakes; aromatic preparations for food; preparation for stiffened whipped cream; non-dairy whip topping; non-dairy whipped dessert toppings and whipped cream substitutes; icing; gels; glazes (food); flavourings (other	
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			than essential oils) for foodstuffs, food and beverages; preparations used as additives for foodstuffs, food and beverages; additives (nonmedicated) for foodstuffs; preparations for use as dietetic additives for food for human consumption; seasonings; blends of seasonings; chemical seasonings (cooking) and dry seasonings; spice extracts, spice mixes, spice preparations, spices and spices in the form of powders.	
	2374919 06/08/2012	29	Milk Products; Butter; Butter Blend; Cream/Pastry Margarine; Bakers Cream; Instant Custard Powder; Edible Fats; Edible Oils; Oil Substitute; Shortening; Fat-Containing Mixtures For Bread Slices; Fatty Substances For The Manufacture Of Edible Fats; Gelatine; Flavourings (Other Than Essential Oils) For Meat, Milk And Milk Products;	Abandoned



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			Preparations Used As Additives For Meat, Milk And Milk Products; Additives (Non-Medicated) For Foodstuffs; Preparations For Use As Dietetic Additives For Food For Human Consumption; Protein Preparations For Use As Additives To Foodstuffs For Human Consumption (Other Than Adapted For Medical Purposes)	
	2374920 06/08/2012	30	Flour and preparations made from cereals; bakery products; bakery mixes; egg free cake, bread and bakery mixes; egg free mixes; snack foods; yeast including dry yeast, wet yeast and block yeast; yeast extracts; yeast products for food; yeast tablets and yeast in pill form; bread improvers; cake improvers; cake gels and conditioners; bread; pastry; brioche; pancakes; biscuits; brownies; donuts; cookies; pizza bases; soy bread; cakes; sponge; sponge cakes; cake mixes;	Abandoned



			sweet good mixes; dessert products; muffins; muffin mixes; pies; sugar confectionary; flour confectionery; custard; fruit slices; fruit jellies; pastry dough; bread dough; stuffing mix; salt for cooking; pasta containing eggs; baking powder; edible decorations for cakes; aromatic preparations for food; preparation for stiffened whipped cream; non-dairy whip topping; non-dairy whipped dessert toppings and whipped cream substitutes; icing; gels; glazes (food); flavourings (other than essential oils) for foodstuffs, food and beverages; preparations used as additives for foodstuffs, food and beverages; additives (nonmedicated) for foodstuffs; preparations for use as dietetic additives for food for human consumption; seasonings; blends of seasonings; chemical seasonings (cooking) and dry seasonings; spice extracts, spice	
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			mixes, spice preparations, spices and spices in the form of powders.	
TOWER	3635786 2 14/09/2017	2	Colorants for foodstuffs, food and beverages; additives for use as colorants for foodstuffs, food and beverages.	Registered

11. The appellants also used the mark 'TOWER' in respect of various goods falling in Classes 1, 29 and 30 of the NICE classification. The appellants had also applied for registration of their trade marks in the said classes. A tabular statement setting out the details of various trademarks applied for by the appellants and the current status of the applications is set out below:

S. No.	Application No. /Registration No.	Applicant	Trade Mark	Status	Class/Goods
1.	1411775 06/01/2006 Published on 01/08/2008	Vicky Aggarwal Trading As: M/s Hailey Global	TOWER	Registered	01; Mono sodium glutamate and citric acid, chemicals.
2.	1655205 19/02/2008 Published on 01/06/2010	Vicky Aggarwal Trading As: M/s Hailey Global		Opposed by Plaintiff on 29/09/2010 Withdrawn on 27/01/2015	01; Mono sodium glutamate and citric acid, chemicals



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3.	1919463 09/02/2010 Published on 23/03/2015	Vicky Aggarwal Trading As: M/s Hailey Global		Registered	01; Mono sodium glutamate and citric acid, chemicals
4.	3063535 28/09/2015 Published on 27/05/2019	Atule Agarwaal		Opposed by Plaintiff on 18/09/2019	30; Spices, seasoning, condiments, besan, rice, wheat flour
5.	3107173 26/11/2015 Published on 23/09/2019	Atule Agarwaal		Opposed	29; Dry fruits, dairy products, snack foods, processed or roasted nuts and fresh nuts, preserved or salted foods, dried and cook fruits and vegetables, jellies, jams, snack foods, preserved fruit sauces, milk and milk products, popcorns, edible oils, ghee, pickles and fats in class-29
6.	3194213 25/02/2016	Atule Agarwaal		Objected	29; Dry fruits, dairy products,



					snack foods, processed or roasted nuts and fresh nuts, preserved or salted foods, dried and cook fruits and vegetables, jellies, jams, snack foods, preserved fruit sauces, milk and milk products, popcorns, edible oils, ghee, pickles and fats in class-29
7.	3618273 22/08/2017	Atule Agarwaal	TOWER EVERYDAY	Objected	01; Mono sodium glutamate, citric acid chemicals
8.	3618274 22/08/2017 Published on 10/02/2020	Atule Agarwaal	TOWER EVERYDAY	Opposed by Plaintiff on 05/05/2022	29; Dry fruits, snack foods, processed or roasted nuts & fresh nuts. Preserved or salted foods, dried & cook fruits and jams snack foods. Preserved, fruit sauces, popcorn



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					pickles.
9.	3618275 22/08/2017 Published on 23/05/2022	Atule Agarwaal	TOWER 123	Opposed by Plaintiff on 15/09/2022	01; Mono sodium glutamate, citric acid chemicals
10.	3618276 22/08/2017	Atule Agarwaal	TOWER 123	Objected	29; Dry fruits, dairy products, snack foods, processed or roasted nuts and fresh nuts. Preserved or salted foods, dried & cook fruits & jams, snack foods. Preserved, fruit sauces milk & milk products, popcorns, edible oils, ghee, pickles & fats.
11.	3618278 22/08/2017 Published on 23/05/2022	Atule Agarwaal	TOWER ENJOY	Opposed by Plaintiff on 15/09/2022	01; Mono sodium glutamate, citric acid chemicals
12.	3618279 22/08/2017 Published on 13/07/2020	Atule Agarwaal	TOWER ENJOY	Opposed by Plaintiff on 03/11/2020	29; Dry fruits, dairy products, snack foods, processed or roasted nuts



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					and fresh nuts. Preserved or salted foods, dried & cook fruits & jams, snack foods. Preserved, fruit sauces milk & milk products, popcorns, edible oils, ghee, pickles & fats.
13.	3772601 08/03/2018 Published on 17/01/2022	Atule Agarwaal	POWER	Opposed by Plaintiff on 03/05/2022	29; Dry fruits, dairy products, snack foods, processed or roasted nuts and fresh nuts. Preserved or salted foods, dried & cook fruits & jams, snack foods. Preserved, fruit sauces milk & milk products, popcorns, edible oils, ghee, pickles & fats.



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14.	3772602 08/03/2018 Published on 09/07/2018	Atule Agarwaal	POWER	Registered	30; Churan, churan goli, saunf, toffees,cand y, confectionar y
15.	3772603 08/03/2018	Atule Agarwaal	POWER	Objected	01; Mono sodium glutamate, citric acid chemicals
16.	4056891 15/01/2019	Atule Agarwaal		Objected	29; Dry fruits, snack foods, processed or roasted nuts & fresh nuts. Preserved or salted foods, dried & cook fruits and jams snack foods. Preserved, fruit sauces, popcorn pickles
17.	4122372 19/03/2019	Vicky Aggarwal Trading As: M/s Hailey Global	TOWER SPAIN	Registered	01; Mono sodium glutamate, citric acid
18.	4347432 14/11/2019	Vivan Inc. Partnership Firm Details: Atule Agarwaal & Vicky	TOWER SAFFRON	Objected	30; Spices & Saffron



		Aggarwal			
19.	4914117 20/03/2021 Published on 19/04/2021	Atule Agarwaal & Vicky Aggarwal	TOWER TANATAN	Opposed by Plaintiff on 19/08/2021	29; Dry fruits
20.	5042197 13/07/2021	Atule Agarwaal & Vicky Aggarwal Partners Of Tower Nuts		Objected	29; Fresh Nuts & Dry fruits, Seeds
21.	5042198 13/07/2021 Published on 04/10/2021	Atule Agarwaal & Vicky Aggarwal Partners Of Tower Nuts	TOWER NUTS	Opposed by Plaintiff on 31/01/2022	29; Dry fruits
22.	5201476 08/11/2021 Published on 20/12/2021	M/S Tower Nuts Partnership Firm Details Atule Agarwaal & Vicky Aggarwal		Opposed by Plaintiff on 14/04/2022	29; Nut & dry fruits

12. The plaintiff avers that on 29.09.2010 it opposed (by Opposition No. 767486) an application bearing number 1655205 filed by appellant



no. 4 seeking registration of the trademark in Class 1 for monosodium glutamate (MSG) and citric acid chemicals.



13. It is the case of the plaintiff that in January 2013 it learned about the use of the trademark ‘TOWER’ by appellant no.4 for goods including MSG, citric acid, tartaric acid, green raisins, camphor, copper sulphate, Hexamine, *damar batu* and mercury. Thereafter, by a Cease and Desist Notice dated 30.01.2013, it called upon appellant no. 4 to restrict its use of the trademark ‘TOWER’ in relation to goods falling in Class 1 and not to expand its use to goods falling in Class 30 or any other related classes.

14. In response to the aforesaid notice, the appellants undertook not to use the trade mark ‘TOWER’ in respect of certain goods. The said undertaking (hereafter *the Undertaking*), furnished in terms of the letter dated 20.03.2013, is central to the controversy in the present appeal and is set out below:

“To,

Date: 20/3/2013

AB Mauri India (P) Ltd.
Plot No. 218 & 219,
Bommasandraligni Link Road,
Bangalore-560 106

Dear Sirs

We are in receipt of your letter dated January 30, 2013. In consideration of the same, we hereby solemnly undertake as follows:

a) We recognize and acknowledge the proprietary rights of A.B. Mauri India (P) Ltd. in the trademark “TOWER” in respect of goods forming part of class 30 of the Classification of goods and services under the Trade Marks Act, 1999.

b) We submit that we are using the mark TOWER only in respect of our goods namely Monosodium Glutamate, Citric



Acid, Tartaric Acid, Green Raisins, Camphor, Hexamine tablets, which form part of class 1 & 29 of the Classification of goods and services under the Trade Marks Act, 1999.

c) We submit that we shall restrict the use of TOWER mark only in respect of our aforementioned goods falling in class 1 & 29.

d) We undertake that we shall not make, sell or offer for sale any products, or conduct business or conduct business in the future under the mark “TOWER” or any other mark similar mark in relation to goods and classes of interest of A.B. Mauri India (P) Ltd. including and not limited to Class 1 & 29 goods.

e) We confirm and undertake we have neither filed, nor shall file any application for the mark “TOWER” or anything confusingly similar to “TOWER” for any goods and classes of interest of A.B. Mauri India (P) Ltd. including and not limited to Class 1 & 29 goods.

f) We undertake that we shall not, nor shall our heirs, assigns, employees and anybody who has interest in our venture, oppose any future application for registration or use of TOWER by A.B. Mauri India (P) Ltd., Inc., its assigns, employees, licensees etc in India or anywhere else in the world;

This undertaking is signed on this the day herein before mentioned.

Sd/
M/s Hainey Global”

15. The plaintiff claims that pursuant to the Undertaking, it sent a letter dated 27.01.2015 and withdrew its opposition (Opposition No.767486) to appellant no.4’s application (Application No.1655205)



for registration of the trade mark in respect of Monosodium Glutamate, Citric Acid and chemicals in Class 1.

16. The plaintiff instituted the suit [CS(COMM) No.810/2022] being aggrieved by the appellants using the trademark 'TOWER' and other deceptively similar marks in respect of various other goods. The principal dispute relates to the use of the trade mark in respect of dry fruits including pistachio, walnuts, cashew nuts and almonds. The plaintiff claims that the use of the trade mark by the appellants infringes its trade mark 'TOWER' which, it claims, is a well-known trademark.

IMPUGNED JUDGMENT

17. The learned Single Judge, *prima facie*, found that the use of the trademarks by the appellants infringes the plaintiff's trademark and is also in violation of the Undertaking dated 20.03.2013. The learned Single Judge, thus, concluded that the appellants could not be permitted to use the trade mark 'TOWER' for dry fruits. The learned Single Judge rejected the contention that the Undertaking did not cover the use of the trademark 'TOWER' in respect of dry fruits, as the same were not goods of interest to the plaintiff. The learned Single Judge observed that paragraph '(c)' of the Undertaking restricted the use of the trademark 'TOWER' for any goods other than those mentioned in clause '(b)' in Class 1 and Class 29. Thus, the appellants could not use the trade mark 'TOWER' in respect of goods falling under Class 29 and there is no



dispute that dry fruits fall within the said Class.

SUBMISSIONS

18. Mr. Amit Sibal, learned senior counsel appearing for the appellants sought to assail the impugned judgment essentially on three grounds. First, he submitted that the plaintiff is engaged in the business of products used in baking and therefore, could not interdict the use of the trade mark 'TOWER' in respect of other goods. He submitted that the plaintiff does not hold registration of the trade mark 'TOWER' in respect of dry fruits. Further the plaintiff is also not engaged in selling such goods. He thus, submitted that there is no possibility of any confusion as the goods in respect of which the appellants are using the mark in question, were completely different from those dealt with by the plaintiff. He further submitted that the channels of sale were also completely different. Further, he submitted that dry fruits could not be considered as allied or cognate to the goods dealt with by the plaintiff. Second, he submitted that the learned Single Judge had erred in interpreting the Undertaking furnished by appellant nos.1 and 4. He contended that the Undertaking permitted the use of the trade mark 'TOWER' in respect of goods that were not similar to those dealt with by the plaintiff.

19. Third, he submitted that the terms of the Undertaking could bind only appellant nos.1 and 4 and not the other appellants. He submitted that the learned Single Judge had erred in proceeding on the basis that appellant no.4 was a firm and appellant nos.2 and 3 were constituent partners of the said firm. He contended that appellant no.4 was the sole



proprietorship concern of appellant no.1 and the same was acknowledged by the plaintiff in its replication.

REASONS & CONCLUSION

20. We find no merit in the contentions advanced on behalf of the appellants. The learned Single Judge had, *prima facie*, concluded that a case for infringement was made out under Section 29(2)(b) of the Trade Marks Act, 1999 (hereafter *the Trade Marks Act*). Section 29(2) of the Trade Marks Act is set out below:

“29. Infringement of registered trade marks

* * *

(2) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which because of-

- (a) its identity with the registered trade mark and the similarity of the goods or services covered by such registered trade mark; or
- (b) its similarity to the registered trade mark and the identity or similarity of the goods or services covered by such registered trade mark; or
- (c) its identity with the registered trade mark and the identity of the goods or services covered by such registered trade mark, is likely to cause confusion on the part of the public, or which is likely to have an association with the registered trade mark.”

21. In the present case, there is no dispute that the trademark used by the appellants in connection with dry fruits is similar to the plaintiff's trade mark 'TOWER'. However, the appellants contend that Section 29(2)(b) of the Trade Marks Act is not applicable because the goods are not similar. In terms of Section 29(2)(b) of the Trade Marks Act, use



of a mark similar to a registered trade mark, which is likely to cause confusion on the part of the public or is likely to indicate association with the registered trademark because of the similarity of the mark with the registered trademark and identity or similarity of goods and services covered by the said trademark would be infringing use. Thus, use of the trademark similar to a registered trademark in respect of allied or cognate goods which are likely to cause confusion or indicate association with the registered trademark, would constitute infringement of the registered trademark in terms of Section 29(2)(b) of the Trade Marks Act. The learned Single Judge had rejected the contention that dry fruits are not allied or cognate to the goods in respect of which the trade mark 'TOWER' is registered in favour of the plaintiff. The learned Single Judge had reasoned that dry fruits and raisins were commonly used in bakery products. Further, both the products in respect of which the plaintiff's trade mark is registered and dry fruits fall in the same class – Class 29 of the Nice Classification. We concur with the said reasoning. Undisputedly, dry fruits are commonly used in bakery products. It is quite likely that the use of similar trade marks in respect of bakery products and dry fruits would lead to a presumption of association between the marks viewed from a standpoint of a person of average intelligence and imperfect recollection.

22. It is also relevant to refer to paragraph 8 of the opposition filed by appellant no.2 to the plaintiff's application (Application no.2213665) for registration of the trade mark 'TOWER' in Class 30. The same is reproduced below:



“8. That the trade mark of the applicant TOWER is in all essential respects identical with or deceptively similar to the opponents trade mark. The goods are also of the same description and if the applicants are allowed to use or register their mark, there may be deception of the public and injury to the opponents trade and business.”

23. It is seen that the appellants had acknowledged that the goods in respect of which appellant no.2 was using the trade mark was similar to the products dealt with by the plaintiffs.

24. The contention that the Undertaking did not prohibit use of the trade mark ‘TOWER’ in respect of dry fruits is also unpersuasive. In terms of Clause ‘(c)’ of the undertaking, the use of the trademark ‘TOWER’ was confined to only those products as mentioned in Clause ‘(b)’ viz. (i) Monosodium Glutamate; (ii) Citric Acid; (iii) Tartaric Acid; (iv) Green Raisins; (v) Camphor; and, (vi) Hexamine tablets. The person giving the Undertaking had also undertaken not to sell or offer for sale any products or conduct any business in the future under the trade mark ‘TOWER’ or any other similar mark “in relation to goods and classes of interest of A.B. Mauri India (P) Ltd. including and not limited to Class 1 & 29 goods”. Thus, Clauses ‘(b)’, ‘(c)’ and ‘(d)’ of the Undertaking read conjunctively clearly indicate that the Undertaking expressly covered all goods under Classes 1 and 29, save and except those specified in Clause ‘(b)’ of the Undertaking.

25. The learned Single Judge did not accept the contention that dry fruits were excluded by virtue of Clause ‘(d)’ of the Undertaking on the ground that the question as to which product under Class 29 would be covered by the “*Classes of the interest*” of the plaintiff is a matter to be



considered by the plaintiff.

26. The contention that no appellant, other than appellant no.1 (appellant no.4), is bound by the Undertaking is also *prima facie* untenable. The record clearly indicates that appellant nos. 2 and 3 were held out as constituents of appellant no.4. Thus, notwithstanding that appellant no.4 may be the sole proprietorship of appellant no.1, the record indicates that appellant no.2 also himself held out as appellant no.4. The plaintiff in its plaint had set out the extracts of the submissions filed by appellant no.2 before the Trade Mark Registry under cover of its letter dated 05.05.2022. The said extracts are set out below:

“a) **Cited mark 01 belongs to the Applicant itself**

It is submitted that the first cited mark under application nos. 1411775 in the name of Mr. Vinod Kumar Aggarwal belongs to the Applicant itself as Mr. Vinod Kumar Aggarwal, Mr. Vicky Aggarwal and Mr. Atule Agarwaal are partners of the same firm named as Hainey Global.....

b) **Cited mark 02, 03 and 04 - Already settled between parties to co-exist:**

The second, third and fourth cited mark TOWER under application No. 2213663, 2374913 and 2374917 filed by AB Mauri India Pvt. Ltd. are not in conflict with the present application as the present applicant has entered into a settlement agreement with the cited applicant AB Mauri and the present application is filed as per the terms and conditions mentioned in the agreement. Hence, the marks can co-exist in view of the settlement. The settlement deed and various other documents filed by the attorneys (AZB Partners) of the cited applicant AB Mauri Pvt. Ltd. are filed herewith as Annexure – B.....”

27. It is not disputed that such a statement was made to the Trade Marks Registry. Undisputedly, appellant nos.1,2 and 3 are closely



related (appellant no.3 is the father of appellant nos.1 and 2). The appellants do not claim that appellant no.3 was not aware of the representations made by appellant no.2.

28. The learned Single Judge had also noted appellant no.2's opposition dated 27.04.2018 to the plaintiff's application for registration of the trade mark in Class 30. The relevant extract from appellant no.2's opposition as set out in the impugned judgement is reproduced below:

"1. That the Opponents are engaged in the business of manufacturing and marketing of various goods including goods in class 30 (hereinafter referred to as the said goods) and have been carrying on their business under the name and style of M/s Hainey Global, 15, Deepali Enclave, Pitam Pura, Delhi – 110 034.

4. That the Opponent is the registered proprietor of the trade mark TOWER under registration no. 1411775 dated 06/01/2006 in class 01 and the said registration is still valid and subsisting.

5. That the Opponent thereafter has filed various applications for registration of its various TOWER formative trademarks and the details of which are as under: -

S.No.	Trademark	Application No.	Class	Date of application	Name of the applicant
1		1655205	1	19/02/2008	HAINEY GLOBAL
2	T O W E R	1411775	1	06/01/2006	MR. VICKY AGGARWAL



					Trading As: HAINEY GLOBAL
3	TOWER EVERYDA Y	3618273	1	22/08/2017	ATULE AGARWAL
4	TOWER 123	3618275	1	22/08/2017	ATULE AGARWAL
5	TOWER ENJOY	3618278	1	22/08/2017	ATULE AGARWAL
10	TOWER 123	3618276	29	22/08/2017	ATULE AGARWAL
11	TOWER EVERYDA Y	3618274	29	22/08/2017	ATULE AGARWAL
12	TOWER ENJOY	3618279	29	22/08/2017	ATULE AGARWAL
13		3107173	29	26/11/2015	ATULE AGARWAL”

29. In view of the above, *prima facie*, we are unable to accept that the appellants would not be bound down by the Undertaking.

30. We are unable to accept that the learned Single Judge has exercised its discretion “arbitrarily, or capriciously, or perversely” or has “ignored settled principles of laws regulating grant or refusal of interlocutory injunction”. Thus, on the anvil of the standard as set out by the Supreme Court in *Wander Ltd. & Anr. v. Antox India Pvt. Ltd.*¹, no interference in the impugned judgment is warranted.

¹ 1990 Supp SCC 727



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31. The appeal is unmerited and is, accordingly, dismissed.

VIBHU BAKHRU, J

SACHIN DATTA, J

JULY 9, 2024

‘gsr’