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

Date of decision: 7th January, 2015

+ CS(OS) 428/2014
RSPL HEALTH PVT LTD Plaintiff
Through Mr.S.K.Bansal, Mr.Ajay Amitabh
Suman, Adv.Kamal Naresh &
Mr.Santosh Kumar, Advs.
versus
RAJESH M NAHTA & ORS Defendants
Through None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

1. Arguments have been heard in this suit. As noted in Order dated 24.09.2014, Defendants no.1 and 2 have been served on 13.05.2014 and defendant no.3 has been served on 09.05.2014. The right of the defendants to file written statement was also closed vide order dated 24.09.2014. As none appeared on behalf of the defendants even today, they are proceeded ex-parte.

2. The plaintiff has filed the present suit seeking a decree for permanent and mandatory injunction for infringement of their registered Trade Mark 'XPERT' by the Defendants and for claiming all rights in their registered Trade Marks.

3. It is the contention of the plaintiff that it is a company registered under the Companies Act, 1956 engaged in manufacturing, marketing and selling all kinds of washing soaps, washing powder, detergent cakes, toiletries and substances for laundry use, cleaning etc. It is contended that the plaintiff through its predecessors originally conceived, coined and adopted the trade

mark/label/trade dress 'XPERT' in the year 1993 in respect of washing soaps, washing powder, detergent cakes, bleaching preparations, etc.

4. It is contended that the plaintiff acquired the said trade mark with goodwill from its predecessors. It is stated that M/s Nasreena Cottage Industries, Hyderabad honestly and bonafidely adopted the said trademark XPERT in the year 1993 in respect of all kinds of detergent for laundry use and cleaning powder under no.1270731 in class 3 and assigned the said trade mark XPERT to the present plaintiff under the Assignment Deed dated 15.07.2013. The plaintiff thus contends to be the owner and proprietor of the trade mark and copyright of XPERT and/or XPERT LABEL.

5. It is the contention of the plaintiff that the said trademark/label is used by the plaintiff since the year of its adoption up to present time continuously, uninterruptedly as an exclusive owner. It is contended that the plaintiff conceived and adopted the trademark XPERT with different prefixes and/or suffixes as well as in artistic label form. The XPERT trademark/label has been registered by the plaintiff under no. 1077473 in class 3, 1205486 in class 3, 1270731 in class 3 and under no.1390217 in class 3.

6. The plaintiff contends that it represents its said trademark/label in an artistic manner including its getup, lettering style, colour scheme, placement of words, etc. and thus the art work involved in the plaintiff's said trademark/label is original within the meaning of the Copyright Act, 1957. It is further contended that the copyrights in the said trademark/label are also duly registered in the name of the plaintiff under no. A-67662/2004.

7. It is contended by the plaintiff that the plaintiff maintains highest standard of manufacture and sale and their products are highly demanded in the

markets across the globe. The plaintiff contends that they have continuously advertised and promoted their trademark/label through electronic and print media. It is further contended that the consumers associate, identify and distinguish the said trademark XPERT of the plaintiff originating from the plaintiff alone. It is also contended that the plaintiff maintains highest standards of manufacture and invests enormous amount of money and effort in Research and Development activities as well. It is contended that the stated trademark has become synonymous and distinctive indicium of the plaintiff in relation to aforementioned goods and businesses and nobody should be thus permitted to use or deal with the same/similar trademarks/labels and copyrights therein wither as a trademark or in any other manner in relation to any of their goods and businesses.

8. It is the contention of the plaintiff that the defendants are engaged in the trade of salt and allied goods. It is contended that the defendants are commercially and in the course of trade using the trade mark/label XPERT in relation to their goods and businesses. The impugned trademark/label/ trade dress/ colour scheme etc. is deceptively same/similar to the plaintiff's said trademark/label. It is contended that the defendants have copied the trademark of the plaintiff with all its features and artistic work, layout design, lettering style, get up, etc. the imitation is in exactitude of copying in such a manner that the ordinary purchaser and also big retailers/dealers/distributors are bound to be confused/deceived. It is further contended that the impugned goods and business of the defendants are of similar nature to that of the plaintiff and that the goods of the plaintiff are sold at the same shop where the impugned goods of the defendants are sold, thus, the same class of purchasers are involved in

purchasing the abovementioned goods.

9. It is contended by the plaintiff that in December, 2013 the plaintiff came across the impugned trade mark application of the defendants for the trademark XPERT under no. 1911023 in class 30 and XPERT Label under no.1911024 in class 30 in relation to salt. It is contended that the plaintiff filed notice of oppositions dated 02.01.2014 to both the trademark applications of the defendants and thereafter the plaintiff came across the impugned goods of the defendants in the market.

10. It is the contention of the plaintiff that the defendants have started using the impugned trademark recently and that the defendants are not issuing any formal bills with respect to their sales of the impugned goods under the said trademark/label. It is contended that the defendants have adopted the said trademark fraudulently and with sinister motives. The impugned trademark is bound to create confusion and deception on the course of business. It is further contended by the plaintiff that their goodwill is affected by the passing off of the defendant's goods under the trademark which is related to the goods of the plaintiff.

11. Reference may be had to the judgments of this Court in the case *The Indian Performing Right Society Ltd. vs. Gauhati Town Club and Anr., 2013 (134) DRJ 732* and in *United Coffee House vs. Raghav Kalra & Anr. 2013 (55) PTC 414 (Del)* where it was held that when the defendant is ex parte, the plaintiff need not file evidence keeping in mind that the averments made in the plaint have been supported by an affidavit. In the present case the plaint is supported by the affidavit of Mr. Manoj Singh, Legal Manager of the plaintiff.

12. In view of the averments made in the plaint and the documents placed on

record the plaintiff has established that the said trademark/label XPERT is exclusively associated to the plaintiff and its products. The trademark/label XPERT is registered in their favour since the year 1993 in class 3. The copyrights are also duly registered in favour of the plaintiff. It is further established that the defendants have malafidely copied the well known trademark of the plaintiff with all its features and artistic work in relation to their impugned goods which they are trying to pass-off as originating from the plaintiff.

13. In view of the above a decree is passed in favour of the plaintiff and against the defendants restraining the defendants and also their agents, representatives, distributors, etc from manufacturing, selling, using, displaying, advertising, importing/exporting or by any other mode or manner dealing with the impugned trademark/label/trade dress/colour combination XPERT or any other trademark which is deceptively similar to the plaintiff's trademark XPERT in relation to the impugned goods.

14. The suit also seeks relief of damages of Rs.20,01,000/- from the defendants. A perusal of the report of the Local Commissioner dated 16.4.2014 shows that he visited the premises of the defendant and reached there on 22.3.2014. However, no stock of goods was found with the impugned trademark XPERT. Accordingly, in my opinion it is not a fit case to award damages to the plaintiff. In view of the above, suit is disposed of.

JAYANT NATH, J

JANUARY 07, 2015
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