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

Date of Decision: 06th February, 2023

+ **CS(OS) 1196/2005**

SH. GIAN CHAND GARG

..... Plaintiff

Through: None.

versus

BRITANNIA INDUSTRIES LTD.

..... Defendant

Through: Mr. Siddharth Bawa and Mr. Anuj
Garg, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

CC 658/2006

1. The suit was dismissed *vide* order dated 07th July, 2005 for non-prosecution, and proceedings in the counter claim continued. Counter-claimant has recorded evidence and the matter is at the stage of final disposal.

2. Defendant seeks following prayers in the counter claim:

“a) *For an order of permanent injunction restraining the plaintiff himself, its employees, agents, dealers, stockists and all other persons acting on its behalf from manufacturing, marketing or dealing under the trade mark Good Day and also from using any other trade mark which is deceptively similar with the trade mark Good Day by infringing the defendant's well known trade mark*

- bearing No. 452003-B and 488808 in class 30.
- b) *For an order of permanent injunction restraining the plaintiff himself its employees, agents, dealers, stockists and all other persons acting on its behalf from manufacturing, marketing and dealing in rice bearing the trade mark Good Day or any other trade mark deceptively similar thereto amounting to passing off their goods as the goods of the defendant.*
 - c) *For an order to withdraw the pending application no. 1302509 in class 30 and any other pending applications for the registration of the mark Good Day by the plaintiffs.*
 - d) *For an order to withdraw all pending oppositions against the defendant's application under opposition nos. KOL 182792, KOL 182793, CAL 209518 and CAL 209517 and any other oppositions which has been filed against the defendant's mark Good Day and also an order restraining the plaintiff from instituting any further opposition proceedings against the defendant.*
 - e) *For an order of delivery upon affidavit by the plaintiff to the defendant of all the offending goods, cartons, wrappers, dyes etc for purposes of destruction and/or obliteration bearing the mark Good Day.*
 - f) *For an order of rendition of accounts to ascertain the profits earned by the plaintiff on the sale of the goods or any other allied and cognate goods bearing the trade mark Good Day and a decree for the amount so found due on the basis of the sales made by the plaintiff.*
 - g) *A decree for costs of proceedings."*

3. Controversy in the suit [CS(OS) 1196/2005] pertained to use of the label mark "GOOD DAY", which Plaintiff was using for processing and marketing of rice. The Defendant – M/s Britannia Industries Ltd., the registered owner of device marks bearing "GOOD DAY",¹ utilizes the same for biscuits. Plaintiff sought restraining orders against the use of the "GOOD DAY" mark by Defendant for rice, claiming that they were the first ones to use and adopt the said mark in relation to rice.

4. In its pleadings as also affidavit of evidence of PW-1, Plaintiff has claimed user since 1993. The Defendant contests Plaintiff's claims and asserts that they have been using the mark since 1986, but in association with biscuits, not rice. During the pendency of the suit, Defendant has

¹ Under Application Nos. 452003 and 488808 in Class 30.

secured registrations in its favour for stylised variants of “GOOD DAY” marks in class 30, detailed in paragraph No. 12 of the affidavit of evidence of DW-1 – Mr. Arya Mathew, extracted hereunder:

12. *I say that the Defendant has subsequently got various trade mark registrations under Class 30 in respect of Good Day. The said trade mark has been renewed from time to time. The list of trade marks (Good Day) which are valid and subsisting and have been renewed from time to time as under:*

S. No.	Trademark Application Number	Trade Mark	Class
1.	768701	Good Day	30
2.	768702	Good Day	30
3.	768703	Good Day	30
4.	768705	Good Day	30
5.	907531	Good Day Cakes (Label)	30
6.	907532	Good Day (Label)	30
7.	907533	Good Day Cakes-Chocolate (Label)	30
8.	907534	Good Day-Rich Fruit (Label)	30
9.	907535	Good Day Cakes	30
10.	907537	Britannia Good Day Cakes-Fruit	30
11.	907538	Good Day Cakes-Plum	30
12.	907540	Good Day (Label)	30
13.	907541	Good Day Vanilla Chocolate	30
14.	907542	Good Day Cakes-Orange Chocolate (Label)	30
15.	752300	Good Day	30
16.	474951	Good Day Butter Britannia (Label)	30
17.	488808	Good Day Chocolate	30
18.	452003	Good Day	30
19.	752299	Good Day (Label)	30
20.	1448677	Good Day (Logo)(Label)	30

5. Defendant has also placed on record invoices dating back to 1989 and bills of publications and advertisements for its mark “GOOD DAY”. *Per contra*, Plaintiff’s bills and invoices depict business activities since 1998-99.

6. The Plaintiff acknowledges the deceptive similarity between the two marks and Defendant’s prior use, but only objects to Defendant’s use of

“GOOD DAY” for rice. Although at the time of filing of the suit, Defendant was using the impugned mark only for biscuits, it has now diversified and has been using the trademark “GOOD DAY” in relation to other goods falling under class 30. The said mark has also been declared to be a well-known trademark by IPAB *vide* order dated 23rd December, 2020 in ORA/68/2013/TM/AMB.

7. Defendant has thus established its continuous and extensive use of the mark “GOOD DAY” since 1993 through evidence and other material placed on record. Defendant had registered the mark “GOOD DAY” in class 30 before Plaintiff’s application yet, Plaintiff continued using “GOOD DAY” mark for rice, which falls in the same class. In fact, Plaintiff’s trademark application was opposed by Defendant, but the application has now been abandoned. Having regard to declaration of Defendant’s “GOOD DAY” mark as a well-known mark, its standing in the market and admitted subsequent adoption of the mark by Plaintiff, the Court is of the opinion that Plaintiff has infringed Defendant’s registered mark and is attempting to pass off its goods as that of Defendant’s. Such use by Plaintiff would also lead to dilution of goodwill and reputation attached to Defendant’s well-known trademark “GOOD DAY”.

8. Although written statement to the counter claim was filed by the Plaintiff, however, he stopped appearing and has not cross-examined the Defendant’s witness. The suit, as noted above, was thereafter dismissed. A notice of default was served on the Plaintiff pursuant to order dated 13th September, 2022, yet Plaintiff chose to remain unrepresented. Neither the

Defendant's witness was cross-examined, nor did Plaintiff lead any evidence to prove the defence to the counter-claim. In above circumstances, in the opinion of the Court, Defendant has established a case for grant of injunction. Balance of convenience also lies in favour of Defendant and against the Plaintiff.

9. Accordingly, counter claim is decreed in favour of Defendant and against Plaintiff in terms of prayers (a) and (b) of the counter claim. As regards prayer (c), it is pointed out that application No. 1302509 in class 30 stands abandoned and therefore, the said relief has been rendered infructuous. *Qua* prayer (d), Court is informed that opposition Nos. KOL 182793, CAL 209518 and CAL 209517 have been disallowed and marks have been registered in favour of Defendant. The only surviving opposition is KOL 182792, which shall be adjudicated by the appropriate forum in accordance with law, and therefore, no directions can be issued in that regard. The remaining reliefs are not being pressed.

10. Counter claim stands decreed in the above terms. Registry is directed to draw up the decree sheet.

SANJEEV NARULA, J

FEBRUARY 6, 2023

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(Corrected and released on 17th February, 2023)