

\$~13

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

% Date of Decision: 15.07.2015

+ CS(OS) 1752/2014

M/S KRISHI RASAYAN EXPORTS PVT LTD Plaintiff

Through: Mr. Prabhat Kaushik, Adv.

versus

M/S INDO -SWISS CHEMICALS LTD

..... Defendant

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Open Court)

This is a suit for permanent injunction restraining the defendant from infringing the registered trade mark, copyright and trade dress of the plaintiff; restraining the defendant from passing off its goods and business as that of the plaintiff; for damages etc. The defendant has been proceeded ex parte and the plaintiff has led evidence supporting the averments in the plaint. The plaintiff claims to be the owner of the trade mark 'PAUSHAK' registered in Class 5 of the Schedule of the Trade Marks Rules, 1999, which has been in use since 15.5.1995. There has been a consistent increase in the annual turnover of the plaintiff between the year 2005 and 2014 and the turnover for the last financial year being Rs.26,13,28,098/-. The annual turnover in respect of the products under the trade mark 'PAUSHAK' is stated Rs.845/- crores. Between the year 2004 to 2015 the plaintiff has

consistently increased advertisement and promotional expenses regarding the said trade mark. The expense in this regard for the last financial year was Rs.26,94,714/-. The plaintiff claims that both its trademark and its distinctive trade dress have gained popularity in the eyes of its consumers. The plaintiff's trade mark looks as under:



The plaintiff came to know that the defendant is using the trade name 'POSHAK' for the same class of goods, i.e., agro chemical products. Evidently, there is clearly a phonetic and structural similarity between the two names and an unsuspecting user or uneducated farmer or agricultural worker could well be deceived by the defendant's product. Additionally, the defendant's trade name 'POSHAK' tends to ride on the goodwill of the plaintiff in the trade name 'PAUSHAK'. The defendant's trade mark looks as under:-



The certificate registering the plaintiff's trade mark is exhibited as Annexure Ex.PW-1/4. Copies of bills, invoices and advertisement expenses have been exhibited as Ex.P-1/6. The plaintiff seeks a permanent injunction restraining the defendant from using the impugned trade mark 'POSHAK' for manufacture and marketing in the business of agro-chemicals products.

This Court is of the view that the plaintiff's trade mark 'PAUSHAK' and the defendant's trade mark 'POSHAK' are phonetically identical and the latter is likely to deceive unwary users of the said products who would primarily not be literate agriculturists and field workers. Should the defendant be permitted to continue marketing similar products with a deceptively similar trade name, it is likely to violate the plaintiff's trade mark and goodwill in its well-established products. The claim of the plaintiff is unrebuted.

In the circumstances, a case is made out for grant of the reliefs sought in this suit. Accordingly, the suit is decreed in terms of prayers (b), (c) and (d) of the plaint.

The learned counsel for the plaintiff does not press for rendition of accounts. Accordingly, prayer (a) is dismissed as not pressed. The plaintiff has incurred costs of Rs.10,000/- and has otherwise expended monies towards pursuing this case. In the circumstances, an amount of Rs.50,000/- is imposed as costs.

Apropos the claim of damages, there is no evidence on record to substantiate the same. Accordingly, the claim for damages is declined.

The suit is disposed off in the above terms.

Let the decree sheet be drawn up.

NAJMI WAZIRI, J

JULY 15, 2015/ak