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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION (L) NO. 1912 OF 2016
IN
SUIT (L) NO. 687 OF 2016
WITH
SUIT (L) NO. 687 OF 2016**

Dabur India Ltd. ...Applicant/Plaintiff
VS
Ekko Products Pvt. Ltd. ...Defendant
.....

Mr Rashmin Khandekar i/b Rishi Mody for the Petitioner
Mr Dipesh Siroya for the Respondent
Mr Mohammed Afzal Shaikh, Director of the Defendant present.
.....

**CORAM : B. P. COLABAWALLA J.
AUGUST 10, 2016**

P.C. :

When this matter was called out, the parties have agreed that the suit itself can be taken on board and be disposed of, and therefore, the following order is passed by consent.

1. The plaintiff is a reputed manufacturer *inter alia* engaged in the manufacture and sale of a product under the mark and/or brand name and/or label "DABUR AMLA HAIR OIL". The Plaintiff has also registered the copyright in its label, the registration certificate thereof is set out in 'Exhibit C' of the plaint. The label and the product are reproduced below -



The Plaintiff has manufactured “DABUR AMLA HAIR OIL” in distinctive bottles which are set out in paragraph 11 of the plaint.

2. The Plaintiff has filed the present suit for seeking reliefs in respect of infringement of copyright and Passing Off. The Defendant has agreed to submit to a decree on admission in terms of prayer clauses (a) and (b) set out in paragraph 40 of the plaint which are reproduced herein below.

a) *That the Defendant by itself, its directors, associates, sister concerns, assigns in business, distributors, dealers, stockists and agents be restrained by a decree of permanent injunction of this Hon'ble Court from manufacturing, selling, offering for sale, advertising in any manner including the*

internet and directly or indirectly dealing in hair oil or ayurvedic preparations or any other goods under the impugned “EKKO AMLA OIL” label or any other label that may be a colourable imitation or substantial reproduction of the “DABUR AMLA HAIR OIL” label of the Plaintiff in respect of its colour combination, get up, layout and arrangement of features, as may amount to infringement of copyright of the Plaintiff therein;

- b) *That the Defendant by itself, its directors, associates, sister concerns, assigns in business, distributors, dealers, stockists and agents be restrained by a decree of permanent injunction of this Hon’ble Court from manufacturing, selling, offering for sale, advertising in any manner including the internet and directly or indirectly dealing in hair oil or ayurvedic preparations or any other goods under the impugned “EKKO AMLA OIL” label/get-up/trade dress or any other label/get-up/trade dress as may be deceptively to the “DABUR AMLA HAIR OIL” label/get-up/trade dress of the Plaintiff as may lead to confusion or deception amounting to passing off of the goods/business of the Defendant for those of the Plaintiff or may constitute acts of unfair competition;*

3. The Defendant was using the impugned label depicted on the bottle at 'Exhibit J' to the Plaint. The label is reproduced as under.



The Defendant has now undertaken to change the said label to a new label viz. –



The said undertaking is accepted.

4. The Defendant further undertakes that it will not use a bottle, the design and/or shape whereof is identical or deceptively similar to the Plaintiff's current bottle as depicted in paragraph 11 of the Plaint and which is reproduced as below.



The said undertaking is accepted.

5. The Defendant further undertakes to conform to and abide by prayer (c) of paragraph 40 of the Plaint as reproduced below:

c) an order for delivery up of all the infringing goods, packaging, labels, printing materials, printing cylinders, blocks, dyes, articles etc. to an authorized representative of the Plaintiff for destruction/erasure;

save and except in respect of certain quantity, not exceeding approximately 100 units, of "EKKO AMLA OIL" products bearing the infringing/impugned label for the reason that they are already in the retail market and it would be nearly impossible for the Defendant to recall them. The Defendant further affirms and undertakes that he has no other stock of "EKKO AMLA OIL" bearing the infringing/impugned label under his custody or control. The said undertakings are also accepted.

6. The Plaintiff has no objection with respect to the Defendant's usage of "EKKO" bearing registration

no. 1968523 in class 3.

7. It is clarified that the decree is only in respect of the Defendant's usage of infringing/impugned label of "EKKO AMLA OIL" and/or any other label which is identical and/or deceptively similar to the Plaintiff's "DABUR AMLA HAIR OIL" label and not in respect of Defendant's usage of the words "EKKO AMLA OIL". The Defendant is allowed to use the new label depicted in paragraph 3 of this order.
8. In view of the above, the Plaintiffs do not press for other reliefs in the suit. In the result, the suit is disposed off accordingly.
9. In view of disposal of the suit, nothing survives in the Notice of Motion and the same is disposed off accordingly.
10. Refund of court fees in accordance with the rules.

(B. P. COLABAWALLA J.)