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

\+ CS(OS) 336/2012 & IA No. 2582/2012

DABUR INDIA LIMITED ..... Plaintiff

Through: Mr Manish K. Mishra, Mr K.K. Nangia and Mr Waseem Shuaib Ahmed, Advocates.

versus

MAHENDRA BOHARA & ANR ..... Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% **02.08.2016**

1. The present suit has been filed by the plaintiff, inter alia, seeking a decree of permanent injunction restraining the defendants from directly or indirectly dealing in food articles including digestive tablets under the trademark ‘NATMOLA’ or any other trademark which is deceptively similar to the plaintiff's trademark ‘HAJMOLA’. The plaintiff also prays for an order for rendition of accounts of profits earned by the defendants and in the alternative, a decree of ₹20,00,000/- (Rupees Twenty Lakhs) towards compensatory and punitive damages against the defendants.

2. Although the defendants were served, however, they did not enter appearance and participate in the present proceedings. Accordingly, they were proceeded ex-parte on 05.07.2013. Mr B.K. Gupta, Senior Manager-

Legal and the constituted attorney of the plaintiff company (PW 1) filed an affidavit affirming the averments made in the plaint. Ex. PW 1/1 is the certified copy of the resolution passed by the Board of Directors of the plaintiff company, *inter alia*, authorizing Mr B.K. Gupta to institute proceedings on behalf of the company.

3. The plaintiff - a company incorporated under the Companies Act - is stated to be the fourth largest FMCG Company in India and is, *inter alia*, engaged in the business of manufacturing pharmaceuticals, toiletries, medicinal preparations, digestive tablets, candy for digestion, churan, herbal preparations, etc. The plaintiff is the proprietor of the registered trademark 'HAJMOLA' and PW 1 has affirmed that the said trademark was being used in relation to Ayurvedic Churan since 1972. PW 1 also affirmed that the plaintiff introduced digestive tablets under its trademark 'HAJMOLA' in the year 1972 which became immensely popular. Thereafter, in 1992, the plaintiff introduced a digestive candy in four different flavours under the trademark 'HAJMOLA'. PW 1 further affirmed that in September, 2003, the plaintiff introduced HAJMOLA in a granulated form with a whole new taste.

4. The word 'HAJMOLA' is a registered trademark and the same is evidenced by Ex. PW 1/2 which is a certificate for trademark registration No. 281856 for trademark 'HAJMOLA' in Class 05. PW 1 also furnished printouts from the website of trademark registry indicating the status of plaintiff's trademark registration Nos. 475430, 607072, 1135021, 1135020, 1294832, 1294847, 1294846, 1294831 and 1332949 which were exhibited as Ex. PW 1/3 (colly). In addition to the above, PW 1 also produced certificates evidencing registration of the trademark 'HAJMOLA' in United Kingdom and Bangladesh as Exhibit PW 1/4 (Colly). PW 1 affirmed that the plaintiff in the fourth week of January, 2012 became aware that the defendants were selling digestive tablets under the trademark 'NATMOLA'. The said product was being sold in the markets of Delhi near Delhi-Haryana border. The plaintiff has also produced a sample of the HAJMOLA Sachet alongwith NATMOLA Sachet which has been collectively exhibited as Ex. PW 1/10.

5. The plaintiff's sales in the year 2010-11 are stated to be ₹ 119,52.92 lakhs and the publicity expenses incurred by the plaintiff in 2010-11 is stated to be to the tune of ₹5,54.85 lakhs. PW 1 has also produced sample

sales invoices indicating that the plaintiff had sold its product under the trademark HAJMOLA during the years 2008-2011.

6. PW 1 has affirmed that HAJMOLA has been advertised extensively in print media as well as on television networks and is a very well known trademark in various countries around the world including India.

7. It is plainly evident that plaintiff's trademark 'HAJMOLA' has acquired goodwill and reputation and is a well known trademark. PW 1 has also produced samples of export invoices evidencing that the product HAJMOLA is also exported out of India.

8. The plaintiff has produced the Sachet of NATMOLA. The packaging indicates that the same is manufactured by defendant No.2. It is stated that the said defendant is engaged in the business of jaljira, suparis, digestive tablets, etc. and its products are mainly sold under the trademark 'NATRAJ'. However, it is alleged that defendants are also using the trademark 'NATMOLA' in respect of products which are similar to those dealt with by the plaintiff.

9. It is amply clear that the trademark 'NATMOLA' is deceptively similar to the plaintiff's trademark 'HAJMOLA'. It has been further

affirmed that the word ‘MOLA’ does not have any meaning and the trademark 'HAJMOLA' is a coined word. It is thus established that defendants have infringed the plaintiff’s trademark 'HAJMOLA'. The colour scheme of the Sachet of NATMOLA is also deceptively similar to the colour scheme of the HAJMOLA sachet. It is thus obvious that the defendants are attempting to pass off their goods as that of the plaintiff’s. In the aforesaid circumstances, the plaintiff is entitled to a decree of permanent injunction as prayed for by the plaintiff.

10. It is also apparent that the use of the trademark ‘NATMOLA’ is not honest. The intention of the defendants appears to be to use the plaintiff's goodwill associated with the plaintiff’s trademark ‘HAJMOLA’. In the circumstances, the plaintiff is also entitled for rendition of accounts in respect of the profits earned by the defendants from dealing in the product NATMOLA. However, the defendants have not entered appearance and therefore, the profits earned by them from dealing in NATMOLA cannot be ascertained. However, that cannot be the reason for disregarding the plaintiff’s claim for damages. The defendants cannot be permitted to escape their liability by avoiding the court proceedings.

11. In ***Cartier International ATG & Ors. V. Gaurav Bhatia & Ors.*****: 2016 (65) PTC 168 (Del)**, a coordinate Bench of this Court, in somewhat similar facts, observed as under:-

> "It appears from the conduct of the defendants who have deliberately stayed away from the present proceedings with the result that an enquiry into their accounts for determination of damages could not take place.
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> It is well settled that damages in such cases must be awarded and a defendant, who chooses to stay away from the proceedings of the Court, should not be permitted to enjoy the benefits of evasion of court proceedings. Any view to the contrary would result in a situation where the defendant who appears in Court and submits its account books would be liable for damages, while a party which chooses to stay away from court proceedings would escape the liability on account of failure of the availability of account books.
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> A party who chooses not to participate in court proceedings and stay away must, thus, suffer the consequences of damages as stated and set out by the plaintiffs as the Court in the present case are dealing with counterfeiting products. It is rank case of dishonesty where the piracy committed by the defendants is apparent on the face of the record. It is just like printing of duplicate currency. The counterfeiter can never be allowed to do such illegal activities. Cheating can never be condoned by the Court unless the accused is punished."

12. In my view, the aforesaid rationale would also be applicable in the facts of the present case and this would be a fit case for grant of exemplary punitive damages.

13. This Court has also in similar circumstances awarded punitive damages in ***Time Incorporated v. Lokesh Srivastava & Anr.***: **2005 (30) PTC 3 (Del)** and ***Microsoft Corporation v. Rajendra Pawar & Anr.***: **2008 (36) PTC 697 (Del.)**.

14. In view of the aforesaid, the decree is granted in terms of prayer (i), (ii) and (iii), that is, as under:-

> "(i) A decree for permanent injunction restraining the defendants, its partners or proprietor as the case may be, its assigns in business, its distributors and dealers, servants, agents from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in food articles including digestive tablets under the impugned trade mark **NATMOLA,** or any other trademark as may be deceptively similar to the trade mark **HAJMOLA** of the plaintiff as may amount to infringement of the plaintiff's registered trade marks;
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> (ii) A decree for permanent injunction restraining the defendants, its partners or proprietor as the case may be, its assigns in business, its distributors and dealers, servants, agents from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in food articles including digestive tablets under the impugned trade mark **NATMOLA** or any other trade mark as may be deceptively similar to the trade mark **HAJMOLA** of the plaintiff as may lead to confusion or deception amounting to passing off of the goods/business of the defendants for those of the plaintiff;

(iii) A decree directing the defendants to deliver up all the infringing packaging, labels, blocks, dyes, articles etc. to an authorized representative of the plaintiff for destruction/ erasure;

15. The plaintiff is also granted punitive damages against the defendants in the sum of Rs. 2 lakhs for the reasons as stated above.

16. Decree sheet be drawn accordingly.

VIBHU BAKHRU, J

AUGUST 02, 2016
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