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

% ***Judgment dated 5th October, 2016***

+ CS(OS) 605/2015

M/S DHARAM CHAND LAKHA MAL Plaintiff

Through Mr. Ankur Mishra and Ms. Aparna
Jain, Advocates

versus

R.K. SOAP FACTORY & ANR Defendants

Through None

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. None for defendant no.1. Defendant no.1 is accordingly proceeded *ex parte*. Defendant no.2 has already been deleted from the array of parties.
2. Plaintiff has filed the present suit under Section 135 of the Trade Marks Act, 1999 for permanent injunction to restrain passing off, infringement of registered trade mark, rendition of accounts and damages etc. The plaintiff is stated to be in the business of manufacturing and selling Toilet and Washing Soap and other cosmetics products in Delhi, Rajasthan and has branches all over India as well as retail stores under the trade mark 'NAULAKHA' soap since 1951.
3. As per the plaint, the defendant is supplying and selling to public at large products with the infringing trade mark 'NU-LUKHA' SOAP/SABUN which is deceptively similar to the registered trade mark NAULAKHA SOAP of the plaintiff. The plaintiff claims to be a

leading and reputed manufacturer of toilet and washing soap and other cosmetic products. Due to the specialized and quality manufacturing of Soaps and other cosmetics, the trademark of the plaintiff has gained goodwill and reputation among the consumers and the markets in Delhi, Rajasthan and other parts of India. As per the plaint, the forefathers of the plaintiff were one of the pioneers who commenced the business of 100% vegetarian soaps with excellent quality and results at affordable prices. The products of the plaintiff's are used by consumers as a household product, which is the reason that the plaintiff has acquired a reputation and goodwill in the market.

4. Further, as per the plaint which is duly supported by an affidavit, the plaintiff has been continuously using the mark 'NAULAKHA' since January, 1951 and thus has created a niche in the market. The plaintiff has been selling the products under the mark NAULAKHA through its authorized dealers and retail branches all over India. The plaintiff has invested a substantial time, efforts, manpower and money for the purpose of advertising, marketing and protecting the mark 'NAULAKHA' soap. The plaintiff is the registered proprietor of the trade mark 'NAULAKHA' vide its applications bearing nos. 149407, 321634 and 1256803 in class 3 which were registered in the years 1951, 1976 and 2003 respectively. All the three registrations have been renewed from time to time and are valid and subsisting.
5. The plaintiff's mark/logo being a distinctive mark is also the exclusive copyright of the plaintiff, as a result of which the customers and general public have recognized that the products offered by the plaintiff under the trade mark NAULAKHA are good in quality. As per the plaint, due to the continuous use of its trade mark 'NAULAKHA' soap since 1951, the plaintiff has acquired substantial goodwill and reputation in the

market.

6. It is the case of the plaintiff that during the month of December, 2014, the plaintiff learnt that the defendants are using of the trade mark 'NU-LUKHA' which was deceptively similar to the mark of the plaintiff. The defendants' use of the mark NU-LUKHA is identical with and deceptively similar to the plaintiff's registered trade mark which creates likelihood of confusion and deception in the minds of the public at-large. After coming to know about the use of trade mark NU-LUKHA of the defendants, the plaintiff issued a cease and desist notice dated 26.12.2014, but the defendants never replied to the notice.
7. As per the plaint, the plaintiff's products under the mark NAULAKHA comprises of high quality of Toilet and Washing Soap and other cosmetics products. The high quality of the plaintiff's product has gained reputation and goodwill among the consumers and the defendant is diluting the plaintiff's reputation and goodwill by selling low quality products under the deceptively similar mark. The plaintiff's product is a well-known mark and has gained singular association in the minds of the consumers and public at large with respect to the high quality products which is being diluted by the misuse of defendant. The defendant, despite knowledge, is dishonestly and with a *mala fide* intention continuing to copy and use the registered trade mark of the plaintiff and this act of the defendant squarely falls within the ambit of unfair trade practices and violates the provisions of the Trade Marks Act, 1999. It is also the case of the plaintiff that the use and sale of the products under the deceptively similar mark by the defendant which is substantially identical and deceptively similar to that of the registered trade mark of the plaintiff is a clear violation of the plaintiff's exclusive rights under the Trade Marks Act, 1999.

8. It is the case of the plaintiff that the defendant continued to use the mark NU-LUKHA with the intention to confuse and misdirect customers seeking plaintiff's goods. The activity of the defendant is illegal and in violation of the provisions of the Trade Marks Act, 1999. The activities of the defendants are unlawful and constitute unfair competition, intentional trade mark infringement, trade mark dilution, passing off and false designation of the origin of the products. It is the case of the plaintiff that the defendant's mark NU-LUKHA is identical and deceptively similar to the plaintiff's registered mark 'NAULAKHA' soap which is protected under the provisions of the Trade Marks Act, 1999. The visual and phonetic appearance of the mark on the defendants products resembles with the registered mark of the plaintiff. The resemblance is similar and causing immense irreparable loss to the plaintiff and there is likelihood of confusion and deception on account of use of the mark by the defendant on its products. As per the plaint, the plaintiff and the defendant cater to the similar kind of customers and thus by using deceptively similar mark of the plaintiff, the customers would associate the defendant's product with that of the plaintiff. This act of the defendant amounts to passing off, trade mark infringement and trade mark dilution of the plaintiff's registered trade mark and is causing commercial loss and loss of goodwill and reputation to the plaintiff.
9. As per the plaint, the business of the plaintiff and defendant is same, the goods are being sold to the similar class of purchaser and as such the confusion and deception is inevitable. The defendant has copied the plaintiff's mark which is visually and phonetically similar to the plaintiff's mark as well and the defendant has also copied the trade dress of the packaging of the product under the deceptively similar

mark.

10. The learned counsel for the plaintiff has drawn the attention of the Court to the written statement filed by the defendant no.1. As per the written statement, more particularly, paragraph 2 of the reply on merits, the defendant no.1 has denied that it is manufacturer of infringing product or is supplying for sale or is selling the infringing mark NU-LUKHA soap/*sabun* which is deceptively similar to the trade mark of the plaintiff. It has further averred that the defendant no.1 was previously manufacturing soap under the mark 'payal' and has since closed its business in the year 2010-11. Para 2 of the written statement of the reply on merits reads as under:

“2) That the contents of para no.2 of the plaint are wrong and specifically denied. It is specifically denied that the defendant no.1 is a manufacturer of infringing product who is supplying to defendant no.2 for sale to the public at large. It is specifically denied that the defendant no.1 and 2 are using/selling the products with the infringing mark NU-LAKHA SOAP/SABUN which is deceptively similar to the registered mark NAULAKHA of the plaintiff.

In reply to this para, it is respectfully submitted that the defendant no.1 neither manufactured the products of the plaintiff as alleged in this para nor is using or selling the alleged products to the defendant no.2. It is further submitted that the defendant no.1 does not know the defendant no.2, so the question of supplying or selling the product does not arise at all. It is specifically submitted that the answering defendant had already closed his factory i.e. M/s R.K. Soap Factory, Geeta Colony, Khairthal, Alwar (Rajasthan) vide Registration Certificate No. 08630606553 in the year 2010 because of loss and non-supply of the product in the market. It is pertinent to mention herein that the answering defendant was manufacturing the soap product in the name of 'PAYAL'. The said factory officially was closed on 01.04.2011 and accordingly its registration/license was

also canceled... It is also pertinent to mention here that the answering defendant was running its factory in a rented accomodation/shop at Krishan Ganj Road, Khairthal, Alwar (Rajasthan) owned by Shri Mahender Singh S/o Shri Banji Singh. The said shop had been vacated in the year 2010 and since then no any [sic] business took place either in this premises or any other place by the answering defendant's factory nor uses or misuses the name of the plaintiff as alleged in the suit. It is false and baseless allegation upon the answering defendant."

(Emphasis Supplied)

11. In fact, learned counsel for the plaintiff submits that throughout the written statement, the defendant has denied using the trade mark of the plaintiff. Since the plaintiff is using the trade mark 'NAULAKHA' soap since 1951, counsel for the plaintiff submits that having regard to the various documents placed on record the plaintiff is willing to give up the prayer for relief of damages.
12. A coordinate bench of this court in ***Indian Performing Right Society Ltd. v. Gauhati Town Club & Anr., 2013 (134) DRJ 732*** has held that there is no requirement to lead lead evidence before finding that the plaintiff is entitled to a relief of injunction.
13. Accordingly, in view of the statement of the counsel for the plaintiff and the foregoing averments in the written statement of the defendant no. 1, the present suit is decreed in favour of the plaintiff in terms of para 22 (a) and (b) of the plaint. The defendant shall also destroy within four weeks of the receipt of the judgment of the advertising material pertaining to packaging materials, etc. containing the offending trade mark 'NAULAKHA'.

I.A.4603/2015(under Order XXXIX Rules 1 & 2 CPC)

14. The interim order dated 05.03.2015 is made confirmed.

15. The application stands disposed of.

G.S.SISTANI, J

OCTOBER 05, 2016

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