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

\+ CS(COMM) 225/2017

DHARAMPAL SATYAPAL SONS PVT. LTD. ..... Plaintiff
Represented by: Mr. Vaishali Mittal and Mr. Siddhant Chamola, Advocates.

versus

MANISH SAVLANI & ORS. ..... Defendants
Represented by: Mr. C.M. Ankolekar, Advocate.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

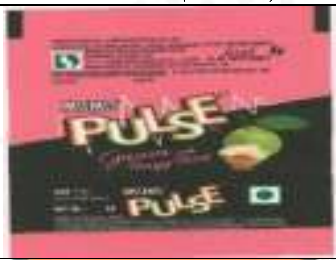
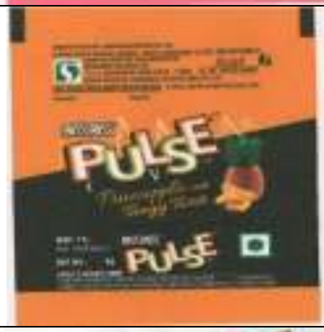
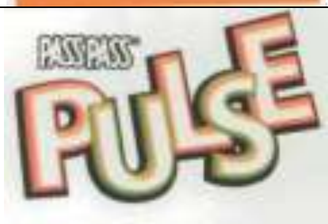
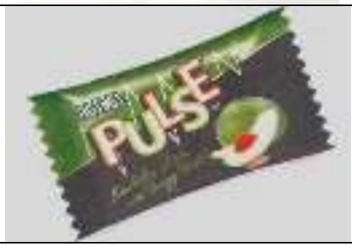
O R D E R
% **04.09.2017**

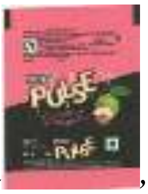
1. The plaintiff had filed the present suit inter alia seeking the reliefs of permanent injunction restraining the defendants, their proprietors, agents, partners etc. from reproducing in any material form or using in any manner, the packaging/ getup/ layout of the plaintiff's 'PULSE' candies in all flavours, in the labels/ cartons/ packaging/trade dress amounting to passing off the trade mark and trade dress and copyright infringement of their trade mark and trade design 'PULSE' and also restraining the defendants from using mark 'PLUSS+' which is deceptively similar to trade mark/ trade dress and copyright of the plaintiff and rendition of accounts, damages etc.

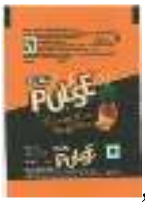
2. During the pendency of the suit before the issues could be settled, parties have settled the matter before the Delhi High Court Mediation and Conciliation Centre on 17th July, 2017 on the following

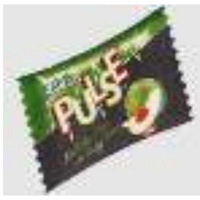
terms:

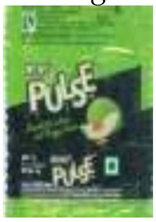
(a) The Defendant Parties herein hereby acknowledge and recognize the First Party's sole and exclusive proprietary rights in the First Party's following trademarks, which rights the Defendant Parties' do not and shall not contest:

Trademark Application No.	***Trademark***	***Class***	***Date of Application***
2827906	*PULSE (word)*	*30*	*16.10.2014*
3071704		*30*	*07.10.2015*
3071705		*30*	*07.10.2015*
2827909		*30*	*16.10.2014*
2891666		*30*	*29.01.2015*
2827906	*PULSE*	*30*	*16.10.2014*

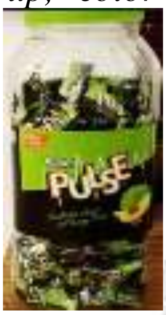
(b) *The Defendant Parties herein hereby acknowledge and recognize the First Party's sole and exclusive rights contained in* 

, 

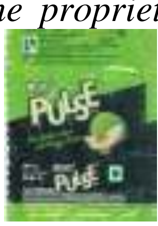
, 

, 

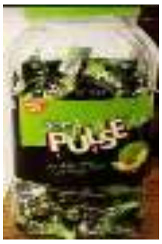
which constitute a significant part of the trade-dress pertaining to its candies under the mark ***PULSE.*** *The Defendant Parties further agree and undertake not to contest the First Party's above mentioned sole and exclusive rights at any point of time in the future.*

(c) *The Defendant Parties herein acknowledge and recognize the First Party's sole and exclusive rights contained in the get-up, color combination, overall layout of the cartons* 

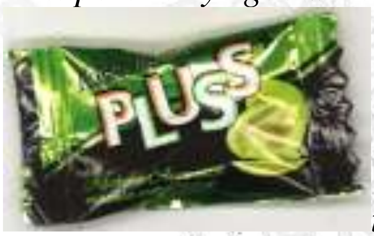
which constitute a significant part of the trade-dress pertaining to its candies under the mark ***PULSE.*** *The Defendant Parties further agree and undertake not to contest the First Party's above mentioned sole and exclusive rights at any point of time in the future.*

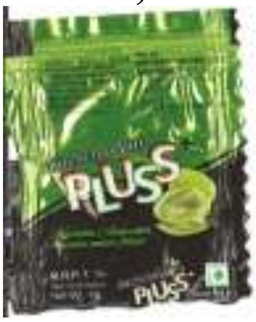
(d) *The Defendant Parties' abovenamed hereby acknowledge that the First Party is the proprietor of the trademark* ***PULSE*** *and* ***trade dress*** 

including the carton

packaging 

(hereinafter referred to as the 'PULSE trademarks and trade dress') and that the First Party has worldwide reputation and goodwill in the same.

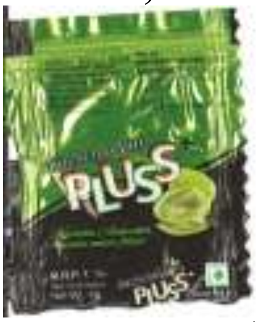
(e) The Defendant Parties herein undertake that they will not, at any time in the future, manufacture, use, sell, offer for sale, distribute, issue to the public, advertise for sale, import or export any goods bearing the trademark ***PLUSS+,*** 

the trade-dress 

(hereinafter collectively referred to as the "PLUSS+ trademarks and trade-dress) and use any other trademark which is similar to the First Party's well-known ***PULSE*** *trademarks and trade dress of the First Party, and/or use the same or any other deceptively similar or identical marks, color combination, get-up and/or a combination thereof in any manner, amounting to passing off of the First Party's intellectual property rights.*

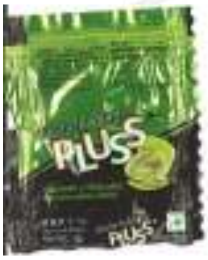
(f) The Defendant Parties hereby submit that they had manufactured, used, sold, offered for sale, distributed, issued to the public, advertised for sale, goods bearing

*the trademark marks **PLUSS+,** and trade dress*

, 

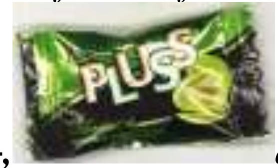
for the period September 2016 to 01.04.2017. The Defendant Parties further submit that they had sold stock of these goods amounting to INR 2,50,000/- during the aforesaid period. The Defendant Parties hereby undertake and assure that at least since 01.04.2017, they have not manufactured, used, sold, offered for sale, distributed, issued to the public, advertised for sale, imported or exported any goods bearing the trademark ***PLUSS+***

and trade dress

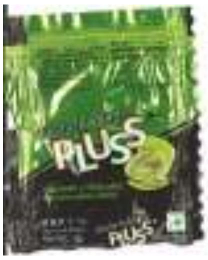


*and used any other trademark which is similar to the First Party's well-known **PULSE** trademarks and trade dress, and/or used the same or any other deceptively similar or identical marks, color combination, get-up and/or a combination thereof in any manner, amounting to passing off of the First Party's intellectual property rights.*

*(g) The Defendant Parties hereby agree and undertake that it has destroyed all goods, brochures, promotional material, stickers, cartons, packing, dies, articles, papers and any other material of the Defendant Parties bearing the marks **PLUSS+,***



and trade dress



and any other related material which was in the possession of the Defendant Parties.

(h) *The Defendant Parties hereby undertake that they have informed all their associates, retailers and other commercial outlets they have ceased making sale and/or promoting their goods under the PLUSS trademarks and trade-dress.*

(i) *The Second Party hereby agrees and undertakes to pay INR 1,00,000/- (Rupees One Lakh) towards legal costs incurred by the First Party. The Second Party shall handover a cheque in the amount of INR 1,00,000/- (Rupees One Lakh) on or before the date the suit is fixed before the Hon'ble Court.*

(j) *The First Party agree and undertake to give up its claims for damages, rendition of accounts etc. against the Defendant Parties, as prayed for in paragraph 38 (d) and paragraph 38 (e) of the plaint.*

(k) *The parties agree that the Hon'ble Court may decree/ dispose of the present suit in terms of this settlement agreement.*

3. The settlement agreement is signed by Shri Saurabh Mishra, the authorized representative of the plaintiff on behalf of the plaintiff, authorisation in whose favour is annexed as Annexure –A with the settlement agreement sent from Delhi High Court Mediation and Conciliation Centre.

4. Settlement has been signed by defendant Nos. 1 and 2 on their own behalf and as proprietors/co-proprietors of defendant No. 3. The Settlement agreement has also been signed by Mr. Vinod Kumar and Mr. Naveen on behalf of defendant Nos. 4 and 5 who were the retailers selling the products of defendant Nos. 1, 2 and 3.

5. Defendant Nos. 1 and 2 are present in court and are identified by learned counsel. They on their own behalf and on behalf of defendant No. 3 affirm the terms of settlement noted above and undertake to abide by the same.

6. Cost of ₹1 lakh as undertaken to be paid by defendant Nos. 1 to 3 has been handed over by cheque bearing No. 982440 dated 21st August, 2017 drawn on State Bank of India, Naroda Road, Ahmedabad, Gujarat to learned counsel for the plaintiff today in Court.

7. Since parties have entered into the settlement and terms of settlement are further affirmed by Mr. Saurabh Mishra on behalf of the plaintiff who has given up the prayer for damages, rendition of accounts, etc. and also by defendant Nos. 1 and 2 on their own behalf and on behalf of defendant No. 3, the suit is decreed in terms of settlement arrived at between the parties.

8. Court fee be returned to the plaintiff in terms of the Section 16 of Court Fee Act. Decree sheet will incorporate the terms of settlement.

MUKTA GUPTA, J.

SEPTEMBER 04, 2017/'yo'