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

+ **CS(COMM) 824/2016**

VIRGIN ENTERPRISES LIMITED & ANR Plaintiffs

Through **Mr. R.K. Jain, Advocate with
Dr. Amitabha Sen and
Ms. Malyashree Sridharan,
Advocates**

versus

VIRGIN FOODS & FEEDS PVT LTD & ORS Defendants

Through: **None**

Reserved On : 17th August, 2017

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Date of Decision: 28th August, 2017

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J :

1. Present suit has been filed for permanent and temporary injunction restraining infringement of trade mark, passing off, rendition of accounts and other miscellaneous reliefs. The prayer clauses in the suit are reproduced hereinbelow:-

"a. Grant an order for permanent injunction restraining the Defendants, their partners, directors, principal officers, servants, agents and representatives from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in advertising services or any other related services

under their company/corporate name "VIRGIN FOODS & FEEDS PVT. LTD." , or under any other mark/s deceptively similar to the Plaintiff's well known trademark VIRGIN and/or company name amounting to infringement of the Plaintiff's "VIRGIN" trademark;

b. Issue direction to the directors of the Defendant No.1 company to apply to the Regional Director and Registrar of Companies, Ministry of Corporate Affairs, Hyderabad to change the company name of the Defendant No.1 by deleting the term/name VIRGIN from its company name;

c. In the alternative, issue a direction to the Regional Director and Registrar of Companies, Ministry of Corporate Affairs, Hyderabad to direct the Defendants to change the company name of the Defendant No.1 by deleting the term/name VIRGIN from its company name;

d. Grant a decree of damages to the tune of Rs.21,00,000 in favour of the Plaintiffs and against the Defendants on account of loss of sales, reputation and goodwill of the Plaintiffs' trademark caused due to the Defendants;

e. Direct the Defendants to render a true account of all the profits earned by them using the impugned mark/name/domain name "VIRGIN FOODS AND FEEDS PVT. LTD." and further direct the Defendants to pay to the Plaintiff such amount as may be found due and payable on such account being taken;

f. Costs of the suit and incidental expenses throughout may kindly be awarded to the Plaintiffs and against the Defendants; and

g. Any other just and equitable reliefs/orders in Plaintiffs' favour in the interest of equity and justice may kindly be passed."

2. At the very outset, the learned counsel for the plaintiffs stated that he wished to press prayers 'a' and 'b' of the plaint only. He specifically gave up his claim for damages and rendition of accounts.

3. On 28th October, 2015, this Court granted an ex parte ad interim injunction in favour of the plaintiffs and against the defendants. The relevant portion of the said order is reproduced hereinbelow:-

"Till further orders, the defendants, their partners, principal officers, servants, agents and representatives are restrained from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in advertising services or any other related services under their company/corporate name "VIRGIN FOODS & FEEDS PVT LTD", or under any other marks deceptively similar to the plaintiffs' well known trademark "VIRGIN" and/or company name amounting to infringement of the plaintiffs' "VIRGIN" trademark."

4. Since the defendants did not enter appearance despite service, they were proceeded ex parte vide order dated 28th October, 2015 and the ex parte interim injunction was confirmed on 4th May, 2017.

5. Mr. R.K Jain, learned counsel for plaintiffs stated that the plaintiff No. 1 is the prior user and adopter of the trade mark **VIRGIN** and is the registered proprietor of over 3,000 **VIRGIN** trade marks worldwide including India.

6. He stated that the plaintiffs' trade mark **VIRGIN** is a well known and famous trade mark having trans-border reputation and the Trade Marks Registry has recently added the plaintiffs' mark in the list of Well Known Trademarks.

7. Mr. R.K Jain stated that the estimated total world-wide turnover figures for the **VIRGIN** branded companies for the years 2012 to 2014 are as follows:

YEAR	TURNOVER (£ Billions)
2012	14.9
2013	15.6
2014	16.1

8. He contended that the defendants are manufacturers, dealers, distributors, processors, growers, promoters, merchants, exporters, importers and stockiest engaged in the business of all kinds of foods, chemicals, feeds etc.

9. He stated that the defendant No. 1 has dishonestly adopted the name/mark **VIRGIN** as part of its company name which is identical to the plaintiffs' well known trade mark and corporate name **VIRGIN** and the same is causing irreparable loss and damage to the mark **VIRGIN** of the plaintiffs.

10. Having perused the papers and having heard the learned counsel for plaintiffs, this Court is of the view that the plaintiffs' mark **VIRGIN** is a well known trade mark as defined under Section 2(1)(zg) and other relevant provisions of the Trade Marks Act, 1999.

11. In any event, as the averments in the plaint have not been rebutted by the defendants nor did the defendants bother to put forth their stand in spite of ample opportunities given by this Court, they are deemed to have been admitted.

12. In fact a coordinate bench of this Court in ***Virgin Enterprises Ltd & Anr. Versus Virgin Paradise Airlines Training Pvt. Ltd., 2015 (61) PTC 145 [Del]*** has held as under:

10. The marks 'Virgin' and 'Virgin Signature Logo' are used widely throughout the world by the plaintiffs in various fields through its licences. The goods and services bearing the 'Virgin' trade and service marks are exclusively associated with the plaintiffs. It is a 'well known trademark' and 'famous trademark' as defined under Section 2(1)(zg) of Trade Marks Act. The adoption of the above trade/service mark 'Virgin' by the defendant without any justification or permission amounts to gross infringement of the intellectual property rights of the plaintiff No. 1. The use of the mark 'Virgin' by the defendant is bound to cause confusion, deception and mistake amongst the public. It would tend to suggest a relationship between the defendant and the plaintiffs which in fact it does not so exist. The use of the similar/identical mark by the defendant would adversely affect the plaintiffs' goodwill and reputation. The use of the mark by the defendant constitutes violation of the plaintiffs legal rights amounting to infringement and passing off.

(emphasis supplied)

13. The rights of the owner of a well known trade mark have been clearly laid down by this Court in ***Tata Sons Ltd. versus Manoj Dodia & Ors., 2011(4) R.A.J 181 (Del)***. The relevant portion of the said judgment is reproduced hereinbelow:

12. The owner of a well known trademark may (i) seek cancellation or (ii) prevent registration of a trademark which is same or similar to the well known mark irrespective of whether the impugned mark is in relation to identical or similar goods or services or in relation to other categories of goods or services. He may also prevent others

from incorporating the well known trademark as a part of their corporate name/business name. Even if a well known trademark is not registered in India, its owner may avail these rights in respect of the trademark registered/used or sought to be registered/used in India, provided that the well known mark is otherwise known to or recognized by the relevant section of public in India.

(emphasis supplied)

14. As regards the prayer of the plaintiffs for change of the name of defendant No. 1-company is concerned, this Court in ***Montari Overseas Limited versus Montari Industries Limited, ILR 1997 Delhi 64*** has held as under:

7.....“But, then in the present suit the plaintiff has also based its cause of action on passing off of the name of defendant No. 1 as that of the plaintiff. I would rather say that the jurisdiction of the Central Government under Ss. 20 and 22 of the Act and the jurisdiction of the Civil Court operate in two different fields. Further the Central Govt. has to act within the guidelines laid down under S. 20 of the Act, while there are no such limitations on the exercise of jurisdiction by the Civil Court.”

(emphasis supplied)

15. In the opinion of this Court, the name VIRGIN FOODS & FEEDS PRIVATE LIMITED with the essential feature VIRGIN is bound to cause confusion and deception among the public at large, consumers, business and trade circles and is likely to suggest that there is some nexus between the plaintiffs and defendants.

16. In the light of above discussion, this court is of the view that the plaintiffs have proved their case against the defendants.

17. Consequently, the defendants, its employees, agents, representatives, servants and assigns are restrained from using any of the **VIRGIN** marks or logos or any other mark of the plaintiffs or domain name and company name deceptively similar to that of the plaintiffs and the suit is decreed in accordance with prayers 'a' and 'b' of the plaint. Registry is directed to prepare a decree sheet accordingly.

MANMOHAN, J

AUGUST 28, 2017
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