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

+ **CS(COMM) 1076/2016**

HINDUSTAN UNILEVER LIMITED

..... Petitioner

Represented by: Mr. Saif Khan, Ms. Anisha
Gupta, Advs.

versus

MOHIT BHATIA & ORS

..... Respondent

Represented by: Ms. Priyanka Anand, Adv.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

26.09.2017

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1. Plaintiff and the defendants i.e. defendant Nos. 1 to 6 have settled the matter before the Delhi High Court Mediation and Conciliation Centre on the following terms and conditions:

- A. *The Defendants acknowledge and do not dispute nor shall ever dispute in any manner, that the Plaintiff is the registered proprietor of the trade mark "Fair & Lovely" vide registration No. 349209 dated 16th May, 1979 in respect of "Cosmetics and toilet preparations" as classified in class 3 along with the goodwill and reputation in the same on account of the continuous use of the said trademark since 1975, forming subject matter of the present suit.*
- B. *The Defendants acknowledge and do not dispute nor shall ever dispute in any manner, that the Plaintiff is the*

prior adopter, user and registered proprietor of the well-known trade mark “Fair & Lovely” and variants thereof, along with the goodwill and reputation in the same.

- C. The Defendants acknowledge and do not dispute nor shall ever dispute in any manner, that the Plaintiff is the owner of the copyright in the artistic work comprised in the Fair & Lovely packaging, including cartons, tubes and caps comprising its distinctive arrangement of features, lay out, get up, colour combination and other packaging variants introduced by the Plaintiff over the years with the essential features and get up as described in the plaint.*
- D. The Defendants undertake that they will not either by themselves or through their affiliates, associates, partners, officers, servants, representatives and agents and/or all others acting for and on their behalf use any packaging/label/carton which is similar in artistic features, get up, make up and/or colour combination of the “Fair & Lovely” packaging and it’s variants of the Plaintiff as described in the present suit. The defendant further agrees that they shall not challenge , in any manner the Plaintiff’s trade mark or Copyright registrations for ‘Fair & Lovely’ or its variations in future.*
- E. The Defendants undertake that save and except as provided in the present agreement, they will not either by themselves or through their affiliates, associates, partners, officers, servants, representatives and agents and/or all others acting for and on their behalf, use, manufacture, sell, offer for sale or distribute, advertise or in any manner directly or indirectly deal in goods of any description bearing the marks/labels “Pofie & Lovely”, “Four & Lovely”, “Fime & Lovely”, “Fair & Finn” and “Fair Beauty” or any mark that is identical or phonetically/visually/ deceptively similar to the Plaintiff’s*

trademark “Fair & Lovely” or comprising of the words “Fair &” and/or “& Lovely” in conjunction with any other words which are or may be deceptively similar to the Plaintiff’s proprietary trademark “Fair & Lovely”.

- F. The Defendants undertake that they will confine use of the mark ‘Pofie & Lovely’ words with letters T.E. in circle, as registered bearing trademark no. 1620604 in class 03 in the trade dress, colour scheme or artwork represented in the labels/cartons annexed as Annexure – A (1) to A (5). The Defendants expressly understand, agree and undertake that in the use of the said artwork, trade dress labels/cartons by them, the word ‘LOVELY’ will be in less or equal prominence to ‘POFIE’ with letters T.E. in circle, and that the use of said labels will be only in relation to products as covered by its registration certificate viz; Vanishing Cream, Turmeric Vanishing Cream, Lipstick, Sindur & White Petroleum Jelly. The Defendant agrees to use the trade mark ‘Pofie & Lovely’ as Registered under no. 1620604 in class 03 with Capital T.E. inside full circle as represented in the certificate of registration and as permitted in the present application and undertake and agree that they will not use ‘Pofie & Lovely’ in any other manner. The Plaintiffs have no objection to the use by the Defendants of the said ‘Pofie & Lovely’ labels/cartons in the artwork/ colour scheme, trade dress as annexed and as per the aforesaid terms and conditions. The defendant shall not seek any further registrations for the mark ‘Pofie & Lovely’ and defend its aforesaid registration at its own costs and consequences.*
- G. The Defendants affirm that they have not filed any trademark application for registration of the marks “Four & Lovely”, “Fime & Lovely”, “Fair & Finn” and “Fair Beauty” or for any other mark that is phonetically/visually/ deceptively similar to the Plaintiff’s trade mark ‘Fair & Lovely’ or comprising of the words*

“Fair &” and/or “& Lovely”, and the Defendants undertake that they shall not file any such trademark application or seek Copyright registration at any stage in future. The Defendants undertake to withdraw the trademark application no.3439845 for ‘POFIE FAIR & FACE’ within 15 days of filing of the present application.

- H. The Defendants further affirm that they have not filed any application for registration of copyright for any artistic work/ label/ product packaging which is deceptively similar to the Plaintiff’s “Fair & Lovely” or “Fair &” or “& Lovely” artistic works in their various versions of packaging as described in the suit, or for any literary work comprised in the packaging/label/carton of “Fair & Lovely”, and the Defendants undertake that they shall not file any such Copyright application in future. The Plaintiff will have no objection if the Defendants seek copyright registration of any of the labels approved by the Plaintiff.*
- I. That the Defendants undertake and submit that they will destroy the goods seized by the Local Commissioners and given to them under Superdari at their cost and arrangements in presence of a representative of the Plaintiff on a mutually agreed date and time and preferably within 30 days from the date of adjudication of this application.*
- J. That the Defendants agree and undertake that they will not, in the future, either by themselves or through their affiliates, associates, partners, officers, servants, representatives and agents and/or all others acting for and on their behalf adopt any trade mark and/or packaging, get up, layout, arrangement of features and colour scheme which is identical or deceptively similar to the Plaintiff’s trade marks and/or packaging of the Plaintiff’s products bearing the Plaintiff’s trade marks which infringes or appears to infringe the Plaintiff’s*

Intellectual Property Rights, Copyright rights or passes off any of the Defendants' products as that of the Plaintiff.

- K. That the aforesaid undertakings have been voluntarily given by Mr. Mohit Bahtia, Mr. Ashok Kumar Bhatia and Mr. Subhash Chander, i.e. Defendant No. 1, Defendant No. 2 and Defendant No. 5 respectively, in their personal capacity as well as on behalf of Four and Lovely Traders, Turbo Enterprises and Delhi Sales Agency, i.e. Defendant No. 3, Defendant No. 4 and Defendant No. 6 respectively and the same shall also be binding on all the aforementioned Defendants individually as well as collectively. Furthermore, the present application has been executed by Mr. Mohit Bhatia, Mr. Ashok Kumar Bhatia and Mr. Subhash Chander for the Defendants without any coercion or duress.*
- L. In view of the aforementioned undertakings and acknowledgements, the Plaintiff gives up its claim for rendition of accounts, damages and costs as have been prayed under clause 41 (v), 41(vi) and 41(viii) of the plaint and the suit be disposed of in terms of the present settlement agreement.*
- M. The parties agree that the terms contained and agreed herein shall be final and binding upon both parties, their affiliates, associates, partners, officers, servants, representatives and agents, legal heirs, successors and assigns in business and all others acting for and on their behalf.*

POFIE & LOVELY
Roop Altra
WHITENING CREAM
For Fair, Clean & Clear Skin
FACE
KHILE GULAB JASA

POFIE & LOVELY
Roop Altra
CREAM
FOR FAIR, CLEAN & CLEAR SKIN
हर्बल
अमि

INGREDIENTS:
Water, Stearic Acid, Purpurea, Vitamin E, Stearyl alcohol, Propylene glycol, Methyl Paraben, Propyl Paraben, Glycortin, IPM Potassium Hyaluronate, Titanium Dioxide.

ALL SEASON
FOR EXTERNAL USE ONLY

POFIE & LOVELY
Roop Altra
CREAM
FOR FAIR, CLEAN & CLEAR SKIN

हर्बल
जीम

INGREDIENTS:
Water, Stearic Acid, Perfume, Vitamin E, Stearyl alcohol, Propylene glycol, Methyl Paraben, Propyl Paraben, Glycerine, IPM Potassium Hydroxide, Titanium Dioxide.

BEFORE **AFTER**

ALL SEASON
FOR EXTERNAL USE ONLY

FACE
KHILE GULAB JABA

POFIE & LOVELY
Roop Altra
WHITENING CREAM
For Fair, Clean & Clear Skin
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KHILE GULAB JAIRA

POFIE & LOVELY
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LOVELY**

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Propylene glycol, Methyl
Paraben, Propyl Paraben,
Glycerine, IPM Potassium
Hydroxide, Titanium Dioxide.




ALL SEASON
FOR EXTERNAL USE ONLY

2. The mediation settlement is signed on behalf of the plaintiff by Ms. Deepika Raikwar, authorized representative of the plaintiff, authorization in whose favour is at annexure X along with the mediation report received from the mediation centre. The settlement agreement is also signed by Shri Mohit Bhatia, defendant No.1 and proprietor of defendant No.3; Shri Ashok Kumar Bhatia, defendant No.2 and proprietor of defendant No.4; and Shri Subhash Chander defendant No.5 and proprietor of defendant No.6. Affidavits in support of the settlement agreements have also been filed by Shri Mohit Bhatia, Shri Ashok Bhatia and Shri Subhash Chander on their behalf and as the sole proprietors of defendant Nos. 3,4 & 6 respectively. In terms of clause (I) of the settlement as noted above, the defendants undertake to destroy the goods seized by the Local Commissioner and given to them under Superdari at their cost and arrangements in the presence of representative of the plaintiff on a mutually agreed date and time within 30 days from today.

3. Since the parties have arrived at a settlement of their own free will, volition and without any coercion, the suit is decreed in terms of the settlement as noted above. Decree sheet will incorporate the terms of settlement. Court fees be returned to the plaintiff under Section 16 of the Court Fees Act.

IA Nos. 8111/2010, 4399/2011 and 19912/2012

Disposed of as infructuous.

MUKTA GUPTA, J.

SEPTEMBER 26, 2017 /‘ga’