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

+ **CS(COMM) 1219/2016**

**INTERCONTINENTAL GREAT BRANDS LLC
& ANR**

..... Plaintiffs

Through: Ms Nancy Roy, Advocate.

versus

DUNN FOODS PRIVATE LIMITED & ANR

..... Defendants

Through

**CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU**

ORDER

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17.03.2017

VIBHU BAKHRU, J

IA No.3222/2017

1. This is an application filed on behalf of the plaintiffs under Order VIII Rule 10 of the Code of Civil Procedure, 1908 (hereafter 'the CPC') for judgement and decree as sought in the plaint.
2. The learned counsel appearing for the plaintiffs states, at the outset, that plaintiffs are pressing for a decree of injunction and are willing to forego other reliefs including damages.
3. The plaintiffs have filed the above-captioned suit *inter alia* seeking injunction restraining the defendants from infringing their trademarks, copyright and also from restraining the defendants from passing off the goods of the plaintiffs.

4. It is averred in the plaint that the plaintiffs have their business in more than 100 countries around the world including India and are one of the significant global leaders in the business of biscuits, chocolates, candy and powdered beverages.

5. The plaintiffs also claim that they have a unique pattern on the cookies manufactured and sold by them which is described as "OREO Cookie Trade Dress". It is averred that the aforesaid trade dress is unique to the plaintiffs' products and the defendants are attempting to copy the same in their products in an endeavour for passing off their goods as that of the plaintiffs'. The plaintiffs also own registered trademarks, which are compendiously described in paragraph 11 of the plaint. Some of the trademarks (labels) also clearly reflect "OREO Cookie Trade Dress". It is averred that the plaintiffs have spent significant amounts in advertisement and promotion of their products; it is claimed that in the year 2014, approximately 285 million US Dollars were spent on advertisements of their products.

6. It is averred that defendant no.1 is manufacturing and selling products under the mark "LICK N DIP". The photographs of the packaging, as reproduced in the plaint, indicate that the packaging used by defendant no.1 is deceptively similar to the packaging on the plaintiffs' products.

7. The learned counsel for the plaintiffs has also drawn the attention of this Court to the coloured photographs of the defendants' products which clearly indicate that the defendants have also designed their products similar to the "OREO Cookie Trade Dress".

8. It is also relevant to mention that the notice and summons in the suit were issued on 05.09.2016. The defendants entered appearance on 23.09.2016 when the hearing of the interim application was adjourned at the request of the learned counsel for the defendants and the matter was listed on 03.10.2016. On 03.10.2016, the learned counsel appearing for the defendants made a statement on instructions of the defendants, that the defendants, were willing to address all issues raised by the plaintiffs and were willing to change the packaging, the get up as well as the pattern on the product (OREO Cookie Trade Dress); and, at their request, the matter was referred to Delhi High Court Mediation and Conciliation Centre.

9. On 25.10.2016, 30.11.2016 and 20.12.2016, the learned counsel for the parties sought further time to settle the disputes and further represented that the parties had made significant progress towards resolving the disputes.

10. On 15.02.2017, the learned counsel for the defendants submitted that the defendants were not in touch with her and were not responding to her communications.

11. In view of the above, this Court on 15.02.2017 passed an interim injunction *inter alia* restraining the defendants from manufacturing or authorised the manufacturing, distributing, exporting, selling, offering for sale, advertising, promoting, displaying and/or using, in any manner whatsoever, the impugned product namely 'LICK N DIP'.

12. Since the defendants had stopped appearing and further had failed to file the written statements, the right to do so was closed and the defendants were proceeded *ex parte*.

13. In view of the averments made in the plaint, which remain uncontroverted, the plaintiffs are entitled to the judgment in terms of the relief claimed for. However, since the plaintiffs have not established the quantum of damages, no relief in this regard can be granted.

14. As noted above, the learned counsel for the plaintiffs has also not pressed for the said relief. In view of the above, the suit is decreed in terms of prayer A(i) to A(iv), which are set out below:-

“A. The Defendants, their directors, principals, proprietor, partners, officers, employees, agents, distributors, suppliers, affiliates, subsidiaries, franchisees, licensees, representatives, group companies and assigns be restrained by an *ex-parte ad interim* and *interim* injunction from:

- i. Manufacturing, or authorizing the manufacturing, distributing, exporting, selling, offering for sale, advertising, promoting, displaying and/or using, in any manner whatsoever, the impugned product namely LICK N DIP as represented in the foregoing Paragraph Nos. 39, 40, 43, 44 and 45 of the Plaint and/or any other product bearing any other mark/label/trade dress/packaging/cookie shape identical and/or deceptively and/or confusingly similar to the Plaintiff's registered trade marks and labels namely OREO Cookie Trade Dress and OREO Packaging as tabulated under Paragraph Nos. 8 and 11 of the Plaint as a trade mark/label/packaging/trade dress or part of a trade mark/label/packaging/trade dress, trade name or a part of trade name or in any other manner whatsoever, which would amount to infringement of the registered trade marks and labels of the Plaintiff No. 1.
- ii. Manufacturing, or authorizing the manufacturing,

distributing, exporting, selling, offering for sale, advertising, promoting, displaying and/or using, in any manner whatsoever, the impugned product bearing the mark LICK N DIP and/or any other product bearing any other mark identical and/or deceptively and/or confusingly similar to the Plaintiffs' registered trade mark TWIST LICK DUNK as tabulated under Paragraph No. 11 of the Plaint as a trade mark or part of a trade mark, domain name or a part of domain name or in any other manner whatsoever, which would amount to infringement of the registered trade marks of the Plaintiff No. 1.

- iii. Manufacturing, or authorizing the manufacturing, distributing, exporting, selling, offering for sale, advertising, promoting, displaying and/or using, in any manner whatsoever, the impugned product namely LICK N DIP and/or any other product bearing any other mark/label/trade dress/package identical and/or deceptively and/or confusingly similar to the Plaintiffs' marks/trade dress/labels/package/cookie shape including OREO Cookie Trade Dress, OREO Packaging and TWIST LICK DUNK as tabulated under Paragraph Nos. 8, 9 and 11 of the Plaint and/or any other variants and the unique/distinctive trade dress relating thereto, thereby passing off their products as that of the Plaintiffs.
- iv. Reproducing, printing, publishing and/or using the labels/package as mentioned in Paragraph Nos. 39, 40, 43, 44 and 45 of the Plaint and/or from imitating in material form the Plaintiffs' labels/package, as represented in Paragraph Nos. 9 and 11 of the Plaint, the copyrights of which vest with the Plaintiffs, thereby amounting to the infringement of the Plaintiffs' copyrights in the said works.”

15. The learned counsel for the petitioner has also handed over a bill of costs indicating that the plaintiffs incurred a cost of ₹10,40,780/-. However,

it is seen that the same also includes amounts aggregating ₹1,35,590/- incurred prior to filing of the suit (which is not directly related to the filing of the suit), voluntary mediation, etc. The plaintiffs are, accordingly, awarded costs for pursuing the matter in Court quantified at ₹9,05,190/- as the statement of costs submitted is *ex facie* reasonable.

16. Let a decree sheet be drawn up. Pending application also stands disposed of.

17. The date already fixed as 02.05.2017 is cancelled.

MARCH 17, 2017
MK

VIBHU BAKHRU, J

