

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
SUIT (L) NO.336 OF 2018
WITH
NOTICE OF MOTION (L) NO.596 OF 2018**

Parle Agro Pvt. Ltd. ... Plaintiff
versus
Gulam Moinuddin Khan and Anr. ... Defendants

Mr. Nishad Nadkarni with Mr. Vaibhav Keni I/by M/s. Khaitan and Co., for Plaintiffs.
Ms. Shruhti Sansoth Phalke, for Defendant Nos.1 and 2.

**CORAM: S.J. KATHAWALLA, J.
DATE: 18th JUNE, 2018**

P.C.:

1. Heard the learned Advocates for the parties and by consent, the following order is passed :

(i) By consent, the Suit is decreed in terms of prayer clauses (a), (b) and (d), which are reproduced hereunder :

“(a) The Defendants, its Directors, proprietors, partners, owners, servants, subordinates, representatives, stockists, dealers, agents and all other persons claiming through or under them or acting under their instructions be restrained by a perpetual order and injunction of this Hon’ble Court from infringing the Plaintiff’s trademark FROOTI bearing registration Nos. 1780257, 2176068 and 2568539 in any manner whatsoever and from using in relation to any products / Impugned Products the trademark FROOTIN or any other mark which is identical or similar to the registered trademark FROOTI and from manufacturing, importing, exporting, selling, advertising,

offering to sell or dealing in Impugned Products/any products under or bearing the mark FROOTIN or any mark which is identical or similar to the Plaintiff's registered trademark FROOTI;

(b) The Defendants, its Directors, proprietors, partners, owners, servants, subordinates, representatives, stockists, dealers, agents and all other persons claiming through or under them or acting under their instructions be restrained by a perpetual order and injunction of this Hon'ble Court from infringing any of the Plaintiff's trademarks comprised in the FROOTI Family Marks bearing registrations Nos. 3228106, 3234039, 3234040 and 3234449 in any manner and from using in relation to any products / Impugned Products the Impugned Label or any other mark which is similar to any of the aforesaid marks of the Plaintiff including without limitation the FROOTI Label depicted at Exhibit A-1 or any of the essential features thereof (including without limitation the yellow background and green lettering or the overall color scheme, layout and getup thereof) and from manufacturing, importing, selling, advertising, offering to sell or dealing in Impugned Products/any products under or bearing any of the impugned marks or any mark which is similar to any of the Plaintiff's aforesaid registered trademarks or any essential features thereof;

(c) The Defendants, its Directors, proprietors, partners, owners, servants, subordinates, representatives, stockists, dealers, agents and all other persons claiming through or under them or acting under their instructions be restrained by a perpetual order and injunction of this Hon'ble Court from passing off the Defendants' products / Impugned Products as those of the Plaintiff in any manner and from manufacturing, selling, dealing, advertising, offering to sell any Impugned Products or any products under the mark FROOTIN and/or bearing the Impugned Label and/or bottles or packaging or trade dress similar or identical in shape to that of the Plaintiff and/or bearing any mark similar / identical to the plaintiff's trademark FROOTI

and / or bottles or packaging material bearing labels or a trade dress that resembles the FROOTI Label at Exhibit A-1 or which bears the essential features thereof and from using in relation to any products the mark the mark FROOTI or its distinctive labels or packaging or its essential features or any marks identical to or similar to the aforesaid;

(d) The Defendants, its Directors, proprietors, partners, owners, servants, subordinates, representatives, stockists, dealers, agents and all other persons claiming through or under them or acting under their instructions be restrained by a perpetual order and injunction of this Hon'ble Court from infringing in any manner the Plaintiff's copyrights in the FROOTI Label depicted at Exhibit A-1 to the plaint and from reproducing/ copying any of the aforesaid copyright work or any part of the aforesaid copyright work on the Impugned Products/ Impugned Label or on any packaging material/ labels/sachets/boxes/cartons/bottles/advertising material/ literature or any other substance and from manufacturing and selling or offering for sale or in any manner dealing with products upon or in relation to which any of the said copyright work has been reproduced or substantially reproduced or issuing copies of any of such works to the public;

(f) The Defendants, its Directors, proprietors, partners, owners, servants, subordinates, representatives, stockists, dealers, agents and all other persons claiming through or under them or acting under their instructions be ordered and decreed to deliver up to the Plaintiff for destruction all of the Defendant's Impugned Products, Impugned Labels, goods, dies, articles, bottles, packets, labels, cartons, packaging material, plates, ink, product literature, advertising material paper and all other things used in connection with the manufacture or marketing of goods under the Impugned Labels or any features thereof;"

(ii) The Defendants have paid an amount of Rs.2,00,000/- to the Plaintiff towards costs and/or damages.

(iii) The Court Receiver stands discharged without passing any accounts, upon payment of his costs, charges and expenses by the Advocate for the Plaintiff.

(iv) The goods seized by the Court Receiver and which are lying with the Defendants shall be destroyed in the presence of the representative of the Petitioner within a period of one week from today.

(v) The learned Advocate for the Defendants states that they have submitted an application seeking withdrawal of the mark Frootin. The Trade Mark Registry is directed to treat the same as withdrawn and confirm the same by their letter addressed to the Defendants with a copy to the Advocate for the Plaintiff within a period of one week from today.

(vi) Earlier orders passed by this Court stand vacated.

(vii) The Suit is accordingly disposed of. Refund of Court Fees, if any, as per rules. Notice of Motion also stands disposed of.

(S.J.KATHAWALLA,J.)