

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

NMCD (L) NO 996 OF 2018

IN

COMIP (L) NO 525 OF 2018

Hindustan Unilever Limited

... Plaintiff

Versus

Joy Balaram Soap Works

... Defendant

Mr.Hiren Kamod a/w. Mr Dhiren Karania i/b. Khaitan & Co. for the Plaintiff.

Mr. Rohan Bangar i/b. Zunjarrao & Co. for the Defendant.

CORAM: S. J. KATHAWALLA, J.

DATE: 4TH JUNE 2018

P.C.:

1. The above matter was listed on 29 May 2018 when the Advocate for the Defendant submitted that the Defendant was ready to submit to a decree and pay costs of Rs 2 Lakhs. He had further submitted that the Vakalatnama, the written undertaking of the Defendant and the Demand Draft towards costs were dispatched through courier by the Defendant from Assam, which were in transit. The Advocate for the Defendant had thus requested that the matter be placed today.

2. Accordingly, when the matter is called out today, the learned Advocate appearing for the Defendant undertakes to file vakalatanama on behalf of the Defendant during the course of the day. The undertaking is accepted.

3. Heard the learned Advocates for the parties and the following Order is passed by consent:

i) The above Suit is decreed in terms of prayer Clauses (a), (b) and (d), which are reproduced hereunder:

“a) the Defendant, directly or indirectly, by itself, its concerns, partners, servants, employees, agents, dealers, distributors and all persons claiming under it be restrained by a perpetual order and injunction of this Hon’ble Court from using or causing to be used the impugned packaging/ impugned trade dress or any other packaging/ trade dress identical or similar to the Plaintiff’s said artistic packaging/ trade dress in relation to the impugned goods or any goods or in any manner from manufacturing, marketing or offering for sale, advertising or dealing in any goods bearing the impugned packaging/ impugned trade dress or any other packaging/ trade dress identical or similar to the Plaintiff’s said artistic packaging/ trade dress so as to infringe the Plaintiff’s copyright subsisting in the said artistic packaging/ trade dress;

b) the Defendant, directly or indirectly, by itself, its concerns, partners, servants, employees, agents, dealers, distributors and all persons claiming under it be restrained by a perpetual order and injunction of this Hon’ble Court from using or causing to be used the impugned packaging/ impugned trade dress or any other packaging/ trade dress identical or similar to the Plaintiff’s said artistic packaging/ trade dress in relation to the impugned goods or any goods or in any manner from manufacturing, marketing or offering for sale, advertising or dealing in any goods bearing the impugned packaging/ impugned trade dress or any other packaging/ trade dress identical or similar to the Plaintiff’s said artistic packaging/ trade dress so as to pass off or enable others to pass off the Defendant’s impugned goods as being those of the Plaintiff;

d) the Defendant, directly or indirectly, by itself, its concerns, partners, servants, employees, agents, dealers, distributors and all persons claiming under it be ordered and decreed to deliver up to the Plaintiff for destruction, the Defendant's goods, labels, advertising materials, wrappers, dies, blocks, packing material and all things bearing the impugned packaging/ impugned trade dress and/ or any other packaging/ trade dress which is a substantial reproduction of and/or closely and substantially similar to the Plaintiff's said artistic packaging/ trade dress and to remove all or any reference to the impugned packaging / trade dress or any other packaging / trade dress identical or similar to the Plaintiff's said packaging/ trade dress as may be appearing on any movable or immovable assets in the Defendant's possession and / or name, including those in the possession and / or name of the Defendant's associate or sister concerns;"

- i) The Advocate for the Defendant has tendered a Demand Draft drawn in favour of "The Prothonotary and Senior Master, High Court, Bombay" for an amount of Rs. 2 Lakhs towards costs/damages. The Prothonotary and Senior Master shall encash the demand draft and await further directions from the Court.
- ii) The Advocate for the Defendant has tendered a written undertaking of the Defendant dated 25 May 2018. The same is taken on record and marked 'X' for identification. The undertakings recorded therein are accepted.
- iii) The detergent powder packets seized by the Court Receiver, shall be opened by the parties in presence of their representatives and the powder therein shall be returned to the Defendant and all the packets shall be destroyed within a period of two weeks from today.
- iv) The Suit as well as the Notice of Motion are disposed off.
- v) Refund of Court Fees, if any, as per Rules.

vi) The Court Receiver stands discharged without passing accounts but subject to payment of his cost, charges and expenses within a period of two weeks from today by the Plaintiff.

(S.J. KATHAWALLA, J.)