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

+ **CS(COMM) 428/2016 & I.A.13428/2015**

**M/S SUMEET RESEARCH AND
HOLDINGS PVT. LTD & ANR.**

..... Plaintiffs

Through Mr. Shailen Bhatia, Advocate with
Ms Ekta Nayar and Ms. Shivani
Chand, Advocates.

Versus

M/S SIPRA APPLIANCES

..... Defendant

Through None

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Date of Decision: 14th September, 2018

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present suit has been filed for permanent injunction restraining infringement of trade mark, copyright, passing off, trade name, damages, delivery up etc. The prayer clause in the suit is reproduced hereinbelow:-

“32. It is therefore, prayed that this Hon’ble Court may be pleased to grant the following reliefs:

“a. An Order for permanent injunction restraining the Defendant, its officers, as the case may be, its servants, agents, dealers, distributors and all others acting for and on its behalf form manufacturing, exporting, selling, offering for sale, exhibiting, advertising, directly or indirectly dealing with Mixer

*Grinders, Electronic Palm Grinders, Grinders, Mixers, Washing Machines and other cognate/allied goods under the trade mark **SUMEET** or any other identical/deceptively similar mark to the Plaintiff's trade mark **SUMEET TRADITIONAL** amounting to infringement of registered trade mark No. 819556 in class 7.*

*b. An Order for permanent injunction restraining the Defendant, its officers, as the case may be, its servants, agents, dealers, distributors and all others, acting for and on its behalf from manufacturing, exporting, selling, offering for sale, exhibiting, advertising, directly or indirectly dealing with Mixer Grinders, Electronic Palm Grinders, Grinders, Mixers, or other Electrical Home Appliances and other cognate/allied goods under the trade mark **SUMEET** or **SUMEET TRADITIONAL** or any other identical/deceptively similar trade mark to the plaintiff's mark or from doing any other thing as is likely to lead to confusion or deception thereby resulting in passing off the Defendant's goods as those of the Plaintiff.*

*c. An Order for permanent injunction restraining the Defendant, its officers, as the case may be, its servants, agents, dealers, distributors and all others acting for and on its behalf from manufacturing, exporting, selling, offering for sale, exhibiting, advertising, directly or indirectly dealing in Mixer Grinders, Electronic Palm Grinders, Grinders, Mixers, or other Electrical Home Appliances and other cognate/allied goods under the trade mark **SUMEET** or **SUMEET TRADITIONAL** or any other identical/deceptively similar trade mark which is in violation of rights of the Plaintiff acquired by the first adoption of word **SUMEET** as part of trading name/corporate name.*

*d. For an Order of permanent injunction restraining the Defendant, its officers, as the case may be, its servants, agents, dealers, distributors and all others acting for and on its behalf from manufacturing, exporting, selling, offering for sale, exhibiting, advertising, directly or indirectly dealing in Mixer Grinders, Electronic Palm Grinders, Grinders, Mixers, or other Electrical Home Appliances and other cognate/allied goods under the trade mark **SUMEET** or **SUMEET TRADITIONAL** or any other identical/deceptively similar trade mark to the Plaintiff's*

*mark or for infringement of Copyright in the artistic work titled as **SUMEET TRADITIONAL**.*

e. An Order for delivery up of all material including labels, blocks, dies, strips, cartons, stationery, literature or any other printed matter bearing the impugned mark for the purpose of destruction and /or erasure.

*f. For an Order of Damages caused to reputation and goodwill of the Plaintiff on account of use of the Trade Marks **SUMEET & SUMEET TRADITIONAL** by the Defendant.*

Any further Order/Orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case may also be passed in favour of the plaintiffs and against the defendant."

2. At the outset, learned counsel for plaintiffs gives up para 32 (e) and (f) of the prayer clause to the suit. The statement made by learned counsel for plaintiffs is accepted by this Court and plaintiffs are held bound by the same.

3. Vide order dated 09th July, 2015 this Court granted an *ex-parte ad interim* injunction in favour of the plaintiffs and against the defendant. The relevant portion of the *ex-parte* injunction order is reproduced hereinbelow:-

"...Accordingly, till the next date of hearing, defendant is restrained from the using the plaintiffs' trade mark 'Sumeet' or 'Sumeet Traditional' or any other deceptively similar trade mark as that of plaintiffs."

4. The defendant entered appearance and filed its written statement. However, as none had been appearing on behalf of defendant since 21st October, 2016, the defendant was proceeded *ex-parte* on 12th July, 2017.

5. The relevant facts of the present case are that the plaintiff no.1 is a company incorporated in 1980 and the word SUMEET has been an essential and integral ingredient of its corporate name since inception. It is stated that the plaintiff no. 2 is the dealer of the plaintiff no. 1 in New Delhi.

6. It is stated that the plaintiff no. 1's mark SUMEET has been used for power operated kitchen mixies for domestic use since 1963 by Mrs. Madhuri Mathur, mother of the director of plaintiff no.1 company. It is stated that the trade mark SUMEET was originally registered in 1970 under Class 7 of the Trade and Merchandise Marks Act, 1958, in the name of Mrs. Madhuri Mathur and was assigned on 01st January, 1981 to the plaintiff no. 1 company. It is stated that vide order dated 08th February, 1992, the Apex Court in ***Power Control Appliance Co. & Ors. vs. Sumeet Machines Pvt. Ltd.***, 1994 (2) SCC 448 held that the plaintiff no. 1 is the registered owner of the trade mark SUMEET.

7. It is stated that the plaintiff no. 1 is also the registered owner of the trade mark SUMEET TRADITIONAL under Class 7 of the Trade and Merchandise Marks Act, 1958 for mixer grinders and *inter alia* other household electrical appliances. It is stated that the plaintiffs registrations are valid and subsisting.

8. It is stated that by virtue of continuous and extensive use, the word SUMEET is associated with the plaintiff no. 1 company as the trade mark SUMEET TRADITIONAL is distinctive of and identified exclusively with the goods of the plaintiff no. 1.

9. It is stated that the plaintiff no. 1 also owns copyright in the label titled as SUMEET TRADITIONAL as the same constitutes an original

artistic work with the meaning Section 2(c) of the Copyright Act, 1957.

10. It is stated that vide Memorandum of Understanding dated 01st December, 2014, the plaintiff no. 1 licensed the mark SUMEET TRADITIONAL to M/s Soni Steel and Appliances Pvt. Ltd. and its concerns/companies M/s Siddhesh Industries, M/s Aishwariya Industries and M/s Parishram Home Appliances for the purposes of manufacture of various household appliances including mixers.

11. It is stated that the sales figures of the plaintiff no. 1 company and its licensees from January to May 2015 was Rs. 78,05,413/-.

12. Learned Counsel for the plaintiffs states that the defendant company i.e. M/s Sipra Appliances is unauthorisedly selling identical mixies with the trade mark SUMEET and SUMEET TRADITIONAL. He states that the plaintiff no. 1 company had entered into an Agreement for Subcontract dated 12th April, 2013 with the defendant for manufacture of two specific models of mixies. Since the defendant was violating the Agreement by selling goods under the mark SUMEET TRADITIONAL, the said Agreement was terminated vide notice dated 05th June, 2013 and Letter of Termination dated 06th July, 2013.

13. Learned counsel for the plaintiffs states the use the expression SUMEET or SUMEET TRADITIONAL by the defendant, post termination of the contract is likely to cause confusion and deception amongst the purchasing public. He states the defendant has unauthorisedly adopted the marks SUMEET and SUMEET TRADITIONAL with the *mala fide* intent to ride upon the goodwill and reputation of the plaintiffs.

14. The plaintiffs have filed their *ex parte* evidence by way of affidavit of Shri Mukesh Gupta (PW1), manager of the plaintiff no. 1 company. The plaintiffs have also examined Shri Yoginder Pal Dawar (PW2), partner of the plaintiff no. 2.

15. The plaintiffs' witness (PW1) has proved registration of plaintiff's marks SUMEET and SUMEET TRADITIONAL as Exhibit PW1/6 and Exhibit PW1/7. The plaintiff's witness has also proved the Memorandum of Understanding dated 01st December, 2014, entered into between the plaintiff no. 1 and M/S Soni Steel Appliances (P) Ltd, as Exhibit PW1/8 and copies of invoices of the plaintiff no.1 and its licensees M/s Siddhesh Industries and M/s Soni Steel and Appliances Pvt. Ltd. as Exhibit PW1/9 and Exhibit PW 1/10. PW-1 has proved the Agreement for Subcontract dated 12th April, 2013, entered into between the plaintiff no. 1 and the defendant as Exhibit PW1/11, a copy of the official Notice dated 05th June, 2013 as Exhibit PW1/12 and a copy of the letter of termination dated 06th July, 2013 as Exhibit PW1/13. The plaintiffs' witness has also proved letter dated 11th March, 2015 issued by the plaintiff no. 2 as a dealer of the plaintiff no. 1 as Exhibit PW1/14, establishing the jurisdiction of the this Court.

16. The plaintiffs' witness (PW2) has proved Partnership Deed dated 17th June, 2009 of plaintiff no. 2 with the plaintiff no. 1 as Exhibit PW2/1 and copies of invoices pertaining to the trade mark SUMEET as Exhibit PW2/2. PW2 has also proved photographs of the plaintiffs' and defendant's products as Exhibit PW2/3 and Exhibit PW2/4.

17. Having heard learned counsel for plaintiffs as well as having perused the papers, this Court is of the view that due to extensive use

over substantial period of time, the plaintiffs' marks SUMEET AND SUMEET TRADITIONAL have acquired reputation and goodwill in the marks in India.

18. In the opinion of this Court, the triple identity test is satisfied as the defendant has made use of an identical/deceptively similar trademark in relation to identical goods having an identical trade channel (products sold *vide* same trading channels).

19. From the evidence on record, it is apparent that despite termination notice dated 05th June, 2013 and letter of termination dated 06th July, 2013, the defendant had malafidely continued to affix the plaintiffs' trademarks on their products.

20. Further, as the plaintiff's evidence has gone unrebutted, said evidence is accepted as true and correct. The Supreme Court in ***Ramesh Chand Ardawatiya Vs. Anil Panjwani, AIR 2003 SC 2508*** has held as under:-

"33.In the absence of denial of plaint averments the burden of proof on the plaintiff is not very heavy. A prima facie proof of the relevant facts constituting the cause of action would suffice and the court would grant the plaintiff such relief as to which he may in law be found entitled. In a case which has proceeded ex parte the court is not bound to frame issues under Order 14 and deliver the judgment on every issue as required by Order 20 Rule 5. Yet the trial court should scrutinize the available pleadings and documents, consider the evidence adduced, and would do well to frame the "points for determination" and proceed to construct the ex parte judgment dealing with the points at issue one by one. Merely because the defendant is absent the court shall not admit evidence the admissibility whereof is excluded by law nor permit its decision being influenced by irrelevant or inadmissible evidence."

21. Consequently, the allegation that the trademark, SUMEET AND SUMEET TRADITIONAL used by defendant amounts to infringement of plaintiffs' trademark is correct. The use of the impugned mark by the defendant was bound to cause incalculable losses, harm and injury to the plaintiffs.

22. Accordingly, present suit is decreed in accordance with the paragraph 32 (a) to (d) of the plaint along with the actual costs incurred by the plaintiffs. The cost shall amongst others include the lawyers' fees, as well as the amounts spent on purchasing the court fees. Registry is directed to prepare a decree sheet accordingly.

MANMOHAN, J

SEPTEMBER 14, 2018

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