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

\+ CS(COMM) 1371/2016 & I.A. 9229/2014

PREMIER NUTRITION ..... Plaintiff

Through: Ms. Girija Krishan Varma, Advocate

versus

INDUSTRIAL PROGRESSIVE (INDIA) LIMITED & ORS. ..... Defendants

Through: None.

% Date of Decision: 29th November, 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 marks, infringement of copyright, delivery up of goods, rendition of accounts and damages.

2. The prayer clause in the present suit is reproduced hereinbelow:-

> *"(i) A decree of permanent injunction restraining the Defendant Nos. 1 & 2 by itself as also through their individual proprietors, partners, directors, agents, affiliates, employees, representatives, distributors, retailers, developers, subsidiaries, assigns, heirs, successors and all others acting for and on their*

behalf from using, selling, soliciting, exporting, displaying, advertising by electronic, visual, audio, print mode or by any other mode or manner or dealing in or using the deceptively similar impugned trademark, Artwork / Packaging trade dress and logo (as described in para – above and Annexure "M" of the suit) in relation to their impugned goods or in conjunction with other words or any other trade mark and the business of milk products, preparation and in relation to such goods or in any manner whatsoever, from doing any other acts or deeds amounting to or likely to cause passing off.

(ii) Copyright infringement and a violation of the Plaintiff's rights in the subject logo, trade dress and trademark and further to pass a decree of permanent injunction to restrain the Defendant Nos. 1, 2, 3 & 4 their agents, employees, affiliates, subsidiaries, dealers, distributors, retailers from using the impugned trademark, trade dress and logo of the Defendant Nos.1 and 2 or in relation to its entire range of business activities;

(iii) An order for delivery up of all the impugned finished and unfinished articles and materials bearing the impugned and violative trademark and copyright or any other deceptively similar logo, trade dress and trademark including any blocks, labels, literature, display boards, sign boards, brochures etc. bearing the impugned trademark, trade dress and logo to the Plaintiff for the purposes of destruction and erasure;

(iv) An order and decree for rendition of accounts of profits earned by the Defendant Nos. 1 to 4 on account of their illegal and wrongful activities and use of the impugned trademark, trade dress and logo and a decree for the amount so found in favor of the Plaintiff on such rendition of accounts;

> (v) *In the alternative to the rendition of accounts, that this Hon'ble Court may be pleased to Order the Defendant Nos. 1 to pay to the Plaintiff a minimum amount of Rupees Twenty Lacs (20,00,100) as damages for the economic loss and injury to the reputation and goodwill of the Plaintiff.*
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> (vi) *Costs and Legal expenses of the suit be provided for;*
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> (vii) *That this Hon'ble Court may be pleased to pass any other order it may deem fit and appropriate to meet the ends of justice."*

3. On 30th October, 2013, this Court granted an *ex parte ad interim* injunction in favour of the plaintiff and against the defendants. The relevant portion of the said order is reproduced hereinbelow:-

> *"9. I am of the opinion that the similarity between the rival products is glaring and deceptive. I have also perused through the copies of Trade Mark Registration Certificate as well as Statement of Sales of the plaintiff along with the bills/invoices. Prima facie, it is apparent to me that the plaintiff is the prior user of the mark "MANTHAN" and the trade dress and logo in question. Therefore, pending further orders, I hereby grant an ex-parte injunction in favour the plaintiff, restraining the defendants from manufacturing and marketing products carrying the impugned mark "MANTHAN" and/or the impugned trade dress and/or logo, with respect to milk and dairy products."*

4. The defendants entered appearance and filed their written statement. They pursued the case for four years. However, when the matter was listed for admission/denial the defendants ceased to appear. Since none appeared on their behalf on 09th November, 2016, 24th November, 2016, 06th December, 2016, 17th January, 2017 and 27th February, 2017, they were proceeded *ex-parte* on 04th August, 2017.

Vide the same order the *ex-parte ad interim injunction* order was confirmed till the disposal of the suit.

5. The contentions and submissions advanced by the learned counsel for the plaintiff are as under:-

(i) The plaintiff is a company incorporated in 1973 and is one of the largest companies of India engaged in the business of manufacturing and marketing milk and dairy products under the name and style of "MANTHAN" with the trading style "Premier with logo P" since the year 1990-91.

(ii) The plaintiff's milk products are procured from various soruces and chilled, pasteurized, homogenized and processed at facilities which are certified by the Bureau of Indian Standards (BIS) as well as Food Safety and Standards Authority of India.

(iii) In the year 1990, the plaintiff honestly conceived and adopted its unique tradig name "MANTHAN" with trading style "Premier with logo P" and trade dress. By virtue of continuous and uninterupted use the same has become nationally recognised and exclusively associated with the plaintiff's business.

(iv) The plaintiff is the registered owner of the trade mark "MANTHAN" and the trading style "Premier with logo P" under Classes 29 and 32 of the Trade Martks Act, 1999.

(v) The plaintiff's logo contains a unique get up, layout and arrangement of the features and was designed by the plaintiff. It is stated that the said logo and trade dress constitute an "original artistic work" within the meaning of Section 2(c) of the Copyright Act, 1957. It is also stated that the plaintiff has filed applications for registration of the copyright in its unique logo and trade dress.

(vi) The annual sales of milk products of the plaintiff in India from 2012-13 was Rs. 46,39,98,692/- and that the plaintiff incurred large sums of money in advertising and promoting its products.

6. Learned counsel for the plaintiff states that the defendant no. 2 is a company manufacturing the infringed goods, defendant no. 3 is a distributor and defendant no. 4 is the retailer.

7. Learned counsel for the plaintiff states that in October, 2013, the plaintiff became aware about the defendants products sold under a trademark/name/trade dress and logo identical to that of the plaintiff's for skimmed milk powder. Further, enquiries revealed that the defendant is in an identical business of manufacturing and supplying milk, dairy products and skimmed milk powder. She further states that the defendants targeted consumers and purchasers of the plaintiff to make large sales during the festive months of Diwali, Holi and Christmas. Photographs of the plaintiff's and defendants' products is reproduced herein below:-

8. Learned counsel for the plaintiff states that the plaintiff addressed a Caution Notice dated 16th October, 2013 and 18th October, 2013 in the regional newspaper *"Dainik Bhaskar"*, with the view to caution its customers regarding the defendants infringing products and warn the defendants of impending legal action. However, this was ignored by the defendants. She states that the plaintiff, with the assistance of the police, conducted a raid in October, 2013 where spurious goods worth approximately Rs. 5 lakh were found and invoices of sales were found at the premises of the defendants. Accordingly, thereafter present suit was filed and an ex-parte ad interim injunction order was passed.

However, learned counsel for the plaintiff states that even thereafter the defendants continued to sell the infringing products. She points out that on 20th February, 2014 a purchase was made from the defendants. She states that the defendants made maximum sales between October, 2013 to February, 2014.

9. Learned counsel for the plaintiff states that in April 2014 the parties tried to mediate the matter. However, she states, the mediation failed as the defendants refused to stop using the trademark "MANTHAN" despite the injunction. Thereafter in May 2014 the plaintiff filed a contempt application as the defendants failed to comply the injunction order dated 30th October, 2013. Learned counsel for the plaintiff states that it was only after the said contempt application was filed that the defendants complied with the injunction order dated 30th October, 2013.

10. Learned counsel for the plaintiff states that the adoption and use of the impugned marks by the defendants is motivated by *mala fide*/dishonest intention to trade upon and commercially benefit from the reputation and goodwill enjoyed by the plaintiff in its "MANTHAN" mark along with the "P" trading style "Premier with logo P".

11. Learned counsel for the plaintiff states that the defendants' dishonest adoption and use of the impugned marks, being virtually identical to the plaintiff's, caused confusion that the products of the defendants are associated with the plaintiff's.

12. Learned counsel for the plaintiff states that the defendants in paragraph 2 of their Written Statement have admitted to use of the

trademark/name "MANTHAN" and they had applied for registration of the name/mark "Pranay Manthan". She states that the defendant falsely stated that they only recently made a few sales using the logo, trade dress, font and only the style of the word "Manthan" with changes.

13. The plaintiff has filed its *ex parte* evidence by way of affidavit of Mr. Anand Joshi, the Accounts Manager of the Plaintiff. In his affidavit, he has deposed as under:-

> *"26. I further state that despite the injunction order of 30th Oct 2013, the defendants continued to sell the infringing spurious goods carrying the impugned trademarks till Feb of 2014, that the plaintiffs are aware of, which could have been even later. The defendants not only violated the Hon'ble Court's orders but also caused additional losses in the plaintiff company's sales and dilution of plaintiff's goodwill and reputation. A police raid was conducted in 10th Oct 2013 at defendant's premises and goods worth approximately Rs. 5 Lakhs were found on defendant's premise. Thereafter, an injunction order was obtained which the defendants blatantly violated as our Company representative made purchases from the defendants of the spurious goods with the impugned trademark/name on 20th Feb 2014. The loss of damages due to the sale of infringing goods could easily be calculated as the sales by defendants (on an average Rs 1 lakh per day) from 10th Oct 2013 to 20 Feb 2014, which words out Rs 1 lakh x 130 days = Rs 1.30 crores (Rs one crore and 30 Lakhs)."*

14. In the opinion of this Court, the defendants have no real prospect of defending the claim as they have not denied the documents of the plaintiffs and the evidence of the plaintiff's has gone unrebutted. Further, the plaintiffs are the prior registered user of the trade marks and logo in question.

15. The plaintiff in his evidence has stated that the loss of damages due to sale of the infringing goods could be calculated as sales by the defendants (on an average Rs. 1 lakh per day) from 10th October, 2013 to 20th February, 2014, which works out to Rs. 1 lakh x 130 days = Rs. 1.30 crores. However, as the plaintiff has prayed for decree of lower amount of Rs.20,00,100/-plaintiff is held entitled to Rs.20,00,100/-.

16. In view of the above, the suit is decreed in favour of the plaintiff and against defendants in terms of paragraph (i) and (ii) and (v) of the prayer clause of the plaint. The costs shall amongst others include the lawyer's fees as well as the amount spent on Court-fees. Registry is directed to prepare a decree sheet accordingly.

17. Consequently, the present suit and application stand disposed of.

MANMOHAN, J

NOVEMEMBER 29, 2018
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