

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

COMMERCIAL I.P.SUIT NO.49 OF 2010

M/s.Hasmukhrai & Co.)....Plaintiffs

V/s.

M/s.Hasmukh & Co. (P.G.))....Defendant

Mr.Rashmin Khandekar a/w Mr.Bhuvan Singh and Ms.Blossom Noronha i/by Jehangir Gulabbhai and Bilimoria and Daruwalla for plaintiffs.

[Mr.Sanjay Shah-partner of plaintiff present].

Mr.Hiren Kamod i/by M/s.Bharat Shah and Co. for defendant.

[Mr.Maheshchandra N.Pandya, Mr.Rajanikant N.Pandya and Mr.Vishnuprasad N.Pandya-partners of defendant present in Court]

CORAM : K.R.SHRIRAM,J

DATE : 4.9.2019

P.C.:-

1. At the outset, I have to note that one of the signatories of defendant Maheshchandra N. Pandya has signed in Gujarati and Mr.Kamod for defendant states that he will produce Mr.Maheshchandra N.Pandya before the Chief Translator of this court during the course of today to explain the consent terms. Order noted below is subject to the Mr.Maheshchandra N.Pandya being produced before the Chief Translator of this court and endorsement of having

explained made by Chief Translator of this court.

2. Plaintiff and defendant have entered into consent terms dated 4.9.2019. The consent terms signed by all the partners of plaintiff through its authorized signatory, Sanjay Shah and the 3 partners of defendant and their respective advocates is taken on record and marked 'X' for identification. The signatories are present in court and are identified by their respective advocates.

3. For ease of reference, consent terms is scanned and reproduced below :-

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL IP SUIT 49 OF 2010

M/s. Hasnukh and Co.
a partnership firm registered
under the Indian Partnership Act,
1932 and having its principal place
of business at 118/13-1, Suroj
Bhaskar, Corner of S.D. Bhatnagar
Galli, Kalfadevi Road,
Mumbai - 400 002.

Vs.

M/s. Hasnukh and Co. (Pvt.)
a partnership firm registered
under the Indian Partnership Act,
1932 and having its principal place
of business at
Shop No 4, 5, 6 & 7,
366/368, Kalfadevi Road, Corner
of Dr. Viegas Street,
Mumbai - 400 002.



Defendant

CONSENT TERMS

1. The Plaintiff and Defendant (hereinafter referred to as "the Parties"), in the present Suit, have agreed to resolve the present dispute amicably and hence are filing the present Consent Terms.

Sumit
Hasnukh
1. Hasnukh and Co.

2. The Parties to the present S.U. hereby expressly agree and undertake as follows:

3. The Parties hereby unconditionally agree and undertake to abide by the terms of the Agreement for Dissolution dated 21st November 1984 in its entirety. A copy of the said Agreement for Dissolution dated 21st November 1984 is enclosed herewith as Annexure "A".

4. The Parties hereby unconditionally agree and undertake that both the parties are entitled to the use of the phrases "Since 1933" and "73 Years of Tradition" or such other phrases. The Parties further unconditionally agree and undertake that neither Party will object and/or initiate legal proceedings and/or proceedings before any forum, including but not limited to the Trademarks Registry and Intellectual Property Appellate Board in respect of the use of the phrases "Since 1933" and "73 Years of Tradition" or such other phrases. For the purposes of avoidance of doubt, the Parties further unconditionally agree and undertake that both Parties will be entitled to use any variation of the phrase "73 Years of Tradition" as they so desire, including but not limited to, "50 Years of Tradition", "90 Years of Tradition", "100 Years of Tradition", etc. and the disability in respect of taking any objection and/or initiating any legal suit and/or other proceedings as set out in this clause shall also apply to the use of such variations.

5. Subject to the terms of the Agreement for Dissolution dated 21st November 1984, both Parties agree and undertake that the packaging and/or trade dress in which their products are sold will not be identical and/or deceptively similar to the packaging or trade dress previously adopted/used by one of the Parties.

6. The Parties hereby unconditionally agree and undertake to do the following within a period of 15 days from the date of these Consent Terms:

A. The Plaintiff hereby unconditionally agrees and undertakes to withdraw Opposition Proceedings filed by the Plaintiff against the Trademark.

[Handwritten signatures]
 2

Applications of the Defendant as set out below:

Sr. No.	Particulars	Filed Against	Class
1.	Plaintiff's Opposition No. MUM-922462	Defendant's Trademark Application No. 119855 Dated 13.03.2003 	30
2.	Plaintiff's Opposition No. MUM-216213	Defendant's Trademark Application No. 1360212 Dated 09.01.2009 	30
3.	Plaintiff's Opposition No. MUM-212912	Defendant's Trademark Application No. 1403333 Dated 21.12.2009 	30

Singh

22-02-2010

S. Pandey

V. Pandey

2-4	Plaintiff's Opposition No. MUM-231408	Defendant's Trademark Application No. 866632 Dated 19.07.1999	30
			

B. The Plaintiff hereby unconditionally agrees and undertakes to withdraw Rectification Proceedings filed by the Plaintiff against the Defendant's registered trademarks as set out below:

Sr. No.	Particulars	Filed Against	Class
1.	Plaintiff's Rectification No. MUM-359876	Defendant's Trademark Registration No. 863359 Dated 30.06.1999 	30
2.	Plaintiff's Rectification No. MUM-286778	Defendant's Trademark Registration No. 9.7211 Dated 04.02.2010 	30

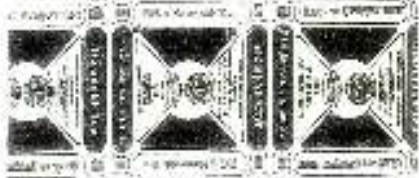
Singh

2009-2010

Hendri

N. S. Pandey

- C. The Plaintiff hereby unconditionally agrees and undertakes to withdraw Copyright Proceedings filed by the Plaintiff against the Copyright Registrations of the Defendant as set out below:

Sr. No.	Particulars	Filed Against
1.	Plaintiff's Rectification to Defendant's Copyright Registration No. A-59437/2001 (1984)	Defendant's Copyright Registration No. A-49645/2001 (1984) 
2.	Plaintiff's Rectification to Defendant's Copyright Registration No. A-71903/2005 (1933)	Defendant's Copyright Registration No. A-71903/2005 (1933) 

- D. Defendant hereby unconditionally agrees and undertakes to withdraw all Opposition Proceedings filed by the Defendant against the Trademark Applications of the Plaintiff as set out below and over leaf:

Sl. No.	Particulars	Filed Against	Class
1.	Defendant's Opposition No. MUM-761903	Plaintiff's Trademark Application No. 145909, Dated 12.07.2006 HASMUKH TEA	33

2. Defendant's Opposition No. MUM-754924	Plaintiff's Trademark Application No. 1159092 Dated 12.07.2010	35
		

5. The Plaintiff hereby unconditionally agrees and undertakes to withdraw the Trade Mark Application No. 1159092 in class 35 for Registration of Trademark HASMUKH TEA as set out in the table above.

7. A list of the Registered Trademarks of the Parties to the present suit pertaining to HASMUKH TEA is set out in the table enclosed herewith as **Annexure "B"**. Both the Parties unconditionally agree and undertake that they have 'No Objection' to the trade mark registrations of the respective parties as set out in Annexure B.

8. The Parties unconditionally agree and undertake that any Trade Mark Application made by them in future shall be in consonance with the terms of the Agreement for Discontinuation dated 27th November 1984.

9. In view of the aforesaid, the Plaintiff agrees and undertakes to withdraw the present suit.

that the suit be disposed off accordingly.

Dated this 4th day of September, 2010.

For Plaintiff

M/s Hasmukhrai & Co.

Sanjay B. Shah
1) SANJAY BHUPATRAI SHAH
Partner

For Defendant

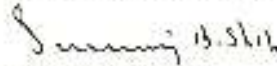
M/s Hasmukh & Co.(P.G.)

M. N. Pandya
(ie M. N. Pandya)
1) Maheshbhai Narayandas Pandya
Partner

Sanjay

8) KARAN ATUL SHAH

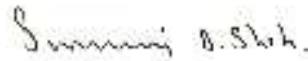
Partner
Through his Authorised Signatory



Sanjay Bhupendra Shah
Authorised signatory

9) ATMAN ATUL SHAH

Partner
Through his Authorised Signatory



Sanjay Bhupendra Shah
Authorised signatory

Advocate for Plaintiff

Blossom Noronha

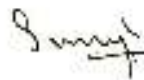
For M/s Jehangir Gulabhai &
Bilimoria & Daruwalla

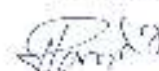
Advocate for Defendant


C. S. Shah
Sole Partner
For M/s. Bharat Shah & Co.

INTERPRETED BY me in the presence of
Dr. P. H. Chaudhary, Advocate, Banker
Panchya only
Sudha Interpharm
High Court, Bombay
ON 29.12.19

FILE NO.
No. 1893
Dtd: 01/09/19



20.12.19

Sanjay

4. Order in terms of consent terms. All statements accepted as undertaking to this court. All undertakings are also accepted. Suit accordingly stands disposed in terms of the consent terms. No order as to costs. Refund of court fees if any in accordance with Rules.

5. Counsel state that parties have filed certain original documents and request a direction to the registry to return the same. Registry to return the original documents in exchange for a photo copy of those documents duly certified as true copies by the advocates on record.

6. All to act on authenticated copy of this order.

(K.R.SHRIRAM,J)