

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

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Decided on: October 31, 2019

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CS (COMM) 122/2019

RECKITT BENCKISER (INDIA) P. LTD.

..... Plaintiff

Represented by: Mr.Abhishek Kotnala, Adv.

Versus

SUREKHABEN L JAIN & ORS.

..... Defendant

Represented by: Ms.Srishti Khurana, Adv. with
Mr.Manish Kumar Choudhary,
Mr.Bhaskar Mishra, Advs. for
D1 and D2

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CS(COMM) 122/2019

1. By the present suit, the plaintiff inter alia seeks a permanent injunction against the defendant Nos. 1 and 2, its Directors, partners/proprietors, licensees, franchisee, distributors & dealers, from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in glass and household cleaning and lavatory care preparations under the impugned trade mark KOLEAN and KOLEAN and HI-CLEAN bottle and cap packaging/trade dress/colour scheme as may be a colourable imitation or substantial reproduction of the plaintiff's trade mark COLIN;

and COLIN and HARPIC bottle and cap packaging/trade dress including its distinctive colour scheme amounting to infringement of trade mark of the plaintiff, passing off of its goods as those of the plaintiff's, rendition of accounts, costs etc.

2. During the course of the present proceedings, the parties desired to settle their disputes and were referred to the Delhi High Court Mediation and Conciliation Centre. A copy of the settlement agreement dated 21st October, 2019 has been received from the Delhi High Court Mediation and Conciliation Centre which notes that the plaintiff and defendant Nos. 1 and 2 have settled the matter.

3. As per the defendant No. 2, who is the son of defendant No. 1, he has no concern whatsoever with M/s. Labdhi Product, which is the proprietorship concern run by his mother defendant No. 1.

4. The parties have arrived at a settlement on the following terms and conditions:

(A) *The Defendant acknowledges and recognizes that the Plaintiff is the owner of the well-known marks COLIN and HARPIC Bottle and cap packaging/ trade dress as enumerated in paragraphs 10 and 11 of the plaint;*

(B) *The Defendant undertakes never to challenge the Plaintiffs' rights over the trade marks COLIN and HARPIC Bottle and cap packaging/ trade dress in any manner at any time in future;*

(C) *The Defendant undertakes before this Hon'ble Court that the Defendant, their directors, principals, partners, officers, employees, agents, distributors, affiliates, subsidiaries, licensees, representatives and assigns shall not manufacture or authorize the*

manufacture, distribute, export, sell, offer for sale, advertise, promote, display and/or use in any manner whatsoever, the mark KOLEAN and/or any other mark which is identical to or confusingly and/or deceptively similar to the Plaintiff's trade mark COLIN as a trade mark, part of a trade mark, trade name, part of a trade name, name of business concern, part of name of a business concern, domain name, part of a domain name or in any other manner whatsoever in relation to any goods or services, or in relation to any promotional, marketing or advertising material or any other material used or intended to be used for labeling or packaging or for advertising any goods or services which would amount to infringement of the Plaintiff's registered trade mark or passing off thereof;

(D) The Defendant undertakes before this Hon'ble Court that the Defendant, their directors, principals, partners, officers, employees, agents, distributors, affiliates, subsidiaries, licensees, representatives and assigns shall not manufacture or authorize the manufacture, distribute, export, sell, offer for sale, advertise, promote, display and/or use in any manner whatsoever, the bottle



shape / trade dress and/or any other bottle shape/ trade dress which is identical to or confusingly and/or deceptively similar



to the Plaintiff's bottle shape/ trade dress in any manner

whatsoever in relation to any goods or services, or in relation to any promotional, marketing or advertising material or any other material used or intended to be used for labeling or packaging or for advertising any goods or services which would amount to passing off

- (E) *The Defendant undertakes before this Hon'ble Court that the Defendant, their directors, principals, partners, officers, employees, agents, distributors, affiliates, subsidiaries, licensees, representatives and assigns shall not manufacture or authorize the manufacture, distribute, export, sell, offer for sale, advertise, promote, display and/or use in any manner whatsoever, the bottle*



shape / trade dress and/or any other bottle shape/ trade dress which is identical to or confusingly and/or deceptively similar



to the Plaintiff's bottle shape/ trade dress in any manner whatsoever in relation to any goods or services, or in relation to any promotional, marketing or advertising material or any other material used or intended to be used for labelling or packaging or for advertising any goods or services which would amount to infringement and/ or passing off thereof;

- (F) *The Defendant undertakes before this Hon'ble Court that the Defendant shall use the mark OM KESARI FRESH KESLEAN and / or KESARI HI-CLEAN for its glass cleaning products;*

- (G) *The Defendant also undertakes before this Hon'ble Court that the Defendant shall use the bottle shape/ trade dress for its glass*

cleaning product under the marks OM KESARI FRESH KESLEAN as attached as ANNEXURE-B herewith. Further, the Defendant shall have the liberty to use its mark KESARI HI-CLEAN for its glass cleaning products.

- (H) The Defendant undertakes before this Hon'ble Court that the Defendant shall use the bottle shape/ get-up and trade dress for its toilet cleaning product under the mark KESARI HI-CLEAN as attached as ANNEXURE-C herewith or any other trade mark, bottle shape/ trade dress and / or colour combination which is not identical to or deceptively or confusingly similar to the Plaintiff's bottle shape/ trade dress and/ or colour combination.*
- (I) The Defendant also undertakes to surrender their registration for the mark "Kesari Fresh KOLEAN and Device of OM" bearing No. 2562471 in class 3 within 7 days of signing of the present settlement. In view of the aforesaid application being withdrawn, the rectification proceedings filed before IPAB, Ahmedabad, Gujarat by the Plaintiff against the said application shall become infructuous.*
- (J) The Defendant also undertakes to pay to the Plaintiffs a sum of Rs.50,000/- (Rupees Fifty Thousand Only) as token damages on or before 15.12.2019 by way of account transfer or Demand Draft in the name of Plaintiff.*
- (K) The Defendant undertakes and state before this Hon'ble Court that the Defendant has not filed any other applications for registration of the mark KOLEAN or HI-CLEAN Bottle shape which is deceptively and/or confusingly similar to that of the Plaintiff's trade marks as elaborated in paragraphs 10 and 11 of the plaint;*
- (L) In view of the above undertakings of the Defendant, the Plaintiff has agreed that the Defendant can exhaust all their pending stocks available with them till 15.12.2019. Notarized statement of stocks as on 21.10.2019 of the Defendant is annexed as ANNEXURE-D.*

(M) The said undertakings given by the Defendant shall be binding henceforth on the Defendant(s) and their associates, representatives, successors, partners, employees, affiliates and assignees-in-business.

(N) That it is agreed between the parties that the present suit may be decreed in terms of the present Settlement Agreement.

(O) The Hon'ble Court may consider refund of the court fees to the Plaintiff in terms of the Section 16 of the Court Fees Act 1870 read with Section 89 of CPC, 1908.

5. The settlement agreement is duly signed by Mr.Jatin Vyas, authorized representative of the plaintiff, authorization in whose favour has been filed along with the plaint and by Mr.Lalit Kr.Jain, authorized representative of defendant No. 1, authorization in whose favour is annexed as Annexure D-1 to the reply affidavit to IA 3355/2019 filed under Order XXXIX Rules 1 and 2 CPC. The settlement agreement has also been signed by the defendant No. 2, son of defendant No. 1.

6. Suit is accordingly decreed in terms of the settlement arrived at between the parties. Decree sheet will incorporate the terms of settlement.

7. Court fee be refunded back to the plaintiff under Section 16 of the Court Fees Act. Registry will issue a necessary certificate in this regard.

I.A. 3355/2019 (under Order XXXIX Rule 1 & 2 CPC)

Application is disposed of infructuous.

(MUKTA GUPTA)
JUDGE

OCTOBER 31, 2019
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