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

+ **CS(COMM) 391/2019**

DHARAMPAL SATYAPAL SONS PRIVATE LIMITED

..... Plaintiff

Represented by: Ms. Vaishali Mittal, Mr. Manish Biala &
Mr. Mrinali Menon, Advocates.

versus

M/S REKHA SWEETS & ORS.

..... Defendants

Represented by: Mr. Mohan Vidhani, Mr. Rahul Vidhani &
Mr. Saurabh Kumar, Advocates.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

16.01.2020

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I.A. No.495/2020 (u/O XXIII Rule 3 CPC)

1. By this joint application, the plaintiff and the defendants pray that the suit be decreed in terms of the settlement arrived at between the parties.
2. Taking the settlement agreement on record and permitting the suit to be decreed in terms of the settlement, application is disposed of.

CS(COMM) 391/2019

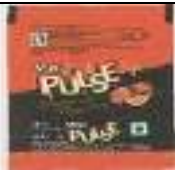
1. Present suit has been filed by the plaintiff against defendant No.1 which is a partnership firm of which defendant Nos.2 and 3 are the partners *inter alia* alleging infringement of its trademark, copyright, trade dress, layout, colour combination, get up, passing off the goods of the defendants as that of the plaintiff, unfair trade practice, rendition of accounts, etc.
2. During the pendency of the suit, parties have entered into a settlement

on the following terms and conditions, as noted in para 2 of I.A.
No.495/2020 :-

“2. During the course of the present proceedings, the Plaintiff and the Defendant No.1, Defendant No. 2 and Defendant No. 3, have entered into a settlement along the following terms:

(a) The Defendants herein hereby acknowledge and recognize the Plaintiff's sole and exclusive proprietary rights in the Plaintiff's following trademarks, which rights the Defendants do not and shall not contest. The list of the Plaintiff's registrations and applications for the said trademarks in India, wherein the Plaintiff's sole and exclusive proprietary rights are recognized by the Defendants herein, is given below:

Trademark Application No.	Trademark	Class
2827909		30
3071704		30
3071705		30
2891666		30
2827906	PULSE (word)	30

3103619		30
3854008		30
3854009		30
3854010	PULSE SHOTS	30
3188874	PULSE	32
3364213	PULSE	32

- (b) *The Defendants hereby acknowledge and recognize the Plaintiff's sole and exclusive rights contained in the well-*

known

PULSE,



*, trademarks which constitute a significant part of the trade-dress pertaining to its candies under the well-known trademark **PULSE**. The Defendants further agree and undertake not to contest the Plaintiff's above mentioned sole and exclusive rights at any point of time in the future.*

- (c) *The Defendants hereby acknowledge and recognize the Plaintiff's sole and exclusive rights contained in the get-up, color combination, overall layout of the cartons*



*which constitute a significant part of the trade-dress pertaining to its candies under the well-known trademark **PULSE**, including that the Plaintiff has worldwide reputation and goodwill in the same. The Defendants further agree and undertake not to contest the Plaintiff's above mentioned sole and exclusive rights at any point of time in the future.*

- (d) *The Defendants hereby acknowledge that the Plaintiff is the holder of copyright in the artistic work in the*



label. Further the Defendants acknowledge that the Plaintiff has the sole right to commercialize the products under the said artistic label.

- (e) *The Defendants further shall not contest for (i.e. shall not raise opposition against, shall not file an application for rectification and/or invalidation and/or cancellation of, etc.) any trademark applications or trademark registrations filed or secured by the Plaintiff in respect of PULSE trademark and its constituent trade dress. The Defendants further agree and undertake not to contest the Plaintiff's above mentioned sole and exclusive rights at any point of time in the future.*

- (f) *The Defendants further agree and undertake before this Hon'ble Court that they will not, at any time in the future, manufacture, use, sell, offer for sale, distribute, issue to the public, advertise for sale, import or export any goods bearing the **PLUSSE** bearing the trade-dress*



*and use any other trademark which is similar to the Plaintiff's well-known **PULSE** trademarks and its trade dress, and/or use the same or any other deceptively similar or identical marks, color combination, get-up and/or a combination thereof in any manner, amounting to passing off of the Plaintiff's intellectual property rights.*

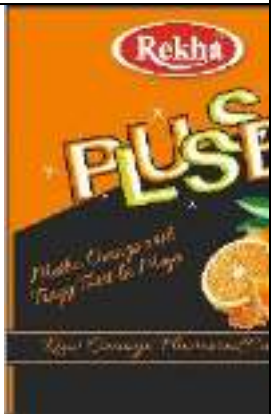
- (g) *The Defendants hereby undertake and assure that they have restrained themselves from manufacturing, using, selling, offering for sale, distributing, issuing to the public, advertising for sale, importing or exporting any*



*goods bearing the **PLUSSE** and trade dress*



- (h) *The Defendants herein agree and undertake that they will withdraw the following trademark applications:*

Trademark Application No.	Trademark	Class	Date of Application	Status
3123420		30	14.12.2015	Opposed – Plaintiff has opposed the trademark application on June 25, 2019
3247702		30	2.05.2016	Opposed – Plaintiff has opposed the trademark application on January 17, 2018
3872613		30	28.06.2018	Objected

The Defendants further undertake not to file any trademark application which are identical or deceptively similar to and/or nearly resembling the Plaintiff's well-

known and registered **PULSE** trademarks and name, trade dress, or any trademark and name confusingly similar thereto in any manner whatsoever, including but not limited to a mark, Company name, Firm name, domain name or otherwise (including in purchased keywords, metatags and metadata). The requests before the Trademarks Registry by the Defendants withdrawing the application shall be filed by the Defendants within the period of 10 days from the date of recordal of the present compromise in the court.

(i) The Defendants herein agree and undertake that they will withdraw their copyright registration bearing number A-125745/2018 granted by the Copyright Board in the label, artwork of the **PLUSSE** trade dress. The requests before the Copyright Registry withdrawing their registration shall be made within the period of 10 days by the Defendants from the date of recordal of the present compromise in the court.

(j) The Defendants hereby agree and undertake that they have destroyed all goods, brochures, promotional material, stickers, cartons, packing, dies, articles, papers and any other material of the Defendants bearing the



marks **PLUSSE** and trade dress



and any other related material. The Defendants hereby undertake and state that they have adopted a revised trade dress and trade mark “**PULPUL**” for their hard boiled candies and the



modified packaging is now enclosed herewith as **Annexure A**. The Plaintiff states that the Plaintiff has no objection to the use and registration of the said label by the Defendants and shall not file objections/oppositions thereto. The Plaintiff further states that the Plaintiff has no objection to the use of the trademark **REKHA** and the trading style/name **REKHA SWEETS** by the Defendants. It is hereby made clear that the defendants shall be at liberty to use the different label for **PULPUL** from time to time **HOWEVER**, the so changed label would be absolutely different from the labels of the plaintiff as detailed in para 1 and 2 of this application.

- (k) The Defendants hereby undertake that they have informed all their associates, retailers and other commercial outlets that they have ceased making sale and/or promotion of their goods under the **PLUSSE** trademarks and trade-dress.
- (l) The Defendants hereby agree and undertake to pay **INR 1,00,000** as a gentle token of compensation towards the non-governmental organization namely the **FRIENDICOES-SECA** as agreed between the Parties. The Defendants agree and undertake to give effect to the abovementioned payment of **INR 1,00,000** on the day the said terms of settlement between the parties are recorded by this Hon'ble Court.
- (m) The Plaintiff agrees and undertakes to give up its claims for rendition of accounts and costs etc. against the Defendants, as prayed for in paragraph 64 and (x) and (xii) of the plaint."

3. The application is duly signed and supported by the affidavits of authorized representative of the plaintiff as also defendant Nos.2 and 3, the two partners of defendant No.1.
4. Consequently, the suit is decreed in terms of the settlement agreement arrived at between the parties. Learned counsel for the defendants has handed over a demand draft for a sum of ₹1 lac to the learned counsel for the plaintiff as agreed in terms of clause (l) of the settlement agreement being draft No.505421 dated 10th January, 2020 drawn on Punjab National Bank, Tekari Road, Gaya, Bihar in favour of FRIENDICOES-SECA.
5. Decree sheet be prepared in terms of the settlement. Decree sheet will incorporate the terms of settlement.
6. Court fee be returned to the authorized representative of the plaintiff under Section 16 of the Court Fees Act.
7. Registry will issue necessary certificate in this regard.

I.A. No.10352/2019 (under Order XXXIX Rule 1 and 2 CPC)

Application is disposed of as infructuous.

MUKTA GUPTA, J.

JANUARY 16, 2020
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