

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****COMMERCIAL IP SUIT NO. 395 OF 2017****ALONGWITH****LEAVE PETITION NO. 12 OF 2017****IN****COMMERCIAL IP SUIT NO. 395 OF 2017**

Ashok Bhat

....Plaintiff

V/s

Smiles Corporation and Anr.

....Defendants

Mr. Vinod Bhagat a/w Ms. Parveen Anand, Ms. Fatema Kalowala i/b GS Hegde and VA Bhagat for Plaintiff.

Mr. Mahesh A. Mahadgut for Defendant No. 1.

Mrs. Rekha V. Rane, 2nd Asstt. to Court Receiver present.

CORAM : K.R.SHRIRAM, J.**DATED : 7th APRIL 2021.****P.C. :**

1. Plaintiff and Defendant No.1 have settled the matter and entered into Consent Terms dated 5th April, 2021. The Consent Terms signed by plaintiff and proprietor of Defendant No.1 and their respective advocate is taken on record and marked "X" for identification.

2. Mr. Bhagat and Mr. Mahadgut states that Ashok Bhat (Plaintiff) and Dipesh Anilbhai Shah (Proprietor of Defendant No.1) are present on line and are identified by them, though I cannot see them.

3. For ease of reference, the Consent Term is scanned and reproduced herein below :-

7/4/21 - Sr. HC-2 1

1

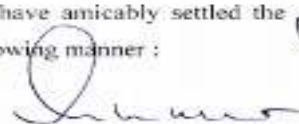
x'f
7/4/2021

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMIP IP SUIT NO. 395 of 2017

Dr. Ashok M. Bhat, proprietor of Nnova & Company, having its office at 104, Rizvi Chambers, Hill Road, Bandra (W), Mumbai - 400 050.	)	Plaintiff
Vs.	)	
1. Smiles Corporation, whose constitution is not known to the Plaintiff, having its address as 105, Super Market, Opp. Town Police Station, Nehru Street, Vapi and its office at 103, Dr. Ambedkar Shopping Center, Opp. Kinnary Cinema, Ring Road, Surat - 395 002.	)	
2. MACWELL IMPEX, whose constitution is not known to the Plaintiff, having its address as Plot No. 21, Khodiyar Estate, Behind Mahalaxmi Fabrics, Narol, Ahmedabad - 382 443.	)	Defendants

CONSENT TERMS

The Plaintiff and the Defendant No.1 have amicably settled the present dispute between them in the following manner :

2

2

1. The Defendant No.1 hereby acknowledges the proprietary rights of the Plaintiff in its registered trade mark NOVA and in the original artistic works of NOVA, being used by the Plaintiff in relation to its cosmetic preparations as more particularly mentioned in the plaint.

2. The Defendant No.1 submit to a Decree in favour of the Plaintiff in terms of prayers (a), (b) and (c) of the plaint, which reads as under:-

a. that Defendants by themselves, their proprietors/partners, servants, agents, assignees, transferees and all those connected with them in their business be restrained by a perpetual order and injunction of this Hon'ble Court from in any manner manufacturing, marketing, selling and/or using in relation to brilliantine cream and other like cosmetic goods, the impugned mark INOVA and the impugned label mark of INOVA bearing a trade dress identical with and/or any mark/label mark bearing a trade dress deceptively similar to the Plaintiff's mark NOVA/label mark and trade dress of NOVA, so as to infringe upon the Plaintiff's said mark registered under Nos. 126501, 126502, 729924, 729925, 164656 and 1079537, all in class 03,

b. that the Defendants by themselves, their proprietors/partners, servants, agents, assignees, transferees and all those connected with them in their business be restrained by a perpetual order and injunction of this Hon'ble Court from in any manner manufacturing, marketing, selling and/or using in relation to brilliantine cream and other like cosmetic goods, the impugned mark INOVA and the impugned label mark of INOVA bearing a

trade dress identical with or any mark/label mark bearing a trade dress deceptively similar to the Plaintiff's distinctive and prior used trade mark NOVA and trade dress of NOVA, so as to pass off their goods and business or enable others to pass off the Defendant's business and goods as and for those of the Plaintiff or in some way connected or associated therewith;

c. that the Defendants by themselves, their proprietor/partners, servants, agents, assignees, transferees and all those connected with them in their business be restrained by a perpetual order and injunction of this Hon'ble Court from in any manner manufacturing, marketing, selling and/or using in relation to brilliantine cream and other like cosmetic goods, the pirated artworks of NOVA which bears a colour scheme, get up, lay out, design, style and representation which is identical with and/or is substantially similar to the original artistic work as depicted on the Plaintiff's carton and label of NOVA, so as to infringe upon the Plaintiff's copyright registered under Nos. A-13658/75 and A-13659/75 dated 30.07.1975.

3. As regards the Plaintiff's prayer clause (d) the Defendant No.1 states that he does not have any stock of goods and/or packaging material bearing the impugned mark and impugned artworks of INOVA with him.

4. The Defendant No. 1 states that he has not filed any applications seeking registration of the impugned mark INOVA (word mark) and/or under impugned artwork (containing the word INOVA), being identical/similar to the Plaintiff's trade mark and original artistic work of NOVA, with the Registrar of Trade Marks and/or with the Registrar of Copyright respectively.



4

4

5. Copies of both the Plaintiff's and Defendant No. 1's Aadhar Cards are appended herewith at ANNEXURES A and B respectively.

6. In view of the above, the Plaintiff gives up rest of his claims in the Suit as against the Defendant No. 1.

Dated this ^{05th} ~~30~~ day of ^{April} ~~March~~ 2021.

Dr. Ashok M. Bhat,
Plaintiff

Dipesh Anilbhai Shukla, Proprietor
of the Defendant No. 1

Advocate for the Plaintiff.

Manish A. Mahadgut
Advocate for the Defendant No. 1

ANNEXURE - A

[Handwritten signature]



[Handwritten signature]

ANNEXURE - B

8218 1856 3139 VID: 9122 3149 8625 9521 4421 0000 4421 2410104 8218 1856 3139 VID: 9122 3149 8625 9521 8218 1856 3139 VID: 9122 3149 8625 9521	8218 1856 3139 VID: 9122 3149 8625 9521 8218 1856 3139 VID: 9122 3149 8625 9521 8218 1856 3139 VID: 9122 3149 8625 9521
---	---

4. Order in terms of the Consent Terms.
5. All statements and undertakings accepted.
6. Suit stands decreed as per the Consent Terms in terms of prayer clauses (a), (b) and (c) against Defendant No.1.
7. Mr. Bhagat states that writ of summons which was served upon Defendant No.2 came undelivered because Defendant No.2 was not found at the address that plaintiff had and Mr. Bhagat states that he made efforts to locate Defendant No.2 but was unable to locate Defendant No.2 and therefore, service was effected against Defendant No.2 by way of substituted service. Ms. Rane, Second Assistant to Court Receiver states that even after the order of 19th January, 2017 was passed ex-parte at the request of plaintiff, plaintiff never provided address of Defendant No.2 and the place where the Receiver has to go and execute the order. Mr. Bhagat repeats, plaintiff could not locate Defendant No.2.
8. Therefore, it would serve no purpose passing any order against Defendant No.2. Hence, suit against Defendant No.2 stands dismissed. If and when plaintiff finds Defendant No.2 to be infringing plaintiff's trade mark and/or copyright, plaintiff may take such steps as advised on a fresh cause of action.

9. The Court Receiver stands discharged without passing of accounts. The undertaking of plaintiff to pay any outstanding charges to the Court Receiver within two weeks of receiving communication from the Court Receiver is accepted.
10. Refund of court fee, if any, be paid in accordance with rules.
11. All interim applications stand disposed.
12. No order as to costs.
13. All to act on authenticated copy of this order.

(K.R. SHRIRAM, J.)