

Santosh

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

COMM IP SUIT NO. 22 OF 2021

Godrej Consumers Products Ltd. ...Plaintiff
Versus
Yuva Personal Care and ors. ...Defendants

**WITH
INTERIM APPLICATION NO. 421 OF 2021
WITH
LEAVE PETITION NO. 104 OF 2020
IN
COMM IP SUIT NO. 22 OF 2021
WITH
COURT RECEIVER'S REPORT NO. 187 OF 2021**

**SANTOSH
SUBHASH
KULKARNI**

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Mr. Ashutosh Kane, a/w Ms. Akshata Kamath and Ms.
Vedangi Soman, i/b W.S. Kane & Co., for the Plaintiff.
Ms. Tanuja Baban Liman, for Defendant nos.1 to 6.
Mr. Mandar Chandrachu, Plaintiff's representative.

**CORAM: N. J. JAMADAR, J.
DATED : 20th JANUARY, 2022
(Video Conferencing)**

PC:-

1. Heard the learned Counsels for the parties.
2. The learned Counsel for the plaintiff has tendered draft amendment. Having regard to the nature of the proposed amendment, the plaintiff is permitted to amend the plaint in accordance with the draft amendment.
3. Necessary amendment be carried out forthwith.

4. Re-verification dispensed with.
5. Ms. Liman, the learned Counsel, submits that she has instruction to appear on behalf of defendant no.6.
6. Ms. Liman waives notice for defendant no.6.
7. The learned Counsel for the plaintiff and the learned Counsel for defendant nos.1 to 6 submit that the parties have amicably resolved the dispute and executed the Consent Terms. The learned Counsels for the parties have tendered the Consent Terms.
8. The Consent Terms are executed by Mr. Mandar Chandrachud, the Constituted Attorney for the plaintiff and Mr. Paras Jain – defendant no.2, Mr. Sunil Sharma – defendant no.3 and partner of defendant no.1, Mr. Shiv Kumar Sharma – defendant no.4, Mr. Rohit Jain – defendant no.5 and Mr. Ankur Agrawal – defendant no.6. The parties are identified by their respective Advocates. Mr. Paras Jain, Mr. Rohit Jain and Mr. Shiv Kumar Sharma are present before the Court. They admit the contents of the Consent Terms and execution thereof.
9. In view of the aforesaid submissions and statements, the Consent Terms are taken on record and marked 'X'.

10. Paragraphs 1 to 4 of the Consent Terms ('X') read as under:

"1. The Defendants, while accepting the Plaintiff's statutory and common law rights in the trade mark "mr. magic", the artistic packaging/ said trade dress at Exhibits "B-1" and "B-2" to the plaint, and the stick pack at Exhibit "C" to the plaint, and the Plaintiff's proprietary and common law rights in the bottle at Exhibit "D" to the plaint, submit to an order and decree in terms of prayer clauses (a) to (f) of the plaint, which are reproduced below.

- (a) *the Defendants by themselves, their proprietor, partners, directors, servants, employees, agents, dealers, distributors and all persons claiming under them be restrained by a perpetual order and injunction of this Hon'ble Court from infringing the Plaintiff's registered trade mark "mr. magic" bearing Registration No. 4232083 in Classes 03 and 05, by using the impugned trade mark Magic Bubble and/or any other trade mark deceptively similar to the Plaintiff's aforesaid registered trade mark in respect of the goods covered by the Plaintiff's aforesaid registration and/or the like goods or in any other manner whatsoever;*
- (b) *the Defendants by themselves, their proprietor, partners, directors, servants, employees, agents, dealers, distributors and all persons claiming under them be restrained by a perpetual order and injunction of this Hon'ble Court from infringing the Plaintiff's copyright in the artistic work comprised in the said artistic packaging/ trade dress at Exhibits "B-1" and "B-2" hereto by reproducing, printing, publishing, using and/or communicating to the public the impugned packaging/ trade dress at Exhibits "G-1" to "G-3" hereto or any other work which is a reproduction of the artistic work comprised in the Plaintiff's said artistic packaging/ trade dress at Exhibits "B-1" and "B-2" hereto or substantial part thereof or in any other manner whatsoever;*
- (c) *the Defendants by themselves, their proprietor, partners, directors, servants, employees, agents, dealers, distributors and all persons claiming under them be restrained by a perpetual order and injunction of this Hon'ble Court from infringing the Plaintiff's copyright in the artistic work comprised in the said stick pack at Exhibit*

“C” hereto by reproducing, printing, publishing, using and/or communicating to the public the impugned stick pack at Exhibit “G-4” hereto or any other work which is a reproduction of the artistic work comprised in the Plaintiff’s said stick pack at Exhibit “C” hereto or substantial part thereof or in any other manner whatsoever;

- (d) the Defendants by themselves, their proprietor, partners, directors, servants, employees, agents, dealers, distributors and all persons claiming under them be restrained by a perpetual order and injunction of this Hon’ble Court from manufacturing, packaging, selling, exhibiting for sale, advertising or otherwise dealing in hand wash and the like goods bearing the impugned trade mark “Magic Bubble” and/or any other trade mark identical with or closely and deceptively similar to the Plaintiff’s said well-known trade mark “mr. magic” so as to pass off or enable others to pass off the Defendants’ hand wash as and for the Plaintiff’s well-known hand wash or in any other manner whatsoever;*
- (e) the Defendants by themselves, their proprietor, partners, directors, servants, employees, agents, dealers, distributors and all persons claiming under them be restrained by a perpetual order and injunction of this Hon’ble Court from manufacturing, packaging, selling, exhibiting for sale, advertising or otherwise dealing in hand wash and the like goods under the impugned packaging/ trade dress shown at Exhibits “G-1” to “G-3” hereto and/or any other packaging/ trade dress which is identical with or deceptively similar to the Plaintiff’s said well-known artistic packaging/ trade dress at Exhibits “B-1” and “B-2” hereto and/or under the impugned stick pack shown at Exhibit “G-4” hereto and/or any other packaging/ trade dress identical with or deceptively similar to the Plaintiff’s said stick pack shown at Exhibit “C” hereto so as to pass off or enable others to pass off the Defendants’ hand wash as and for the Plaintiff’s well-known hand wash or in any other manner whatsoever;*
- (f) the Defendants by themselves, their proprietor, partners, directors, servants, employees, agents, dealers, distributors and all persons claiming under them be restrained by a perpetual order and injunction of this Hon’ble Court from using the impugned bottle shown at Exhibit “H” hereto and/or any other bottle/ container which is identical with or deceptively similar to the Plaintiff’s said well-known bottle at Exhibit “D”*

hereto, upon and in relation to hand wash and/or the like goods, so as to pass off or enable others to pass off the Defendants' impugned goods as and for the Plaintiff's well-known goods or in any other manner whatsoever;

2. The Defendants shall, in the presence of the authorized representative of the Plaintiff, destroy the impugned packaging/ trade dress, the impugned stick pack, and the impugned bottle, which have been seized by the Court Commissioner/ Court Receiver, and which are kept in the premises of the Defendant Nos. 1 and 5, after removal of the contents thereof i.e. the powder /liquid soap and hand sanitizers which were found at the Defendants' premises during the execution of the ex-parte ad-interim order. Further, the said destruction shall be undertaken on a single day, within 15 days from the date of these Consent terms, and the Defendants undertake to file an Affidavit of compliance within a week therefrom.

3. The Defendants state and confirm that subsequent to the visit of the representative of the Court Commissioner/ Court Receiver on 3rd November, 2020, no goods bearing/ contained in the impugned packaging/trade dress, the impugned stick pack, the impugned bottles or any other packaging, cartons, labels, wrappers, dies, blocks, stationery, packing material and things bearing the impugned trade mark and/or any other trade mark deceptively similar to the Plaintiff's said trade mark or packaged in the impugned packaging/trade dress or in any other trade dress which is deceptively similar to the Plaintiff's said trade dress a substantial reproduction thereof, or in the impugned bottle, have been manufactured, printed, stored/stocked at the premises of the Defendants or advertised for sale or sold by the Defendants. In the event that the Defendants have manufactured or printed or stored/stocked the same, they will destroy the same within 15 days from the date of these Consent Terms and the Defendants undertake to file an Affidavit of compliance within a week therefrom.

4. The Defendants confirm that they have not filed any application for registration of the impugned trade mark and/ or the impugned packaging/trade dress and/or the impugned stick pack and/or the impugned bottle with any authority in India, under the provisions of the Trade Marks Act, the Copyright Act and/or the Designs Act or any other statute. The Defendants further undertake to not file any such application(s) in the future."

11. It appears that the Consent Terms ('X') have been executed voluntarily and there is no coercion or duress. The plaintiff and

the defendants have worked out a comprehensive settlement and resolved the entire dispute.

12. Hence, the suit stands decreed in accordance with the Consent Terms ('X').

13. The Consent Terms ('X') shall form part and parcel of the decree.

14. Undertakings given in the Consent Terms ('X') are accepted as undertakings to the Court.

15. The plaintiff is entitled to refund of Court fees in accordance with the Rules.

16. Leave Petition under Clause XIV is made absolute.

17. Court Receiver's Report No.187 of 2021 stands disposed of.

18. The Court Receiver stands discharged without passing accounts, subject to payment of charges, expenses and costs of the Court Receiver by the plaintiff.

19. In view of the disposal of the suit, the Interim Application No.421 of 2021, stands disposed of.

[N. J. JAMADAR, J.]