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

Date of decision: 5th April, 2022

\+ **CS (COMM) 552/2021 & I.A.14245/2021**

RECKITT BENCKISER INDIA PRIVATE LIMITED ..... Plaintiff

Through: Mr. Sumit Wadhwa, Mr. Ryan Wilson, Advocates

versus

MR. SHARAD JAGAT PAL SHRIVASTAV ..... Defendant

Through: None

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. The present suit has been filed by the Plaintiff-Reckitt Benckiser (India) Private Limited, seeking permanent injunction as also reliefs for infringement of trademark, copyright, passing off, and account of profits, against the misuse of its trademark *'HARPIC*', essential features of *'HARPIC'* labels and the shape of the '*HARPIC'* bottles, by the Defendant. The case of the Plaintiff is that the Plaintiff's product is sold under the mark *'HARPIC'*, which is sold in unique blue containers with red caps and red containers with white caps, both with a distinctive label, shape and trade dress. The said trade dress of the two products are depicted hereinbelow:

3. As per the plaint, the Blue and Red '*HARPIC'* products which are used as toilet cleaners and bathroom cleaners, are products which are market leaders in their respective categories. The Plaintiff's trademark *'HARPIC'* is stated to have been adopted internationally in 1920 and is registered in over 150 jurisdictions. The trademark '*HARPIC'* is in use in India applied to a distinctive bottle since 1984. '*HARPIC'* and its formative marks, its label, device, and bottle shape have also been registered in India as trade marks, in various classes including in Classes 3 and 5. The Blue and Red HARPIC bottles have various distinctive features such as:

i. The shape of the bottles;

ii. The color of the bottles; and

iii. The labels which are affixed thereon.

4. All these elements together constitute distinctive marks as also trade dress of the Plaintif; the same are referred to herein as 'Blue HARPIC Bottles' and 'Red HARPIC Bottles', for ready reference. The plaint has explained how, since launch, these products have evolved and have undergone some changes. The sale figures of *'HARPIC'* since 2015 have also been placed on record, which shows that the sales in the year 2019-2020 were more than Rs.900 crores and the advertising expenses for the said

years are over Rs.100 crores. The market share of the Plaintiff, as of June 30, 2021, is stated to be 77.2%.

5. Mr. Wadhwa, ld. Counsel appearing for the Plaintiff, submits that the Plaintiff has also taken several successful actions protecting these marks, trade dress, and its intellectual property in the '*HARPIC'* products. The Plaintiff has obtained injunctions against third parties, for instance, in:

Sl. No.	Suit Title	Order	Particulars
1.	***Reckitt Benckiser India P. Ltd. v. Surekhaben L. Jain & Ors.***	***CS(Comm) 122/2019***, decided on 31st October, 2019	The Defendant undertook to not use the identical or similar trade dress of HARPIC. 
2.	***Reckitt Benckiser India Pvt. Ltd v. M/s. Super Shine Industries***	***CS(Comm) 265/2020***, decided on 21st July, 2020	The Defendant was restrained from manufacturing, selling or offering for sale its products under the trade dress identical to that of the Plaintiff under the mark "HARPIC" & "COLIN".

			
3.	***Reckitt Benckiser India Pvt. Ltd v. Mr. Alok Jain Trading as M/s. Advance Hygiene Products & Ors.***	***CS(Comm) 508/2020***, decided on 19th November, 2020	The Defendant was restrained from manufacturing, selling or offering for sale, advertising, promoting its products under the trade dress identical to that of the Plaintiff under the marks "DETTOL" "HARPIC" "HARPIC TRADE DRESS" "COLIN" and "COLIN TRADE DRESS 

6. The grievance in the present case is that the Defendant has adopted the mark *'HAPRIC'* in identical Blue and Red containers for toilet cleaners and bathroom cleaners. The said *'HAPRIC'* products are also being

promoted on the internet on the platform of IndiaMart, under the trading style Sharad Graam Udyog. Defendant - Mr. Sharad Jagat Pal Shrivastav is the proprietor of the said entity. The Defendant's *HAPRIC* products as against the Plaintiff's *HARPIC* products are depicted below:

7. Vide the previous order dated 29th October, 2021, the Defendants were injuncted in the following terms:

> *"24. Accordingly, till further orders, defendant is restrained from using the word mark HAPRIC, and/ or any other mark deceptively similar to the Plaintiffs HARPIC mark, either by itself or in conjunction with any other word and/or in any manner whatsoever, using the labels and/or blue and red bottles shaped*  *, and/or any other label mark deceptively similar to the label used in the plaintiff's Blue Bottle and Red Cap*

Trade Dress 

as well as the plaintiff's Red Bottle and White Cap Trade Dress Variant  *, from using the blue and red bottles shaped as* 

and/or any other bottle trade dress deceptively similar to the shape and colour of the bottle in plaintiff's Blue Bottle and Red Cap Trade Dress  *and from reproducing, printing, publishing and/or imitating in any material form the plaintiff's original artistic work as given in the plaintiff's HARPIC Trade Dress (i.e. the HARPIC labels* 

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,  *, so as to constitute infringement and/or passing off plaintiff's trade mark/trade dress.*

25. Till further orders, defendant is directed to immediately remove all references of the impugned products from third party websites mentioned in para 4 of the plaint and/or any other website where the products bearing the defendant's HAPRIC Mark and Trade Dress are sold, offered for sale, promoted *and/or advertised.”*

8. A Local Commissioner was also appointed vide the said order dated 29th October, 2021. Pursuant to the same, the Local Commissioner has executed the commission. A perusal of the Local Commissioner’s report dated 2nd December, 2021, which has been filed on record, shows that a large quantity of infringing products were seized by the Local Commissioner, as under:

S. No.	Goods/Particulars	Quantity
1.	HAPRIC PLUS Red Bottle with White Cap empty; without label	1380
2.	HAPRIC PLUS Red Bottle with White Cap filled; with label	23
3.	HAPRIC POWER PLUS Blue Bottle with Red Cap (filled) with label	1469
4.	HAPRIC Blue Label Small Stickers (Label)	50
5.	HAPRIC Blue Label Sticker Sheet having Six Stickers	10

9. The Local Commissioner had also handed over the complete set of documents along with the order dated 29th October, 2021, to the Defendant, who was present at the premises. Therefore, the Defendant is fully aware of the filing of the present suit and the order that has been passed. The Local Commissioner has also taken into custody the account books, sale records, bill books, etc. and has filed the photographs thereof on record.

10. This Court has perused the report of the Local Commissioner and the

plaint. The Defendant's infringing products have also been handed over to the Court. A perusal of the same shows that the Defendant's products are nothing but almost counterfeit products of the Plaintiff's *'HARPIC'* products. Considering the nature of the products and the fact that they can be purchased by a large segment of the population, the complete identity in the shape of the container, the color combination, the trade dress, the color of the bottle, the color of the cap, the shape of the nozzle, etc. leaves no doubt in the Court's mind that the Defendant completely intended to cheat and defraud customers and blatantly violate various rights of the Plaintiff.

11. This Court also notes that despite service having been effected, pursuant to the order dated 29th October, 2021, none has appeared on behalf of the Defendant. The previous order dated 28th January, 2022, also notices clearly that the Local Commissioner's report is on record and the Defendant has not appeared. Even the report on record by the Process Server dated 8th December, 2021, shows that at one of the addresses in Amar Colony, Delhi, Defendant No.1 - Mr. Sharad Jagat Pal Shrivastav, was a tenant and he had vacated the said premises around four years ago. The local commission was however executed at the premises of Defendant No.1 in Jhajjar, Bahadurgarh, Haryana, where the Local Commissioner served the copy of the order on the Defendant. The Process Server who visited the Bahadurgarh premises has also given a report on 24th December, 2021 that the summons was served on the mobile no. of the Defendant, being 9318449984.

12. The Defendant has also been served repeatedly through courier as also through WhatsApp, speed post, etc. Therefore, the Defendant has had adequate opportunity to appear before the Court and defend the present case. This Court is convinced, after perusing the Local Commissioner's report, as

also the Process Server's report and the Identity Card/Adhaar Card of the Defendant which was given to the Process Server, that the Defendant is duly served in the matter. Despite this, the Defendant has chosen not to enter appearance. Obviously, the fact that the Defendant does not appear clearly shows that the Defendant has no defence to put forth on merits.

13. Even otherwise, after perusing the infringing bottles which have been shown to the Court, as also the report of the Local Commissioner, this Court is convinced that a permanent injunction is liable to be granted restraining the Defendant and all others acting for or on its behalf, from manufacturing, selling, offering for sale, advertising or promoting, either offline or online, any products which use the mark which is identical or deceptively similar to the Plaintiff's mark including *'HARPIC'* in any containers, bottles or other labels which are a colourable imitation of the Plaintiff's packaging/trade dress/label/mark. Accordingly, a permanent injunction is granted in terms of paragraphs 61 (a),(b),(c),(d), (f).

14. Insofar as the inventory prepared by the Local Commissioner is concerned, two of the Plaintiff's representatives are permitted to visit the premises of the Defendant, and take seizure of the infringing products for the purpose of destruction/erasure of the said products.

15. Insofar as the relief of costs is concerned, the Plaintiff has valued the suit at more than Rs.2 crores. The Defendant has been selling these products at least since July, 2020 as is clear from the bottle which has been handed over to the Court. The cost incurred by the Plaintiff would be much higher than the Court fee which has been deposited. On the issue of costs to be awarded in commercial matters, the Supreme Court in ***Uflex Ltd. v. Government of Tamil Nadu & Ors. [Civil Appeal Nos.4862-4863 of 2021,***

decided on 17th September, 2021] has held as under:

> *"51. The costs following cause is a principle which is followed in most countries. There seems to be often a hesitancy in our judicial system to impose costs, presuming as if it is a reflection on the counsel. This is not the correct approach. In a tussle for enforcement of rights against a State different principle apply but in commercial matters costs must follow the cause.*
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> *XXX*
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> *53. We may note that the common thread running through all these three cases is the reiteration of salutary principles: (i) costs should ordinarily follow the event; (ii) realistic costs ought to be awarded keeping in view the ever increasing litigation expenses; and (iii) the cost should serve the purpose of curbing frivolous and vexatious litigation.*
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> *XXX*
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> *56. We have set forth the aforesaid so that there is appreciation of the principles that in carrying on commercial litigation, parties must weigh the commercial interests, which would include the consequences of the matter not receiving favourable consideration by the courts. Mindless appeals should not be the rule. We are conscious that in the given facts of the case the respondents have succeeded before the Division Bench though they failed before the learned single Judge. Suffice to say that all the parties before us are financially strong and took a commercial decision to carry this legal battle right up to this Court. They must, thus, face the consequences and costs of success or failure in the present proceedings.*
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> *57. The best reflection of what costs have been incurred is what the parties have paid towards the counsel fee and out of pocket expenses. The present proceedings do arise from a writ proceeding under Article 226 of the Constitution but it is really a commercial dispute. Thus, the failing party cannot hide behind the veneer of the present dispute being in the*

nature of a writ proceeding. The tender jurisdiction was created for scrutiny of commercial matters and, thus, where continuously parties seek to challenge award of tenders, we are of the view that the succeeding party must get costs and the party which loses must pay costs. This was really a battle between two commercial entities on one side seeking to get set aside an award of a tender to two other entities. What else would be commercial interest!

58. It is with the aforesaid objective that we had asked the parties to file their bill of costs vide order dated 17.08.2021. The objective was to bring forth this principle into force by quantifying actual costs for the succeeding party.

59. We have scrutinised the bill of fee and costs. We are inclined to allow actual costs. However, we have modulated the costs insofar as appellant is concerned to the extent of the indicated amount of the Advocate-on-Record and allow 50% of the same. The total costs, thus, payable to the petitioner/appellant would be Rs.23,25,750/- (Rupees twenty three lakh twenty five thousand seven hundred fifty only). The State Government cannot be left behind so far as their compensation ofcosts in defending such a litigation is concerned and we, thus, allow the costs of Rs.7,58,000/- (Rupees seven lakh fifty eight thousand only).”

16. Accordingly, the settled legal position is that in commercial matters, actual costs ought to be awarded, keeping in mind the bill of costs, including counsel fees. In the present case, in view of the blatant infringement and manufacture of counterfeit products by the Defendant, this Court is convinced that this is a fit case for award of actual costs to the Plaintiff. The cost statement has been handed over by the Plaintiff which shows that Rs. 3.5 lakhs has already been incurred for court fees and the fees of the Local

Commissioner. In addition, it is claimed that Rs. 10 lakhs is the legal cost. The cost statement handed over today is taken on record.

17. Accordingly, the suit is decreed for a sum of Rs.13,50,000/-. The Defendant shall pay the said amount within eight weeks, failing which, the Plaintiff is permitted to commence execution proceedings against the Defendant. All applications are disposed of in the above terms. The decree sheet be drawn up accordingly.

PRATHIBA M. SINGH
JUDGE

APRIL 5, 2022/*aman/MS*