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

Date of Decision: 31st October, 2022

+ **CS (COMM) 683/2021 and I.A. 17193/2021**

M/S BLUE HEAVEN COSMETICS PVT LTD Plaintiff

Through: Mr. Rishabh Srivastava, Advocate.
(M:9737708556)

versus

MISS FASHION INDIA THROUGH ITS PROPRIETOR LUKESH
JAIN & ORS. Defendants

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The background of the case is that the suit has been filed by the Plaintiff - M/s. Blue Heaven Cosmetics Pvt. Ltd. seeking permanent injunction restraining infringement of registered trademarks, trade dress, copyright, packaging, colour combination, passing off, rendition of accounts of profits, *etc.* The Plaintiff is stated to be the registered proprietor of the word mark “Blue Heaven” and the following device marks in classes 03 and 35 -

Blue
Heaven

&

Blue
Heaven

3. One Sh. Gurnam Singh, sole proprietor of M/s G.C. Laboratories

adopted the mark “*Blue Heaven*” as well as the formative marks in the year 1972. Later the same is stated to have been assigned to the Plaintiff- M/s Blue Heaven Cosmetics Private Limited vide an assignment deed dated 27th March, 2019. It is the case of the Plaintiff that the mark “*Blue Heaven*” has been used by it in a distinctive logo form in blue color, and various variants thereof, for the last several years.

4. The present suit was filed by the Plaintiff against three Defendants i.e. Miss Fashion (India) through its proprietor Mr. Lukesh Jain (also at ‘Arihant Traders’)- Defendant No.1, Mr. Kushal Jain - Defendant No.2 (also at ‘Arihant Traders’) and an ecommerce platform - Indian Ethics -Defendant No.3.

5. It is the grievance of the Plaintiff that on 10th December, 2021 the Plaintiff came across the following product of the Defendants bearing an exact replica of the Plaintiff’s registered mark, colour combination, packaging, and overall get up as that of Plaintiff’s product-



Defendants' product (i)

Plaintiff's product (ii)

6. Vide order dated 22nd December, 2021 an *ex parte ad interim* injunction was issued by the Id. Single bench restraining the Defendants from using the trade mark, trade dress, color scheme, or overall getup as depicted above (i).

7. During the pendency of the suit, the Plaintiff and Defendant Nos.1 and 2 amicably resolved their disputes and filed an application under Order XXIII Rule 3 CPC. As per the settlement application, the suit was decreed vide order dated 12th April, 2022 in terms of paragraph 41(i) of the plaint and the settlement terms *qua* the said Defendants. The relevant portion of the said order reads as under:

“6. The Plaintiff and the Defendant Nos.1 & 2 have resolved their disputes amicably and the terms of the settlement are contained in paragraphs 3 to 8 of the application. As per the settlement application, the Defendant Nos.1 & 2 have acknowledged the rights of the Plaintiff in the mark, trade dress, color combination, writing style, packaging, color combination, overall get up as depicted above (ii). It is further stated in paragraph 3 of the application that Defendant No.1 and 2 have not infringed the rights of the Plaintiff in the mark “Blue Heaven”.

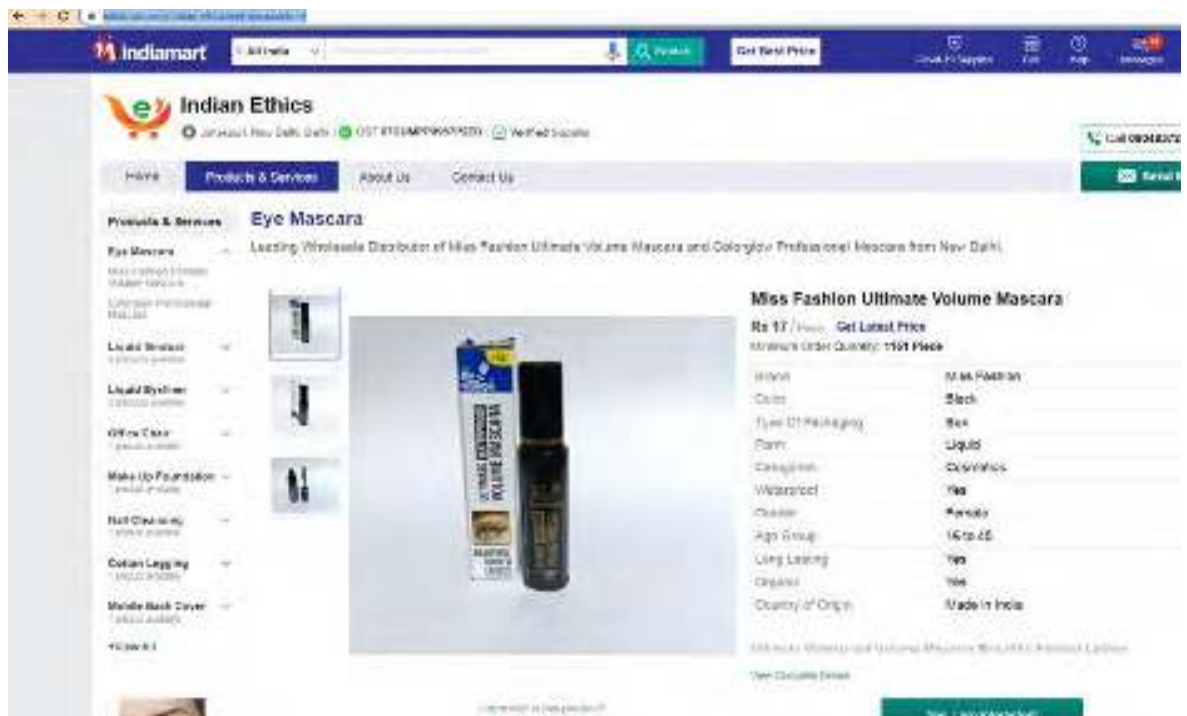
7. The Defendant No. 1 and 2 have undertaken not to use any mark identical or similar to the mark of the Plaintiff as depicted above through themselves or through any of their associated entities. A sum of Rs.4 lakhs, as per paragraph 7 of the application, is acknowledged to have been received by the Plaintiff.

8. The Court has perused the terms of the settlement. The same are lawful and there is no impediment to recording the same. The application is signed by the Plaintiff and the Defendant Nos.1 & 2 along with their respective counsels.

9. The suit is decreed in terms of paragraph no. 41 (i)

of the plaint as also the Settlement terms recorded in the agreement, qua the Defendant Nos.1 & 2. The Plaintiff, Defendant Nos.1 & 2 or anyone acting for and on their behalf shall be bound by the terms of the settlement. Decree sheet be drawn accordingly.”

8. The suit, thus, now continues *qua* only Defendant No.3. Defendant No.3 which is an e-commerce platform which runs a website under the name www.iethics.in. As per the plaint, Defendant No.3 was involved in the online marketing of the products of Defendant Nos.1 & 2 on its own website and other third party websites such as www.indiamart.com. The screen shots of the said websites consisting of the impugned products have been placed in the plaint and are extracted herein below:





9. At the time when Defendant Nos.1 & 2 settled the disputes with the Plaintiff, settlement talks were going on with Defendant No.3. On behalf of Defendant No.3, an email dated 30th December, 2021 was received, which has been handed over by Id. Counsel for the Plaintiff. The same reads as under:

“Sir/Mam

***We have Received Or Package Related Trademark
Ref Mo 123 Date: 27-12-21***

***Sir Indian Ethics Not Deal Any Type Of Cosmetics
Products Please Check Our Website Indian Ethics
Our Ecommerce Portal Links I Mention Below Pis
Check***

Amazon: Click Here

Or By business is Meshoo Reselling Business

***Our Business Started: 29 June 21 Not sell Any
Product For Previous Months because My Business
Not Setup Properly at a time.***

Thanks & Regards

Indian Ethics”

10. Thereafter, ld. Counsel for the Plaintiff submits, that Defendant No.3 is not coming forward to sign the settlement application. Further, vide order dated 11th July, 2022, the right of Defendant No.3 to file written statement also stands closed. The Defendant no.3 is proceeded *ex-parte*.

11. Heard. The main Defendants i.e., Defendant Nos.1 & 2, who are involved in manufacturing and marketing the impugned products have already settled with the Plaintiff and have undertaken not to use the mark “Blue Heaven”, similar get up, trade dress, writing style, *etc* as that of the Plaintiff’s product. Considering the fact that Defendant No.3 is an e-commerce platform selling the products of Defendant Nos.1 & 2 and no defence has been put up, this Court is of the opinion that no oral evidence would be required in view of the settled legal position in ***Disney Enterprises Inc. & Anr. v. Balraj Muttneja & Ors.*** [CS (OS) 3466/2012 decided on 20th February, 2014] and the suit can be finally disposed of against Defendant No.3 as well. The relevant observation from the judgment in ***Disney Enterprises Inc. (supra)***, are as under:

“3. Though the defendants entered appearance through their counsel on 01.02.2013 but remained unrepresented thereafter and failed to file a written statement as well. The defendants were thus directed to be proceeded ex parte vide order dated 04.10.2013 and the plaintiffs permitted to file affidavits by way of exparte evidence. 4. The plaintiffs, despite having been granted sufficient time and several opportunities, have failed to get their affidavits for leading ex-parte evidence on record. However, it is not deemed expedient to further await the same and allow this matter to languish, for the reason that I have in Indian Performing Rights Society Ltd. Vs. Gauhati Town Club MANU/DE/0582/2013 held that where the defendant is ex parte and the material before the Court is sufficient to allow the claim of the plaintiff, the time of the Court should not be wasted in directing ex parte evidence to

be recorded and which mostly is nothing but a repetition of the contents of the plaint.”

12. The suit is thus decreed in terms of paragraph 41(i) of the plaint against Defendant No.3 as well. Defendant No.3 shall with immediate effect, if not already removed, take down all the listings of Defendant Nos.1 & 2's products on its platform and other third party websites, if any put up by it. Such third party websites shall take down the listings, upon receiving communication from either the Plaintiff or any of the Defendants.

13. In the facts and circumstances of the present case, nominal costs of Rs.25,000/- are awarded in favour of the Plaintiff and against Defendant No.3. No further reliefs are pressed for in the matter. Decree sheet be drawn against Defendant no.3.

14. The suit along with all the pending applications are disposed of.

**PRATHIBA M. SINGH
JUDGE**

OCTOBER 31, 2022/dk/sk