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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 13th July, 2023
 + **CS (COMM) 103/2022 & I.A.2452/2022**
ALLIED BLENDERS AND DISTILLERS PVT. LTD. Plaintiff
 Through: Mr. Pravin Anand, Mr. Shrawan
 Chopra & Mr. Achyut Tewari, Advs.
 (M: 8604633567)
 versus
ASHOK KUMAR CONDUCTING ACTIVITIES
THROUGH WEBPAGE 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 was filed by the Plaintiff-M/s Allied Blenders and Distillers Pvt. Ltd. seeking injunction against unauthorized use of the mark "OFFICER'S CHOICE", the bottle, the label and the product itself in a Facebook page by the Defendant-Ashok Kumar.
3. The Court had perused the said Facebook page and had passed the following order dated 14th February, 2022.

"19. The plaintiff is the registered proprietor of the mark "Officer's Choice" since 1988. Furthermore, the mark "Officer's Choice" has been declared as a "well known trade mark" by this Court vide judgment dated 16th January, 2017 in CS (COMM) 1227/2016 titled Allied Blenders and Distillers Pvt. Ltd. Vs. Surya Rao Trading as Leo Foods & Beverages.

20. On 9th February, 2022, the plaintiffs representative came across the impugned web page on Facebook being



<https://www.facebook.com/officerchoicel>, which contains obscene, vulgar and derogatory social media posts and which page has dishonestly adopted the



mark the image the name "Officer's Choice" and the description "@officerchoicel. Wine/Spirits".

21. Issue notice to the defendant John Doe, whose identity is not known, through all permissible modes.

22. Reply be filed within four weeks.

23. Rejoinder thereto, if any, be filed within two weeks thereafter.

24. I have gone through the impugned web page on Facebook, which contains obscene posts along with the plaintiffs trade mark.

25. In my view, the plaintiff has been able to establish a prima facie case in its favour for grant of ex-parte ad interim injunction. Balance of convenience is in favour of the plaintiff. Irreparable harm and injury would be caused to the plaintiff's reputation and posting of such content is diluting the trade mark of the plaintiff.

26. Consequently, the defendant is directed to immediately take down the impugned webpage being <https://www.facebook.com/officerchoicel> and restrained from using the plaintiffs trade mark as detailed in paragraph 8 of the plaint.

27. The Grievance Officer of Facebook is directed to immediately take down the impugned web page and provide all available details about the defendant to the plaintiff."

4. In view of the fact that the Defendant's identity was not known, Facebook had given effect to the order and removed the reference to the



- Plaintiff's product. The Defendant has not entered appearance in the matter.
5. Since the objectionable post and the Facebook page have been removed by Facebook, upon the service of the order being effected, no further purpose would be served in continuing the suit.
 6. The Defendant is proceeded against *ex-parte*.
 7. Following the rationale of the judgment of a Id. Single of this Court in ***Disney Enterprises Inc. & Anr. v. Balraj Muttneja & Ors. [CS (OS) 3466/2012 decided on 20th February, 2014]***, no *ex- parte* evidence would be required in this matter.
 8. The Plaintiff's rights in the mark "OFFICER'S CHOICE" have been repeatedly recognised in various decisions as mentioned below.
 9. The operative portion of ***CS (COMM) 1227/2016 'Allied Blenders and Distillers Pvt. Ltd. vs. Surya Rao'[Decided on: 16.01.2017]*** wherein the mark " OFFICER'S CHOICE" was held to be a well-known mark , is extracted hereinbelow:-

"17. In this context, PW1 has deposed to the effect that:

"i. the plaintiff (through its predecessor) is using the mark "Officer's Choice"

continuously and extensively since the year 1988;

ii. the plaintiff's sales of the products bearing the trademark "Officer's Choice" and other related marks have increased from 1.13 million cases in the year 1994 to 30.18 million in the year 2014-15 (Ex Pw1/46 and Ex Pw1/123);

iii. the plaintiff's expenditure on advertisement and brand promotion of

"Officer's Choice" has increased from ' 6.35 crores in the year 1993-94 to '

264.59 crores in 2014-2015 (Ex Pw1/125);

iv. the exports "Officer's Choice" have arisen from



80,900 cases in 2006-07 to 10,02,456 in the year 2010-11 [Ex Pw1/83 (Colly)];

v. the plaintiff's whiskey "Officer's Choice" was reported to be the largest

selling whiskey in the world by the newspaper, The Times of India in an article dated 11.08.2014 (Ex Pw1/85);

vi. the plaintiff's whiskey "Officer's Choice" is described as the largest selling whiskey in the world by The Millionaires' Club 2014 (Ex Pw1/87);

vii. that "Officer's Choice" whiskey is world's No. 1 whiskey in the world in

terms of volume as per an article in the IWSR Magazine, August, 2014 edition (ExPw1/88); and

viii. "Officer's Choice" has been presented with several awards including

"World's Greatest Brand & Leaders 2015- Asia and GCC" by URS International. [Ex pw1/124(Colly)]."

18. Tested on the parameters as indicated in section 11(6) and 11(7) of the Act, it is plainly evident that the mark "Officer's Choice" has become a "well known" mark.

19. In view of the above, the plaintiff is entitled to a decree of permanent injunction restraining the defendant from using the mark "Officere's" or any other mark deceptively similar to the mark of the plaintiff. Accordingly, the decree is granted in terms of prayers made in paragraph 26 (i), (ii) and (iii) of the plaint, which read as under:

"i. an order for permanent injunction restraining the Defendant, its directors, principal officers, wholesalers, distributors, partners or proprietors, as the case may be, its officers, servants and agents from manufacturing, selling, exporting, importing, offering for sale, distributing, advertising, directly or indirectly dealing in alcoholic beverages, especially IMFL or goods of any description bearing the trade mark and/or trade name "Officere's" or any identical or



deceptively similar mark/label to the Plaintiffs trademarks/label marks "Officer", 'Officer's Club' and/or "Officer's Choice" as also other "Officer" formative marks, amounting to infringement of the Plaintiff's registered trademarks as enumerated in the Plaint;

ii. an order for permanent injunction restraining the Defendant, its directors, principal officers, wholesalers, distributors, partners or proprietors, as the case may be, its officers, servants and agents from manufacturing, selling, exporting, importing, offering for sale, distributing, advertising, directly or indirectly dealing in alcoholic beverages, especially IMFL or goods of any description bearing the trade mark and/or trade name "Officere's" or any identical or deceptively similar mark/label to the Plaintiffs trade marks/label marks "Officer", 'Officer's Club' and/or "Officer's Choice" as also other "Officer" formative marks, amounting to infringement of the Plaintiffs registered copyright as enumerated in the Plaint;

iii. an order for permanent injunction restraining the Defendant, its directors, principal officers, wholesalers, distributors, partners, or proprietor as the case may be, its officers, servants and agents from manufacturing, selling, exporting, importing, offering for sale, distributing, advertising, directly or indirectly dealing in IMFL or other goods bearing trade mark "Officere's" or any deceptively similar mark/label(s) including, but not limited to "Officer's Choice" and "OC, including any identical/similar logo as that of the Plaintiff's "Officer's Club" and "Officer's Choice" so as to misrepresent their products as those of the Plaintiff and from doing any other thing as may cause confusion or deception leading to passing off of the Defendant's goods and business as those of the Plaintiff;"



10. The operative portion of **CS (COMM) 115/2022 'Allied Blenders & Distillers Pvt. Ltd. vs. SNJ Distillers Private Limited & Anr.'** [Decided on : **19.04.2023**] wherein the status of "OFFICER'S CHOICE" as a well-known mark was reiterated is extracted hereinbelow:

"34. I have heard learned Senior Counsels for the Plaintiff and the Defendants and examined their rival contentions.

35. Plaintiff is the registered proprietor and prior user of the trademarks Officer's Choice, Officer's Choice Blue, Officer's Choice Black and Choice albeit registration for the word 'Choice' is in Class 32 for Mineral Water. It is an undisputed position that Plaintiff's trademark Officer's Choice has been declared as a well-known mark by this Court in Surya Rao (supra). Plaintiff has placed on record details of its registrations in the trademark 'Officer's Choice' word per se and the label, which are valid and subsisting. Sales turnover under the trademark 'Officer's Choice' is shown as Rs. 2,698.48 crores for the year 2013-14 which has increased to Rs. 4,573.78 crores in

2019-20 and for 'Officer's Choice Blue' from Rs. 437.54 crores to Rs.2,019.70 crores. The expenses incurred on promotion and advertising as mentioned in the plaint and prima facie supported by the documents are to the tune of Rs. 14.90 crores in 1994-95 to Rs. 52.72 crores in 2019-20. The impugned mark of the Defendants, on the other hand, is also a device mark with the words 'Green Choice' and indisputably, the rival products are identical i.e., whisky.

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42. Coming back to the case in hand, it is undisputed that Plaintiff's registered trademark Officer's Choice has been the subject matter of several litigations in this



Court. It is relevant to refer to some of the cases only to see the journey of the trademark 'Officer's Choice' over the years. One of the first few judgments that call for a reference are in respect of two separate suits filed by the Plaintiff herein against Shree Nath Heritage Liquor Pvt. Ltd. in CS(OS) No. 2589/2013 and Sentini Bio Products Pvt. Ltd. in CS(OS) No. 247/2009, where the impugned marks were 'Collector's Choice' and 'Officer's Special' respectively. Suits were filed by the Plaintiff seeking permanent injunction against the respective Defendants and in both cases the products in question of the Plaintiff and the Defendants were identical i.e. IMFL. The learned Single Judge in 2014 M/s. Allied Blenders (supra) confirmed the ex-parte injunction, restraining the Defendant from advertising, distributing, selling etc. their goods bearing a mark or label similar or deceptively similar to 'Officer's Choice' and/or passing off their goods. A few passages from this judgment are relevant and are as follows:-

"11. Having recently dealt with in Mohan Meakin Ltd. (supra) in the context of principles applicable to the question of infringement/passing off in the trade of alcoholic beverages, rather than dealing afresh with the subject, it is deemed appropriate to reproduce what was observed therein. It was held:

"the test of similarity/dissimilarity is to be applied in the light of the product/goods or services in consideration and may be different for different category of products, goods or services, depending not only upon the nature and character of the product, its use by consumers but also the trade channels. The products of both the plaintiff and the defendant in the present case are alcoholic beverages. Though the Supreme Court in Khoday Distilleries Limited supra was concerned with the same product but the alcoholic beverages with which this judgment is concerned, as distinct from the high end alcoholic beverages with which the Supreme Court was concerned, are on the



contrary at the lower if not lowest rung of price range, the purchasers whereof are often described as tipplers and who often purchase the same not in the highest form of awareness, as distinct from connoisseurs in whose context the observations relied upon by the defendant were made by the Supreme Court.

The use by the defendant of the trademark "TOLD MOM" if found to be similar or deceptively similar to the trademark "OLD MONK" of the plaintiff is likely to affect the goodwill attached to the trademark of the plaintiff. A trademark which distinguishes the goods of one person from those of the other is infringed not only when a average consumer thereof is led into buying the goods of the latter presuming the same to be of the former but also when such consumer by consuming the goods of the latter, under the impression that they are of the former forms an impression/opinion of the quality of the said goods and which impression/opinion guides the further purchases by the customer of the said goods and the reputation which the customs propagates of the goods.

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46. The next station on this journey is an important landmark where the trademark 'Officer's Choice' was declared as a 'well-known trademark' under Section 2(1)(zg) of 1999 Act in Surya Rao (supra). Needless to state that having been declared as a well-known mark, 'Officer's Choice' is entitled to protection not just qua identical/ similar goods in same class but across all classes, including classes in respect of which it holds no registration and/or for goods or services it has yet to enter in. [Ref. Disney Enterprises, Inc. v. Rajesh Bharti & Ors., MANU/DE/0454/2013]. The strength of the mark 'Officer's Choice' is thus evident from its status as a 'well-known' and 'arbitrary mark' and it needs no emphasis that if law protects such a mark



across classes and dissimilar goods, it cannot permit use of a deceptively similar mark for identical goods.

47. Additionally, over a period of time Plaintiff has obtained numerous interim orders in its favour from this Court injuncting third parties from use of the trademarks identical/deceptively similar to 'Officer's Choice', 'Officer's Choice Blue' and its variants including marks which contain the word 'Choice' even without the word 'Officer' and as an illustration Plaintiff has referred to interim orders where Defendants' marks are 'Emperor's Choice' 'Master Choice', 'Our Choice' 'Your Choice', 'Sailor's Choice' and 'Spinner's Choice'. This Court, while referring to the aforesaid interim orders, is conscious of the fact that interim orders do not have a binding force, yet the very fact that different Courts in different matters have exercised the discretion to grant interim injunctions, restraining third parties from using impugned marks comprising of the word 'Choice' with other prefixes without the word 'Officer', is a pointer to the strength of the trademark 'Officer's Choice', implying that even use of the word 'Choice' has the potential to cause confusion, a finding rendered in 2014 M/s. Allied Blenders (*supra*).

48 . Therefore, seen holistically, the trademark 'Officer's Choice' has travelled its journey from adopting and registering the mark in 1988 to being recognised as an 'arbitrary' mark in the year 2015 by this Court and finally being declared by the Court as a 'well-known' mark in 2017. Plaintiff has stepped into introducing several variants of the mark during these years and boasts of being a registered proprietor of marks such as 'Officer's Choice Blue', 'Officer's Choice Black' etc. as a part of its stable. Wholesale sales (cases containing 9 litres) in millions of the product bearing the mark 'Officer's Choice' has grown from 9.55 millions in 2008-09 to 30.10 millions in 2019-20 and the expenses incurred on advertisement and



promotions were to the tune of Rs. 52.72 crores in 2019-20 alone. Plaintiff has earned a reputation of being the highest selling whisky as widely reported in reputed magazines such as IWSR and Millionaire's Club. With all this in the backdrop, the question that begs an answer is whether any party can be permitted to use a trademark identical/deceptively similar to Officer's Choice or even come close to it and the answer is in the negative.

49. The next issue, which is the heart of the dispute is, whether the rival marks are identical/deceptive similar. The rival marks in the present case are admittedly not identical and the narrow controversy therefore is with regard to the 'deceptive similarity'. Before examining the marks in question from this perspective, it would be useful to refer to a few judgments. In Playboy Enterprises, Inc v. Bharat Malik & Anr., MANU/DE/0313/2001, Plaintiff was the registered proprietor of the trademark 'PLAYBOY' under which it was publishing an Indian magazine and had sought permanent injunction against the Defendant, who was publishing a magazine titled 'Playway'. Case of the Plaintiff was that it was one of the largest business houses of the world and the mark 'PLAYBOY' had become a household name in the relevant circles on account of extensive sales and advertisements and the word 'PLAY' was so important to the Plaintiff that any use by a third party was bound to lead to association with the Plaintiff's product and blur its mark. It was also contended that the adoption of the impugned mark by the Defendant was merely to exploit and gain undue advantage of Plaintiff's reputation, generated by sale of its popular magazine in India under the well-known mark and attract the same market of consumers, besides diluting the mark and damaging the reputation and goodwill.

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69. The judgments cited by the Defendants, in my view,



do not aid them or enure to their advantage and are distinguishable for reasons I shall advert to hereinafter. In John Distillers (supra), the rival marks were 'Officer's Choice' and 'Original Choice' and the IPAB observed that Choice was a popular word on the Trade Marks Registry especially amongst alcoholic manufacturers as also that when taken as a whole, the two marks are not identical and therefore, there is no likelihood of confusion and even the target consumers not fluent in English, would know the difference. First and foremost, as rightly argued by the Plaintiff, much water has flown from 2013, when the judgment was delivered by IPAB. Plaintiff has expanded manifolds over the years and in 2015, the Division Bench in Shree Nath Heritage Liquor Pvt. Ltd. (supra), held that the mark 'Officer's Choice' is 'arbitrary' and subsequently, the mark has been declared as a well-known mark by this Court. This Court has already rendered a prima facie finding in the earlier part of the judgment that majority of the marks cited by the Defendants with respect to 'Choice' as common to trade, are registered by the Plaintiff, besides the fact that as a matter of record, Plaintiff has several interim orders of this Court granting injunctions against third parties where 'Choice' has been used as a suffix in marks such as 'Master Choice', 'Your Choice', 'Banker's Choice', etc. Additionally, in the litigation in 2008, this Court had observed that there was a delay of 7 years on part of the Plaintiff in coming to the Court and that 'Original Choice' had extensive sales, which is not the case here. Another crucial fact that distinguishes the present case is that in the present case, the Court has prima facie found dishonest adoption by Defendant No. 2, who is admittedly a former bottler of the Plaintiff and had extensive knowledge of its repute and sales.

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78. Accordingly, the ex parte ad interim order dated



17.02.2022 is made absolute till the final adjudication of the suit and Defendants, their affiliates, subsidiaries, directors, wholesalers, distributors, partners, or proprietors as the case may be, their officers, servants and agents and all others acting for and on their behalf from are restrained from using, manufacturing, selling, exporting, importing, offering for sale, distributing, advertising, directly or indirectly dealing in alcoholic beverages, especially Country Spirits and IMFL, or goods of any description and from using the impugned mark 'Green Choice' or any identical/deceptively similar mark to that of the Plaintiff's trademarks 'Officer's Choice', 'Officer's Choice Blue' and 'Choice' in any manner whatsoever, amounting to trademark infringement of the Plaintiff's trademarks or to cause confusion or deception leading to passing off of the Defendants' products as those of the Plaintiff or associated with the Plaintiff or to cause dilution and tarnishment of the Plaintiff's well-known trademarks.

11. Considering the rights of the Plaintiff in the mark “OFFICER’S CHOICE”, label, product and logos, permanent injunction is issued against the Defendant and anyone else acting for and on behalf of the Defendant from using the mark “OFFICER’S CHOICE” label, logos etc., or making any reference to the Plaintiff’s product on any social media platform.
12. The suit is decreed accordingly. Decree sheet be drawn up.

PRATHIBA M. SINGH
JUDGE

JULY 13, 2023/dk/rp