



2023:DHC:9073



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 913/2018, I.A. 7614/2018 & I.A. 11060/2018**
CADBURY U K LIMITED Plaintiff
Through: **Ms. Aastha Kakkar, Adv.**

versus

MANOJ AGARWAL & ORS. Defendants
Through: **Mr.N. Mahabir, Adv.**

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER (O R A L)
12.12.2023

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1. The dispute between the parties stand settled with the intervention of the Delhi High Court Mediation and Conciliation Centre. Settlement agreement dated 18 August 2023 has been placed on record.

2. The terms of settlement read thus:

“A. The Second Party acknowledges the First Party to be the exclusive owner and lawful proprietor of the Trademark "5 STAR", 5 STAR stylized, and the trade dress/label



and in the artistic work involved in the device mark and all the packaging/ labels/trade dress mentioned in the Plaint at Para No.8. The Second Party undertakes that it shall not challenge the trademarks and copyrights of the First Party as mentioned in the Plaint at Paragraph Nos. 6 and 8 either directly or indirectly, at any time in future before any Hon'ble Court, Tribunal and/or Statutory Body, whether in India or in any foreign jurisdiction for any goods/ services and/or on any ground(s) whatsoever.



A. The Second Party affirms that they have ceased all manufacturing, sale, distribution and use of the product bearing the impugned mark and impugned label /trade dress



in compliance with the order dated May 29, 2018 in all markets- physical and online, and further undertakes that they shall not manufacture, distribute, export, sell, offer for sale, advertise, promote, display and/or use in any manner whatsoever, the impugned product SUPERSTAR as represented in



the Paragraph No.40 of the Plaint i.e. or any other product bearing the impugned label/ trade dress and impugned mark or any other label/ trade dress and/or mark which is identical or deceptively and confusingly similar to the First Party's trademarks or part of a trade mark and labels/trade dress or part of a label/ trade dress as tabulated under Paragraph Nos. 6 and 8 of the Plaint, in any manner, whatsoever, in relation to any goods, or in relation to any promotional, marketing or advertising material or any other material used or intended to be used for labelling or packaging or for advertising any goods whatsoever.

B. The Second Party also affirms that they have removed use of the impugned product bearing the impugned trade dress/ label



from their promotional and advertising materials including but not limited to all packaging, labels, pouches, cartons, brochures, business cards, business envelopes, letterheads, cartons, publicity material, pamphlets, hoardings, sign boards, stationary, etc.

C. The Second Party undertakes to send take down notices to remove the use of the impugned product bearing the impugned



trade dress/ label to all third party online listings, including but not limited to the listings/ posts on social media websites, e-commerce websites, online portals etc. within 7 days from the date of passing of the consent order in terms of the present Settlement Agreement.

D. The Second Party undertakes to withdraw the Registration for the word mark PRIYAGOLD SUPERSTAR bearing No. 2232282 in Class 30, and furnish an endorsed copy of such withdrawal, within 10 days from the date of passing of the consent



order in terms of the present Settlement Agreement.

E. The Second Party undertakes that they shall never apply, file or assert any right in the mark SUPERSTAR and/or SUPERSTAR and/or any other STAR formative mark, as a word mark or as a standalone mark for Class 30 goods or any goods which are identical or similar to confectionery goods.

F. That the Second Party is at liberty to apply for registration



of the label (as mentioned in **Annexure-E**) as a trademark and copyright. The Second Party undertakes not to claim any rights over the word STAR forming part of the label and include a disclaimer in the application(s) so filed for registration of the label mark (Annexure E) to the same effect. The First Party undertakes to not file any Opposition or Rectification Petition against the label mark as mentioned **Annexure-E**.

G. The Second Party further undertakes that they shall never adopt and/or use any trade dress/ label/ packaging which may be identical and/or deceptively and confusingly similar to the First Party's classic golden coloured wrapping in respect of goods which are identical or similar to confectionery goods.

H. The Second Party undertakes before this Court that they shall only use the trade dress/ label for their product PRIYAGOLD SUPERSTAR Ras attached herewith as **Annexure-E, i.e.**



. It is specifically agreed that the Second Party shall not make use of any label other than the label as agreed herewith as **Annexure-E**.

I. The Second Party undertakes that the Second Party, their directors, principals, partners, officers, employees, agents, distributors, suppliers, affiliates, subsidiaries, franchisees, licensees, representatives, group companies, assigns shall not reproduce, print, publish, imitate in material form and/or using the labels/ packaging as mentioned in Paragraph No.8 of the Complaint, the copyrights of which vest with the First Party, which would amount to infringement of the First Party's copyrights in the said works.

J. The Parties have agreed to request the Hon'ble High Court to pass a decree in terms of the present Settlement Agreement.



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K. In view of the undertakings given by the Second Party in the above Paras A-H of the present Settlement Agreement, the First Party agrees to forego the relief of damages and costs etc. against the Second Party as prayed for in paras C and D of the prayers in the plaint.

L. The Second Party agrees that, in case of breach of any terms of the present Settlement Agreement, as agreed herein, the First Party shall be at liberty to initiate any and all appropriate action, and will also be entitled to claim damages from the Second Party, without prejudice to any and all other claims that the First Party may have against the Second Party in law including, but not limited to, filing a petition for contempt.

M. The Parties hereto confirm and declare that they have voluntarily and of their own free will arrived at the Settlement Agreement in the presence of the Mediator.

N. The Parties hereto state that they have no further claims, demands against each other as all the disputes and differences between the parties have been amicably settled hereto.

O. That the present Settlement Agreement shall dispose of all the disputes between the parties thereto with respect to the present suit and the parties shall remain bound by the terms of the present Settlement Agreement.

P. That the Parties agree that all the terms and conditions laid out in the present Settlement Application have been entered into with a full appreciation of its various clauses and implications;

Q. That the Parties hereby agree to make statement before this Hon'ble Court that the present Settlement Application shall be binding on them as well as all their respective directors, principals, partners, officers, employees, agents, distributors, suppliers, affiliates, subsidiaries, franchisees, licensees, representatives, group companies, assigns and all others acting on their behalf, for all times to come.

R. The Hon'ble Court may consider refund of the Court fees to the First Party in terms of Section 16A of the Court Fees Act, 1870 read with section 89 of the Code of Civil Procedure.

S. The parties agree that they shall appear before the Hon'ble court during to make their statements in terms of the present Settlement Agreement.



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T. The parties undertake before the Hon'ble Court to abide by the terms and conditions set out in the agreement and not to dispute the same hereinafter any time in future.”

3. The Court has perused the terms of settlement and find them to be legal and in order.

4. Both sides are represented by learned Counsel who undertake on behalf of their respective clients to remain bound by the terms of settlement agreement.

5. As such, the dispute does not survive for consideration on merits.

6. The suit stands decreed in terms of the settlement agreement dated 18 August 2023, by which the parties shall remain bound.

7. Let a decree sheet be drawn up accordingly by the Registry.

8. The plaintiff shall be entitled to refund of the court fees deposited by it. Let the refund be made to learned Counsel for the plaintiff as the plaintiff is situated outside India.

C.HARI SHANKAR, J

DECEMBER 12, 2023

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Click here to check corrigendum, if any