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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 131/2021, I.A. 11389/2022, I.A. 19261/2023 & I.A. 1666/2024**

RADICO KHAITAN LIMITED

..... Plaintiff

Through: Mr. Anirudh Bakhru, Ms. Srijan Uppal, Mr. Abhishek Bhati, Ms. Vijay Laxmi Rathi and Ms. Pragya Chaudhry, Advocates.

versus

SARAO DISTILLERY (OPC) PVT. LTD. & ANR. Defendants

Through: Mr. Surender Deswal, Advocate (through VC).

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

04.03.2024

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1. Pursuant to previous order of this Court dated 13th February, 2024, an affidavit of compliance has been filed on behalf of Sh. Harbans Singh and Mr. Karamjit Singh, both Directors of Sarao Distillery (OPC) Pvt. Ltd., the defendant no.1 in the said matter as well on behalf of defendant no.2. The said affidavits clearly state that the production in relation to trademark '**EVENING MOMENTS**' has been closed and they have not used and do not wish to use the said trademark in future, in any manner whatsoever; and further, that they will withdraw Registration No.3644751 in respect of the said trademark from the Register of Trade Marks and have applied for the same on 20th February, 2024. Additionally, all products, packaging and



promotional material with the trademark **‘EVENING MOMENTS’** have been destroyed. It is further stated by the said deponents who appear through video conferencing that they have no intention to use the mark **‘MOMENT’/ ‘MOMENTS’**, in any manner whatsoever. The said undertaking is taken on record.

2. In view of the aforesaid, counsel for plaintiff does not press for any costs and damages. Accordingly, a decree be passed in terms of prayer 47 (i) to (iv) of the plaint, extracted as below:

- i. A Decree for permanent injunction restraining the Defendants, its directors, executives, partners, proprietors, as the case may be, its officers, servants and agents or anyone acting for and on their behalf in India from manufacturing, exporting, marketing, offering for sale, selling, advertising or in any manner dealing in any Alcoholic Beverages under the impugned trade mark, **‘EVENING MOMENT’** or from adopting any other mark or label which is identical or deceptively similar to the Plaintiff’s registered trade mark **‘MAGIC MOMENTS’** amounting to infringement of the Plaintiff’s registered trade mark (a);
- ii. A Decree for permanent injunction restraining the Defendants, its directors, executives, partners or proprietors, as the case may be, its officers, servants and agents or anyone acting for and on their behalf in India from manufacturing, exporting, marketing, offering for sale, selling, advertising or in any manner dealing in any Alcoholic Beverages under the impugned trade mark, **‘EVENING MOMENT’** and/or from adopting any other mark or label which is identical or deceptively similar to the Plaintiff’s trade mark **‘MAGIC MOMENTS’** amounting to passing off or doing any other thing which will lead to passing off of the goods and services of the Defendants as those of the Plaintiff;



- iii. A Decree for permanent injunction restraining the Defendants, its directors, executives, partners or proprietors, as the case may be, their officers, servants and agents or any other persons acting for and on behalf in India of the Defendants from manufacturing, exporting, marketing, offering for sale, selling, advertising or in any manner dealing in any Alcoholic Beverages under the impugned trade mark 'EVENING MOMENT' or any other deceptively similar trade mark to the Plaintiff's trade mark 'MAGIC MOMENTS' amounting to dilution of the goodwill and reputation of the Plaintiff's trade mark 'MAGIC MOMENTS';
- iv. A Decree for permanent injunction restraining the Defendants its directors, executives, partners or proprietors, as the case may be, their officers, servants and agents or any other persons acting for and on behalf in India of the Defendants from manufacturing, exporting, marketing, offering for sale, selling, advertising or in any manner dealing in any Alcoholic Beverages under the impugned

3. Decree sheet be drawn up in terms of the aforesaid prayers.
4. Prayer 47(v) of the plaint (for delivery up of all the bottles and packaging materials of the impugned mark) is not pressed by counsel for plaintiff, considering that the process has already been completed in terms of the said statement/undertaking of defendants taken on record, as noted above.
5. Suit is accordingly disposed of. Pending applications, if any, are rendered infructuous.
6. Needless to state that the application for cancellation of the trademark as already filed by the deponents on 20th February, 2024 shall be earnestly pursued by them in order to comply with their undertaking.
7. Considering that counsel for plaintiff has given up his relief for personal damages and the issues stand effectively settled, refund of 50% of the court fees is permitted. Registry is directed accordingly.



8. Order be uploaded on the website of this Court

ANISH DAYAL, J

MARCH 4, 2024/kct/sc