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

+ **CS(COMM) 170/2020, I.A. 5577/2020, I.A. 9824/2020**

THE HIMALAYA DRUG COMPANY & ORS Plaintiffs

Through: Ms. Prachi Agarwal, Advocate.

versus

PURECA LABORATORIES (P) LTD Defendant

Through: Mr. Sumit Rajput, Advocate for D-3.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

29.02.2024

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1. This lawsuit was partially decreed on 5th October, 2020, with specific reliefs granted against Defendant No. 1, as detailed in Paragraphs 66(i) through (iv) and (vi) of the plaint. The case continues against Defendant No.1 concerning the remaining reliefs yet to be addressed. Furthermore, through an order dated 5th November, 2022, Defendants No. 2 and 3 were added as parties to this suit.

2. Counsel for the Plaintiffs states that although they are not pressing for damages or rendition of accounts, however, considering the fact that the Defendants were indulging in infringement of their trademark, the Plaintiffs are entitled to be compensated by award of the actual cost towards expenses incurred for initiating and prosecuting the suit.

3. There is no representation for Defendant No. 1, nor has any written statement or defence been presented on their behalf. Defendant No. 2



exhibits a similar lack of engagement with the legal proceedings, having not submitted any form of defence. In contrast, Mr. Sumit Rajput, Advocate, has appeared *via* video conferencing on behalf of Defendant No. 3; yet, akin to the other defendants, Defendant No. 3 has not filed any written statement. Given these circumstances, the Court deems it necessary to advance the adjudication of this case, relying on the pleadings and other materials available on record.

4. Plaintiffs are engaged in, *inter alia*, the manufacture and sale of hand sanitizers under their registered trademarks: ‘PUREHANDS’,



‘PUREHANDS ADVANCE’ and device mark ‘’, [“**PUREHANDS Marks**”]. The details of registration of the said marks are set out as follows:

LIST OF TRADEMARK REGISTRATIONS

S.NO	Trademark	Registration Number	Date of Application	User Date	Class
1.	PUREHANDS	1140649	03.10.2002	Proposed to be used	5
2.	PUREHANDS	3138215	23.12.2015	Proposed to be used	5
3.		1211408	30.06.2003	06.01.2003	5

5. Since 2003, the Plaintiffs have continuously utilized the trademark ‘PUREHANDS’ in connection with the sale and marketing of hand sanitizers within India. The trademark registration certificate, as well as other



documents demonstrating use of the PUREHANDS Marks, have been placed on record. The Defendants' use of an identical mark has been conclusively established through photographs of the impugned products. Despite issuing a cease-and-desist notice to the Defendants on 9th March, 2020, and engaging in subsequent attempts to elicit a response, the Plaintiffs received no response.

6. The Court, upon reviewing the evidence presented, finds conclusive proof of the Plaintiffs' proprietary rights in the PUREHANDS Marks. The Defendants' decision to use an identical mark for the same category of goods — i.e. sanitizers — constitutes a direct infringement of the Plaintiffs' trademark rights. This action not only breaches statutory protections afforded under trademark law but also raises a significant likelihood of confusion among consumers, potentially misleading them into associating the Defendants' products with the Plaintiffs' established reputation. Such confusion undermines the distinctiveness of the Plaintiffs' brand and dilutes its value, effectively allowing the Defendants to unjustly benefit from the goodwill the Plaintiffs have developed over years. Moreover, the absence of any defence from the Defendants, combined with their failure to engage with the proceedings or contest the allegations as evidenced by the order dated 24th August, 2022, whereby their right to file a written statement was closed, further substantiates the claim of infringement.

7. Ms. Prachi Agarwal further underscores infringement evidence by pointing to the report of the Local Commissioner, who visited the premises of the Defendants under court orders. This inspection resulted in the discovery and seizure of infringing merchandise, including 600 sanitizer bottles adorned with the impugned mark which were found in the possession



of Defendant No. 3. Adding to this, the affidavit dated 7th November, 2020, of Mr. Vaibhav Vohra, who serves as the Director of Defendant No. 1, sheds light on the company's acknowledgment of the issue. It details a comprehensive list of products that were retrieved following recall letters dispatched to their dealers, indicating an attempt to mitigate the infringement after the fact. This confluence of actions—ranging from the physical recovery of infringing goods to the compliance action initiated by the Defendants—serves as compelling evidence of the infringement perpetrated. Considering these factors, the Court deems it appropriate to adjudicate this matter by decreeing the suit under Order VIII Rule 10 read with Order XIII-A of the Code of Civil Procedure, 1908 (CPC).

8. In light of the above, the suit is decreed in the following terms:

8.1. Defendant No. 1 shall hand over the infringing goods as listed in Annexure/ Enclosure 'D' to the affidavit dated 7th November, 2020 of Sh. Vaibhav Vohra, to the Plaintiffs, who shall then be permitted to destroy the same in accordance with law.

8.2. Defendant No. 3 shall handover the infringing articles/ goods lying with them on *superdari* in terms of the Local Commissioner's report dated 1st December, 2020. Plaintiffs shall be entitled to destroy the same in accordance with law.

8.3. The suit is also decreed in favour of the Plaintiffs and against Defendants No. 2 and 3 in terms of prayers stated at Paragraphs No. 66 (i) to (iv) and (vi) of the plaint.

8.4 Considering the aforementioned facts and the blatant infringement by Defendants, in the opinion of the Court, the suit is also decreed in favour of the



Plaintiff and against the Defendants, jointly and severally, for actual cost INR 9,65,747/-¹, which includes court fees, payment made to the Local Commissioner and legal fee paid to the counsel.

9. The suit is decreed in the above terms. Decree sheet be drawn up.

SANJEEV NARULA, J

FEBRUARY 29, 2024

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¹ As per revised statement of cost filed by the Plaintiffs *vide* Index No. 16661 on 4th January, 2024.