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

+ **CS(COMM) 447/2023**

CADBURY UK LIMITED & ANR. Plaintiff

Through: **Mr. Prakriti Varshney, Advocate.**

versus

MOKSHY WAFERS & CONFECTIONERY PVT. LTD. & ANR.

..... Defendant

Through: **Ms. Kavya Pahwa, Advocate (through VC)**

**CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL**

% **ORDER
29.04.2024**

I.A. 9353/2024 (Application under Order XXIII Rule 3 of CPC)

1. A joint application has been filed by plaintiffs under Order XXIII Rule 3 read with Section 151 of the Civil Procedure, Code, 1908 (“CPC”) placing on record the terms of settlement arrived at.
2. The terms of agreement are lawful and acceptable and have been duly signed by authorised signatories of the parties, as well as, counter signed by respective counsels.
3. The terms of settlement are as under:



A. The Defendants acknowledge the Plaintiffs to be the true and lawful owners/ proprietors of the trade marks, labels/trade dress/packaging and copyrights, as depicted and mentioned under Paragraph Nos. 7, 9, 72, 74, 110 and 112 of the Plaint. For the ease of reference, a tabular representation of the aforementioned trade marks, labels/trade dress/packaging and copyrights is annexed hereto as **Document A**.

For Shikshy Wafers And Confectioners Pvt Ltd
Mona
Director

- B. The Defendants acknowledge the Plaintiffs' rights in the signature Purple coloured labels and packaging for chocolate or confectionery products, as mentioned in *inter alia* Paragraph Nos. 9, 74 and 112 of the Plaint;
- C. The Defendants acknowledge the Plaintiffs' rights in the signature colour Purple for chocolates, confectionery products and/or any goods falling in Class 30;
- D. The Defendants undertake to this Hon'ble Court that the Defendants shall not challenge the trade marks, labels/trade dress/ packaging and copyrights of the Plaintiffs as mentioned in the Plaint at Paragraph Nos. 7, 9, 72, 74, 110 and 112 either directly or indirectly, at any time in future before any Court, Tribunal and/or Statutory Body, whether in India or in any foreign jurisdiction, on any ground(s) whatsoever.
- E. The Defendants affirm that the Defendants have ceased all *inter alia* manufacture, sale, distribution and use of the impugned products namely DAIRY LIPS, BORNDON (chocolate enrobed wafer under the mark BORN DON having the colour combination and scheme of yellowish golden and purple alongwith an pattern displaying the sun's rays in the background behind the mark as mentioned in Paragraph 183 of the Plaint), ONRIO, BOURNITA, ORIOO Burger and ORIOO wafers bearing the impugned marks, impugned stylizations, impugned devices, impugned labels/trade dress and/or any other products bearing the impugned marks, impugned stylizations, impugned devices and/or impugned labels/trade dress as mentioned in paragraphs 2, 174 and 181 to 184 of the Plaint, except as specifically agreed herein in Clause 3(K), or any other mark or stylization or device or logo or label/ trade dress



which is identical to and/or confusingly and deceptively similar to the Plaintiffs' trade marks, labels/trade dress/packaging and copyrights of the Plaintiffs as mentioned in the Plaint at Paragraph Nos. 7, 9, 72, 74, 110 and 112 either as a trade mark / part of a trade mark, as a trade dress/ label or part of a trade dress/ label, as a device mark or part of a device mark, logo or part of a logo or in any other manner whatsoever, in relation to any goods or services, or in relation to any promotional, marketing or advertising material or any other material used or intended to be used for labelling or packaging and/or advertising any goods or services and confirms that they have removed all use of the said impugned products from their promotional and advertising materials including but not limited to all finished or unfinished products, labels, stickers, wrappers, packages, boxes, cartons, stationery, posters, brochures, business cards, business envelopes, letterheads, cartons, publicity material, pamphlets, hoardings, signboards, nameboards, on-pack advertising, Point of Sale material, packaging and promotional material, etc. For the ease of reference, a tabular representation of the Defendants' impugned products under the impugned marks, impugned stylizations, impugned devices and impugned labels/trade dress is annexed hereto as **Document B**.

- F. The Defendants undertake before this Hon'ble Court that the Defendants shall never, in the future, *interalia* manufacture, authorize the manufacture, sell, offer for sale, market, export, import, retail, supply, distribute, exhibit, advertise, promote, display, deal in and /or use the impugned products namely DAIRY LIPS, BORNDON (chocolate enrobed wafer under the mark BORN DON having the colour combination and scheme of yellowish golden and purple alongwith an pattern displaying the sun's rays in the background behind



the mark as mentioned in Paragraph 183 of the Complaint), ONRIO, BOURNITA, ORIOO Burger and ORIOO wafers bearing the impugned marks, impugned stylizations, impugned devices, impugned labels/trade dress and/or any other products bearing the impugned marks, impugned stylizations, impugned devices and/or impugned labels/ trade dress as mentioned in paragraphs 2, 174 and 181 to 184 of the Complaint, except as specifically agreed herein in Clause 3(K), or any other mark or stylization or device or logo or label/ trade dress which is identical to and/or confusingly and deceptively similar to the Plaintiffs' trade marks, labels/ trade dress/packaging and copyrights of the Plaintiffs as mentioned in the Complaint at Paragraph Nos. 7, 9, 72, 74, 110 and 112 either as a trade mark / part of a trade mark, as a trade dress/ label or part of a trade dress/ label, as a device mark or part of a device mark, logo or part of a logo or in any other manner whatsoever, in relation to any goods or services, or in relation to any promotional, marketing or advertising material or any other material used or intended to be used for labelling or packaging and/or advertising any goods or services.

G. The Defendants undertake before this Hon'ble Court that the Defendants shall refrain from reproducing, imitating, copying, adopting, using and/or exploiting the original works of the Plaintiffs including the Plaintiffs' labels, devices and logos for the brands OREO, DAIRY MILK, BOURN VITA and the signature Purple coloured labels and packaging, as mentioned in Paragraph Nos. 9, 74 and 112 of the Complaint, and/or any other copyrighted material of the Plaintiffs in relation to the impugned products or any other product, or in any other manner whatsoever.

For Moksby Wafers And Confectioners Pvt. Ltd.



H. The Defendants undertake before this Hon'ble Court that the Defendants shall refrain from manufacturing or authorizing the manufacture, selling, offering for sale, marketing, exporting, importing, retailing, supplying, distributing, exhibiting, advertising, promoting, displaying, dealing in and/or using, in any manner whatsoever, any chocolates, confectionery products and/or any goods falling in Class 30 packaged or labelled in a Purple, Purple and white, Purple and gold, mauve or Lilac coloured wrappers/labels or any similar shade/color or combination thereof.

I. The Defendants undertake before this Hon'ble Court to take steps to remove and / or send takedown notices to remove all references of the impugned products namely DAIRY LIPS, BORNDON (chocolate enrobed wafer under the mark BORN DON having the colour combination and scheme of yellowish golden and purple alongwith an pattern displaying the sun's rays in the background behind the mark as mentioned in Paragraph 183 of the Plaint), ONRIO, BOURNITA, ORIOO Burger and ORIOO wafers bearing the impugned marks, impugned stylizations, impugned devices and/or impugned labels/trade dress and/or any other products bearing the impugned marks, impugned stylizations, impugned devices and/or impugned labels/ trade dress as mentioned in paragraphs 2, 174 and 181 to 184 of the Plaint, except as specifically agreed herein in Clause 3(K), or any other mark or stylization or device or logo or label/ trade dress which is identical to and/or confusingly and deceptively similar to the Plaintiffs' trade marks, labels/ trade dress/ packaging and copyrights of the Plaintiffs as mentioned in the Plaint at Paragraph Nos. 7, 9, 72, 74, 110 and 112 from their websites and/or all third party websites, including but not limited to the listings/posts on social media websites, e-commerce websites,

For Bhakty Shilpa And Confectionery Pvt. Ltd.


Director





online portals etc. within 7 calendar days of signing of the present application and provide proof of such removals to the Plaintiffs' counsel.

J. The Defendants undertake to destroy all pending stocks of the impugned products namely DAIRY LIPS, BORNDON (chocolate enrobed wafer under the mark BORN DON having the colour combination and scheme of yellowish golden and purple alongwith an pattern displaying the sun's rays in the background behind the mark as mentioned in Paragraph 183 of the Plaint), ONRIO, BOURNITA, ORIOO Burger and ORIOO wafers bearing the impugned marks, impugned stylizations, impugned devices and/or impugned labels/trade dress and/or any other products bearing the impugned marks, impugned stylizations, impugned devices and/or impugned labels/ trade dress as mentioned in paragraphs 2, 174 and 181 to 184 of the Plaint, except as specifically agreed herein in Clause 3(K), or any other mark or stylization or device or logo or label/ trade dress which is identical to and/or confusingly and deceptively similar to the Plaintiffs' trade marks, labels/ trade dress/ packaging and/or copyrights of the Plaintiffs as mentioned in the Plaint at Paragraph Nos. 7, 9, 72, 74, 110 and 112 in the presence of the Plaintiffs' representative within 7 calendar days of signing of the present settlement application.

K. The Defendants further affirm that the Defendants have not filed any application or secured a registration for any mark or copyright or design which is identical and/or deceptively and confusingly similar to the Plaintiffs' intellectual properties detailed in the Plaint at Paragraph Nos. 7, 9, 72, 74, 110 and 112, except for the registration for the mark

For Melsky Waters And Collections Pvt. Ltd.


Director





BORNDON (word) bearing No. 4465813 in Class 30 and undertakes not to file any application or secured a registration for any mark or copyright or design which is identical and/or deceptively and confusingly similar to the Plaintiff's intellectual properties detailed in the Plaint at Paragraph Nos. 7, 9, 72, 74, 110 and 112.

- L. The Defendant affirms that the Defendant has amended the stylization, devices and the labels/ trade dress of the impugned product bearing the mark BORNDON to the stylization, devices and labels/trade dress as reproduced below and will only use the same henceforth with respect to its mark BORNDON. For the ease of reference, a tabular representation of the amended stylization, devices and labels/trade dress of the Defendants' product under the mark BORNDON is annexed hereto as *Document C*.

Amended Product of the Defendants under the mark BORNDON



For Makshy Wafers And Confectioners Pvt. Ltd.
Mona
Director

This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.

The Order is downloaded from the DHC Server on 01/05/2024 at 12:21:47



For Mukesh Bhatia And Confessionals Pvt. Ltd.
Mukesh Bhatia Director

This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.

The Order is downloaded from the DHC Server on 01/05/2024 at 12:21:47



For Mummy Wafer And Confectionery Pvt. Ltd.
[Signature]
Director

[Signature]

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4. Accordingly, parties will be bound by the terms of the settlement as executed by them.
5. Let decree sheet be drawn up accordingly.
6. In view of the settlement between the parties, plaintiff is entitled to get refund of Court fees.
7. Accordingly, registry is directed to refund of Court Fees to plaintiff.
8. The suit is disposed of in these terms.
9. Pending applications if any, are also rendered infructuous.
10. The date already fixed stands cancelled.
11. Order be uploaded on the website of this Court.

ANISH DAYAL, J

APRIL 29, 2024/RK/ig