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

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Date of decision: 26th November, 2024+ **CS(COMM) 462/2023 & I.A. 12451/2023****PHILIP MORRIS BRANDS SARL**PlaintiffThrough: Mr. Manish Biala and Mr. Devesh
Ratan, Advocates.

versus

M/S RAHUL PAN SHOP & ORS.Defendants

Through: None.

CORAM:**HON'BLE MR. JUSTICE AMIT BANSAL****AMIT BANSAL, J. (Oral)**

1. The present suit has been filed seeking relief of permanent injunction restraining the defendants from infringing the trademark and copyright of the plaintiff, passing off their goods as that of the plaintiff, along with other ancillary reliefs.

PLEADINGS IN THE PLAINT

2. Brief facts relevant for adjudicating the present suit are set out below:

2.1. The plaintiff, Philip Morris Brands SARL, is a subsidiary of Philip Morris International Inc., an American multinational company. The plaintiff company carries out its business in India through IPM India Wholesale Trading Pvt. Ltd.

2.2. In the year 1924, the plaintiff adopted the trademark 'MARLBORO' and it started selling cigarettes bearing the said mark in India from the year 2003.



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2.3. It is averred in the plaint that the plaintiff is the registered proprietor of the 'MARLBORO' trademark and its formative marks as well as the



'ROOFTOP' device mark in India. The trademark registrations of the plaintiff are given in paragraph 7 of the plaint. The Certificates of Registrations are filed as document no. 3 of the documents filed along with the plaint. All the aforesaid registrations remain valid and subsisting.

2.4. It is stated in the plaint that the plaintiff adopted several sub-brands and trademarks such as 'MARLBORO RED', 'MARLBORO GOLD', 'MARLBORO MENTHOL', 'MARLBORO ADVANCE COMPACT' etc. which are used in products sold all over the world, including India.

2.5. The plaint further asserts that the stylized trademark **Marlboro** in a bold typeface with elongated vertical bars of the small case letters "l" and "b" as well as the 'ROOFTOP' device were first used in the year 1954. Subsequently, the plaintiff has adopted the trademarks/labels

**SMOOTH FLO**

. The plaintiff claims a copyright over the aforementioned labels which are the original artistic works of the plaintiff under Section 2(c) of the Copyright Act, 1957. The images of the plaintiff's packaging and cigarette sticks bearing the aforesaid trademarks/ labels are given in paragraphs 9 and 11 of the plaint.

2.6. In the year 2021-2022, the sales of the plaintiff's products bearing the 'MARLBORO' marks and 'ROOFTOP' device were to the tune of Rs. 11,07,09,44,292/-. The annual sales of the plaintiff from the year 2009 to 2022 are given in paragraph 13 of the plaint. The original CA Certificate



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certifying the sales figures from 2009 to 2019 has been filed as document no. 8 of the documents filed along with the plaint.

2.7. Over the years, the plaintiff has spent a considerable amount of money in promoting and advertising its products bearing the 'MARLBORO' trademarks. The promotional expenses of the plaintiff for the said products during the period 2009-2022 in India are given in paragraph 14 of the plaint. The plaintiff's 'MARLBORO' brand has also been consistently ranked number 1 in the Brand Finance Report from 2018 to 2020 as the world's most valuable tobacco brand with a brand value of USD 32.7 million in 2020. As a result, the 'MARLBORO' trademarks and ROOFTOP' device enjoy immense reputation and goodwill among consumers.

2.8. The defendant no.1, M/s Rahul Pan Shop, is a proprietorship concern involved in selling cigarettes and other tobacco products. The defendant no.2 is the person managing and running the defendant no.1 and is believed to be the owner / proprietor of the defendant no.1.

2.9. The defendant no.3 is the owner of a warehouse located in Chandigarh, where counterfeit goods bearing the plaintiff's trademarks are being stored in large quantities. The defendant no.4 is the person managing and running the said warehouse. The defendant no.5 is an individual working for the defendants no.3 and 4.

2.10. In March 2023, the plaintiff came across the counterfeit 'MARLBORO ADVANCE COMPACT' cigarette packs sold by the defendants no.1 and 2. Thereafter, the plaintiff asked its investigators to purchase 20 packs of the counterfeit products. From this investigation, it emerged that the defendants no. 3 and 4, through defendant no.5, were supplying the said counterfeit products to the defendants no.1 and 2.



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2.11. It is averred in the plaint that all the counterfeit cigarette packs purchased by the plaintiff, through its investigator, bore the same code “0X0 WUA KH1 546” which seemed to be incorrect because the genuine products of the plaintiff bear a unique code on each cigarette pack. This unique code is printed during the manufacturing process and it is different on every pack.

3. Accordingly, the plaintiff filed the present suit on 10th July, 2023 seeking to restrain the defendants from carrying on their infringing activities.

PROCEEDINGS IN THE SUIT

4. On 13th July, 2023, this Court granted an *ex parte ad interim* injunction in favour of the plaintiff restraining the defendants from dealing in any products bearing the impugned packaging or using the labels/artistic

works  /  ,  ,  and *SMOOTHFLO* or

the mark  as well as the five sided ‘ROOFTOP device’ 

. This Court also appointed a Local Commissioner to visit the defendants no.1 and 2’s premises.

5. The Local Commissioner conducted the commission on 22nd July, 2023 at the defendants no.1 and 2’s premises and inventoried all the packs of cigarettes bearing the plaintiff’s trademarks ‘MARLBORO’ which were found at the said premises. However, packs and/or loose counterfeit cigarettes bearing the code “0X0 WUA KH1 546” were not found at the premises of the defendants no.1 and 2.

6. Via order dated 27th February, 2024, the present suit has already been decreed *qua* the defendants no. 3 and 4 on the basis of a settlement.



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7. Via order dated 31st January, 2024, the Joint Registrar noted that the defendants no.1 and 2 were duly served through courier on 15th December, 2023. Despite this, the defendants no.1 and 2 did not enter appearance and no written statement(s) were filed on behalf of the defendants no.1 and 2.

8. Since written statements were not filed by the defendants no.1 and 2 within the maximum permissible period of 120 days, the right to file the same was closed on 3rd July, 2024.

9. Via order dated 20th August, 2024, the defendants no.1 and 2 have been proceeded against *ex parte* and the same order also records that the plaintiff does not wish to proceed against the defendant no. 5.

10. In these circumstances, counsel for the plaintiff presses for a decree of permanent injunction against the defendants no.1 and 2 under Order VIII Rule 10 of the Code of Civil Procedure, 1908 (hereinafter, 'CPC').

ANALYSIS AND FINDINGS

11. I have heard the submissions of counsel for the plaintiff and also perused the material on record.

12. The plaint has been duly verified and is also supported by the affidavit of the plaintiff. In view of the fact that no written statement(s) have been filed on behalf of the defendants no.1 and 2, all the averments made in the plaint have to be taken to be admitted. Further, since no affidavit of admission/denial has been filed on behalf of the defendants no.1 and 2 in respect of the documents filed with the plaint, in terms of Rule 3 of the Delhi High Court (Original Side) Rules 2018, the same are deemed to have been admitted. Therefore, in my opinion this suit does not merit trial and the suit is capable of being decreed in terms of Order VIII Rule 10 of the CPC.

13. From the averments made in the plaint and the evidence on record, the



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plaintiff has been able to prove that it is the registered proprietor of the trademarks 'MARLBORO' and the 'ROOFTOP' device. Due to its long and continuous use, the plaintiff has also acquired a copyright over the labels used in its cigarettes/ cigarette packs.

14. The plaintiff has placed on record images of the defendants' impugned products to show that the defendants are indulging in infringement and passing off of the plaintiff's registered mark, 'MARLBORO' and other formative marks. The plaintiff's products and the defendant's products are set out below:

Plaintiff's Goods	Defendants' Impugned Goods
	
	



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15. The comparison above categorically shows that the cigarette packs are identical in terms of colour combination and arrangement of letters, marks and figures. Hence, the defendants no.1 and 2 have replicated the contents, colour scheme, the 'MARLBORO' trademarks and 'ROOFTOP' device of the plaintiff's packaging.

16. Based on the discussion above, a clear case of infringement of trademark and copyright is made out. The defendants no.1 and 2 have taken unfair advantage of the reputation and goodwill of the plaintiff's trademarks/artistic works and have also deceived the unwary consumers of their association with the plaintiff by dishonestly adopting the plaintiff's registered marks without any plausible explanation. Therefore, the plaintiff has established a case of passing off as well.

17. At this stage, it may be relevant to note that the defendants no.1 and 2 did not appear before the Court, despite service of summons on 15th December, 2023 *via* courier. Further, no communication on behalf of the defendants no.1 and 2 has been placed on record in respect of the allegations of the plaintiff in this suit. Hence, the right to file written statement for the defendants no.1 and 2 was closed on 3rd July, 2024.

18. Since the defendants no.1 and 2 have failed to take any requisite steps to contest the present suit, despite having suffered an *ad interim* injunction order, it is evident that they have no defence to put forth on merits.

RELIEF

19. In view of the foregoing analysis, a decree of permanent injunction is passed in favour of the plaintiff against the defendants no. 1 and 2 in terms of prayer clauses 34 i., 34 ii. and 34 iii. of the plaint.



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20. The counsel for the plaintiff does not press for any other relief.
21. Let the decree sheet be drawn up.
22. All the pending applications stand disposed of.

AMIT BANSAL, J

NOVEMBER 26, 2024

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