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

+ **CS(COMM) 542/2021 & I.A. 6710/2024**

RECKITT BENCKISER INDIA PRIVATE LIMITED Plaintiff

Through: **Mr. Sumit Wadhwa and Mr. Aman
Venugopal, Advs.**

versus

RAVI KUMAR & ORS.

..... Defendants

Through: **Mr. Yatin Grover, Adv. for D-1.**

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

21.03.2024

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I.A. 6710/2024 (joint application by parties)

1. This application has been filed under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 jointly by the parties placing the terms of the settlement arrived at between them on record, which are as under:

5. That, the Plaintiff and the Defendant No. 1 have agreed to amicably settle the matter on the following terms:

a. The Defendant No. 1 unconditionally submits to a permanent injunction from using, manufacturing, distributing, exporting, selling, offering for sale, advertising, promoting and/or displaying products bearing the trade marks HARPIK, HARCİK, in



deceptively similar labels  and

 shape of the HARPIC bottle [] and/or on any other product bearing any other mark/label/trade dress/packaging/bottle shapes deceptively and/or confusingly similar to the Plaintiff's HARPIC label and its HARPIC BOTTLE shape and/or any manner whatsoever in relation to its goods/services constitutes infringement and/or passing off its goods as and for that of the Plaintiff and shall in the future refrain from using any mark similar/identical to the Plaintiff's trade marks

HARPIC, HARPIC labels  and the

shape of the HARPIC bottle  ;

- b. The Defendant No. 1 unconditionally submits to a permanent injunction from reproducing, printing,



publishing and/or imitating in any material form the Plaintiff's original artistic work as given in the Plaintiff's HARPIC Trade Dress, i.e. the HARPIC



labels, so as to constitute infringement of the Plaintiff's copyright;

- c. The Defendant No. 1 undertakes to this Hon'ble Court to unconditionally remove and destroy all products, stickers, labels, brochures, leaflets, banners, hoardings, visiting cards, invoices, bill books and /or any other articles bearing the trade mark HARPIK, HARCİK, in deceptively similar labels



and



and shape of the HARPIC bottle



[] and/or any other product/label/stationery making use of a mark similar/identical to the Plaintiff's trade marks



HARPIC, HARPIC labels



and the



shape of the HARPIC bottle in the presence of a representative of the Plaintiff and within the timeline fixed by the Hon'ble Court;

- d. The Defendant No. 1 undertakes to this Hon'ble Court to unconditionally make all reasonably possible efforts in deleting/taking down any infringing listings available online, or any other listing(s) available on any third party website(s), which bears and/or makes reference to the trade marks HARPIK,

HARCIK, in deceptively similar labels



and



and shape of the HARPIK bottle [



] and/or on any other product bearing any



other mark/label/trade dress/packaging/bottle shapes deceptively and/or confusingly similar to the Plaintiff's HARPIC label and its HARPIC BOTTLE shape and/or any manner whatsoever, and provide cogent proof of the efforts made in this regard, to the counsels for the Plaintiff.

- e. The Defendant No. 1 further states and undertakes to this Hon'ble Court that it has not applied for, or obtained trade mark registrations for any mark(s) which is identical or similar or encompasses the Plaintiff's registered trade mark HARPIC or the HARPIC bottle shape mark, in relation to any goods or services.
- f. The Defendant No. 1 agrees to pay to the Plaintiff without any demurer or protest a sum of liquidated damages to the tune of INR 50,00,000/- (Fifty Lakhs only) in the event of the occurrence of any future default/breach by any of them of any condition set forth herein above.



- h. The Defendant No. 1 agrees to pay a sum of INR 2,00,000/- (Two Lakhs only) towards full and final settlement of the dispute and the Plaintiff agrees that the said amount be sent to the Delhi State Legal Services Authority (Legal Aid Cell). Proof of the same would be sent to the Plaintiff's counsel on or before March 22, 2024;
- i. That the parties agree and undertake to this Hon'ble Court that the terms of settlement as set out above will be binding on all successors, franchisees, licensees, distributors, representatives, assignees, agents and anyone acting for and/or on their behalf.
- j. The parties shall bear their own cost of the proceedings.

2. The application has been signed by the authorised signatories of parties and counter signed by their respective counsel and supported by affidavits of the parties.

3. The Court has perused the terms of settlement and finds them to be lawful and acceptable.

4. Accordingly, decree sheet be drawn up in terms of the above settlement.

5. Parties shall be bound by the terms of settlement.

6. As regards para 5(h) of the application, in that, defendant no.1 will pay Rs.2 Lacs to the Delhi State Legal Services Authority (Legal Aid Cell) on or before 22nd March, 2024, counsel for defendant no.1 states that some extension may be granted since they need to ascertain the details of the beneficiary account. Accordingly, the same may be paid on or before 01st April, 2024.

7. As regards para 5(c) of the settlement, counsel inform that the parties



have agreed that same can be carried out on or before 05th April, 2024, in presence of the representatives of the plaintiff and defendant.

8. As regards defendant no.2, no one has appeared in proceedings before this Court and has been proceeded *ex-parte* by order dated 20th December, 2022.

9. In view of the same, counsel for plaintiff claims that they are entitle to a decree in their favour. An *ex-parte* injunction had been awarded in favour of plaintiff *vide* order dated 28th October, 2021 in the following terms:

27. Accordingly, till further orders, defendants, their partners, officers, employees, agents, distributors, suppliers, affiliates, subsidiaries, franchisees, licensees, representatives, group companies and assigns from manufacturing or authorizing the manufacture, distributing, exporting, selling, offering for sale, advertising, promoting, displaying and/or any one acting for and on its behalf are restrained from in any manner using the mark/name "HARPIK" AND "HARCIK" or any other mark/name deceptively similar to plaintiff's trademark HARPIC either by itself or in conjunction with any other word and/or in any manner whatsoever resulting in passing off or infringe the plaintiff's copyrights in the artistic work comprised in its products packaging. They are further restrained from listing any product of the plaintiff on the website of defendant no.3.

10. Details of the claim by the plaintiff were narrated in the said order as well which have been perused by this Court *inter alia* in paragraphs 17 – 24 of the said order.

11. Considering that defendant no.2 has not joined the proceedings, averments stand unrebutted.

12. Accordingly, decree is passed in favour of plaintiff in terms of the



following prayers, as included in the plaint:

- a) A decree of permanent injunction against the Defendants from using the marks HARPIK, HARCİK and/or any other mark deceptively similar to the Plaintiff's trade mark HARPIC either by itself or in conjunction with any other word and/or in any manner whatsoever, so as to constitute infringement and/or passing off its goods as and for that of the Plaintiff's;
- b) A decree of a permanent injunction against the Defendants from manufacturing/selling any bottle in the

shape and blue and red colour combination
and/or any other bottle shape deceptively similar to the Plaintiff's HARPIC constitutes infringement and/or passing off its goods as and for that of the Plaintiff's;



c) A decree of a permanent injunction against the Defendants from using, manufacturing, distributing, exporting, selling, offering for sale, advertising, promoting and/or displaying products bearing the trade marks HARPIK, HARCİK, in deceptively similar labels



and and shape of the HARPIK bottle [



] and/or on any other product

bearing any other mark/label/trade dress/packaging/bottle shapes deceptively and/or confusingly similar to the Plaintiff's HARPIC label and its HARPIC BOTTLE shape and/or any manner whatsoever in relation to its goods/services constitutes infringement and/or passing off its goods as and for that of the Plaintiffs;



- d) A decree of a permanent injunction against the Defendant from reproducing, printing, publishing and/or imitating in any material form the Plaintiff's original artistic work as given in the Plaintiff's HARPIC Trade

Dress (i.e. the HARPIC labels ) so as to constitute infringement of the Plaintiff's copyright;

- h) An order that the decree be binding on the Defendants, their directors, successors, franchisees, licensees, distributors, retailers, representatives, assignees, agents and any one acting for and/ or on their behalf;

13. In view of the settlement between the parties, plaintiff is entitled to 50% refund of the court fees.

14. Registry is directed accordingly.

15. As regards defendant no.3, a decree was passed in favour of plaintiff on 20th December, 2022.

16. Accordingly, suit is disposed of in the aforesaid terms. Pending applications, if any, also stand disposed of.

17. Order be uploaded on the website of this Court.

ANISH DAYAL, J

MARCH 21, 2024/MK/sc