



\$~14

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 699/2021**
REPUBLIC TECHNOLOGIES (NA) LLC Plaintiff

Through: Mr. Saif Khan, Mr. Shobhit Agarwal
and Mr. P. Kushwaha, Advocates.

versus

VIPIN PATHAK TRADING AS M/S PATHAK IMPEX AND M/S
PATHAK TRADERS Defendant
Through: Mr. Jayant Kumar and Mr. Amit
Kumar, Advocates for D-1.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

% **ORDER**
07.02.2024

1. The matter is pending for determining of costs and damages considering that, post issuance of summons by this Court on 23rd December, 2021, defendant's counsel appeared on 29th March, 2022 and made a categorical statement that they were willing to change the impugned logo and mark. Subsequently, on 19th April, 2022, it was noted that an affidavit was filed by defendant regarding the said change of mark and packaging. Deliberations between the parties with respect to alternative mark/logo continued thereafter and finally, on 9th May, 2023, subsequent to mutual resolution, it was agreed that defendant would not contest the suit on merit and shall adopt a non-infringing trademark. Thus, only issue of cost and



damages has been kept open.

2. Today, Mr. Khan, learned counsel appearing on behalf of plaintiff states that they are willing to seek a decree from the Court and prays for damages only to the extent of Local Commissioner's fees and expenses.

3. Keeping in mind facts and circumstances of the matter, costs to the tune of Rs.2,50,000/- (Two Lakh Fifty Thousand only) may accordingly be paid to the plaintiff within a period of four weeks from today.

4. Present suit is decreed in terms of the prayers (a) (b) (c) and (d) of the plaint.

“a. An order and decree of permanent injunction restraining the Defendant, his partners as the case may be, agents, servants, distributors and any other persons acting for and on behalf of the Defendant from selling, offering for sale, manufacturing, advertising, importing, exporting, or in any manner commercially dealing in any

goods bearing the trade mark OOBURG/  *or any mark identical or deceptively similar to the Plaintiff's OCB trade marks, amounting to infringement of the Plaintiffs' registered trademark No. 854360;*

b) An order and decree of permanent injunction restraining the Defendant, his partners as the case may be, agents, servants, distributors and any other persons acting for and on behalf of the Defendant from substantially reproducing, issuing, communicating to the public or otherwise using the logos, labels and trade dress/packaging of the Plaintiff's OCB products amounting to an infringement of the Plaintiff's copyright therein;



c) An order and decree of permanent injunction restraining the Defendant, his partners as the case may be, agents, servants, distributors and any other persons acting for and on behalf of the Defendant from selling, offering for sale, advertising, manufacturing, importing, exporting, and directly or indirectly dealing in any goods

bearing the trade mark 'OOBERG' /  and/or its packaging or any mark identical or deceptively similar to the Plaintiff's OCB trade marks, amounting to passing off;

d) An order and decree of permanent injunction restraining the Defendant, his partners as the case may be, agents, servants, distributors and any other persons acting for and on behalf of the Defendant from selling, offering for sale, advertising, manufacturing, and directly or indirectly dealing in any goods bearing the trade mark

'OOBERG' /  and/or its packaging or any mark deceptively similar to the Plaintiff's OCB trade marks, causing dilution and tarnishment amounting to unfair competition;"

5. Decree sheet be drawn up accordingly.

6. It is noted that certain goods were seized by the Local Commissioner appointed pursuant to directions of this Court on 23rd December, 2021 and were returned to the defendant on *superdari*. Said goods may be de-sealed and destroyed in the presence of authorized representative/counsel for the parties at defendant's premises, i.e., M/s Pathak Impex and M/s Pathak Traders, House No. 162, Gali No.6B, Vishnu Colony, Ballabgarh, Faridabad, Haryana-121004.



7. Let the same be done on or before 20th February, 2024 between 11:00 hours and 17:00 hours IST.
8. Counsel for defendant also states, on instructions, that they will withdraw the trademark application no. 4856587 in respect of the impugned mark within a period of two weeks from today.
9. The suit is, therefore, disposed of in above terms. Pending applications, if any, are rendered infructuous.
10. Order be uploaded on the website of this Court.

ANISH DAYAL, J

FEBRUARY 7, 2024/ssc/sc