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

\+ CS(COMM) 845/2022 & I.A. 20564/2022

C.K ENTERPRISES ..... Plaintiff

Through: Mr. Vikas Khera & Mr. Ved Prakash, Advocates.

versus

MR. SUNNY & ANR. ..... Defendants

Through: Mr. Arpit Sharma & Mr. Praveen Kumar, Advocates for D-1.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

<u>O R D E R</u>

% **09.01.2024**

<u>**I.A. 14818/2023** *(under Order XXIII Rule 3 read with Section 151 of the Code of Civil Procedure, 1908 seeking compromise)*</u>

1. By way of this application, Plaintiff and Defendant No. 1 jointly pray for a compromise decree on the terms enumerated in Paragraph No. 5 of the application. Counsel for parties mentioned in the appearance above confirm the compromise between the parties.

2. The Court has perused the terms of the compromise recorded in Paragraph No. 5 of the application and finds the same to be lawful.

3. Accordingly, the suit is decreed in favour of Plaintiff and against Defendant No. 1 in terms of prayers sought at Paragraph No. 36 (a) (i), (ii), (iii), (iv), and (v) of the Plaint and the terms of compromise recorded in the application. Parties shall remain bound by the terms and conditions of the settlement.

4. Decree sheet be drawn up.

5. The application is disposed of.

I.A. 18897/2023 *(under Order XIIIA of Commercial Courts Act, 2015, read with Section 151 of Code of Civil Procedure, 1908, seeking summary judgement)*

6. Suit has already been compromised between Plaintiff and Defendant No. 1 and the decree has been passed today. As regards Defendant No. 2, Plaintiff has filed the instant application seeking a summary judgment.

7. As noted in order dated 16th March, 2023, Defendant No. 2 has been served with the summons in the suit. However, despite service, Defendant No. 2 has not appeared or filed any written statement. The time period of filing written statement has since expired and therefore, their right to file written statement stands closed.

8. In view of the above, Defendant No. 2 is proceeded as *ex-parte*. In absence of any defence, Plaintiff relies on Order VIII Rule 10 of the Code of Civil Procedure, 1908 (CPC) to seek a decree against the Defendant No. 2.

9. Mr. Vikas Khera, counsel for Plaintiff, states that he is not pressing for any damage claim against Defendant No. 2. However, since Defendant No. 2 has not cared to appear before this Court to contest the proceedings, despite the fact that Local Commissioner has recovered counterfeit products from their possession, Mr. Khera urges that the Court may consider awarding costs against them.

10. On 6th December, 2022, this Court has passed an *ex parte* ad interim injunction against Defendant No. 2. The relevant portion of the said order noting the factual background and the cause of action, reads as under:

> *"16. The plaintiff is in business of manufacture and sale of balloons. The*

plaintiff has been using the trademark 'TIGER' since 1st April, 1989. On 11th March, 2020, the plaintiff adopted the mark ‘C.K. TIGER' . The plaintiff has obtained registrations in respect of its trademarks 'TIGER', 'C.K. TIGER' and other related formative marks in Class 28 for balloons, details of which are as under:

S. No.	Trademark	Application No.	Status
1.		1744879	Rectification filed
2.	C. K. TIGER	4468757	Registered
3.		4468876	Registered
4.		4794566	Registered

17. The plaintiff has also filed its sales figures under the trademark 'TIGER' and 'TIGER' formative mark from the year 2001-02 to 2022-23 to demonstrate that its trademark 'TIGER' is a well-known trademark. In the year 2021-22, the plaintiff had a turnover of approximately Rs.86,00,00,000/-.

18. It is also the case of the plaintiff that it has created and adopted original and unique artistic work that is placed on the packaging in which the balloons are sold, and the plaintiff owns copyright over the said artistic work.

19. Counsel for the plaintiff submits that the defendants no.1 and 2, who are also in the business of selling balloons, have dishonestly adopted the marks/labels 'O D TIGER' and 'SHEERA', which are deceptively similar to the marks/labels being used by the plaintiff for its business. The packaging adopted by the defendants is visually identical to the packaging of the plaintiff. A comparison of the packaging used by the plaintiff and the defendants is set out below:

<table>
<tr><th>PLAINTIFF'S PRODUCTS</th><th>DEFENDANTS' PRODUCTS</th></tr>
<tr><td>
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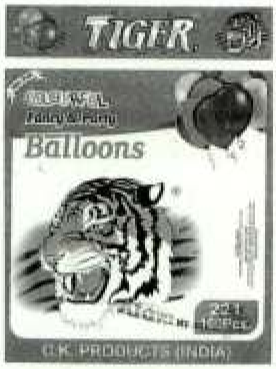
<tr><td>
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20. A comparison of the above marks/labels of the plaintiff with that of the defendants shows that the defendants are violating the statutory as well as common law rights of the plaintiff, which amounts to infringement of trademark and copyright as well as passing off.

…xxx… …xxx… …xxx…

25. A prima facie case is made out on behalf of the plaintiff. Balance of convenience is in favour of the plaintiff and against the defendants. Irreparable injury would be caused to the plaintiff if the defendants continue to use the impugned marks/labels. Prejudice would also be *caused to the public as the marks/labels of the defendants are deceptively similar to that of the plaintiffs and likely to cause confusion in the market.*

26. Consequently, till the next date of hearing, the defendants by themselves as also through their individual proprietors, partners, directors, agents, representatives, distributors, assigns, heirs, successors, stockists and all others acting for and on their behalf are restrained from using, selling, soliciting, exporting, displaying, promoting, advertising and dealing with the impugned marks/ labels

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or 

'O D TIGER' and/or any other markllabellpackaging/artistic works either identical or deceptively similar to that of the plaintiffs aforesaid marks/labels."

11. Further, it is pertinent to note that through the same order, this Court appointed a Local Commissioner to visit the premises of Defendant No. 2. Pursuant thereto, the Local Commissioner has filed a report dated 4th February, 2023, which delineates the counterfeit goods seized from the premises of Defendant No. 2.

12. In view of the fact that there is no contest by Defendant No. 2, and there is material on record to indicate that Defendant No. 2 was also indulging in sale of goods bearing marks which were infringing on the Plaintiff's registered trademark, the suit is decreed in favour of Plaintiff and against Defendant No. 2 in terms of prayers sought at Paragraph No. 36 (a) (i), (ii), (iii), (iv), and (v) of the Plaint.

13. Further, considering the fact that Defendant No. 2 has indulged in the sale of infringing goods, Plaintiff is also entitled to costs of INR 3,50,000/-, which includes court fee of INR 2,00,000/-, fee of Local Commissioner of INR 1,00,000/- and legal expenses incurred by Plaintiff in pursuing the

present suit of INR 50,000/-.

14. Decree sheet be drawn up.

15. In light of the aforesaid, the present suit, along with pending applications, is disposed of.

SANJEEV NARULA, J

JANUARY 9, 2024/*MR*