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

+ **CS(COMM) 915/2022**

TTK PRESTIGE LTD

..... Plaintiff

Through: Mr. Hemant Singh, Ms. Mamta Rani Jha,
Mr. Manish Kumar Mishra, Ms. Akansha
Singh, Ms. Saloni Kaslimal, Advs.

versus

ARJUN RAM & ANR.

..... Defendants

Through: None

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

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31.01.2024

I.A. 20656/2023 (under Order VIII Rule 10 CPC)

1. This application has been filed by plaintiff seeking judgment decree in their favour considering that no one has appeared on behalf of defendants.

2. Mr. Hemant Singh, counsel appearing on behalf of the plaintiff, points out to order dated 19th October, 2023 by which an *ad interim* injunction was passed by this Court. Para 9 of the said order records the appearance of counsel for defendants on multiple dates. The said paragraph is extracted hereunder:

“9. Summons were issued in this case on 23 December 2022. The defendants entered appearance through Mr. Rajat Bhalla, learned Counsel on 9 January 2023, 17 January 2023, 10 February 2023, 27 February 2023 and 2 March 2023.”

3. Further, in para 12 of the said order, it has been recorded that attempts to serve the defendants through counsel who had appeared on their behalf were also unsuccessful. Relevant paragraphs are extracted as under:



“12. As there was repeated non-appearance on behalf of the defendants, this Court, on 29 March 2023, directed court notice to be issued to Mr. Bhalla, who had been representing the defendants earlier. Subsequently, on 20 July 2023, the Registry was directed to telephonically contact Mr. Bhalla and inform him of the listing of this matter with a request to appear.

13. That was done; however, there is still no appearance on behalf of the defendants. Nor have the defendants filed any written statement by way of response to the suit or any response to IA 22321/2022, filed by the plaintiff under Order XXXIX Rules 1 and 2 of the CPC.

14. Apparently, the defendants are either not interested in contesting the suit or do not have any defence to offer to the allegations and assertions contained in the plaint.”

4. In this view of the matter, the plaintiff seeks decree of the suit in compliance of Order VIII Rule 10 Code of Civil Procedure, 1908.

5. By order dated 19th October, 2023, this Court adjudicated on various aspects of infringement that is alleged by the plaintiff in detail. Relevant paragraphs nos. 17, 18, 19 and 22 to 26 are extracted hereunder, reference whereof would be determinative of the reasoning and conclusion of the Court:

“17. It is seen that the various distinctive features of the lids of the pressure cookers in respect of which injunction had been granted are also replicated in the lid of the “PARISTONE” pressure cooker forming subject matter of controversy in the present case. The finding in paras 42.1 to 42.5 would, therefore, apply mutatis mutandis to the present case, with the additional aspect that, in the present case, there is no difference in height between the lids in respect of which suit design had been granted and the lid of the pressure cooker forming subject matter of controversy.

18. The decision on prima facie design piracy, as returned in TTK Prestige Ltd would also, therefore, apply with all force to the present case.

19. Adverting, now, to the aspect of trade mark infringement and passing off, I am of the opinion that, while the aspect of infringement of the rival marks may be arguable in view of the phonetic difference



between the marks “PRESTIGE” and “PARISTONE”, nonetheless,

the  trade dress adopted by the defendants is almost

identical to the  and trade dress of the plaintiff, with identically printed white letters in a similar font on an identical pink background and a black swirl/line below it. There are, clearly, between the two, no such distinguishing features – barring the name itself – as would impress itself on the mind of a consumer of average intelligence and, more importantly, imperfect recollection, so as to enable him to distinguish the former from the latter, when seen at different points of time.

...

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22. The plaintiff has placed material on record, including its annual turnover, which indicates that it has considerable goodwill and reputation in the market. Even otherwise, once the defendants have chosen to copy the manner in which the plaintiff has visualised its mark and also the manner in which the mark is affixed on the pressure cooker, as well as the design of the pressure cooker itself, it can hardly lie in the mouth of the defendants to question the goodwill and reputation of the plaintiff. That the defendants have chosen to imitate the manner in which plaintiff prints its logo is itself testimony to the goodwill and reputation of the plaintiff, in the perception of the defendant itself.

23. A prima facie case of passing off, by the defendants, of the plaintiff's product, by using a design which is nearly identical, a trade dress for the mark which is almost identical and overall appearance of the pressure cooker, including the manner in which the said mark is affixed on the body thereof, which is also deceptively similar, therefore, exists.

24. For the aforesaid reasons, the plaintiff would be entitled to an interlocutory injunction, both on the grounds of design infringement as well as passing off, by the defendants, of its product as that of the plaintiff.

25. In view thereof, pending disposal of this suit, the defendants as well as all others acting on their behalf shall stand restrained from manufacturing, selling, offering for sale, exporting, advertising or in any other manner directly or indirectly dealing in pressure cookers bearing the impugned design or any other design which infringes the suit design no. 324727-001.



26. The defendants shall also stand restrained from using the trade

dress  for its mark, which is almost identical to the

trade dress used by the plaintiff for its  mark. The defendants would not, however, be restrained, for the present, from using the mark PARISTONE in any other trade dress, which

is not similar to the trade dress of the petitioner's  mark, on pressure cookers which do not imitate or infringe the registered design of the plaintiff's Svachh range of pressure cookers."

6. Considering that the defendant has not appeared despite several attempts being made, in the opinion of this Court, plaintiff is entitled to a decree in its favour.

7. Counsel for the plaintiff is willing to accept the conclusions drawn by the Court on 19th October, 2023 whereby the defendants were injuncted in respect of

the design used for pressure cooker by them and the trade dress 

adopted by the defendant which was identical to trade dress  adopted by the plaintiff.

8. It is made clear that counsel for the plaintiff does not press for any decree/injunction against use by the defendant of their trade mark PARISTONE, subject to it not being used by the defendant in a manner deceptive or confusingly

similar to that of plaintiff's device mark  .

9. In view of the same, a decree may be passed in the following terms:

(a) A decree for permanent injunction is passed restraining the defendants, their associates, dealers and agents, an all acting on their behalf, from manufacturing, selling, offering for sale, exporting, advertising or directly or indirectly dealing in any manner (including online through



websites or other shopping portals or offline) in pressure cookers (in any size or variation) bearing the impugned design or any other design being an obvious imitation of the plaintiff's Design Registration No. 324727-001;

(b) A decree for permanent injunction is passed restraining the defendants, their associates, dealers and agents, and all acting on their behalf, from manufacturing, selling, offering for sale, exporting, advertising or directly or indirectly dealing in any manner (including online through websites or other shopping portals or offline) in pressure cookers or any other identical or similar/ cognate and allied goods using label/trade

dress/ packaging



or any other label/packaging/ trade

dress which may be identical and or deceptively similar to the Plaintiff's

packaging / label/ trade dress



which is likely to cause confusion and deception amongst the consumers and amount to passing off.

10. Decree sheet may be drawn up accordingly.
11. Suit stands disposed of in above terms.
12. Pending applications, if any, are disposed of as infructuous.
13. Order be uploaded on the website of this Court.

ANISH DAYAL, J

JANUARY 31, 2024/sm/rj