



2024:DHC:7727



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

% **Date of decision: 26th September, 2024.**

+ **CS(COMM) 508/2016 & I.A. Nos. 5866/2016, 9685-9686/2016**

RADICO KHAITAN LTD

.....Plaintiff

Through: Mr Sagar Chandra, Ms Ishani
Chandra and Mr Abhishek Bhati,
Advocates

versus

M/S RAINA BEVERAGES & ORS

.....Defendants

Through:

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 and other ancillary reliefs.

PROCEEDINGS IN THE SUIT

2. Via order dated 11th May, 2016, an *ex parte ad* interim injunction was granted in favour of the plaintiff and a Local Commissioner was appointed to visit the premises of the defendant no.6 to inspect inventories and seize the infringing products.

3. Subsequently, the parties were referred to mediation. However, mediation proceedings were not successful.



4. Via order dated 20th November, 2018, the right of the defendants no.1 to 6 to file written statement was closed and on 3rd June, 2022, the right of the defendant no.7 to file written statement was closed.
5. Since the defendants no.1 to 6 stopped appearing after 23rd April, 2019, and the defendant no.7 never entered appearance, all the defendants were proceeded against *ex parte* via order dated 18th August, 2022.
6. On 24th March, 2023, evidence by way of an affidavit was filed on behalf of Mr Dinesh Kumar Gupta, Vice President (Legal and Company Secretary) of the plaintiff and *ex parte* evidence of the plaintiff was recorded.
7. On 24th September, 2024, a written synopsis was filed on behalf of the plaintiff along with the bill of cost.
8. In view of the above, the counsel for the plaintiff prays for a decree of permanent injunction, delivery up and damages, along with costs in the suit.

BRIEF FACTS

9. The plaintiff, Radico Khaitan Ltd., is a company registered under the Companies Act, 1956, engaged in the business of manufacture and bottling of Indian Made Foreign Liquor. The plaintiff company was established as far back in 1943.
10. The plaintiff supplies alcoholic beverages under its registered trademarks all over India and also exports it to several countries including USA, UAE, Sierra-Leone, Nigeria, Tanzania etc.
11. On 24th December, 1997, the plaintiff filed a trademark application for registration of the word mark “Magic Moments” in Class 33 [alcoholic beverages] of the Trade Marks Act, 1999. Thereafter, in the year 2005, the plaintiff launched its Gin and Vodka products under the said trademark.



12. In 2008, the brand “Magic Moments” was extended in respect of other alcoholic products/beverages. A new sub-brand namely, “Magic Moments Remix” was launched, introducing plaintiff company’s vodka in different flavours.

13. The plaintiff is the registered proprietor of various trademarks comprising the plaintiff’s trade dress for “Magic Moments Remix”, details of which have been given below:

- a. “Magic Moments Raspberry Remix Logo (3D mark)- [Device of Bottle]” under No. 1739174 since 30th September, 2008. The Certificate for use in Legal Proceedings dated 10th May, 2016 in Class 33 of the said Trade Mark is exhibited as Ex. **PW-1/14**.
- b. “Magic Moments Lemongrass Ginger Remix Logo (3D mark)- [Device of Bottle]” under No. 1739175 since 30th September, 2008. The Certificate for use in Legal Proceedings dated 10th May, 2016 in Class 33 of the said Trade Mark is exhibited as Ex. **PW-1/15**.
- c. “Magic Moments Chocolate Remix Logo (3D mark)- [Device of Bottle]” under No. 1739176 since 30th September, 2008. The Certificate for use in Legal Proceedings dated 10th May, 2016 in Class 33 of the said Trade Mark is exhibited as Ex. **PW-1/16**.
- d. “Magic Moments Lemon Remix Logo (3D mark)- [Device of Bottle]” under No. 1739177 since 30th September, 2008. The Certificate for use in Legal Proceedings dated 10th May, 2016 in Class 33 of the said Trade Mark is exhibited as Ex. **PW-1/17**.

14. The plaintiff also has a copyright over the trade dress of the mark “Magic Moments Remix” including the dancing figures represented on the bottles of its products. The plaintiff commissioned an independent



advertising agency to create the said artistic work, and by virtue of Section 17(b) of the Copyright Act, 1957, the copyright in the said artistic work vests with the plaintiff.

15. The plaintiff's products branded as "Magic Moments Remix" had annual sales of Rs. 377 crores (approx.) in the year 2015-2016 in India. Further, the cumulative sales of nine years from 2007 to 2016 amounts to over Rs. 1600 crores (both for India and abroad). The original CA Certificate certifying the said sales figures have been exhibited as Ex. **PW-1/7**.

16. Defendant no.1, M/s Raina Beverages is a subsidiary of the defendant no.2, M/s Raina Exports. Defendant no.3 is the proprietor/partner of the defendants no.1 and 2. Defendant no.4 is the brother of the defendant no.3, and is also a partner in the defendant no.2.

17. Defendants no.3 and 4 had established Ardent India Pvt. Ltd./defendant no.5 to manufacture and export Ethyl Alcohol, Whisky, Vodka and Rum.

18. The products of the defendant no.1 are manufactured, blended and packaged by the defendant no.6. Thereafter, the defendants no.1 to 6 export their products to an entity based in Nigeria, arrayed as the defendant no.7.

19. In the year 2015, the plaintiff filed a suit being CS (COMM) 52/2015 titled "**Radico Khaitan Ltd. v. Shanty Raina & Ors.**" against the present defendants no.2 to 6 in relation to the infringement of a different trademark, trade dress and copyright in respect of the product of the plaintiff, passing it off as the goods of the plaintiff.

20. The aforesaid suit was decreed on 13th August, 2018 and a decree of permanent injunction was passed in favour of the plaintiff and against the



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defendants. The certified copy of the aforesaid decree is exhibited as Ex. **PW-1/38.**

21. In and around March, 2016, the plaintiff came across the impugned products of the defendants being manufactured by the defendant no.6 for the purposes of export. The defendants' products reflect a trade dress almost identical to the plaintiff's registered trademark "Magic Moments Remix". The digital photographs of defendants' products have been exhibited as Ex. **PW-1/29.**

22. Accordingly, the plaintiff filed the present suit on 9th May, 2016 seeking to restrain the defendants from carrying on their infringing activities.

ANALYSIS AND FINDINGS

23. I have heard the submissions of Mr Sagar Chandra, learned counsel appearing on behalf of the plaintiff and also perused the material on record.

24. From the averments made in the plaint and the evidence on record, the plaintiff has been able to prove that it is the registered proprietor of the mark "Magic Moments Remix" and has a copyright over the trade dress of the mark "Magic Moments Remix" including the dancing figures represented on the bottles of its products. The trade dress of the plaintiff has been used by the plaintiff since 2008 and is also registered in the name of the plaintiff. The trade dress comprises of combination of colour and design elements which gives a distinct look to the products of the plaintiff. The plaintiff has also been able to demonstrate and prove its goodwill and reputation in respect of the same.

25. The grievance of the plaintiff in the present case is limited to the adoption and use of the impugned device/trade dress/packaging/artistic work



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by the defendants.

26. A comparison of the trade dress of the plaintiff and the impugned trade dress of the defendants is given in the table below:

Plaintiff's product and Defendants' product (Chocolate Flavoured) (Front view)	Plaintiff's product and Defendants' product (Chocolate Flavoured) (Rear View)
	
Plaintiff's Product "Magic Moments Remix Green Apple" Vodka	Defendant's Product "Confirmed Sexy Vodka Green Apple"

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27. The comparison above categorically shows that the bottles are identical in terms of colour combination and arrangement of letters, marks and figures. The similarities are highlighted below:

Similarities at the front of the bottle

- The defendant's product on the right has a black cap and black ribbon, which is identical to the plaintiff's product on the left.
- The winged "CG" logo of the defendant is similar to the winged "M2" logo used by the plaintiff.
- The word marks of both the parties have been written within two parallel dotted lines, on their respective bottles.
- The five dancing figures on the plaintiff's bottle and six dancing figures on the defendant's bottles are deceptively similar. These figures share similar details like highlighting of the belts, hats and ties in colour.



- e. The plaintiff employed special technology to print its dancing figures in a way that it could be seen on the inside wall of the bottle. In contrast, the defendant changes the colour of one of its dancing figure to match the colour flavour of vodka.
- f. To specify that the alcoholic beverage is flavoured, both the parties have used identical placements at the bottom of the bottle to reflect the flavour.

Similarities at the back of the bottle

- a. The pictorial representation of flavour is identical in both the bottles.
 - b. Again, the five dancing figures on the plaintiff's bottle and six dancing figures on the defendant's bottles are identical.
 - c. The placement of marketing and manufacturing details is identical along with colour combinations.
28. Based on materials on record and the discussion above, a clear case of infringement of copyright as well as passing off is made out. The defendants have taken unfair advantage of the reputation and goodwill of the plaintiff's trade dress/ device/ packaging/ artistic work 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.
29. It appears that the defendants are habitual infringers and earlier also a decree of permanent injunction had been passed against the aforesaid defendants. Despite the aforesaid decree, the defendants continued to infringe the other marks of the plaintiff.
30. At this stage, it may be relevant to note that the defendants no.1 to 6 had entered appearance on 10th August, 2016 and appeared till 23rd April, 2019. Thereafter, the defendants stopped appearing and were proceeded



against *ex parte* on 18th August, 2022. Since the defendants have failed to enter appearance or even 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

31. In view of the above, the decree of permanent injunction is passed in favour of the plaintiff and against the defendants in terms of prayers given in paragraph 45 (i) to (iv) of the plaint.

32. A decree of delivery up in terms of prayer clause 45(v) is passed in favour of the plaintiff directing the defendant no.6 to deliver up all the infringing products that were seized by the Local Commissioner on 16th May, 2016.

33. Counsel for the plaintiff does not press for the relief as sought in prayer clause (vi) with respect to rendition of accounts of profits earned by the defendants.

34. Insofar as the relief of damages as sought in prayer clause 45(vii) is concerned, reference may be made to the judgment in ***Hindustan Lever Ltd. v. Satish Kumar***, 2012 SCC OnLine Del 1378. The relevant observations are set out below:

“23. One of the reasons for granting relief of punitive damages is that despite of service of summons/notice, the defendant had chosen not to appear before the court. It shows that the defendant is aware of the illegal activities otherwise, he ought to have attended the proceedings and give justification for the said illegal acts. Since, the defendant has maintained silence, therefore, the guilt of the defendant speaks for itself and the court, under these circumstances, feels that in order to avoid future infringement, relief of punitive damages is to be granted in favour of the plaintiff.”



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35. In the present case, the defendants have blatantly infringed the trademark of the plaintiff and have also failed to appear before this court.

36. As regard the prayer clause 45(viii), counsel for the plaintiff has filed a bill of costs detailing the various expenses incurred by the plaintiff including legal cost. It is claimed that expenses to the tune of Rs. 3,33,856/- have been incurred and Rs. 9,96,500/- is the legal fees.

37. Accordingly, a cumulative sum of Rs.10,00,000/- is awarded in favour of the plaintiff and against the defendants towards damages and costs in terms of prayer clause 45(viii).

38. Let the decree sheet be drawn up.

39. All pending applications stand disposed of.

AMIT BANSAL, J.

SEPTEMBER 26, 2024

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