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

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Date of decision: 16th April, 2025+ **CS(COMM) 197/2023 & I.A. 24248/2023****M/S TRDP HAPPY WORLD PVT. LTD**PlaintiffThrough: **Mr. Amit Jain, Ms. Shruthi Venugopal, Ms. Simran Kaur & Ms. Nidhi, Advocates.**

versus

SHRI BALAJI CHEMFOOD INDUSTRIESDefendantThrough: **Mr. Arnav Goyal, Advocate.****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 trademarks and copyright of the plaintiff, passing off along with other ancillary reliefs.

CASE SETUP IN THE PLAINT

2. The plaintiff, M/s TRDP Happy World Private Limited, is a company engaged in the business of manufacturing and trading of rusks, biscuits, cakes, instant noodles, etc.

3. In 2011, the plaintiff adopted the trade mark 'MARIO'/ 'TRDP MARIO' through its predecessor and since 2015, the plaintiff has been continuously using the said marks for its goods such as rusks, biscuits, cakes, etc. Along with the word mark, the plaintiff also adopted a device mark with



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a moustache. The device mark adopted by the plaintiff is given below:



4. The plaintiff also obtained registrations of the word mark and the device mark 'MARIO', which are valid and subsisting. The details of the registrations obtained by the plaintiff are given below:

Trade Mark	Application Number	Date of Application	Class	Status
	2202242	08.09.2011	30	REGISTERED
	2204543	13.09.2011	31	REGISTERED
TRDP MARIO	3013159 IN	21.07.2015	30	REGISTERED
	3250622 IN	04.05.2016	30	REGISTERED



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	3305785 IN	11.07.2016	30	REGISTERED
	3305788 IN	11.07.2016	30	REGISTERED
TRDP MARIO	3492908 IN	27.02.2017	30	REGISTERED
	3497050 IN	02.03.2017	30	REGISTERED
MARIO IN	3497052 IN	02.03.2017	30	REGISTERED
MARIO BRIKS IN	4181866 IN	21.05.2019	30	REGISTERED
MARIO TALKIES IN	4195281 IN	03.06.2019	30	REGISTERED
TRDP MARIO IN	3013160 IN	21.07.2015	31	REGISTERED
TRDP MARIO IN	3349735 IN	31.08.2016	31	REGISTERED
	3497051 IN	02.03.2017	31	REGISTERED



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	3184018 IN	12.02.2016	29	REGISTERED
	3184029 IN	12.02.2016	43	REGISTERED

5. Along with the aforesaid marks, the plaintiff has filed and obtained the registration of its mark 'TRDP MARIO' across multiple jurisdictions internationally. The details of the aforesaid registrations are given in paragraph 12 of the plaint. The plaintiff also has a sachet packaging which bears the mark 'MARIO' on it. The packaging of the plaintiff is given below:



6. It is stated that the artistic work contained in the device mark 'MARIO'/'TRDP MARIO' of the plaintiff qualifies to be an original artistic work under the provisions of the Copyright Act, 1957. Further, the plaintiff has obtained multiple copyright registrations, which are given in the table below:

S. No.	Copyright	Title of the Artistic Work
1.	A-115640/2016	TRDP MARIO SUJI TOAST LABEL



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2.	A-15713/2016	TRDP MARIO INSTANT MARIO NOODLES LABEL 
3.	A-120610/2017	TRDP MARIO SUJI TOAST LABEL 
4.	A-119244/2017	TRDP MARIO SUJI TOAST LABEL



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5.	A-120903/2017	TRDP MARIO SUJI TOAST LABEL 
6.	A-118538/2017	TRDP MARIO SUJI TOAST 
7.	A-119203/2017	TRDP MARIO SUJI TOAST LABEL



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8.	A-131018/2019	TRDP MARIO PREMIUM HONEY RUSK LABEL 
9.	A-134808/2020	TRDP MARIO FRENCH SPIKES TAMGY TOMATO 
10.	A-135615/2020	TRDP MARIO ENGLISH SQUARES



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11.	A-136815/2021	TRDP MARIO KHUS RUSK 
12.	A-138494/2021	TRDP MARIO POPCORN BUTTER 

7. It is stated that the plaintiff sells its goods under the ‘MARIO’/ ‘TRDP

MARIO’/  /  /  marks and has acquired goodwill and reputation among the Indian public. The plaintiff has provided its annual sales and promotional figures for the period of 2015-2022 in



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paragraph 8 of the plaint. It is noted that in the year 2021-2022, the sales figure of the plaintiff in India was to the tune of Rs. 329,74,67,772.45/-.

8. The plaintiff also widely advertises its goods under the 'MARIO'/'

'TRDP MARIO' /  /  /  marks. The details of the promotional expenses incurred by the plaintiff are given in paragraph 9 of the plaint. In Delhi, the plaintiff's advertisements appear at prominent places such as Chirag Delhi, Sheikh Sarai Phase- 11, Red Fort, Greater Kailash and Metro Enclave. It is stated that because of the extensive use, the plaintiff's marks have become distinctive and are associated exclusively with the goods of the plaintiff.

9. Defendant, M/s Shri Balaji Chemfood Industries, is an entity which has adopted an identical mark 'MARIO' and deceptively similar label and



packaging 'MARIO' /  for its goods, i.e., salts. It is stated that the marks adopted by the defendant are identical to the plaintiff's mark, and the plaintiff has not permitted the defendant to use the said marks on its goods.

10. In March 2023, the plaintiff discovered the dishonest adoption of the 'MARIO' label and marks by the defendant. The plaintiff found that the defendant had copied the plaintiff's 'MARIO' mark/label in its entirety.

11. Being aggrieved by the aforesaid activities, the plaintiff filed the



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present suit against the defendants.

PROCEEDINGS IN THE SUIT

12. On 10th April 2023, this Court issued summons in the suit and notice in the interim injunction application. Further, the court granted an ad-interim injunction in favour of the plaintiff and against the defendant, by way of which the defendant and all others acting on its behalf were restrained from manufacturing, exporting, selling, offering for sale, advertising, exhibiting, directly or indirectly goods, being salt or any other goods similar to those of the plaintiff's goods under the impugned mark/label/package/artistic work



and/or any other mark/label/package/artistic works. Since the defendant entered appearance on advance service, the Court appointed a Local Commissioner to visit the premises of the defendant and to inventorize the infringing goods.

13. On 12th July 2024, it was stated that the written statement was filed on behalf of the defendant. However, the same was not on record, and the matter was adjourned.

14. Since the written statement was filed beyond the maximum condonable period, the court *vide* order dated 19th November 2024, made the ad-interim injunction permanent and disposed of the application for interim injunction. On the same date, the Court issued notice in the application filed by the plaintiff under Order VIII Rule 10 of the Code of Civil Procedure, 1908 ('CPC').

15. On 14th February 2025, an amount was proposed to the counsel for the



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defendant to settle the matter between the plaintiff.

16. On 27th February 2025, Counsel for the defendant stated that the defendant was not willing to pay the aforesaid amount. Counsel further stated that a reply to the application under Order VIII Rule 10 of CPC has been filed. Since the reply was not on record, the matter was adjourned.

17. On 12th March 2025, the reply filed by the defendant was again not on record. It was also noted in the order that if the reply is not on record on the next date of hearing, the matter would proceed even if the reply is not on record.

18. When the matter was taken up on 16th April 2024, the reply was not on record, and the matter is being decided on merits.

ANALYSIS AND FINDINGS

19. I have heard the submissions of the counsel for the parties and also perused the material on record.

20. The plaint has been duly verified and is also supported by the affidavit of the plaintiff. In view of the fact that no written statement has been filed on behalf of the defendant, all the averments made in the plaint have to be taken to be admitted. Further, since no affidavit of admission/denial has been filed on behalf of the defendant in respect of the documents filed with the plaint, in terms of Rule 3 of the Delhi High Court (Original Side) Rules 2018, the same are deemed to have been admitted. Therefore, in my opinion, this suit does not merit trial, and the suit is capable of being decreed in terms of Order VIII Rule 10 of CPC.

21. From the averments made in the plaint, the plaintiff has been able to prove that the plaintiff is the registered proprietor of the 'MARIO'/ 'TRDP



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MARIO' /  /  /  marks.

22. A comparison between the plaintiff's marks and the impugned marks, along with products bearing the plaintiff's marks and the impugned marks used by the defendant, is set out below:

PLAINTIFF'S MARKS/ GOODS	DEFENDANT'S IMPUGNED MARK/ GOODS
	

23. A perusal of the aforesaid comparison would show that the defendant has dishonestly copied the plaintiff's 'MARIO' trademark. The plaintiff has adopted the word 'MARIO' in a similar font, white lettering on a red background, which is similar to the plaintiff's mark. Additionally, the defendant has adopted the same red, yellow, and white colour combination and replicated the plaintiff's distinctive device of a chef with a moustache.



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The overall layout in both the packaging, including the placement of the chef, text, and food items, is similar to each other.

24. Based on the discussion above, a clear case of infringement of trademarks and copyright is made out. Since the artistic elements of the rival marks are similar, the class of consumers targeted by both parties directly overlaps, and the channels of trade, both online and physical stores, are identical. Consequently, there exists a likelihood that consumers may mistakenly associate the defendant's infringing goods with the plaintiff or perceive them as goods sold by the plaintiff, causing irreparable harm to the plaintiff's goodwill and reputation.

25. The defendant has taken an unfair advantage of the reputation and goodwill of the plaintiff's trademarks/artistic works and has also deceived the unwary consumers of their association with the plaintiff by dishonestly adopting the plaintiff's registered marks without any plausible explanation. Therefore, the plaintiff has established a case of passing off as well.

26. At this stage, it may be relevant to note that despite being given multiple opportunities, the defendant failed to bring on record its written statement and failed to file a reply to the application under Order VIII Rule 10 of CPC.

27. Since the defendant has failed to take any requisite steps to contest the present suit, despite having suffered an *ad interim* injunction order, it is evident that the defendant has no defence to put forth on merits.

28. Accordingly, the plaintiff is entitled to the reliefs claimed in the plaint.

29. Counsel for the plaintiff also presses for relief of compensatory damages and costs.



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30. It is a settled position of law that the Local Commissioner's report can be read into evidence in the terms of provisions of Order XXVI Rule 10 (2) Code of Civil Procedure, 1908 ('CPC') where it is not challenged by any party. (Please refer: *Aero Club v. M/s Sahara Belts¹, Puma Se v. Ashok Kumar²*). A perusal of the Local Commissioner's report would show that during the execution of the Commission, the Local Commissioner found a half-burnt wrapper of the defendant's goods at the labour quarters. Further, a half-burnt package bearing the 'MARIO' trademark/label was recovered from the vacant plot across from the defendant's premises. It is also to be noted that during the execution of the commission, the Local Commissioner was not given the Loading register for FY 2021-2022 and FY 2022-23. The Local Commissioner in his report has noted he was informed by one of the defendant's officials that the free-flowing salt plant was installed by the defendant around the Diwali of 2022, as a result, the stock and loading registers for the FY 2022-2023 were critically important.

31. In my view, the conduct of the defendant is *malafide* as the defendant deliberately burnt the impugned packaging. Further, no contest has been put forth by the defendant to the averments made in the plaint as well as to the report filed by the Local Commissioner. Despite being given multiple opportunities, the defendant did not file a reply to the application under Order VIII Rule 10 of CPC. In light of the foregoing analysis, this Court concludes that the defendant's dubious conduct not only warrants but also necessitates the imposition of both damages and costs.

¹ 2023 SCC OnLine Del 7466

² 2023 SCC OnLine Del 6764



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32. In *Hindustan Unilever Limited v. Reckitt Benckiser India Limited*³, a Division Bench of this Court outlined the principle of ‘*rough and ready calculations*’ for awarding damages.

33. Taking into account the entire facts and circumstances presented in this case, this Court also awards damages and costs amounting to Rs. 5,00,000/- in favour of the plaintiff and against the defendant.

RELIEF

34. In view of the foregoing analysis, a decree of permanent injunction is passed in favour of the plaintiff and against the defendant in terms of prayer clauses 38 (a), (b), (c), (d) and (e) of the plaint.

35. Insofar as the relief of damages and costs sought in prayer clause 38 (g) is concerned, the plaintiff is awarded a sum of Rs 5,00,000/- towards damages and costs.

36. Counsel for the plaintiff does not press for the remaining reliefs prayed for in the plaint.

37. Let the decree sheet be drawn up.

38. The pending application stands disposed of.

AMIT BANSAL, J

APRIL 16, 2025

at

³ ILR (2014) 2 Del 1288