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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of decision: 14th February, 2025*+ **CS(COMM) 740/2024 & I.A. 37916/2024****MULTANI PHARMACEUTICALS LIMITED**PlaintiffThrough: Mr. Pravin Anand, Mr. Ashutosh
Upadhyaya & Mr. Arun Kumar Jha,
Advocates.

versus

S.A. HERBAL BIOACTIVES LLP & ORS.Defendants

Through: Mr. Anil Dutt, Advocate.

CORAM:**HON'BLE MR. JUSTICE AMIT BANSAL****AMIT BANSAL, J. (Oral)**

1. The present suit has been filed by the plaintiff seeking relief of permanent injunction restraining the defendants from infringing the trademarks and copyright of the plaintiff, passing off their goods as those of the plaintiff, along with other ancillary reliefs.

CASE SETUP IN THE PLAINT

2. The plaintiff is a company involved in the manufacture and distribution of Ayurvedic Unani, and Herbal medicines. It is stated that the plaintiff has been selling its medicines since the establishment of its manufacturing unit by Pandit Thakur Dutta Multani Vaidya in Lahore (Undivided India).

3. The plaintiff sells a wide range of products under different categories, such as Personal Care, Healthcare, Home Care, and Ayurvedic medicines



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under the brand name “MULTANI”.

4. In 1938, the plaintiff coined and adopted the ‘KUKA’ trademarks, and since then, the plaintiff has continuously and consistently been using the same in connection with Ayurvedic pharmaceutical products, specifically cough syrups and tablets.

5. The plaintiff has extensively and exclusively used the ‘KUKA’ trademarks and has secured registrations for the same in India. Furthermore, the plaintiff has also applied for the registration of the ‘KUKA’ trademarks in various foreign jurisdictions. The details of the registrations obtained by the plaintiff for its ‘KUKA’ trademarks are given below:

S.No.	Trademark	Registration No.	Date of Application	Products
1.	KUKA	151368	08/11/1951	Ayurvedic medicinal treatment of diseases of throat. (Class 5)
2.		1364137	15/06/2005	Ayurvedic medicinal and pharmaceutical preparations falling in class 05.
3.	KUKASIL	2386136	27/08/2012	Medicinal preparations (Class 5)
4.	KUKA (Tagline)	2806871	10/09/2014	Medicinal preparations included in class 05.
5.		6026218	18/07/2023	Medicinal and pharmaceutical preparation (Class



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				5)
6.		6026224	18/07/2023	Medicinal and pharmaceutical preparation (Class 5)
7.	KUKASIL	2386135	7/08/2012	Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee, flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle, yeast baking powder; salt, mustard; vinegar, sauces (condiments; spices; ice included in Class 30)
8.		1769592	31/12/2008	Coffee, tea, cocoa, sugar, preparations made from cereals included in class 30.

6. The plaintiff has established a vast operational and distribution network



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and has been engaged in extensive sales, advertising, and promotional campaigns in India and internationally for over eight decades in connection with products bearing the 'KUKA' trademarks. The annual turnover of the plaintiff from the year 2014 till 2024 is provided in paragraph 40 of the plaint. It is pertinent to note that in the year 2023-2024, the annual turnover of the plaintiff was around Rs.266.511 crores. The table containing the details of the annual turnover of the plaintiff for the years FY 2014-15 to FY 2023-24 is reproduced below:

Financial Year	Annual Turnover of Plaintiff (Rupees in Lacs)	Annual Turnover of Plaintiff from Multani Kuka
2014-15	6,524.40	570.91
2015-16	8,238.20	630.81
2016-17	8,079.09	622.22
2017-18	10,315.66	823.62
2018-19	11,499.22	1,142.53
2019-20	14,610.92	979.58
2020-21	17,311.14	1,484.17
2021-22	20,438.34	2,086.35
2022-23	22,370.53	1,545.93
2023-24	26,651.89	1,778.21

7. The plaintiff also incurs expenditure on promoting its products bearing the KUKA trademarks. The details of the promotional/ advertising expenses incurred by the plaintiff are given below:

Financial Year	Advertising Expenses of Plaintiff (Rupees in Lacs)
2014-15	466.74
2015-16	785/32
2016-17	1,012.07
2017-18	1,887.85



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2018-19	2,317.12
2019-20	2,584.85
2020-21	1,907.57
2021-22	2,426.25
2022-23	2,308.99
2023-24	2,641.06

8. The plaintiff has actively enforced its rights in the ‘KUKA’ trademarks through successful legal actions to protect and assert its proprietary rights in the ‘KUKA’ trademarks. The details of some of the legal actions initiated by the plaintiff to protect its proprietary marks are given in paragraph 44 of the plaint.

9. The defendants are engaged in the business of manufacturing and marketing herbal extracts, botanical products, and related goods under various trademarks and trade names.

10. In July 2024, the plaintiff came across a cough syrup bearing the mark 'KYKA' in Moldova and Russia. The said product was being distributed in the Republic of Moldova and Russia by the defendants. The plaintiff then discovered that the defendants have been illegally manufacturing and exporting counterfeit of its ‘KUKA’ cough syrup for sale in Moldova and Russia, under a label and mark that is identical to the mark of the plaintiff. Furthermore, the defendants had been supplying the infringing product, under the counterfeit label to the same distributor based in Republic of Moldova, which has been distributing plaintiff’s ‘KUKA’ cough syrup since 2012 in Moldova.

11. Being aggrieved by the same, the plaintiff filed the present suit seeking permanent injunction for infringement of its trademark and copyright against



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the defendants.

PROCEEDINGS IN THE SUIT

12. On 30th August, 2024, the predecessor bench granted an *ex-parte ad interim* injunction in favour of the plaintiff restraining the defendants from using the mark 'KYKA', the artistic work of the plaintiff, the copyright materials of the plaintiff, the counterfeit label, or any other mark identical /deceptively similar to the plaintiff's registered trademarks 'KUKA'.

13. On 2nd December, 2024, the matter was referred for Mediation to the Delhi High Court Mediation and Conciliation Centre at the request of the parties.

14. The parties have settled the dispute in the mediation proceedings before the Delhi High Court Mediation and Conciliation Centre.

15. The settlement agreement dated 10th February, 2025 is on record.

16. It bears the digital signatures of the Authorized Representatives of the plaintiff and the defendants.

17. I have gone through the terms of the above-said settlement and find the same to be lawful.

18. In terms of the aforesaid settlement, the defendants have handed-over a Demand Draft of ₹ 6,50,000/- to the counsel for the plaintiff, in the Court today.

19. In view of the above, the present suit is decreed in terms of the settlement agreement, which will form part of the decree.

WELL-KNOWN TRADEMARK

20. Counsel for the plaintiff further seeks a declaration that the plaintiff's trademark 'KUKA' be declared as a well-known trademark, in terms of prayer



clause 102 (i), under Section 2(zg)¹ of the Trade Marks Act, 1999.

21. In this regard, a short note of submissions has been handed-over by the counsel for the plaintiff.

21.1. For the purpose of good order and record, the Registry will scan a copy of the note, so that it remains embedded in the case file.

22. Section 11(6) of the Trade Marks Act, 1999 sets out factors which are to be considered while determining whether a mark is a well-known mark. For ease of convenience the same is extracted below:

“Section 11 –

...

(6) The Registrar shall, while determining whether a trade mark is a well-known trade mark, take into account any fact which he considers relevant for determining a trade mark as a well-known trade mark including--

(i) the knowledge or recognition of that trade mark in the relevant section of the public including knowledge in India obtained as a result of promotion of the trade mark;

(ii) the duration, extent and geographical area of any use of that trade mark;

(iii) the duration, extent and geographical area of any promotion of the trade mark, including advertising or publicity and presentation, at fairs or exhibition of the goods or services to which the trade mark applies;

(iv) the duration and geographical area of any registration of or any application for registration of that trade mark under this Act to the extent that they reflect the use or recognition of the trade mark;

(v) the record of successful enforcement of the rights in that trade

¹ Section 2 - Definitions and interpretation.

(1) In this Act, unless the context otherwise requires,—

...

(zg) well known trade mark, in relation to any goods or services, means a mark which has become so to the substantial segment of the public which uses such goods or receives such services that the use of such mark in relation to other goods or services would be likely to be taken as indicating a connection in the course of trade or rendering of services between those goods or services and a person using the mark in relation to the first-mentioned goods or services.



mark, in particular the extent to which the trade mark has been recognised as a well-known trade mark by any court or Registrar under that record.”

23. Section 11(7) of the Trade Marks Act, 1999 provides the factor that the registrar has to consider while deciding whether a trade mark is known or recognised in the relevant section of the public for the purposes of sub-section (6). For ease of convenience the same is set out below:

“Section 11 –

...

(7) The Registrar shall, while determining as to whether a trade mark is known or recognised in a relevant section of the public for the purposes of sub-section (6), take into account--

- (i) the number of actual or potential consumers of the goods or services;*
- (ii) the number of persons involved in the channels of distribution of the goods or services;*
- (iii) the business circles dealing with the goods or services, to which that trade mark applies.”*

24. Counsel has drawn the attention of this Court to the following data with regard to the factors enumerated in the aforesaid clauses, from the documents filed along with the suit, as being relevant for deciding whether a mark is eligible for being declared as a well-known mark, which are discussed below:

I. Factor 1- Section 11(6)(i): Knowledge and recognition in relevant section of the public in India obtained because of promotion:

- a) Plaintiff products are widely sold at every pharmacy and on e-commerce websites.
- b) Plaintiff's products catalogue curated for various stores across India [*PDF Pages: 42-49 of list of documents*]



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- c) Extracts from Plaintiff's website registered in 2012- [*PDF Page: 278-310 of list of documents*]
- d) Extracts from Plaintiff's social media accounts (Facebook- since 2012 and Instagram- since 2019- [*PDF Page: 311-368 of list of documents*]
- e) Advertisements of KUKA products featuring Mr. Boman Irani in Dainik Savera Times Newspaper (at least since 2019) [*PDF Page: 369-388 of list of documents*]
- f) Tax Invoice & Telecast Certificates of ZEE Media for TV commercials of KUKA cough syrup (at least since 2018) [*PDF Page: 389-432 of list of documents*]
- g) Tax invoice for newspaper and TV advertisements of KUKA cough syrup [*PDF Page: 433-467 of list of documents*]
- h) CA Certificate dated 18.07.2024 certifying the sales revenue in India of KUKA products (since 2019) [*PDF Page: 474 of list of documents*]

II. Factor 2 – Section 11(6)(ii): the duration, extent and geographical area of any use of that trademark

- a) Purchase orders dated 2012 for export of KUKA products to Moldova and other foreign nations- [*PDF Pages: 52-85 of list of documents*].
- b) Internal Export Records of the Plaintiff since 2004-2005 evidencing export of KUKA products to countries like Latvia, Turkmenistan, Nairobi, Uzbekistan, Armenia, Kiev,



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- Moscow, Kazakhstan, Moldova [*PDF Pages: 86- 130 of list of documents*].
- c) Clearance forms filed by the Plaintiff with the Indian Customs dating back to 2004 for clearance of export of KUKA products to countries like Tashkent, Latvia, Turkmenistan, Nairobi, Uzbekistan, Armenia, Kiev, Moscow, Kazakhstan, Moldova- [*PDF Pages: 131-179 of list of documents*]
- a. Certificate of Registration dated 09.10.2013 issued by the Ministry of Health of Moldova approving the sale of KUKA cough syrup in Moldova- [*PDF Page: 180-181 of list of documents*].

III. Factor 3- Section 11(6)(iii): the duration, extent and geographical area of any promotion of the trademark, including advertising or publicity and presentation, at fairs, or exhibition of the goods or services to which the trademark applies:

- a) Lahore Advertisement of KUKA tablets dated 1938- [*PDF Pages: 51 of list of documents*].
- b) Extracts from Plaintiff's website registered in 2012- [*PDF Pages: 278-310 of list of documents*].
- c) Extracts from Plaintiff's social media accounts (Facebook- since 2012 and Instagram- since 2019 [*PDF Pages: 311-368 of list of documents*].



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- d) Advertisements of KUKA products featuring Mr. Boman Irani in Dainik Savera Times Newspaper (since 2019)- [*PDF Pages: 369-388 of list of documents*].
- e) Tax Invoice & Telecast Certificates of ZEE Media for TV commercials of KUKA cough syrup (since 2018)- [*PDF Pages: 389-432 of list of documents*].
- f) Tax invoice for newspaper and TV advertisements of KUKA cough syrup- [*PDF Pages: 433-467 of list of documents*].
- g) CA Certificate dated 18.07.2024 certifying the advertisement expenses in India of KUKA products (since 2019)- [*PDF Page: 474 of list of documents*].
- h) Extracts from Plaintiff's advertisement of KUKA products as shown on Russian TV- [*PDF Pages: 468-473 of list of documents*]

IV. Factor 4 - Section 11(6)(iv): The duration and geographical area of any registration of or any application for registration of that trade mark under this Act to the extent they reflect the use or recognition of the trade mark

- a) Registration certificates of Plaintiff's KUKA trademarks [*PDF Pages: 208-219 of list of documents*].
- b) List of all International trademark applications filed in Sri Lanka, Nepal, Qatar, Ukraine for the trademark KUKA- [*PDF Pages: 226-228 of list of documents*]



- c) Registration details of the Plaintiff's trademark KUKA in India, dated 08.11.1951- [*PDF Pages: 198-207 of list of documents*]

V. Factor 5- Section 11(6)(v): The record of successful enforcement of the rights in that trade mark in particular, the extent to which the trade mark has been recognized as a well-known mark

- a. Plaintiff has successfully opposed third party use of the mark KUKA and have obtained favorable orders- [*PDF Page: 475-529 of list of documents*].
- Opposition against the trademark KAIKA KULFI in class 30
 - Opposition against the trademark KRANTI KAKA in class 31
 - Opposition against the trademark KAKA BAKERS in class 29
 - Opposition against the trademark KUKA Cattle feed in class 31
 - Opposition against the trademark KUKAL in class 21
- b. The Plaintiff filed a suit numbered CS (COMM) 341/2019 which was then settled and decreed in favor of the Plaintiff vide order dated 19.11.2019.

25. I have gone through the material placed on record by the plaintiff. On the strength of the averments made in the plaint and the volume and nature of the documents placed on record, I am of the view that the plaintiff has



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established well beyond doubt that its mark “KUKA” has acquired a well-known status in terms of Section 2(1)(zg) of the Trade Marks Act, 1999. The long duration for which the said mark has been in use by the plaintiff, the wide geographical area of use, the knowledge of the mark “KUKA” to the general public and its goodwill and reputation due to the extensive promotion, publicity and extensive revenue generated by the plaintiff, in India as well as other countries, the mark “KUKA” has achieved the status of a well-known mark. Accordingly, the plaintiff fulfils all criteria set out in Sections 11(6) and 11(7) of the Trade Marks Act, 1999 for declaring the mark “KUKA” as a well-known mark in respect of cough syrups.

26. As noted above, the present suit has already been decreed in favour of the plaintiff and against the defendants, and the defendants have handed over a Demand Draft of ₹ 6,50,000/- to the counsel for the plaintiff in the Court today.

27. Further, in terms of prayer clause 102 (i), a decree of declaration is also passed declaring that the plaintiff’s mark “KUKA” is a ‘well-known trademark’ within the meaning of Section 2(1)(zg) of the Trade Marks Act, 1999.

28. Let the decree sheet be drawn up.

29. All pending application(s) stand disposed of.

AMIT BANSAL, J

FEBRUARY 14, 2025

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