

Ad Wars: Delhi High Court Sends Parle, Britannia To Mediation, Restrains Re-Publishing Of Print Adverts Against Parle-G

2022 LiveLaw (Del) 1126

IN THE HIGH COURT OF DELHI AT NEW DELHI

PRATHIBA M. SINGH; J.

CS(COMM) 806/2022; 22.11.2022

PARLE PRODUCTS PRIVATE LIMITED versus BRITANNIA INDUSTRIES LTD.

Plaintiff through: Mr. J. Sai Deepak, Mr. N.K. Bhardwaj, Ms. Anju Agrawal, Mr. Bikash Ghorai, Mr. Deepak Panwar, Mr. Rahul Mareth & Ms. Kashima Chadha, Advocates.

Defendant through: Mr. Sagar Chandra, Ms. Ishani Chandra, Ms. Shubhie Wahi & Ms. Sanya Kapoor, Advocates.

ORDER

1. This hearing has been done through hybrid mode.

I.A.19356/2022 (for exemption)

2. This is an application filed on behalf of the Plaintiff seeking exemption from filing copies of original documents, documents with insufficient margins, etc.

3. Exemption is allowed, subject to all just exceptions.

4. **I.A. 19356/2022** is disposed of.

I.A.19354/2022 (additional documents)

5. This is an application filed on behalf of the Plaintiff seeking leave to file additional documents under the Commercial Courts, Commercial

Division and Commercial Appellate Division of High Courts Act, 2015 (*hereinafter*, 'Commercial Courts Act').

6. The Plaintiffs, if they wish to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act.

7. **I.A. 19354/2022** is disposed of.

I.A.19355/2022 (u/S 12A)

8. This is an application filed on behalf of the Plaintiff seeking exemption from instituting pre-litigation mediation. In view of the orders passed in **Chandra Kishore Chaurasia v. R A Perfumery Works Pvt. Ltd, 2022/DHC/004454** the exemption is granted.

9. **I.A. 19355/2022** is allowed and disposed of.

I.A. 19358/2022 (leave to file pen drive on record)

10. This is an application filed by the Plaintiff seeking leave to file a pen drive containing the impugned video advertisements of the Defendant. The contents of the pen drive have been perused by the Court during the hearing, and the pen drive is taken on record.

11. **I.A. 19358/2022** is disposed of.

I.A. 19357/2022 (exemption from advance service to the Defendants)

12. This is an application filed by the Plaintiff seeking exemption from advance service of the plaint, applications and the accompanying documents to the Defendant. In view of the fact that the Defendant has entered appearance, this application is now infructuous.



13. **I.A. 19357/2022** is disposed of.

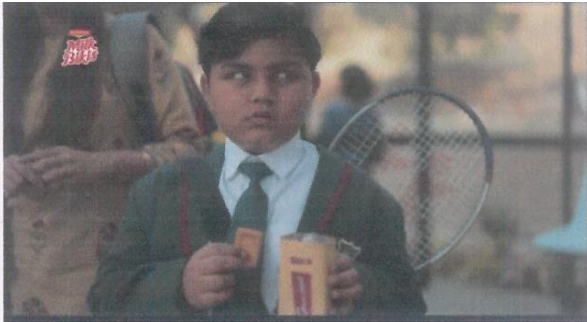




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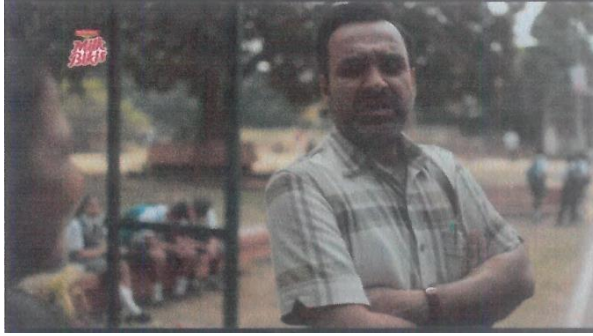
14. Let the plaint be registered as a suit.
15. Issue summons to the Defendant.
16. Ld. counsel for the Defendant accepts summons.
17. The written statement to the plaint shall be positively filed within 30 days. Along with the written statement, the Defendant shall also file an affidavit of admission/denial of the documents of the Plaintiff, without which the written statement shall not be taken on record.
18. Liberty is given to the Plaintiff to file a replication within 15 days of the receipt of the written statement. Along with the replication, if any, filed by the Plaintiff, an affidavit of admission/denial of documents of the Defendant, be filed by the Plaintiff, without which the replication shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.
19. List before Court on 14th December, 2022

I.A. 19353/2022 (u/O XXXIX Rule 1 and 2 CPC)

20. Issue notice.
21. Mr. Sagar Chandra, Id. Counsel accepts notice.
22. The present suit has been filed by Plaintiff - Parle Products Private Limited against the Defendant - Britannia Industries Ltd seeking permanent injunction restraining disparagement, infringement, unfair competition, etc regarding a video advertisement as also two print advertisements publicised by the Defendant for its ‘Britannia Milk Bikis’ products.
23. The case of the Plaintiff is that the Defendant is disparaging the Plaintiff’s world famous biscuits product sold under the mark Parle-G by publicizing derogatory advertisement campaigns through television commercials, online broadcasts as well as through Print media i.e. e-Paper and print Newspaper. The disparaging advertisements include two print advertisements and one video advertisement (*“hereinafter collectively as, impugned advertisements”*). The Plaintiff submits that the impugned advertisements are made in a manner so as to reflect the Plaintiff’s product in a bad light by suggesting that the Plaintiff’s Parle-G biscuits give *adhoora poshan* and are *sadharan* biscuits. The impugned advertisements are as follows:

Impugned print advertisement (Comic strip)	Impugned print advertisement (Newspaper advertisement)
	

Impugned video commercial (Visual Description)	Description (Voice Over)
	<p>The camera pans to the woman's kid who can be seen having a biscuit from a similar packaging of that of the Plaintiff's "Parle G" biscuits.</p>
	<p>Man starts talking to the woman. He asks, "Chintu "G" ka school international waala hai naa?"</p>
	<p>The question is replied to in affirmative by the mother emphasising on the term "G"</p>
	<p>The man further enquiries about Chintu's tennis coaching by making a gesture of a tennis racquet hitting a ball and says, "Aur yeh tennis coaching bhi aesa ..." (followed by a sound made by man's tongue-clicking)</p>
	<p>This is also replied to in affirmative by the woman. She exclaims, 'G Haan!'</p>



The man then asks, "Phir itna saadharan biscuit kyun "G"?"



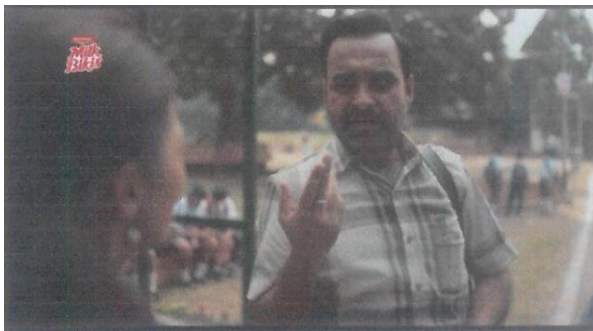
This time the woman exclaims, and reiterate the term "G" kya?




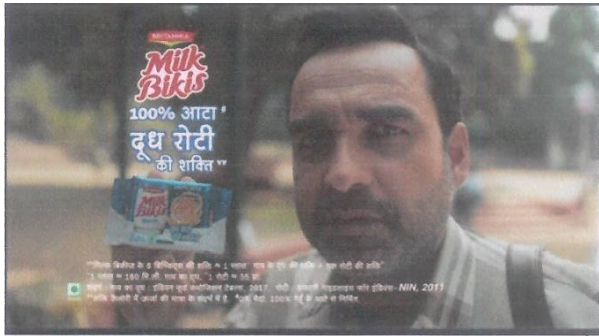
The man responds again with the term emphasising on "G" nahi!



The woman takes the similar packaging of that of the Plaintiff's registered trademark "Parle-G" from the child's hand and peruses it herself.



The man goes on to question the choice of their biscuits. He says, "**Arey jab saare choices hain AI, toh biscoot kyun itna saadharan?**"

	<p>While the Defendant's advertisement on the wall is shown fully, the man exclaims, 'Toh saadharan biscuit ko kahiye "G" nahi!'</p>
	<p>The advertisement finally concludes with the man further saying, 'Britannia Milk Bikis ko "G" Haan</p>

24. It is submitted by the Id. Counsel for the Plaintiff that the use of the letter 'G' in the print advertisements as also the use of a similar looking packaging in the video advertisement leaves no manner of doubt that the comparison of the Defendant's 'Britannia Milk Bikis' product is being made with the Plaintiff's Parle-G product.

25. After noticing the matter in the cause list, Mr. Sagar Chandra, Id. Counsel has entered appearance for the Defendant. He is supplied with complete set of suit papers including the plaint, applications and the accompanying documents. Ld. Counsel has also made some submissions after the passover was granted.

26. Ld. Counsel for the Defendant submits that the impugned video advertisement had been released by the Defendant in 2019 and the two print advertisements are of recent origin. Ld. Counsel further submits that the Defendant is willing to explore amicable resolution of the disputes.

27. The Court has perused the impugned advertisements. A perusal of the two print advertisements clearly shows that the use of the terms such as 'GNAHI', 'Adhura poshan', etc. clearly make a reference to the Plaintiff's Parle-G's biscuits. This is also evidenced by the fact that the packaging with which the Defendant's product is compared in the impugned video advertisements is similar to the Plaintiff's Parle-G product. It is noted that the impugned video advertisement is available on YouTube.

28. Considering that the Defendant is willing to amicably resolve the matter, the parties are referred to the Delhi High Court Mediation and Conciliation Centre (*hereinafter "Mediation Centre"*) on 24th November, 2022 at 4:00 p.m. As requested, Mr. J.P. Sengh, Id. Senior Advocate, is appointed as the Id. Mediator.

29. It is directed that while the settlement is being explored between the parties, the two print advertisements of the Defendant shall not be republished. In the process of mediation, the changes to be carried out in the impugned video advertisement which is currently accessible online shall also be discussed. Accordingly, a comprehensive settlement mediation shall be undertaken between the parties. In the mediation

proceedings, persons who are competent to take decisions shall participate, either physically or virtually.

30. Parties to report on the outcome of the mediation by the next date of hearing.

31. If the matter is not settled, the Defendant may file its reply to this injunction application by 12th December, 2022. 32. List before the Court on 14th December, 2022.

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