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

% *Date of Decision: 27th September, 2022*

+ CS(COMM) 1255/2018

DHARAMPAL SATYAPAL LIMITED & ANR. Plaintiffs

Through: Mr. Pravin Anand, Ms. Vaishali Mittal and Mr. Shivang Sharma, Advocates.

versus

MR. YOUSSEF ANIS MEHIO & ORS. Defendants

Through: Defendants No. 1 and 2 *ex-parte vide* order dated 19.09.2022.

Defendants No. 3 and 4 *ex-parte vide* order dated 15.07.2019.

Suit decreed *qua* Defendants No. 5 and 6 *vide* order dated 06.02.2019.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

I.A. 15936/2022 (under Order XIII-A Rules 3 and 6(1)(a) read with Order VIII Rule 10 read with Section 151 CPC, by Plaintiffs)

1. Present application has been filed under Order XIII-A CPC, as amended by Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015.

2. This suit is filed for permanent injunction restraining infringement and dilution of trademark, trade name, passing off, infringement of copyright, unfair competition, delivery-up, rendition of accounts, damages and costs etc. The prayer clause in the present suit is as under:-

“48. It is, therefore, respectfully prayed that this Hon’ble Court may be pleased to grant the following reliefs in favour of the Plaintiffs and against the Defendants:

(i) A decree of permanent injunction restraining the Defendants, their partners or proprietors, principal officers, servants, agents and distributors and all others acting on its behalf as the case may be from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in any manner with products including but not limited to tobacco products, pan masala products, confectionary and/or any other goods and/or services using the mark

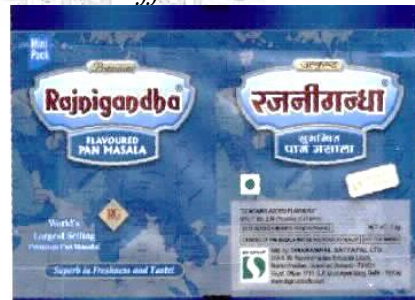


RAJNI PAAN, RAJNIPaan, RAJNI, RAJNIGANDHA; Plaintiffs' trademarks



including trade dress and any other mark deceptively similar thereto leading to:

a) Infringement of Plaintiffs' trademarks RAJNI, RAJNIGANDHA



RAJNIGANDHA, overall colour scheme and unique trade dress in relation to their products;

b) **Passing off** of the Defendants' products (including but not limited to pan masala products, supari, chillum etc) as emanating from the Plaintiffs;

c) **Infringement of copyright** vested in the original artistic works in the Plaintiffs label, packaging, overall get-up etc.

d) **Dilution** of Plaintiff's well-known trademark



RAJNIGANDHA, overall colour scheme and unique trade dress;

e) **Unfair Competition** vis a vis Plaintiffs' well-known



trademarks **RAJNIGANDHA** and **RAJNI** overall colour scheme and unique trade dress;

(ii) An order for the **delivery-up** of all impugned materials of the Defendants, including the Defendants' products, their packaging, container boxes, labels, wrappers, stickers, and stationery or any other material of the Defendants



containing the mark **RAJNIPAAAN** trade (colour) marks including trade dress and the colour combination of Plaintiff;

(iv) An order for **rendition of accounts** of profits illegally earned by the Defendants on account of use of the



trademark mark **RAJNIPAAN**; and a decree for the amount so found be passed in favour of Plaintiff;

(v) An order for **damages** in the present proceedings;

(vi) An order for **costs** in the present proceeding.”

3. When the suit was filed Plaintiffs had arrayed six Defendants and *vide* order dated 29.11.2018, this Court granted an *ex-parte ad interim* injunction in favour of the Plaintiffs and against the Defendants. Relevant portion of the order is as under:-

“Consequently, till further orders, the defendants, their partners, proprietors, directors, principals, agents, servants, masters, affiliates, associates, distributors, licensees and all others acting on their behalf directly or indirectly are restrained from manufacturing, selling, offering for sale, advertising directly or indirectly dealing in any manner with products and services including but not limited to pan masala products, confectionary and/or any other goods and/or services



using marks/trade dress **RAJNI PAAN**,
RAJNIPAAN, plaintiffs' trademark **RAJNIGANDHA**



, including trade dress, copyright vested in RAJNIGANDHA label or any other mark deceptively similar to the plaintiffs.”

4. On receiving summons, Defendant No. 5, Mr. Lucky Gupta, proprietor of Defendant No. 6 i.e., Hookah Zone made a statement before the Court on 06.02.2019 that Defendants No. 5 and 6 did not wish to contest the proceedings and upon recording the undertaking of the counsel for Defendants No. 5 and 6, a decree in favour of the Plaintiffs and against Defendants No. 5 and 6 was passed by the Court. Relevant part of the order is as follows:-

“...Learned counsel for defendant nos.5 & 6 states that the said defendants have neither infringed the plaintiffs' trademark nor copyright and are willing to suffer a decree in terms of prayer 48 (i) (a), (b) and (c) of the plaint.

In view of the aforesaid statement/ undertaking, learned counsel for the plaintiffs does not wish to press the present suit for any other or further relief against defendant nos.5 &6.

Consequently, the statement/undertaking given by learned counsel for defendant nos. 5 &6 is accepted by this Court and the said defendants are held bound by the same.”

5. Order sheets indicate that there was no appearance on behalf of Defendants No. 3 and 4, despite service through several modes, including *dasti*. *Vide* order dated 15.07.2019 Defendants No. 3 and 4 were proceeded *ex parte* and the interim injunction was confirmed *qua* them.

6. Thereafter, as service on Defendant No. 1, Mr. Youssef Anis Mehio, Chairman and General Manager of Defendant No. 2, Mya International/ Mya Flavours could not be effected by ordinary modes except email, Plaintiffs filed an application for substituted service, which was allowed on 21.01.2021. Despite publication, none appeared for Defendants No. 1 and 2 and they were proceeded *ex-parte vide* order dated 19.09.2022.

7. It is the case of the Plaintiffs that they are a part of the Dharampal Satyapal Group (DS Group), which is a multi-diversified conglomerate, founded in the year 1929 and have a strong presence in high growth sectors such as Food & Beverages, Confectionary, Hospitality, Mouth Fresheners, Pan Masala, Tobacco, Agro Forestry, Rubber Thread and Infrastructure.

8. It is averred that Plaintiffs' predecessors adopted the trademark "RAJNI" in 1980 in respect of pan masalas, supari etc. Thereafter, Plaintiffs extended their range of products and adopted the trademark "RAJNIGANDHA" in the year 1983 in respect of flavoured pan masalas. The trademarks are registered as under and the registrations are valid and subsisting:-

Application No.	Trademark	Mark Description	Class	Date of Application
1057271	RAJNI	RAJNI	31	07/11/2001
1057272	RAJNI	RAJNI	34	07/11/2001
1104557	RAJNI		31	14/05/2002

402899	RAJNIGANDHA	RAJNIGANDHA	31	17/03/1983
456862	RAJNIGANDHA (LID)		31	14/07/1986
456863	RAJNIGANDHA (CONTAINER)		31	14/07/1986
490907	RAJNIGANDHA (POUCH)		31	11/05/1988
1758490	RG		31	27/11/2008
1758488	Rajnigandha		34	27/11/2008
1758489	RG		16	27/11/2008
1758487	Rajnigandha		31	27/11/2008
2063714	RAJNIGANDHA	RAJNIGANDHA	31	06/12/2010

1251686	RAJNIGANDHA DEVICE		31	27/11/2003
1620422	RAJNIGANDHA WITH DEVICE		31	13/11/2007
1758486	Rajnigandha		16	27/11/2008
2391890	RAJNIGANDHA	RAJNIGANDHA	21	07/09/2012

9. It is averred that the RAJNIGANDHA products being Plaintiffs' flagship product and the world's largest selling premium flavoured pan masala are sold in a unique packaging having a distinct layout, getup and colour scheme. Consumers around the world associate the trademark RAJNIGANDHA exclusively with the Plaintiffs and none else. The unique and distinctive characteristics of the trade dress as brought out in the plaint are as follows:-



**Essential features of RAJNIGANDHA PAN MASALA
product packaging**

- 1) Dark Royal Blue colour used as the base colour for the packaging
- 2) A world map across the face and back of the pouch
- 3) Rajnigandha written in red in an artistic device with a ghost outline
- 4) Flavoured Pan Masala written in white in an oblong device
- 5) The tagline at the bottom of the front face “*Superb in Freshness and Taste*”
- 6) A small device with RG written at the bottom of the pouch.
- 7) A silver box at the back of the packaging with the relevant packaging details.

10. It is stated that this Court *vide* judgment dated 13.02.2014, in suit titled *Dharampal Satyapal Limited vs. Suneel Kumar Rajput & Anr. [CS(OS) 381/2012]* declared the mark “Rajnigandha” as a well-known trademark, under Section 2(1)(zb) read with Section 2(1)(zg) of the Trade Marks Act, 1999 (hereinafter referred to as the ‘Act’).

11. It is the case of the Plaintiffs that they are owners of copyright in the unique ‘artistic work’ under Section 2(c) of the Copyright Act, 1957 and entitled to exclusive rights under Section 14 of the said Act. It is stated that Plaintiffs have invested huge amounts of money and efforts to advertise and promote their product under the trademark ‘RAJNIGANDHA’ and its constituent trade-dress. For the financial year 2017-2018, total sales revenue for the product, under the trademark ‘RAJNIGANDHA’ clocked over

INR 2757,72,35,867.68/- and expenditure of INR 32,62,65,949.00/- was incurred for advertising goods under the mark 'RAJNIGANDHA', by way of promotion in the newspapers, magazines, internet, hoardings, and Television commercials.

12. Plaintiffs assert that they gained knowledge of the infringing activities of the Defendants in the third week of September 2018, when during a market surveillance in and around the areas of New Delhi, they came across the impugned product **RAJNIPAAN**, being sold in a nearly identical trade



dress . Investigations into the impugned product further revealed the wide availability of the impugned product across Delhi as well as on third party online market places such as www.flipkart.com, www.amazon.com, www.easysmoke.in and www.smokinn.com.

13. I have heard learned counsel for the Plaintiffs and examined the contentions raised.



14. Plaintiffs are registered proprietors of the trademark RAJNIGANDHA and have filed the Certificate of Registration in this regard which is valid and subsisting. No evidence to the contrary has been produced by the Defendants who have chosen to abstain from the proceedings. By virtue of provisions of Section 28 of the Act, Plaintiffs have the exclusive right to use the trademark in relation to the goods in respect of which it is registered as well as to obtain relief in respect of infringement.

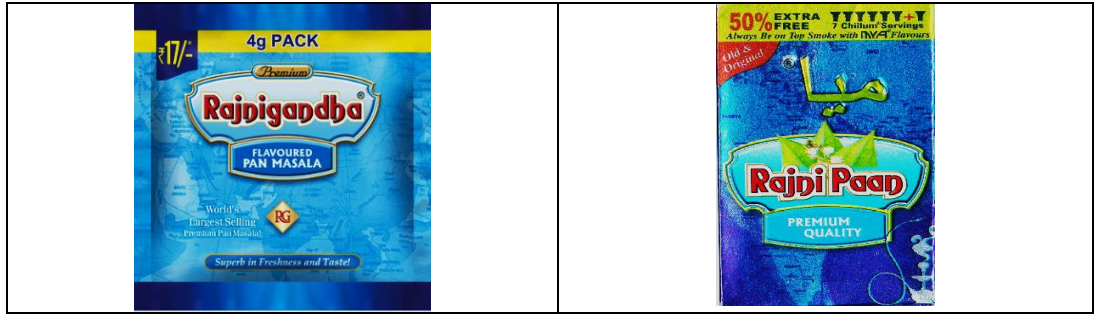
15. Having analysed the competing marks and the impugned label/packaging, this court is of the opinion that there is deceptive similarity between them. Court finds that the packaging of the impugned product, i.e.,



has been designed in an identical colour scheme, font and labels, to give an overall look and feel of the Plaintiffs' products under the RAJNIGANDHA marks, which, as rightly contended by the Plaintiffs, has been done intentionally to trade off the significant goodwill and reputation of the Plaintiffs in their RAJNIGANDHA marks. It is obvious that there is a dishonest adoption by the Defendants and Plaintiffs have made out a case of infringement and passing off.

16. The trademark RAJNIGANDHA has been declared as a well-known mark by this Court and is entitled to a high degree of protection. The impugned mark is visually and structurally deceptively similar to the Plaintiffs' trademark. A table representing the marks of the Plaintiffs and Defendants is reproduced hereinbelow:

Manner of use by the Plaintiffs	Manner of use by the Defendants
	



17. There is no gainsaying that the imitation, adoption and use of the nearly identical trademark, trade name logo and colour scheme by the Defendants is with the intent to cause confusion and create an impression amongst consumers that the Defendants have a direct nexus/affiliation with the Plaintiffs, or have been granted a license by the Plaintiffs in relation to their products and/or are doing business endorsed by the Plaintiffs. It is a settled proposition of law that if the Court finds that there is imitation, no further evidence is required to establish that Plaintiffs’ rights are violated, as held by the Supreme Court in *Kaviraj Pandit Durga Dutt Sharma vs. Navratana Pharmaceutical Laboratories [(1965) 1 SCR 737]* as under:-

“28.

.....

Expressed in another way, if the essential features of the trade mark of the plaintiff have been adopted by the defendant, the fact that the get-up, packing and other writing or marks on the goods or on the packets in which he offers his goods for sale show marked differences, or indicate clearly a trade origin different from that of the registered proprietor of the mark would be immaterial; whereas in the case of passing off, the defendant may escape liability if he can show that the added matter is sufficient to distinguish his goods from those of the plaintiff.”

18. This Court finds that Defendants have mischievously and deliberately adopted a deceptively similar mark and have only replaced ‘GANDHA’ with

‘PAAN’ with an intention to ride upon goodwill and reputation established by the Plaintiffs. In fact, the principle of ‘initial interest confusion’ is also attracted in the present case, which is posited on the assumption that *‘infringement can be based upon confusion that creates initial consumer interest, even though no actual sale is finally created as a result of the confusion. Most Courts now recognise the initial interest confusion theory as a form of likelihood of confusion which can trigger a finding of infringement.’ [Ref: McCarthy Vol 4, 23:6].*

19. Given that the trademark RAJNIGANDHA is a “well-known” mark as defined under Section 2(1)(zg) of the Act and entitled to a high degree of protection, even in cases of dissimilar goods the owner of the mark is required to be shielded. Present case stands on a better footing, as the impugned goods of the Defendants are Chillum flavours, registered in Class 34 and the product of the Plaintiffs is Pan Masala, also registered in Class 34. The goods are allied and cognate and the triple identity test is satisfied as the trademark is nearly identical, goods are allied and cognate and the trade channels are identical with same consumer base. In this context, this Court relies on the judgment in ***Tata Sons Ltd. v. Manoj Dodia & Ors., 2011 SCC OnLine Del 1520***, where the Court held that:

“20. Since the trademark TATA is a well known trademark, use of the aforesaid mark by the defendant on the products being sold by him also constitutes infringement within the meaning of Section 29(4) of the Trademarks Act, 1999 since by using the trademark TATA, he obviously has tried to take an unfair advantage by encashing upon the brand quality and goodwill, which the mark TATA enjoys in the market. Since the defendant has not come forward to contest the suit, the presumption is that use of the mark A-ONE TATA by him is not bona fide, but is deliberate, intended to encash the popularity and reputation,

which TATA brand enjoys. Such use by the defendant is likely to be detrimental to the reputation and distinctive character of the registered trademark TATA of the plaintiff company because if this mark is allowed to be used on the products, which do not originate from TATA group of companies, that may diminish the ability of the trademark TATA to identify the source of the goods in respect of which this trademark is used, besides lowering its reputation in case the quality of the goods is not of expected standard.”

20. Having examined the averments made in the plaint along with the documents filed and the contentions of the Plaintiffs as well as looking to the fact that Defendants No. 1 to 4 are *ex parte* and decree has been passed against Defendants No. 5 and 6, it appears that Defendants No. 1 to 4 have no real prospect of defending the claim, having chosen to stay away from the proceedings despite service. In these circumstances, Plaintiffs are entitled to a decree under Order XIII-A CPC, as amended by Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, which empowers this Court to pass a summary judgment, without recording evidence, if it appears that Defendants have no real prospect of defending the claims.

21. Plaintiffs have sought damages, however, this Court finds that no evidence has been led to substantiate the claim. No stocks have been recovered or seized from the premises by the Local Commissioner appointed by the Court, at the time of grant of interim injunction. On account of lack of evidence with respect to the quantum of damages, this Court is constrained to decline the said relief in light of the judgment of Division Bench of this Court in *Hindustan Unilever Limited v. Reckitt Benckiser India, 207 (2014) DLT 713 (DB)*. In this context, I may also allude to another judgment

of this Court in *CS(COMM) 48/2015* titled as *Super Cassettes Industries Private Limited v. HRCN Cable Network*, relevant passage from which is as under:-

“19. However, this court is not satisfied on the evidence led in the present case that the compensation awarded is inadequate in the circumstances having regard to the three categories in Rookes v. Barnard, [1964] 1 All ER 367 and also the five principles in Cassell & Co. Ltd. v. Broome, 1972 AC 1027. In the event punitive damages are awarded in the present case, it would be an ad-hoc judge centric award of damages, which the Division bench specifically prohibited in Hindustan Unilever Limited(supra)...”

22. However, in view of the fact that Defendant Nos. 1, 2, 3 and 4 are guilty of infringement by dishonestly adopting nearly identical trademark and identical packaging, trade-dress, etc., and have chosen to deliberately stay away from the proceedings, despite service, for which repeated efforts had been made by the Plaintiffs, this Court is of the view that Plaintiffs are entitled to notional damages, in terms of the judgment in *Indian Performing Right Society v. Debashis Patnaik, (2007) 34 PTC 201*. Plaintiffs are also entitled to costs in view of the judgment of the Supreme Court in *Uflex Ltd. v. Government of Tamil Nadu, Civil Appeal Nos. 4862-4863/2021*, decided on 17.09.2021 as well as in terms of the Commercial Courts Act, 2015 and Delhi High Court (Original Side) Rules, 2018 read with Delhi High Court Intellectual Property Division Rules, 2022.

23. In the light of the aforesaid facts and circumstances, suit is decreed in favour of the Plaintiffs and against Defendants No. 1 to 4 in terms of para 48(i) (a) and (c) of the prayer clause of the plaint. Decree of damages is passed for a sum of Rs. 3,00,000/-. Further, Plaintiffs would be entitled to

actual costs, which would include Court fee, recoverable jointly from Defendants No. 1 to 4. Plaintiffs shall file their bill of costs in terms of Rule 5 of Chapter XXIII of the Delhi High Court (Original Side) Rules, 2018 on or before 30.10.2022. As and when the same is filed, the matter will be listed before the Taxing Officer for computation of costs.

24. Decree sheet be drawn up accordingly *qua* Defendants No. 1 to 4.
25. Suit is disposed of in the above terms.
26. Present application stands disposed of accordingly.
27. Date of 18.01.2023 stands cancelled.

SEPTEMBER 27, 2022/rk/sn/shivam

JYOTI SINGH, J

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