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

Date of decision: 23rd January, 2024

+ **CS(COMM) 680/2017**

KAMAL KANT AND COMPANY LLP Plaintiff

Through: Mr. Abhishek Malhotra and Mr.
Kartikay Dutta, Advs. (M:
8979516789)

versus

RAASHEE FRAGRANCES INDIA PVT LTD Defendant

Through: Mr. Sagar Chandra and Mr. Nikhil
Sonker, Advs. (M: 7417478967).

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

Brief Facts

2. The Plaintiff - Kamal Kant and Company LLP has filed the present suit against the Defendant - Raashee Fragrances India Pvt. Ltd. seeking injunction from using the mark 'RAASHEE'.

3. The Plaintiff in the present case is engaged in the business of manufacturing and marketing of pan masala, chewing tobacco, supari mixture, Zaffrani Patti, Zarda and other allied and cognate items since the year 1965. These products are sold in the market under the trade mark/name 'RAJSHREE' bearing various registrations in classes 6,29,31 and 34. It is stated that in the financial year 2013-2014 the Plaintiff earned royalty of



more than Rs. 14 Crores and invested more than Rs. 2.5 crores on promotions and advertisements.

4. The case of the Plaintiff is that it came across the trademark application by the Defendant bearing no.1895418 & 1895423 in classes 34 & 31 respectively for the mark 'RAASHEE' label. The mark is used in respect of similar business as that of the Plaintiff *i.e.*, zarda mix, pan masala including gutkha, zarda, safrani, khaini, mouth freshners, scented supari, betel nuts, agricultural and other cognate and allied goods. The Defendants have been claiming user since 2009. The Plaintiff upon coming across these trademark applications opposed the said marks and the marks have been abandoned by the Defendant, as on the date of filing of the suit. Though the company was live and active by the Defendant, the mark 'RAASHEE' was not being used by the Defendant. The relevant paragraph of the written statement is extracted hereinbelow:

“8. It is submitted that the Defendant, immediately on applying for trademark registration of the said marks started to use the Labels and mark in question and sold various products under the said mark. The Defendant Company thus currently is engaged in the business of manufacturing mouth-freshener, tobacco and tobacco products since 2009 under the mark and style of 'RAASHEE'. It is submitted that although the Defendant Company is live and active however due to mounting losses the products under the mark "RAASHEE" have been discontinued for the time being. The documents pertaining to the same have been filed in the present proceedings.”

5. The Plaintiff, however, felt a reasonable apprehension in the use of the mark 'RAASHEE' by the Defendant and hence, filed the present suit.



The suit was filed initially in 2015 and an *ex-parte* injunction was granted on 22nd May, 2015. Vide a detailed judgment dated 4th November, 2015, the interim injunction was confirmed. The findings of the Id. Single Judge on 22nd May, 2015, are as under:

- “In the circumstances, till the next date of hearing, the defendants, their directors, partners or proprietors, assigns as the case may be, their officers, servants, agents and representatives are restrained:*
- i. from using the trademark RAASHEE directly/indirectly in relation to pan masala, mouth freshners, scented supari, betel nuts of zarda mix, pan masala like gutkha, zarda, safrani and other chewing tobacco, khaini, tobacco products, tobacco raw or manufactured, matches or any other allied items either as a trademark, trade name or domain name or in any form or manner which is either identical or deceptively similar to the trademark RAJSHREE causing infringement of plaintiffs rights under the registered trademark RAJSHREE.*
 - ii. from using the trademark RAASHEE directly/indirectly in relation to pan masala, mouth freshners, scented supari, betel nuts of zarda mix, pan masala like gutkha, zarda, safrani and other chewing tobacco, khaini, tobacco products, tobacco raw or manufactured, matches or any other allied items either as a trademark, trade name or domain name or in any form or manner which is either identical or deceptively similar to the trademark RAJSHREE amounting to pass off plaintiffs aforesaid goods under the trademark RAJSHREE.*
 - iii. from using the trademark RAASHEE directly/indirectly in relation to any goods or dealing in the trade mark RAASHEE or any other deceptively similar trade mark which may cause dilution of the plaintiffs trademark RAJSHREE.”*



6. The matter was carried in appeal and in FAO(OS) 665/2015, the Id. Division Bench vide order dated 7th December, 2015 found that the Defendant was not using the mark and, therefore, directed that the trial in the suit be expedited. The relevant extraction is set out below:

“We find from the impugned order that the appellant has not been manufacturing and it is not manufacturing the product in question nor is selling the same under the mark 'RAASHEE'. Therefore, apart from anything else, no irreparable harm or injury could be cause to the appellant by virtue of the injunction granted by the learned Single Judge. The balance of convenience also does not entail interference with the injunction order. The question of prima-facie case need not be gone into at this stage in view of the above. We are, therefore, not interfering with the impugned order except to the extent that the costs of Rs 50,000/- stand waived. The learned counsel for the appellant has requested that a direction be given to expedite the trial in the suit. The learned counsel for the respondent also has no objection to this. Consequently, we direct that the suit be expedited as only a handful of witnesses are sought to be examined on both sides. The learned Single Judge may consider the appointment of a Local Commissioner for expediting the same. An appropriate application shall be jointly moved by the learned counsel for the parties before the learned Single Judge for framing a fresh schedule in the trial, which we have directed to be expedited.

We also make it clear that the observations made by the learned Single Judge in the impugned order are only prima-facie observations and will not come in the way of the parties in the final determination in the suit.”



7. The evidence has now stood concluded in the matter. The Plaintiff has led the evidence of PW-1-Mr. Satish Joshi and the Defendant has led the evidence of DW-1 Shri Vishal Jain. Both the witnesses have been cross-examined and both have filed their respective documents. The suit has been heard finally.

Submissions

8. On behalf of the Plaintiff, Mr. Abhishek Malhotra, Id. Counsel submits that the Plaintiff's adoption is of 1983 and he relies upon various invoices (*first invoice page 170*), which reflect the said user. Insofar as the advertisement is concerned, the earliest advertisement, which the Plaintiff is able to trace, dates back to 23rd October, 2002 in the newspaper Dainik Bhaskar.

9. However, the Plaintiff has also been able to place on record documents showing payments made by the Plaintiff to certain advertising agencies for advertising the mark in 1984 (page 552 to 595 PW-1/10 and PW-1/15). He further submits that the Plaintiff has reasonable business of earning royalty by licensing its seven brands, which are as under:

- Rajshree
- Rajshree Supreme
- Kamla Pasand
- Madhuban
- Saffronic
- Range
- Safal



10. From licensing of the above stated brands the revenue of the Plaintiff is to the tune of Rs.14.49 crores in the year 2013-14, which is the year preceding the year of filing of the suit.

11. He relies upon the following decisions in support of this case in consideration to use of phonetically similar mark, well-known mark, prior in use and type of consumers using the said marks. These judgements are as under:

- *Marico Limited & Anr. v. Madhu Gupta, (2010) 171 DLT 96*
- *Institut Europeen D. Administration Des Affaires, Insead, Association v. Fullstack Education Private Limited & Anr., 2023 SCC OnLine Del 3016*
- *Nirma Limited v. Purnima Gupta & Anr., 2022 SCC OnLine Del 3126*
- *Cadbury India Ltd. & Ors. v. Neeraj Food Products, ILR (2007) II DELHI 1065*
- *Parle Products (P) Ltd. v. J.P. & CO., Mysore, (1972) 2 SCC 618*

12. On the other hand, Mr. Sagar Chandra, Id. Counsel appearing for the Defendant submits that the Defendant's mark is completely *bona fide* and is an honest adoption. In his cross-examination, the Defendant has clearly stated that he adopted the mark 'RAASHEE' after watching the movie 'What is My Raashee'. He, in fact, conducted a trademark search and noticed that there is no identical or similar mark. The packaging between the parties is also different.

13. Submission of Mr. Chandra is that these products are primarily sold in the Hindi speaking belt of Madhya Pradesh, Chhattisgarh & Uttar Pradesh.



Though the difference in Hinglish between the two marks is the letter ‘J’, there is a perceivable and discernible difference between ‘RAJSHREE’ and ‘RAASHEE’, inasmuch as the Plaintiff’s mark starts with the word ‘RAJ’, which is used in a number of *paan masala* brands. The consuming public being Hindi speaking, they would not be confused due to the English spelling but would go by the Hindi meaning of the said two words. The meaning in Hindi being referring to a zodiac sign or concept of the *Dhanu Raashi*, ‘RAJSHREE’ and ‘RAASHEE’ are not identical or deceptively similar. He submits that in terms of the judgment of the Supreme Court in *Ruston & Hornsby Ltd. v. Zamindara Engineering Co., (1969) 2 SCC 727*, when the marks are not identical, the test of infringement is equal to the test of passing off.

14. It is his case that the marks have different meanings, labels are different, the Hindi meaning is different and there is no likelihood of confusion. The dominant feature of the Plaintiff’s mark is ‘RAJ’ and the Defendant’s mark is to be read as a whole as ‘RAASHEE’ and cannot be subdivided. He thus submits that the rule which is applied to establish phonetic similarity *i.e.* that English speaking persons ought not to be considered as standard in the present case, would favour the Defendant. If the consumers are Hindi speaking and the meanings are different, the said consumer class does not identify with English, in the present case, the confusion would, in fact, be eliminative.

15. Another interesting proposition that Mr. Chandra argues is that the concept of silent letters or syllables is not known in the Hindi language, unlike in English language. Thus, he submits that the overall similarity



between the word 'RAJSHREE' and 'RAASHEE' does not exist and thus, the injunction is liable to be dismissed. On the question of damages, he submits that even at the time of filing of the present suit, the Defendant's product was not found in the market.

16. Ld. counsel for the Plaintiff, however, submits that the Plaintiff is entitled to costs as the Plaintiff was forced to go trial in this matter after some settlement attempts failed.

17. On 11th December, 2023, when the submissions were being addressed, an option to consider adding a prefix to the mark 'RAASHEE' was suggested to the Defendant, so as to distinguish itself from the Plaintiff's mark. Ld. Counsel for the Defendant has reverted today and submits that the Defendant has agreed to change the mark to 'मेरी राशी' in Hindi and to 'MY RAASHEE' in English as under:

In English

MY RAASHEE

In Hindi

मेरी राशी



18. The above proposal on behalf of the Defendant is acceptable to the Plaintiff so long as the Defendant does not give undue prominence to the word 'RAASHEE' and also does not copy the colour combination, get up, lay out or the arrangement of the Plaintiff's 'RAJSHREE' paan masala packaging.

19. In view of the proposal given by the Defendant today, which is agreed to by the Plaintiff, the suit is decreed in the following terms:

- (i) The Defendant shall stand restrained from using the trademark 'RAASHEE' or any other mark which is identical or deceptively similar to the Plaintiff's mark 'RAJSHREE' in respect of pan masala, mouth fresheners, scented supari, betel nuts of zarda mix, pan masala like gutka, zarda, safrani and other chewing tobacco, khaini, tobacco products, tobacco raw or any other cognate and allied goods or services.
- (ii) The Defendant is, however, free to use the two proposed marks set out above so long as the said marks are used in a manner where the words 'MY' or 'मेरी' are of the same font, colour and size as the word 'RAASHEE'. The Defendant while adopting the above two proposed marks shall, however, ensure that the packaging, get up and lay out is not in any manner imitative of the Plaintiff's 'RAJSHREE' paan masala packaging.
- (iii) In view of the fact that the matter is resolved at this late stage and considering the fact that that suit has been litigated since May, 2015, Id. Counsel for the Plaintiff is willing to give up the relief of damages, rendition of accounts and costs subject to the Defendant paying the



sum of Rs.50,000/-, all the other reliefs are rejected. Ordered accordingly.

20. The cost of Rs. 50,000/- shall be paid within a period of four weeks from today to the Counsels for the Plaintiff. All questions of law raised, are kept open.

21. The suit is decreed in the above terms. Decree sheet be drawn.

PRATHIBA M. SINGH
JUDGE

JANUARY 23, 2024

dj/ks