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

Date of Decision: 28th March, 2023

+ **CS(COMM) 483/2020 & I.A. 9953/2020, I.A. 9954/2020**

TATA SONS PRIVATE LTD & ORS. Plaintiffs

Through: Mr. Pravin Anand, Mr. Achuthan
Sreekumar and Mr. Rohil Bansal,
Advocates.

versus

SARFARAZ KHAN Defendant

Through: Defendant proceeded ex-parte *vide*
order dated 28th January, 2021.

CORAM:

MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. The present case relates to copyright infringement of a peculiar and distinctive trade dress associated with Plaintiffs' mineral water product manufactured and sold under the brand "TATA WATER PLUS", as well as infringement of Plaintiff's registered well-known trademark "TATA and "TATA WATER PLUS".

PLAINTIFFS' CASE

2. The case set out in the plaint is as under:-

2.1. Plaintiff No. 1, Tata Sons Pvt. Ltd., along with its group companies, subsidiaries, and associate companies, is the registered proprietor of trademark "TATA" and various permutations/ combinations thereof, including the mark "TATA WATER PLUS" [hereinafter "*Plaintiffs*'

mark(s)”] in various classes, including Class 32 for mineral and aerated waters etc. and in Class 16 for paper, cardboard, printed matter etc., as mentioned at paragraphs 19 and 20 of the plaint. The trademark/trade name “TATA” and its various permutations and combinations thereon, have been consistently and continuously used since its inception in 1917 whereas the use of the name/trade mark “TATA” by the predecessors-in-business of Plaintiff No. 1, dates back to 1868. Tata Consumer Products Limited, who is the second plaintiff, is an affiliate of the first plaintiff, and is primarily involved in producing branded beverages, including tea, coffee, and water. The third plaintiff, Nourish Co Beverages Ltd., is a wholly-owned subsidiary of the first plaintiff, which was established as part of a collaboration between Plaintiff No. 2 and PepsiCo India Holdings Private Limited. Plaintiffs No. 2 and 3 have been granted permission to use the mark “TATA WATER PLUS” through a trademark license agreement dated 26th August, 2011. Copies of the trademark certificates pertaining to the aforesaid registrations and said trademark license agreement have been filed along with the plaint.

2.2. As a result of the continuous and extensive use of Plaintiffs’ marks, over a substantial period of time spanning a wide geographical area in combination with extensive promotion and publicity, the marks have acquired unparalleled reputation and goodwill. Plaintiff No. 1’s registered and well-known mark “TATA” and all products associated with it have become a household name in India which is well within Defendant’s knowledge and has also been noted by the Division Bench of this Court.¹

2.3. Plaintiffs are also the prior adopters and continuous and uninterrupted

¹ Tata Sons Put. Ltd. v. Hakunamatata TATA Founders & Ors., FAO (OS) (COMM) 62/2022.

users of the unique, peculiar and distinct packaging associated with their product under the “TATA WATER PLUS” brand since 2012. The “TATA WATER PLUS” product - India’s first nutrient water, is an original and innovative concept in the hydration category, which looks and tastes like normal water, but is packed with copper and zinc that can be easily absorbed by the human body. Plaintiffs have spent significant resources in advertising, marketing and protecting their product and brand name “TATA WATER PLUS”, which has also generated huge sales and popularity of the product.

2.4. Plaintiffs are the sole owners of the copyrights prevailing in the artistic work forming part of their unique, peculiar and distinct packaging/ trade dress of their abovementioned “TATA WATER PLUS” product, as provided in paragraph 25 of the plaint, apart from the registered trademarks “TATA” and “TATA WATER PLUS”.

2.5. In August, 2020, Plaintiffs learnt that Defendant was dealing in packaged drinking water bearing the mark “TAZA WATER PLUS” [hereinafter “*infringing mark*”]. Plaintiffs engaged an independent investigator to ascertain the exact nature and extent of Defendant's infringing and illegal activities. The original affidavit of the independent investigator has been filed with the plaint.

2.6. On 26th August 2020, the investigator visited the premises at the address provided in the FSSAI registration of the “TAZA WATER PLUS” product under the name of M/s Taza Water Plus. Defendant, who was personally present there confirmed that he was in the business of manufacturing and/or selling, offering for sale, distributing and advertising packaged drinking water under the brand of the infringing mark, and that he is using the infringing mark for his trade/firm’s name, as well. On inspection

of Defendant's premises, the investigator found around 12 to 13 cartons containing packaged drinking water bearing the infringing mark. On query, Defendant agreed to sell "TAZA WATER PLUS" branded packaged drinking water to the investigator and, also readily provided the packaging of his product bearing the infringing mark and the identical trade dress as that of Plaintiffs' product. A photograph of the cartons and Defendant's packaging has been filed along with the plaint.

3. In light of the above, Plaintiffs seeks a permanent injunction, restraining infringement of registered marks and copyrights, passing off, dilution and tarnishment of trademarks, in addition to damages, rendition of accounts, and delivery up, among other remedies.

PRESENT PROCEEDINGS

4. The present lawsuit was listed for the first time on 02nd November, 2020, wherein, on the basis of Plaintiffs' submissions and documents on record, the Court passed an *ad-interim ex-parte* injunction order in favour of Plaintiffs and against Defendant, injunctioning him from using the mark "TAZA WATER PLUS" or any other mark or device which may be deceptively similar to Plaintiffs' 'TATA WATER PLUS' product/packaging.

5. The Defendant did not appear before this Court despite service of summons and accordingly the Court proceeded against him *ex-parte* and confirmed the *ex-parte* injunction order that was operating against him .

6. Subsequently, Plaintiffs' filed application I.A. No. 8868/2022 under Order XIII-A of the Code of Civil Procedure, 1908, seeking a summary judgement. Considering that the Defendant had not responded to the summons, the Court granted the Plaintiffs an exemption from producing original documents, and instead allowed marking of exhibits on the

photocopies of the documents mentioned in the witness's affidavit. Accordingly, *ex-parte* evidence by way of affidavit, was recorded on 13th October, 2022.

ANALYSIS

7. The Defendant has taken a conscious decision of not appearing before this Court. He has not submitted a defence in the form of a written statement within the permissible statutory timeframe of 120 days, and as a result, his right to do so has been forfeited. Defendant has also not controverted Plaintiffs' assertions or led evidence to prove the contrary. Thus, there is deemed admission of Plaintiffs' claim in entirety and the Court need not delve into any other aspect. Nonetheless, the oral and documentary evidence produced before the Court also proves Plaintiffs' case for grant of reliefs sought in the suit.

8. Plaintiff No. 1 has valid and subsisting registrations for the mark "TATA" and "TATA WATER PLUS". The mark "TATA" and variations thereof have also been declared a well-known mark by the Trademark Registry as well as this Court.

9. The Defendant's product packaging is a slavish imitation of the Plaintiffs. The Defendant has attempted to copy all the essential features of Plaintiffs' unique, distinct and peculiar packaging. The comparison chart showing Plaintiffs' packaging of their "TATA WATER PLUS" product and Defendant's infringing packaging of "TAZA WATER PLUS" is as under –

<u>Plaintiffs' packaging</u>	<u>Defendant's packaging</u>
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10. Defendant has used an identical trade dress as that of Plaintiffs which includes the brown and blue strips and the words mentioned therein and even their font size and style. The words “TAZA WATER PLUS” on Defendants’ packaging are written in a font and manner which is identical to the way in which the Plaintiffs have written the words “TATA WATER PLUS”. The only visible change is that the third-letter “T” in “TATA” has been replaced by “Z” in “TAZA”. Further, Plaintiffs’ product label which features a splash of water as a device next to the word “PLUS” has been slavishly copied in the form of a heart shaped splash of water which is also placed identically as Plaintiffs’ device.

11. The evaluation of the comparison above must be made by considering an average and uninformed consumer’s perspective, rather than that of an experienced and astute buyer. Keeping in mind that all essential features of the Plaintiff’s mark and packaging have been copied, the likelihood of confusion is evident. It can also be concluded that the Defendant’s use of its infringing mark and trade dress has been done solely with the ulterior motive of free riding upon the immense goodwill and reputation associated with the

well-known mark “TATA” and the mark “TATA WATER PLUS”. Defendant’s actions manifest bad faith and there is no plausible explanation for Defendant’s use of the name/ mark “TAZA WATER PLUS” and a trade dress identical to Plaintiffs’ trade dress for the product in question. Such misrepresentation leads to confusion and deception among the public at large. Defendant, if not permanently restrained, is likely to cause injury to Plaintiffs, on account of severe harm to reputation and dilution of goodwill of Plaintiffs’ marks. Defendant’s infringing activities also hold grave potential for public harm as the product in question is packaged drinking water which directly ties into public health. Consumption of packaged drinking water which may be of inferior quality could lead to fatalities. Given that packaged drinking water of both parties is sold in the same trade channel, consumers may associate the Defendant’s product as emanating from the Plaintiffs, leading to confusion whereas Plaintiffs have no control over the quality of Defendant’s product. In view of the Court, a clear case of infringement and passing off is made out.

12. The Defendant has no real prospect of defending the Plaintiffs’ claim as they have neither entered appearance nor have, they filed their written statement. Thus, the Court is of the opinion that the present case is fit for passing a summary judgment under Order XIII-A of CPC as applicable to commercial disputes read with Rule 27 of Delhi High Court Intellectual Property Division Rules, 2022 [hereinafter “*IPD Rules*”].² In fact, in absence of defence by Defendant, Court is also entitled to invoke Order VIII Rule 10 of CPC to pass a judgment.

13. As regards damages, Plaintiffs, have not led any evidence to prove the

² Su-Kam Power Systems Ltd. v. Kunwer Sachdev, 2019 SCC OnLine Del 10764, paragraph 90.

damages. However, in view of the fact that Defendant is guilty of infringement by dishonestly adopting a nearly identical trademark and identical packaging, trade-dress, etc., and has chosen to deliberately stay away from the proceedings, despite service, the Court is of the view that Plaintiffs are entitled to nominal damages.

RELIEF

14. The present suit is accordingly decreed in favour of Plaintiffs and against the Defendant in terms of the prayers at paragraph no. 52 (i), (ii) and (iv) of the plaint. Damages of Rs. 3,00,000/- are awarded in favour of Plaintiffs, payable by Defendant to Plaintiff No. 1.

15. Defendant is directed to hand over all infringing material (tangible and intangible), if any, to the authorized representative(s) of the Plaintiffs for the purpose of destruction, in compliance with extant rules/ regulations.

16. Plaintiff No. 1, is also entitled to actual costs, in terms of the Commercial Courts Act, 2015 and Delhi High Court (Original Side) Rules, 2018 read with IPD Rules, recoverable from the Defendant. Plaintiff No. 1 shall file its bill of costs in terms of Rule 5 of Chapter XXIII of the Delhi High Court (Original Side) Rules, 2018 on or before 31st May, 2023. As and when the same is filed, the matter will be listed before the Taxing Officer for computation of costs.

17. Suit is decreed in above terms. Registry is directed to draw up the decree sheet.

18. Suit and pending applications are accordingly disposed of.

SANJEEV NARULA, J

MARCH 28, 2023/d.negi
(Corrected and released on: 13th April, 2023)