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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 1112/2024 with I.A. 47959/2024, I.A. 47960/2024, I.A. 47961/2024, I.A. 47962/2024, I.A. 47963/2024 and I.A. 47964/2024

BRITANNIA INDUSTRIES LTDPlaintiff

Through: Mr. Sachin Gupta, Mr. Adarsh Agarwal, Mr. Ajay Kumar, Mr. Rohit Pradhan, Ms. Prashansa Singh and Ms. Archana, Advocates.

versus

GOOD BAKERY P. LTD.Defendant

Through: None.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

ORDER
11.12.2024

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I.A. 47960/2024 (w/S 12-A of the Commercial Courts Act, 2015)

1. As the present suit contemplates urgent interim relief, in light of the judgment of the Supreme Court in *Yamini Manohar v. T.K.D. Krithi*, 2023 SCC Online SC 1382, exemption from the requirement of pre-institution mediation is granted.

2. The application stands disposed of.

I.A. 47961/2024 (seeking exemption from filing clearer/typed copies etc.)

3. Allowed, subject to the plaintiff filing legible copies of the annexures within four weeks from today.

4. The application stands disposed of.

I.A. 47962/2024 (seeking extension of time in filing Court fees)

5. This application has been filed on behalf of the plaintiff seeking extension of time in filing Court fees.

6. Mr. Sachin Gupta, counsel appearing on behalf of the applicant/plaintiff submits that the requisite Court fees shall be paid within two (2) weeks.

7. The aforesaid statement is taken on record.

8. Application stands disposed of.

I.A. 47963/2024 (seeking exemption from advance service)

9. The plaintiff seeks urgent interim relief against infringing products and for this purpose, an *ex-parte* appointment of Local Commissioner is also sought to confiscate the infringing goods. It is submitted that there is a probability that the defendant may remove the infringing products if the defendant is given advance service of the plaint paper book. Therefore, in the peculiar facts and circumstances of this case, exemption from effecting advance service upon the defendant is granted.

10. The application is disposed of.

CS(COMM) 1112/2024

11. Let the plaint be registered as a suit.

12. Issue summons.

13. Summons be issued to the defendant through all modes. The summons shall state that the written statement shall be filed by the defendant within thirty days from the date of the receipt of summons. Along with the written statement, the defendant shall also file affidavit of admission/denial of the documents of the plaintiff, without which the written statement shall not be taken on record.

14. Liberty is given to the plaintiff to file replication, if any, within thirty days from the receipt of the written statement. Along with the replication filed by the plaintiff, affidavit of admission/denial of the documents of the defendants be filed by the plaintiff.

15. The parties shall file all original documents in support of their respective claims along with their respective pleadings. In case parties are placing reliance on a document, which is not in their power and possession, its detail and source shall be mentioned in the list of reliance, which shall also be filed with the pleadings.

16. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

17. List before the Joint Registrar on 13th February, 2025, for completion of service and pleadings.

18. List before the Court on 4th April, 2025.

I.A. 47959/2024 (w/O-XXXIX Rule 1 & 2 of CPC, 1908)

19. The present suit has been filed seeking permanent injunction restraining the defendant from infringing the trademark of the plaintiff along with passing off and other ancillary reliefs.

20. The case set up in the plaint is that the plaintiff/Britannia Industries Ltd. is a company incorporated under the Companies Act, 1913. The plaintiff is one of the leading FMCG companies in India dealing in diverse product portfolios including biscuits, bread, cakes, rusk, and dairy products such as cheese, beverages, milk, yoghurt and others.

21. It is averred in the plaint that 'LITTLE HEARTS' is one of the plaintiff's most well-established and widely recognized brands, which was

coined and adopted by the plaintiff in 1988 and has been used continuously, extensively, and without interruption since 1993.

22. It is stated that the plaintiff holds 29 registrations for word marks/labels/device marks/shape mark for 'LITTLE HEARTS', the oldest being application no.496919 dated 31st August, 1988 in class 30.

23. It is averred in the plaint that the plaintiff also has a 3D shape trade mark registration for the shape of the 'LITTLE HEARTS' biscuit being application no. 4274917 dated 26th August 2019 in class 30. The details of the plaintiff's various 'LITTLE HEARTS' trademark registrations are specified in paragraph 11 of the plaint.

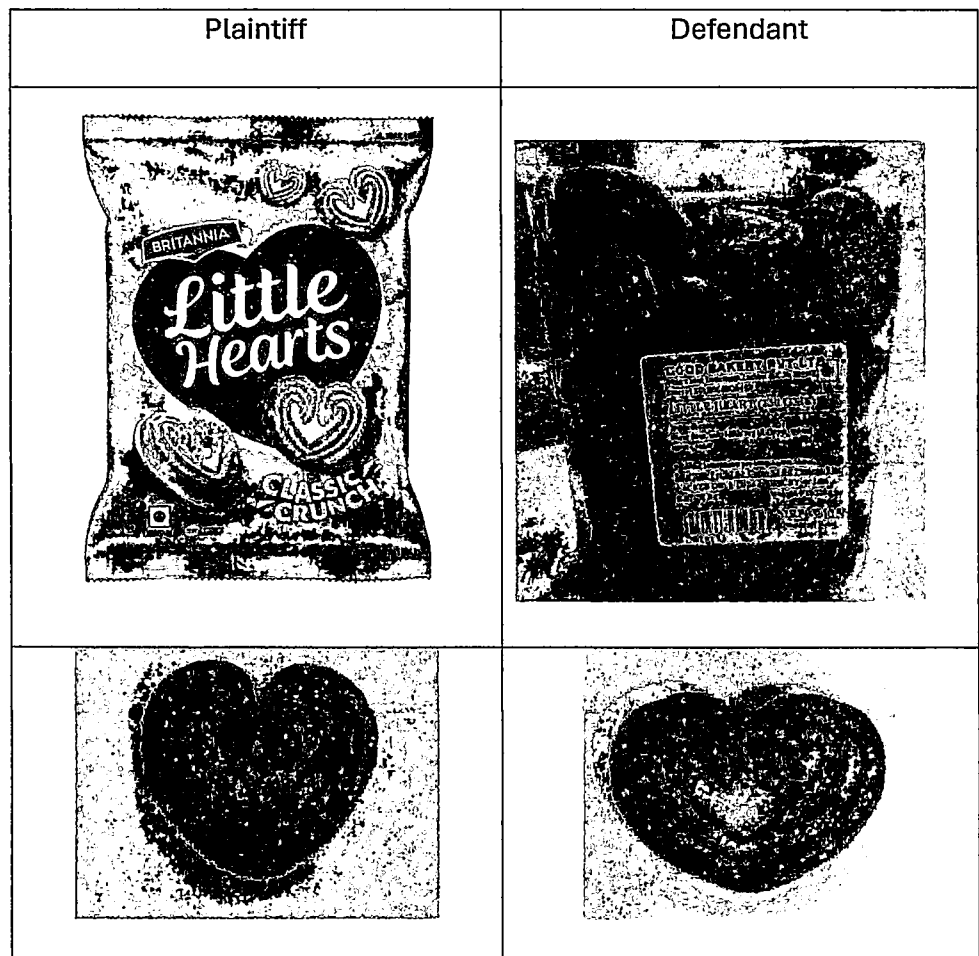
24. It is also stated in the plaint that the plaintiff has widely advertised/published the same in India as well as overseas. Details of the promotional expenses incurred by the plaintiff are provided in paragraph 20 of the plaint.

25. The plaintiff has also provided the details of their sales figures from the year 2006-07 to 2023-24 in paragraph 31 of the plaint. It is pertinent to note that in the financial year 2023-24, the annual sales for the plaintiff's 'LITTLE HEARTS' brand were to the tune of 1155 crores.

26. It is the case of the plaintiff that the defendant is a company registered under the Companies Act, 2013, dealing in confectionary and bakery products.

27. It is averred in the plaint that the defendant is selling products bearing the impugned mark 'LITTLE HEART' which is deceptively similar to the plaintiff's registered trade mark 'LITTLE HEARTS' and the shape of the defendant's biscuits/cookies is identical to the plaintiff's registered shape mark for its 'LITTLE HEARTS' biscuit, which leads to consumer confusion

by creating an association with the plaintiff's product range under the trade mark 'LITTLE HEARTS'. The pictures of competing products are reproduced below:



28. The above comparison clearly shows that the shape of the defendant's product is identical to the registered shape mark of the plaintiff. Additionally, the 'LITTLE HEART' mark being used by the plaintiff is nearly identical to the plaintiff's registered 'LITTLE HEARTS' marks.

29. The counsel for the plaintiff submits that to the best knowledge of the plaintiff, the defendant has not filed any application for registration of the impugned mark/shape and seems to have recently commenced the impugned use.

30. Based on the averments made in the plaint and the submissions made on behalf of the plaintiff, the plaintiff has established that it is the registered proprietor of the 'LITTLE HEARTS' trademarks and shape mark. The product being sold by the defendant bears a trademark that is nearly identical/deceptively similar to the mark of the plaintiff, and the shape of the defendant's product is identical to the registered shape mark of the plaintiff in respect of identical products i.e., biscuits. Clearly, an attempt has been made by the defendant to create an impression that the product being sold by the defendant is connected to the plaintiff. A *prima facie* case of infringement and passing off has been made out on behalf of the plaintiff.

31. Balance of convenience is in favour of the plaintiff and against the defendant. Irreparable injury would be caused to the plaintiff if the defendant continues to use the impugned mark. Prejudice would also be caused to the public as the mark of the defendant is deceptively similar to that of the plaintiff and is likely to cause confusion in the market.

32. Consequently, till the next date of hearing, the defendant, its Directors, assignees and affiliates in business, predecessors, successors business, its distributors, dealers, stockists, super-stockists, wholesalers, retailers, franchisees, licensees, importers, exporters, servants agents and all person claiming through and/or under them or acting on their behalf are restrained from manufacturing, distributing, selling, offering for sale,

promoting advertising, marketing, trading in or otherwise directly or indirectly dealing in biscuits/cookies with an identical shape as that of the plaintiff's registered 'LITTLE HEARTS' shape mark or any other product under the impugned mark 'LITTLE HEART' or any other mark that may be deceptively similar to the plaintiff's registered trademark 'LITTLE HEARTS' or its variants.

33. Issue Notice.

34. Notice be issued to the defendant *via* all permissible modes, including e-mail.

35. Reply be filed within four (4) weeks.

36. Rejoinder thereto, if any, be filed within two (2) weeks thereafter.

37. In view of the fact that the plaintiff has sought appointment of a Local Commissioner to seize the infringing goods, the very purpose of grant of *ex-parte ad interim* injunction would be defeated if the defendant is given notices contemplated in Order XXXIX Rule 3 of Code of Civil Procedure, 1908 (hereinafter "CPC") prior to the execution of the commission. Hence, it is directed that the plaintiff shall serve notices under Order XXXIX Rule 3 of CPC at the time of execution of the commission which shall not be later than two (2) weeks from today.

38. List before the Joint Registrar on 13th February, 2025, for completion of service and pleadings.

39. List before the Court on 4th April, 2025.

I.A. 47964/2024 (w/O XXVI Rule 9 of CPC)

40. The present application has been filed under Order XXVI Rule 4 and 9 of the CPC seeking appointment of a Local Commissioner to, *inter alia*, visit the premises of the defendant and make an inventory of all the goods

having the impugned mark/shape and effect seizure of the same.

41. In view of what is stated above, the plaintiff has made out a case for appointment of a Local Commissioner.

42. Accordingly, Ms. Iram Naaz, Advocate (Mobile No. +91 9873299521) is appointed as Local Commissioner to visit the premises of the defendant situated at:

*Good Bakery P. Ltd.
1, Near Anand Cinema, Cantt Road,
Kaiserbagh, Near Lalbagh, Lucknow
226001*

43. The following directions are passed in this regard:

- i. The Local Commissioner, along with a representative of the plaintiffs and its counsel, shall be permitted to enter upon the premises of the defendant mentioned above or any other location/premises that may be identified during the course of commission, in order to conduct the search and seizure.
- ii. The Local Commissioner shall conduct a search and seize all the infringing products including but not limited to label/packaging material and promotional material (*hereinafter referred to as 'infringing material'*).
- iii. After seizing infringing material, the same shall be inventoried, sealed and signed by the Local Commissioner, in the presence of the parties, and released on *superdari* to the defendant on their undertaking to produce the same as and when further directions are issued in this regard.
- iv. The Local Commissioner shall also be permitted to make

copies of the books of accounts including ledgers, cash registers, stock registers, invoices, books, *etc* insofar as they pertain to the infringing products.

- v. The defendant and its representatives are directed to provide full assistance to the Local Commissioner for executing the present commission.
- vi. In case, the aforesaid premises of the defendant or any part thereof is found locked, the Local Commissioner is permitted to break open the locks and doors for execution of the commission.
- vii. To ensure an unhindered and effective resolution of this order, the SHO of the local police station having jurisdiction of the aforesaid premises and the DCP concerned are directed to render the necessary protection and assistance to the local commissioner, if and when sought.
- viii. The Local Commissioner shall have the liberty to take photographs and/or videos of the stock seized and to take a sample of the infringing products to be filed along with the report.

44. The Local Commissioner shall file her report within two (2) weeks of executing the commission, along with photographs taken and photocopies of the books of account and stock and the inventory procured pursuant thereto.

45. The fees of the Local Commissioner, to be borne by the plaintiff, is fixed at Rs.1,50,000/-. The plaintiff shall also bear expenses for travel, lodging and other miscellaneous out-of-pocket expenses for the execution of the commission.

46. The application stands disposed of in the above terms.

47. The order passed today shall not be uploaded
weeks from today.

48. *Dasti.*

DECEMBER 11, 2024

Vivek/-

