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

+ CS (COMM) 540/2022

PEPSICO INC. & ANR ..... PLAINTIFFS

Through: Mr.Darpan Wadhwa, Sr. Adv. with  
Mr.Manish K. Jha, Ms.Avni Sharma  
& Mr.Amer Vaid, Advs.

versus

RAMDEV INDUSTRIES ..... DEFENDANT

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**ORDER**

% **05.08.2022**

**I.A. 12508/2022 (Exemption)**

1. Allowed, subject to all just exceptions.

**12510/2022**

2. This is an application seeking exemption from making advance service of notice and the paper book of the suit to the defendant.

3. Having considered the contents of the application, the same is allowed. The plaintiffs are granted exemption from making an advance service of notice and the paper book of the suit to the defendant.

**I.A. 12507/2022**

4. This is an application filed on behalf of the plaintiffs seeking leave to file additional documents which are not in the power, possession, control, or custody of the plaintiffs at the moment.

5. The plaintiffs may file the additional documents strictly in accordance with the provisions of the law.

6. The application stands disposed of.

**I.A.12509/2022**

7. This application has been filed seeking exemption from filing pre-institution mediation under Section 12A of the Commercial Courts Act, 2015.

8. Having perused the contents of the application, the same is allowed.

**CS (COMM) 540/2022**

9. Let the plaint be registered as a suit.

10. Issue summons to the defendant to be served through all permitted modes, including electronically, returnable on 29<sup>th</sup> November, 2022.

11. The summons to the defendant shall indicate that the written statement to the plaint shall be positively filed within a period of 30 days from the date of receipt of the summons. Along with the written statement, the defendant shall also file the affidavit of admission/denial of the documents of the plaintiffs, without which the written statement shall not be taken on record.

12. Liberty is given to the plaintiffs to file the replication within a period of 15 days from the date of receipt of the written statement. Along with the replication, if any, filed by the plaintiffs, the affidavit of admission/denial of documents of the defendant be filed by the plaintiffs, 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.

**I.A.12505/2022**

13. Issue notice.

14. On the plaintiffs taking steps, let notice be served on the defendants

through all permissible modes, including electronically, returnable on 29<sup>th</sup> November, 2022.

15. Let reply to the application be filed by the defendant within a period of four weeks from the date of receipt of notice. Rejoinder thereto, if any, be filed within a period of two weeks thereafter.

16. It is the case of the plaintiffs that the plaintiff no. 1 is the registered proprietor of what it refers to as the '*Sun Banner*' device, which is registered under Class 29. The details of such registration internationally as also in India are given by the plaintiffs in paragraph 6.2 of the plaint.

17. The plaintiffs assert that for the purposes of promoting the device mark, it has spent in excess of USD 1.2 Billion from the years 2008-2020. In India itself, the marketing and advertising expenses incurred by the plaintiffs for the promotion of the same has been in excess of INR 855 Crore.

18. The plaintiffs further assert that they have been actively protecting their rights in the above marks through various legal actions and the same has also been recognized by this Court as a protectable trade mark. Reference for the same is made to the judgment of this Court in *Frito-Lay India & Ors. v. Radesh Foods & Anr.*, 2009 SCC OnLine Del 714.

19. The plaintiffs are aggrieved of the adoption of the similar logo for allied goods, that is, namkeens, by the defendant, which is pictorially depicted as under:-

PLAINTIFFS' LOGO	DEFENDANT'S LOGO
	

20. The learned senior counsel for the plaintiffs submits that while the plaintiffs have no objection to the use of the trade mark 'MADHAV', the grievance is only with respect to the logo being adopted by the defendant, which in his submission is deceptively similar to that of the plaintiffs. The plaintiffs further assert that the plaintiff no. 1 first became aware of the use of the impugned logo in August, 2021 whereafter it addressed a cease-and-desist notice to the defendant vide letter dated 10.09.2021. The defendant, however, has refused to comply with the requisition, stating that the rival marks as also the rival products are dissimilar.

21. The learned senior counsel for the plaintiffs asserts that the two marks being deceptively similar and the intention of the defendant is only to ride on the reputation and goodwill generated by the plaintiffs.

22. Having perused the contents of the plaint, the documents filed therewith and having heard the learned senior counsel for the plaintiff, I am of the opinion that the plaintiffs have been able to make out a good *prima facie* in its favour. On a comparison, the two labels/logos, that is, of the plaintiffs and the defendant, appears to be deceptively similar. These are goods that are bought off the shelf in normal grocery shop and therefore, there is a likelihood of confusion, especially keeping in view the unwary

consumer. The balance of convenience is also in favour of the plaintiffs and against the defendants inasmuch as the plaintiffs have spent a huge amount in popularising its device mark. The plaintiffs are also liable to suffer grave irreparable damages in form of dilution of its mark by the use of a deceptively similar logo by the defendant.

23. Accordingly, an *ad-interim* injunction in terms of paragraphs 20(i) to (iv) is granted in favour of the plaintiffs and against the defendant till further orders.

24. Compliance with Order XXXIX Rule 3 of the Code of Civil Procedure, 1908, be made within a period of one week from today.

**I.A. 12506/2022**

25. For the reasons stated hereinabove, in my opinion, the plaintiffs are able to make out a case for appointment of a Local Commissioner to visit the premises of the defendant at Near Badri Bhairav Mandir, Chopra Bari, Gopeshwar Basti, Bikaner - 334 001.

26. Accordingly, I appoint Mr. Attul Bhuchar (Advocate, D/144R/1999; mobile no.: 9891096655; address: 416, Lawyers' Chambers, Block-1, Delhi High Court, 1, Sher Shah Marg, New Delhi-110503) as a Local Commissioner.

27. The Local Commissioner shall take stock of and inventorise all products including labels, packing material, stationery, business cards, carry bags, price stickers, visiting cards, bill boards, brochures, promotional material, point of sale material, letter heads, cash memos, signage, sign posts, leaflets, cartons or any other item of whatsoever description and



nature, bearing the impugned logo and/ or any other logos which may be identical or deceptively or confusingly similar to the LAY's 'Sun Banner' device mark.

28. The Local Commissioner shall also confiscate and release on *superdaari* to the defendant all products including labels, packing material, stationery, business cards, carry bags, price stickers, visiting cards, bill boards, brochures, promotional material, point of sale material, letter heads, cash memos, signage, sign posts, leaflets, cartons or any other item of whatsoever description and nature, bearing the impugned logo



and/ or any other logo which may be identical or deceptively or confusingly similar to the LAY's 'Sun Banner' device mark.

29. The Local Commissioner shall sign each and every page of the ledgers/books of accounts or any similar records maintained by the defendant in the ordinary course of business from the time the aforementioned acts arose. He shall seize the hard-disk of any computer and prepare print outs, if the defendant states that all accounts are being maintained and stored on the hard-disk of the computer.

30. The Local Commissioner shall carry samples of the infringing material found at the premises of the defendant for submission before this Court as also photograph/videograph the proceedings, himself or with the assistance of the representatives of the plaintiffs, and prepare an

investigative report. The Local Commissioner shall also be at liberty to seek police assistance.

31. The fee of the Local Commissioner is fixed as Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand only), at the first instance to be paid by the plaintiffs apart from the out-of-pocket expenses that may be incurred.

32. The application is disposed of.

33. *Dasti.*

**NAVIN CHAWLA, J**

**AUGUST 5, 2022/rv**