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

Date of decision:-12th October, 2023.

+ **CS(COMM) 728/2023, I.A. 20158/2023, 20159/2023, 20160/2023**

BRITANNIA INDUSTRIES LIMITED

..... Plaintiff

Through: Mr. Sagar Chandra, Ms. Shubhie
Wahi & Ms. Ankita Seth, Advs. (M:
9711239881)

versus

AMAR BISCUIT PRIVATE LIMITED & ORS.

..... Defendants

Through: Mr. Amit Tomar, Adv.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

I.A. 20160/2023 (for exemption)

2. This is an application filed by the Plaintiff seeking exemption from filing originals/certified/cleared/typed or translated copies of documents, left side margins, electronic documents, etc. Original documents shall be produced/filed at the time of Admission/Denial, if sought, strictly as per the provisions of the Commercial Courts Act and the DHC (Original Side) Rules, 2018.

3. Exemption is allowed, subject to all just exceptions.

4. Accordingly, application is disposed of.

I.A. 20159/2023(U/O XI R-1 (4))

5. This is an application filed by the Plaintiff seeking leave to file additional documents under the Commercial Courts, Commercial Division



and Commercial Appellate Division of High Courts Act, 2015 (hereinafter, 'Commercial Courts Act'). The Plaintiff, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act and the DHC (Original Side) Rules, 2018.

6. Application is disposed of.

CS (COMM) 728/2023

7. Let the plaint be registered as a suit.

8. Issue summons to the Defendants through all modes upon filing of Process Fee.

9. The summons to the Defendants shall indicate that the written statement(s) to the plaint shall be positively filed within 30 days from date of receipt of summons. Along with the written statement(s), the Defendants shall also file an affidavit of admission/denial of the documents of the Plaintiff, without which the written statement(s) shall not be taken on record.

10. Liberty is given to the Plaintiff to file the replication(s) within 15 days of the receipt of the written statement(s). Along with the replication(s), if any, filed by the Plaintiff, an affidavit of admission/denial of documents of the Defendants, be filed by the Plaintiff, without which the replication(s) 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.

11. List before the Joint Registrar for marking of exhibits on 4th December, 2023. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

12. List before Court on 8th April, 2024.

I.A. 20158/2023 (u/O XXXIX Rules 1 & 2 CPC)

13. Issue notice.



14. The Plaintiff-Britannia Industries Limited has filed the present suit against Defendant No.1- Amar Biscuit Pvt. Ltd. and its promoters *i.e.*, Defendant Nos. 2 to 4, from manufacturing, selling, and offering for sale butter cookies under the mark “GOOD TIME” which has an almost identical packaging.

15. The case of the Plaintiff is that it is one of the leading manufacturers and sellers of biscuits, crackers and various other food items under the trademark ‘GOOD DAY’ which was adopted by the Plaintiff in 1986. The Plaintiff company itself is a 100 year old company of India dealing with various food products since 1918. The Plaintiff’s revenue for the financial year 2022-23, crossed over Rs.16,000 crores.

16. The ‘GOOD DAY’ mark bearing registration no. 452003 in class 30 has been adopted in the year 1986, and has been used across large range of products by the Plaintiff including for biscuit, bread, confectionery, etc., The ‘GOOD DAY’ mark has been repeatedly protected against misuse by the various Courts, in proceedings initiated by the Plaintiff. The sales turnover of the ‘GOOD DAY’ products is stated to be to the tune of Rs.3510 crores in the financial year 2022-2023 with advertising and promotion at Rs.255 crores.

17. The Plaintiff has a significant presence on online platforms such as Facebook, Twitter, Instagram and YouTube with thousands of followers. The product which is the subject matter of the present case is the ‘GOOD DAY BUTTER COOKIES’ product which was launched in the year 1986. Around 1997 a distinctive packaging for the product was adopted. It is averred that the packaging has always been in the colour combination of blue and yellow, with cookie being shown in a specific form. Over the years



Plaintiff has made minor changes/modifications in the trade dress, however it claims that the essential and prominent features of it were retained. The evolution of the 'GOOD DAY BUTTER COOKIES' packaging is set in paragraph 18 of the plaint, which is set out below:

Trade Dress/Packaging/Colour Scheme of GOOD DAY BUTTER COOKIES since 1997 till date	
1997 - 2015	
2015-2019	
2019-2021	
2021-till date	

18. The Plaintiff claims that the said packaging of 'GOOD DAY BUTTER COOKIES' is not merely a trademark label which is entitled to protection but is also an artistic work in which the Plaintiff enjoys copyright.



The Plaintiff claims that the sale of ‘GOOD DAY BUTTER COOKIES’ for the financial year 2022-2023 is Rs.1889 crores and the advertisement and promotional expense for the said product is around Rs.137 crores.

19. The various proceedings which have been taken to protect the mark ‘GOOD DAY’ against similar names and packagings are set out in paragraph 27.

20. The Plaintiff recently learned from one of the consumers, who put a post on platform X (Twitter), about the Defendants adoption of the infringing trade mark and dress ‘GOOD TIME’ bearing the same color combination of blue and yellow, to the following effect:



- X
- Home
- Explore
- Notifications
- Messages
- Lists
- Communities
- Premium
- Profile
- More
- Post

← Post

Shubham Singhal @Shubham4927

@BritanniaIndLtd @doshiamitk @realvarunberry

Plz take action against the duplicacy of your product manufactured by Sagar Foods. Because Same colour and name can misguide illiterate customer to purchase this instead of Britannia's Goodday accidentally.



2:29 PM · Oct 6, 2023 · 24 Views

1

Post your reply

Ankita Seth @AnkitaS15086384

Britannia Industries Limited @BritanniaIndLtd · Oct 6

Thank you for bringing this to our attention. We have escalated this to our team internally, who will look further into the situation.

Search 7

Relevant people

Shubham Sing @Shubham4927
स्वयंसेवक, राम भद्र खोर से भारत का वे तक खून में है हलक

Britannia India @BritanniaIndl
India's largest F that has delight 100 years with delicious produ #GlobalTotalFc

Amit Doshi @doshiamitk
CMO @Britanni @lenovo_in, All

What's happeni

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OnePlus 11R 5G Solar F
Promoted by OnePlus I

Politics - Trending
Israel
1.63M posts

Politics - Trending
#TelAviv
33K posts

Fashion & beauty - Trending
#AdidasLimitedEditio
2,959 posts

Trending in India
#भारतमेंवर्षा
95.8K posts

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21. A comparative chart of the Plaintiff's and Defendants' product is set out below:



<p align="center">PLAINTIFF’S PRODUCT ‘BRITANNIA GOOD DAY BUTTER COOKIES’</p>	<p align="center">DEFENDANTS’ PRODUCT ‘GOOD TIME BUTTER COOKIES’</p>
 <p>Colour combination of Blue, Yellow and White.</p>	 <p>Adoption of an identical colour combination of Blue, Yellow and White.</p>
 <p>The Mark ‘Good Day’ written in a Bold White text against a blue background on the left side of the Packaging/Trade Dress.</p>	 <p>The Impugned Mark ‘Good Time’ written in a Bold White text against a blue background on the left side of the Packaging/Trade Dress.</p>
 <p>The House Mark ‘BRITANNIA’, which is a combination of Red and white Colour, has been placed above the Trade Mark ‘Good Day’ on the Packaging/Trade Dress.</p>	 <p>The House Mark ‘SAGAR’, which is represented in a confusingly similar combination of Red and White colour as that of the Britannia Logo, has been identically placed above the words ‘Good Time’ on the Impugned Trade</p>





	Dress.
 <p>Placement of Butter Cookie on the right part of the Packaging/Trade Dress along with Butter shavings.</p>	 <p>Identical placement of Cookies with similar curved grooves on the right side of the Impugned Packaging/Trade Dress along with Butter shavings.</p>
 <p>Placement of the words 'Butter Cookies' under the Mark 'Good Day'</p>	 <p>Identical placement of the words 'Butter Cookies' under the Impugned Mark 'Good Times'</p>

22. Upon realising this misuse as of 6th October, 2023, the Plaintiff has filed the present suit.

23. Ld. counsel has appeared for the Defendants upon advance notice. The two competing products, their packagings and various features which are set out above would show that the Defendants have made a fully thought out and deliberate attempt to copy and imitate the Plaintiff's cookies packaging. Ld. counsel for the Plaintiff has made reference to Facebook page of the Defendant No.1 <https://www.facebook.com/amarbiscuit786> containing posts of the Defendants where different navy blue, yellow packaging has been used by the Defendants for its butter cookies/biscuits,



till March, 2022. The images of the same are set out below:

PREVIOUS PACKAGINGS OF THE DEFENDANT'S 'BUTTER COOKIES' PRODUCT.	Date of Upload
https://www.facebook.com/amarbiscuitco786/photos/pb.100057609934314.-2207520000/1642313979454154/?type=3	21 st March 2022
	
https://www.facebook.com/amarbiscuitco786/photos/pb.100057609934314.-2207520000/1488807514804802/?type=3	9 th August 2021
	



https://www.facebook.com/amarbiscuitco786/photos/pb.100057609934314.-2207520000/836236963395197/?type=3	24 th March 2019
	
https://www.facebook.com/amarbiscuitco786/photos/pb.100057609934314.-2207520000/187677444917822/?type=3	22 nd December 2015
	

24. According to Id. Counsel for the Plaintiff, the changeover to the new packaging is nothing but an attempt to pass off the Defendants products as that of the Plaintiff's.

25. Mr. Amit Tomar, Id. Counsel appearing for the Defendants submits that the Defendants have been in consultation with him for launch of the 'GOOD TIME BUTTER COOKIES' product, however, he was not aware that they have already launched it in the packaging which is complained of. He submits that he may be given time to seek instructions from his clients.

26. This Court has heard the counsel. By their very nature, butter cookies are products which are purchased by children, by literate and illiterate people across urban and rural areas. The enormous turnover of the Plaintiff



for the Britannia ‘GOOD DAY’ cookies leaves no doubt in the mind of the Court that the said packaging and product achieved enormous recognition and goodwill in the market. Any attempt to imitate the name, the mark or the packaging would have to be stopped immediately inasmuch as the consumers are likely to get confused between the two sets of products. Considering that these are food products any chances of confusion has to be completely avoided.

27. Considering the overall facts, this Court is convinced that the Plaintiff makes out a *prima facie* case for grant of an *ad interim* injunction. Balance of convenience also lies in favour of the Plaintiff considering that it is a well reputed brand selling ‘GOOD DAY BUTTER COOKIES’ since such a long time, as also other products under the said trade mark and trade dress. If an *ad interim* injunction is not granted in the present case it will cause irreparable loss/ harm to the Plaintiff, as the Defendants’ packaging is deceptively similar to that of the Plaintiff’s, which causes confusion to the customers. The Defendants’ are also taking a piggy-back ride of the Plaintiff’s goodwill and reputation in identical business.

28. Accordingly, till the next date of hearing, the Defendants and all other acting for or on their behalf shall stand restrained from manufacturing, selling, offering for sale butter cookie biscuits or any other products in the infringing packaging which is extracted above under the name ‘GOOD TIME/GOOD TIME BUTTER COOKIES’ or any other mark which is identical or deceptively similar to the Plaintiff’s mark ‘GOOD DAY/GOOD DAY BUTTER COOKIES’. The Defendants shall take down any online listings of this product within 48 hours.

29. Let a stock statement of the material bearing the impugned mark and



2023 : DHC : 7481



packaging, be placed on record by the Defendants on the next date. List on the dates fixed above.

PRATHIBA M. SINGH
JUDGE

OCTOBER 12, 2023

dj/ks