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

+ **CS (COMM) 440/2020 & I.A. No. 9225/2020**

ASTRAL POLY TECHNIK LIMITED & ANR.Plaintiffs
Through Mr. Sachin Gupta, Advs.

versus

ASTRALGLEE THROUGH ITS PROPRIETOR MS POOJA
SURENDRA AYRE & ORS.Defendants
Through Mr. Subhradeep Banerjee, Mr.
Chitvan Singhal and Mr. Mukul
Lather, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **12.10.2020**

[Court hearing convened *via* video-conferencing on account of COVID-19]

I.A. No. 9226/2020

1. Allowed, subject to the plaintiffs curing the deficiencies referred to in the captioned application within four weeks from today.

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2. The case set up by the plaintiffs is, briefly, as follows.

3. The plaintiffs claim that they have 150 registrations in their favour across various classes of goods.

3.1 Insofar as the instant case is concerned, the plaintiffs aver that they manufacture, sell, export and deal with goods which fall in Class 3.

3.2 It is the plaintiffs' assertions that for goods manufactured by them in various classes they use the mark "Astral".

3.3 It is not in dispute that insofar as the registration of the word mark and device mark in Class 3 is concerned, the applications were filed on 11.03.2015 and 30.04.2015 respectively. It is also not in dispute that these applications adverted to the fact that the plaintiffs “proposed to use” the mark in the said class i.e. Class 3.

3.3 The record shows that the registration certificates were issued on 07.03.2019 [for the application dated 11.03.2015] and 17.05.2018 [for the application dated 30.04.2015]. It goes without saying, though, that the registration certificates relate back to the date of the application.

4. Mr. Sachin Gupta, who appears on behalf of the plaintiffs, says that the plaintiffs are aggrieved by the fact that the defendants are using a mark which is deceptively similar to the plaintiffs’ registered mark falling in Class 3 i.e. Astral.

5. The record shows [and there is no dispute concerning this aspect of the matter] that the defendants are using the mark “Astralglee”.

6 On being queried, Mr. Gupta has adverted to invoices and advertisement brochures to support his plea that the mark “Astral” for Class 3 products has been in use since January 2016.

7. On the other hand, counsel for the defendants i.e. Mr. Subhradeep Banerjee has, broadly, made the following submissions:

(i) That there are at least 150 companies which use the name “Astral” as a part of their corporate name. The defendants have been using “Astralglee” as a part of their domain name since 2018.

(ii) That the defendants have been selling essential oils under the trademark “Astralglee” both, for domestic and export market, since November 2018.

(iii) That the plaintiffs have been able to place on record only two invoices, one, which is dated 12.01.2016 and the other which is dated 05.08.2020. For this purpose, Mr. Banerjee has drawn my attention to pages 13 and 22 of the plaintiffs' documents folder.

(iv) That the legal notice issued by the plaintiffs, which is, dated 14.08.2020, was replied to by the defendants. In this behalf, my attention has been drawn to the reply dated 02.09.2020, which is appended on page 103 of the plaintiffs' document folder.

5. Mr. Gupta says that insofar as the argument concerning invoices is concerned, the plaintiffs have placed on record invoices starting from the invoice dated 12.01.2016 followed by invoices which span over from May 2020 till August 2020.

5.1 I must indicate that Mr. Gupta has argued, with great emphasis, that once the plaintiffs have a registration in their favour concerning the trademark "Astral" under Class 3, then, the defendants cannot be permitted to use the impugned mark as it will constitute infringement of the plaintiffs' statutory rights.

5.2 Mr. Gupta has also contended that the mere usage of a suffix [as in this case "glee"] will not enable the defendants to contend that there is no infringement of the plaintiffs' trademark "Astral".

5.3 As an alternative, Mr. Gupta has also contended that once the plaintiffs have a registration in their favour, it is not necessary for the plaintiffs to show that they have actually used the mark "Astral" *qua* goods which fall in Class 3. In support of these pleas, Mr. Gupta has relied upon the following judgement.

- ***Gujarat Bottling Co. Ltd. vs. Coca Cola Co.***, (1995) 5 SCC 545

6. Insofar as the defendants are concerned, they relied upon the judgement of the Supreme Court in *Nandhini Deluxe vs. Karnataka Cooperative Milk Producers Federation Ltd.*, (2018) 9 SCC 183 to contend that since they were manufacturing essential oils, which fall in class 3, and the plaintiffs were manufacturing cleaning and polishing materials, which, although, also fall in class 3, there can be no confusion in the minds of the consumer.

6.1 Mr. Banerjee, as indicated above, in support of this plea drew my attention to paragraph 26 of the judgement rendered in *Nandhini Deluxe* (supra).

6.3 It is also Mr. Banerjee's contention that Astral is a common English word which is being used, as noted above, by several entities.

7. In my view, there are several legal and factual issues which require a closer examination and, therefore, I am inclined to issue summons in the suit and notice in the captioned application. It is ordered accordingly.

7.1 Mr. Banerjee accepts service on behalf of the defendants. The defendants will file their written statement and reply to the captioned application within two weeks from today.

7.2 The defendants, apart from anything else, will also place on record agreement(s), if any, entered between them and the third-party manufacturer which, I am told, is an entity going by the name Natures Naturals India.

7.3 Furthermore, I am of the view that Natures Naturals India needs to be arrayed as a party to the instant proceedings. It is ordered accordingly.

7.4 Mr. Gupta will file an amended memo of parties within the next three days.

7.5 Accordingly, summons shall also issue to the newly arrayed entity,

which would be arrayed as defendant no. 4, *albeit* on requisite steps being taken by the plaintiffs.

8. List the matter on 03.11.2020.

RAJIV SHAKDHER, J

OCTOBER 12, 2020

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