

CS Comm No. 676/19

Reckitt Benckiser LLC

.....Plaintiff

Vs.

Karamshi Parma Gami & Ors.

.....Defendants

Order- 01.11.2019

Present: Shri Sachin Gupta, Ms. Masleen Kaur, Shri Pratyush Rao and Shri

Raj Nandini Mahajan, Id. for the plaintiff.

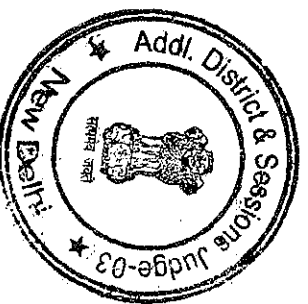
Perusal of plaint shows that it is a suit U/s 134, 135 of Trade Mark Act, 1999 apart from Section 55 of Copyright Act 1957 and also for passing off seeking permanent injunction against defendant from usage of registered trademark/label "**LIZOL, COLIN AND HARPIC**" apart from other reliefs.

Summons of the suit and notice of the applications under Order 39 Rules 1 and 2 R/w 151 CPC be issued on filing PF/RC for the next date of hearing.

Ld. Counsel for plaintiff has prayed for ad-interim ex-parte interim injunction and appointment of Local Commissioner under Order 26 Rule 9 CPC R/w 151 CPC application.

Submissions heard. File perused.

Ld. Counsel for the plaintiffs has submitted that plaintiffs are the member companies of the Reckitt Benckiser Group of Companies whose ultimate parent company is Reckitt Benckiser Group Plx., England. The plaintiffs are a world leader in the field of fast moving consumer goods and has major presence



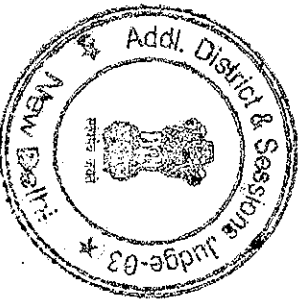
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across the globe in products related to home and hygiene having its branch office at the Executive Centre, Level 3B, FLF Centre, Sansad marg, Connaught Place, New Delhi-110001.

Plaintiffs are the Global Consumer Goods leader in Home, Health and Hygiene products and has operations in more than 60 countries with products sold in nearly 200 countries. The plaintiffs also have 45 manufacturing facilities worldwide and employs around 40,000 people worldwide. The plaintiffs have been manufacturing and marketing its disinfectants, glass and household cleaners and toilet care products under the well known trade mark LIZOL, COLIN and HARPIC respectively beside others. The plaintiff no.2 is manufacturing and marketing products bearing the trade mark LIZOL under license from plaintiff no.1.

It is the case of plaintiffs that the plaintiffs for its cleaning preparations and disinfectants, adopted the HARPIC, LIZOL and COLIN trade dress in the year 1984, 1997 and 1999, respectively. The said trade dress in its packaging comprised of a distinctive bottle & cap shape, colour scheme and label, which was original, unique, attractive and appealing. The said trade dresses have undergone some changes from time to time while retaining the basic essence of the packaging of the plaintiffs' products. While, HARPIC is sold in a blue opaque bottle with a red cap, LIZOL is sold in a transparent rectangular arched shape bottle with a blue cap, and COLIN is sold in a transparent tapered bottle with a blue coloured dispenser with a white nozzle and trigger. The said trade dresses have over a period of time acquired a great amount of distinctiveness within the minds of consumers.


The labels of the plaintiffs are an 'original artistic work' created at the plaintiff's behest within the meaning of Section 2(c) of the Copyright Act, 1957

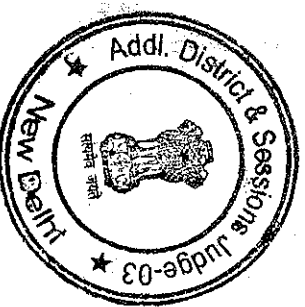


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and the copyright subsists in each of such artistic work under the provision of Section 13(1) of the Copyright Act. The plaintiffs are therefore, the first owner of copyright in the said LIZOL, HARPIC and Colin labels having exclusive right to use thereof under Section 14 of the Copyright Act.

It is the case of plaintiffs that they are the registered proprietors of the trade mark LIZOL and the HARPIC bottle & cap, the details of which are reproduced as under:

TRADE MARK	REGISTRATION NO. AND CLASS/GOODS	DATE
LIZOL	Cleaning preparations for household, industrial and professional use, soaps and prepared or elaborated substances for washing, cleaningetc. in class 3.	754107 dated 30.01.1997
<i>Lizol</i>	Cleaning, scouring and abrasive preparations, bleaching preparations, detergents, preparations for laundry use, soaps, toiletries, skin care preparations, perfuming preparation for the atmosphere in class 3.	837708 dated 21.01.1999
	Preparations for cleaning toilets, preparations for cleaning fabrics, scouring preparations, cleaning preparations, soap (disinfectant), all being goods included in class 3.	3491010 dated 22.02.2017



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It is pertinent to note that plaintiff no.2 had filed one another application for device of its bottle under 3491009 in class 3, which is currently pending registration.

It is the case of plaintiffs that the plaintiffs have expended substantial sums of money on sales promotion, advertisement and publicity through almost all modes including TV, radio, newspapers, magazines etc. of its goods under the said trade mark. Due to superior quality and high efficacy of its said goods bearing the said trade mark/trade dress, continuous and extensive use of the said trade mark and large sales of the said goods as also wide publicity given to its said goods bearing the said trade mark, the plaintiffs have acquired immense reputation and goodwill in the said trade mark/trade dress and the goods sold thereunder. The statement of sales and advertisement of the trademarks are as follows-

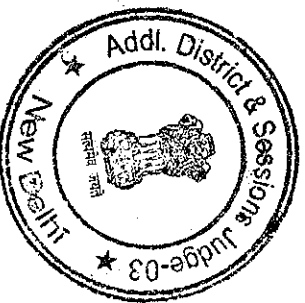
LIZOL

Year	Sales (in INR Crores)	Promotional Expenses (in INR Crores)
2016	446	22.2
2017	491	26.7
2018	601	42.5
2019(YTD)	337	52.8

HARRPIC

Year	Sales (in INR Crores)	Promotional Expenses (in INR Crores)
2016	827.8	102.3
2017	882.7	67.7
2018	1028	76.3

COLIN



Year	Sales (in INR Crores)	Promotional Expenses (in INR Crores)
2016	123.2	6.78
2017	133.3	10.9
2018	138.3	5.86

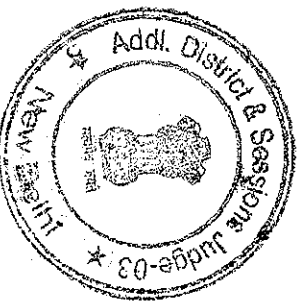
It is the case of plaintiff that on account of long, continuous and exclusive use and painstaking quality control, the plaintiff's trade mark LIZOL, and the LIZOL, COLIN and HARPIC bottle and cap packaging/trade dress, have acquired a status of well-known mark under Section 2(zb) of the Trade Marks Act, 1999, which entitles itself to be granted statutory protection by the legislature against any form of misappropriation and dilution of distinctiveness irrespective of whatever goods or business they are used for.

Plaintiff held registrations for its bottles and caps, which had lapsed in the past. Accordingly, the plaintiffs are not claiming any infringement of its bottle/cap line design; but is claiming common law and statutory trade mark rights in the overall trade dress, which includes shape of the bottle/cap, colour combination and labels.

Plaintiffs have the exclusive right to use the said trade mark/trade dress and ought to be protected by this Hon'ble Court against infringement, passing off, imitation, confusion, deception, dilution and unfair competition by competitors in trade.

It is submitted that the plaintiffs in the last week of August, they came across toilet, glass and floor cleaners being advertised on various websites under the impugned mark Klincare SIZOL, Sundeary SIZOL and Sandery SIZOL.

It is the case of plaintiffs that defendant no.1 Shri Karamshi Parma



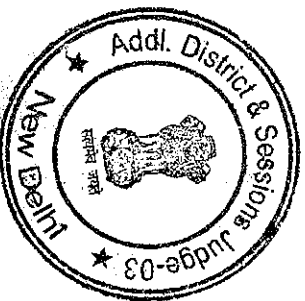
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Gami, Proprietor of M/s. Sandery Products is advertising his products under the impugned mark SANDERY SIZOL on its website <http://sandery-products.business.site/>. Further defendant no.2 Shri Kamlesh Gami is proprietor of M/s. Sundeary Office Solutions who is also selling and advertising his products under the Sandery Toilet Cleaner and Sandery Glass Cleander on its websites www.sandery.in and through www.indiamart.com which is an interactive website. He is selling under trade dress which is deceptively similar to the plaintiff's trademark HARPIC. Defendant no.3 Shri Harish Parma Gami claims to be proprietor of M/s. Gami Enterprises who is also advertising and selling its products on www.indiamart.com.

It is the case of plaintiffs that they are not sure of the exact composition of the defendants, however, to the best of their knowledge, the defendants are related and are carrying on infringing activities, jointly and severally. The plaintiffs also checked the official website of the trade mark registry and found that the defendant no.1 had filed a trade mark Sizol under no.3762887 dated 24.02.2018 in class 3 on proposed to be used basis. The said application was abandoned vide order dated 30.11.2018 as the defendant failed to file reply to the examination report. It is pertinent to note that the plaintiff's mark LIZOL was also cited as a conflicting mark in the said examination report.

Defendant no.3 has also filed an application for the trade mark SUNDEARY (Label) under no.3431686 dated 12.12.2016 in class 3 using claim since 01.06.2015. The said application was abandoned vide order dated 15.05.2018 as the defendant no.3 failed to file counter-statement.

Heard and gone through the record.



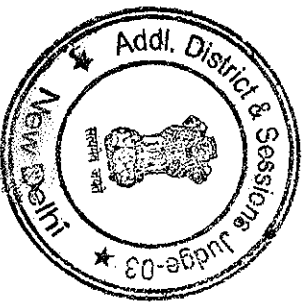
It is further the case of plaintiff that defendants are selling their products through www.indiamart.com which is an interactive website which they opened in their office in Delhi, hence this Court has jurisdiction. Further their office is in Connaught Place which is under jurisdiction of this Court. Hence, this Court has jurisdiction.

Heard and gone through the record.

Reasons for Decision-

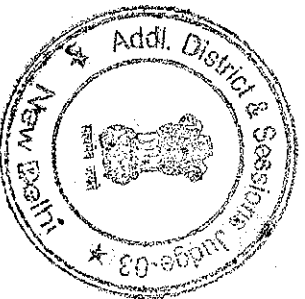
As far as trademark Lizol is concerned, the same is registered Trademark of plaintiff under registration no.837708, copy of which is placed on record. Defendants are using the impugned Trademark Sizol which is phonetically similar to the plaintiff's registered Trademark Lizol. Further plaintiff has placed various invoices and advertisement expenditure on record to show that they have been spending enormous amount on the promotion of their brand and it has become well-known Trademark / Trade dress.

Further plaintiff has produced the original 'Lizol' and 'Sizol' bottles in the Court. A bare perusal of these two bottles would show that defendants have copied not only the registered trademark of the plaintiff but also the trade dress including a current combination. Plaintiff is selling in a broad bottle with curve on one side of the bottle towards the top. The same packaging bottle has been copied by the defendants including the colour, shape and size of the bottle and cap. Even the color combination of the product/Trade dress is same. Further the plaintiffs use of the word Lizol is written in a particular manner, shape and style with dark blue colour. Even the same is copied by the defendants. Hence, it is not only the single colour or bottle which is being copied but it is the combination of the colours, trade dress and trade mark which is being copied by the



defendants. The background colour, cap shape, bottle shape, label on the bottle, trademark, trade design are extremely similar if not identical. This Court is of the prima facie opinion that if the two products are placed next to each other, an obvious inference would be that the second one has been copied by placing the first one at the front. It could happen only by deliberate imitation.

Further it is the case of plaintiff that they are using the trade name HARPIC along with Trade dress since 1984. Further it is the case of plaintiffs that they are spending huge amount on advertisements which is stated in the plaint as well. Plaintiffs are claiming rights in the trade dress i.e. bottle under which defendants are selling their products. The trade mark of plaintiff is HARPIC while defendant is using SANDERY, to which plaintiff has not objection. However, the plaintiff has produced the two bottles before the Court. It is not only the shape of the bottle but th entire packaging against which is being copied. Plaintiff is selling under a broad bottle with a curve at the top with red colour nozzle. The colour combination under which defendants are selling is entirely identical to the colour combination of the plaintiffs. Even the manner in which label has been affixed on the bottle has been copied from the plaintiff's product. Further on the plaintiff's product the label has white and blue colour with '10/10' written in red on it. Even the colour combination has been copied by the defendants with also '10X' written in red by defendant in his bottle. Hence, the trade dress being used by the defendant is inevitably similar to that of the plaintiff. Such uncanny resemblance is possible only through deliberate imitation. Hence, upon comparison of two bottles, it is evident that the background colours, shape of the bottle, size of the bottle, cap shape, nozzle, label pasted on the bottle, colour combination are extremely similar if not identical. The Court is of the prima facie view that if the

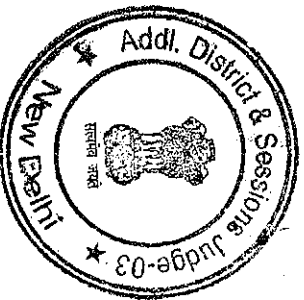


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rival products are kept on a display shelf, it is very difficult for a reasonable customer to differentiate the products. Hence, prima facie it appears that defendants have copied the trade dress of the plaintiff for the sale of toilet cleaner.

Further it is the case of plaintiffs that they are using Trademark 'Colin' since 1999. In support of their claim they have placed various invoices and sales figure on record thereby showing that in view of heavy expenditure on advertisement, it has become a well-known Trademark. A bare perusal of the two products would show that all the essential features of the bottle have been deliberately copied by the defendants. The shape of bottle of plaintiff is unique as it has curve on one side and zig-zag shape on the other. The said essential feature has been copied by the defendants. Even the nozzle / dispenser has been copied using the same colour. It is a transparent bottle and plaintiff is selling the product in it which is in light blue colour. Even the same has been copied by the defendant. Even the colour combination of the label which is pasted on this bottle has been copied along with essential features. It is submitted by plaintiffs that plaintiffs have no objection to the defendants use of Trademark 'Sandery' but it is the trade dress/ bottle against which they have come to the Court. Hence, upon comparison of the two bottles it would reveal that shape of the bottle, colour of the bottle, cap/nozzle, colour of the cap/nozzle, the label on the bottle, colour combination on the label as well as print have been deliberately copied by the defendants thereby trying to pass off their products as that of the plaintiff. If the two products are placed next to each other, it would be impossible for a reasonable customer to tell and differentiate the difference between the two.

A bare perusal of the above three trademarks / trade dress of the plaintiff would reveal that trademark and trade dress LIZOL, HARPIC and COLIN



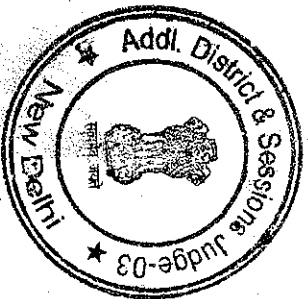
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of the plaintiff have become well-known marks/ trade dress as discussed above.

It is the case of plaintiffs that defendants in connivance with each other are trying to misrepresent to the public and pass off their goods as that of the plaintiff. It is a specific case of plaintiffs that perusal of various documents on record would show that the defendants have been using addresses of each other and use the same 'surname'. Further plaintiffs have placed on record photocopies of the various websites through which they are selling their products and causing damage to the business of the plaintiff.

In view of the above submissions, the plaintiff has established a prima facie case in its favour and balance of convenience also lies in its favour. Plaintiff has shown prima facie that in case defendants are not restrained, it shall cause irreparable injury to the business and goodwill of the plaintiff which can not be compensated in terms of money.

Hence, on the plaintiffs application under Order 39 Rules 1 and 2 CPC the defendants, his agents, assignees, representatives, successors, distributors, stockist and all other acting for and on his behalf are hereby restrained till further orders from manufacturing, packaging materials, printing materials, printing/embossing/graphically representing on bottles, wrappers, boxes, cartons and accessories of products marketing, distributing, purveying, supplying, using, selling, soliciting, exporting, importing, displaying, advertising or by any other mode or manner dealing in or using the impugned trade marks/labels "**SIZOL**" and are hereby restrained from selling their products SANDERY TOILET CLEANER, SANDERY GLASS CLEANER as the trade dress is deceptively similar to that of plaintiffs products as discussed above or using any other word/mark/Label which may be identical with and/or deceptively similar to



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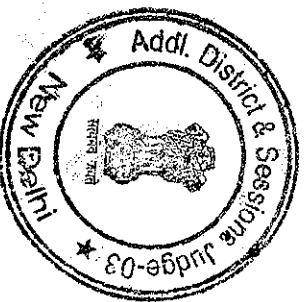
the plaintiff's said trade mark/label in relation to their impugned goods and business of Cleaning preparations for household, industrial and professional use, soaps and prepared or elaborated substances for washing, scouring and abrasive preparations, bleaching preparations, detergents, preparations for laundry use, soaps, toiletries, skin care preparations, perfuming preparation for the atmosphere, preparations for cleaning toilets, preparations for cleaning fabrics, scouring preparations, cleaning preparations, soap (disinfectant), under the trademark "HARPIC, LIZOL, COLIN", trademark and other trademarks and from doing any other acts or deeds amounting to or likely to infringe plaintiff's registered trademarks and copy rights and passing off.

At this stage, Ld. Counsel for the plaintiff also presses his application U/o 26 Rule 9 read with Section 151 CPC for appointment of Local Commissioners for preserving and protecting infringing evidence as per Section 135(2)(b) of the Trade Mark Act, 1999. Accordingly, I appoint:-

Ms. Seema Joshi, Advocate, Enroll. No.2790/09, Chamber No. 290, Patiala House Court, New Delhi-11001 Mobile No.8766221135, email ID: advocateseemajoshi@gmail.com to visit the premises of defendant at: **Kamlesh Gami, Trading as M/s. Sundry Office Solutions, P-655, Bhau Rangari Road, Budhwar Peth, Pune-411002, Maharashtra.**

The fee of the Local Commissioner is fixed at Rs. 1,00,000/- exclusive of travel and pocket expenses or Tax to be paid in advance.

The commission shall be carried out within 15 days from today, after giving notice of the commission to the defendants at the spot. Ld. LC to submits its report within two weeks of the execution of the commission. The



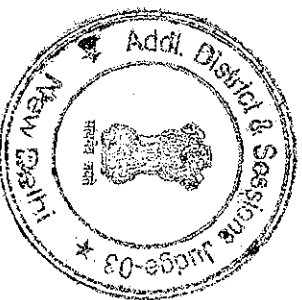
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complete paper book be provided to Ld. LC by the plaintiff along with copy of this order.

The Local Commissioner shall seize all impugned products specifically all kinds of Cleaning preparations for household, industrial and professional use, soaps and prepared or elaborated substances for washing, scouring and abrasive preparations, bleaching preparations, detergents, preparations for laundry use, soaps, toiletries, skin care preparations, perfuming preparation for the atmosphere, preparations for cleaning toilets, preparations for cleaning fabrics, scouring preparations, cleaning preparations, soap (disinfectant), under the trademark "**HARPIC, LIZOL, COLIN**", trademark/label/device/trade dress" or bearing any other trademark identical with or deceptively similar to the plaintiff's trade mark found at the aforementioned place of the defendants. After inventoring the stock, the same be released to the defendants on supardari or in case of non availability of defendants may be given on supardari to the representative of the plaintiff. The Local Commissioner shall sign the account books, if any, of the said defendants including ledgers, cash register, stock register, invoices, books etc.

The Local Commissioner would be entitled to break open the locks in execution of the commission by giving intimation to the concerned SHO and may take police aid, if required, through the Local SHO or the Deputy Superintendent of Police. The Local SHO/SSP/SP are directed to provide all possible help to Ld. LC in smooth carrying out of Commission. One copy of this order be supplied to Local SHO through plaintiff. All the Police Official shall maintain absolute secrecy for effecting execution of communication.

The plaintiff may also arrange for photography and videography, if



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required. However, if locks are broken open, it is mandatory to videograph the entire proceedings, cost of which shall be borne by plaintiff company. The representatives of the plaintiff alongwith the counsel(s) of the plaintiff are permitted to accompany the Local Commissioner at the spot. Report be submitted on or before the next date of hearing.

Compliance of Order 39 Rule 3 CPC be made within 7 days.

As already ordered, issue summons of this suit and notice of the applications to the defendants on filing of PF/RC/AD and authorised courier.

Steps be filed within two weeks for **24.03.2020**.

Copy of this order be given to the plaintiff Dasti as prayed.


(Twinkle Wadhwa)

ADJ-03/PHC/NEW DELHI/ 01.11.2019

**M. ADJ-03, Patiala House Courts,
New Delhi**

