

**(2017) 07 DEL CK 0036**

**In the Delhi High Court**

**Case No : 2467 of 2012**

G.K.BURMAN HERBAL (INDIA) PVT LTD

APPELLANT

Vs

ZEE HYGIENE PRODUCTS PVT LTD.

RESPONDENT

**Date of Decision : 10-07-2017**

**Acts Referred:**

[Code of Civil Procedure, 1908](#), [Order 23 Rule 3](#) -  
[Copyright Act, 1957](#), [Section 51](#), [Section 55](#) - When copyright infringed - Civil remedies

**Citation : (2017) 07 DEL CK 0036**

**Hon'ble Judges : Sanjeev Sachdeva**

**Bench : SINGLE BENCH**

**Advocate : Ankit Sahni, N.Mahabir**

## Judgement

IA No.7358/2017(XXIII R.3 CPC)

1. The plaintiff has filed the present suit under Sections 28 & 29 read with Sections 134 & 135 of the Trade Marks Act, 1999 and Sections 51 & 55 of the Copyright Act, 1957 for permanent injunction restraining infringement of Trade Mark, Copyright, Damages etc.

2. The parties have settled their disputes. Accordingly, the present application under Order XXIII R.3 CPC has been filed.

3. The application is signed by the authorized representatives of

the parties and their counsel and is supported by an affidavit of the respective Directors of the plaintiff as well as defendant Companies. The application is marked "Exhibit C- 1".

4. The application is allowed.

CS(OS) 2467/2012

1. The plaintiff has filed the present suit under Sections 28 & 29 read with

Sections 134 & 135 of the Trade Marks Act, 1999 and Sections 51 & 55 of the Copyright Act, 1957 for permanent injunction restraining infringement of Trade Mark, Copyright, Damages etc.

2. The plaintiff claims to be the proprietor of the trade mark "HIMGANGE" Ayurvedic Oil having adopted the mark in the year 1986.

3. The plaintiff has filed the suit contending that the Defendant is infringing its registered trademark and the copyright.

4. The parties have arrived at a settlement with the plaintiff. Terms of the Settlement are as under:-

"3. The Defendant admits that the trade mark HIMGANGE (word per se) and HIMGANGE (Label) are the registered trademarks of the Plaintiff in relation to Ayurvedic hair oil, besides for other goods, and that the Plaintiff is both the statutory as well as common law owner in relation to the "Himgange" word mark and Himgange Label.

4. That the Defendant admits that the Plaintiff is owner/proprietor of the artistic work HIMGANGE (Label) which is registered under registration No.A70781/05 of the Copyright Act .

5. The Defendant also admits that the Plaintiff is the owner of Copyright in the inside of the carton, the packaging material and instructions for use of the Himgange product of the Plaintiff, as more further detailed in paragraph 5, 6 and 7 of the Plaint.

6. The Defendant also admits that the Plaintiff is the owner of the Design of the bottle registered under Registration No. 196282 under the Designs Act .

7. The Defendant undertakes to this Hon"ble Court that they will not use the labels, sachet/pouch, bottle, packing carton/packing material and outer carton which is deceptively similar to the Plaintiffs label, sachet/pouch, bottle, outer carton/packing material amounting to infringement of trademark, copyright, design and passing off their goods as the goods of the Plaintiff. 8. The Defendant shall not manufacture and sell the products bearing a label deceptively similar or identical to the label of the Plaintiff as well as adopting a layout and get up similar to the artistic features of the Plaintiffs carton, literary works of the Plaintiff as well as bottles that are similar to the registered design of the Plaintiffs bottle. The Defendant shall inform all its distributors to return all infringing stock (if any) within a week of the present settlement and shall hand over all existing stock (if any) to the Plaintiff for destruction within two month of the present settlement. The Defendant further undertake not to oppose or seek a rectification in relation to any of the rights of the Plaintiff.

9. The Defendant has agreed to change the entire packaging of its product (including shape/design of the bottle) under the trade mark HIMGURU, as per ANNEXURE-I, attached to this term of settlement which forms integral part

hereof. The Plaintiff consents to this Annexure - 1.

10. The Defendant undertakes that the new packaging developed as annexed hereto, will not be amended as to presentation of trade mark, artistic work, devices, layout. color scheme shown therein, In case, any amendment/change is made, such change shall not effect the style of writing of the trade mark HIMGURU, and substantial representation of the devices, colour schemes, and that such change shall be reported by the Defendant to the Plaintiff in advance in writing."

5. As per the Settlement, the defendant has agreed to change the entire packaging of its product and the trade dress and packaging agreed upon between the parties, which the defendant would henceforth use for its Ayurvedic Oil, has been annexed as "Annexure-I" to the application under Order XXIII Rule 3 CPC. Annexure-I is marked "Exhibit C- 2".

6. The undertaking given by the defendant is accepted.

7. In view of the undertaking given by the defendant, plaintiff does not press the reliefs mentioned in paragraphs 32 (iii) to 32(vii) of the plaint. Learned counsel submits that though in the application the plaintiff had stated that it does not press reliefs claimed in paragraphs 32 (iii) to 32(iv), he has instructions to state that the plaintiff also does not press the reliefs mentioned in paragraphs 32(v) to 32(vii) of the plaint.

8. In view of the above, the suit is decreed in terms of paragraphs 3 to 10 of the application being IA No.7358/2017 under Order XXIII Rule 3 CPC(Exhibit C - 1), as extracted hereinabove.

9. Exhibits C - 1 and C - 2 shall form part of the Decree.

10. Decree sheet be prepared accordingly.

11. The next date of 29.08.2017 is cancelled.