
(2023) 06 DEL CK 0071

In the Delhi High Court

Case No : Civil Suit (COMM) No. 380 Of 2023, I.A. No. 10909, 10910, 10911, 11175 Of 2023??????

Scotch Whisky Association

APPELLANT

Vs

Whiskin Spirits Pvt. Ltd.

RESPONDENT

Date of Decision : 01-06-2023

Acts Referred:

Code of Civil Procedure, 1908 — Order 23 Rule 3

Citation : (2023) 06 DEL CK 0071

Hon'ble Judges : C.Hari Shankar, J

Bench : Single Bench

Advocate : Jithin M. George, Kapil Wadhwa, Tejasvini Puri, Surya Rajappan, Vasanthi Hariharan

Judgement

I.A.11175/2023 (under Order XXIII Rule 3 of the CPC)

1. This matter has, happily, been settled between the parties even before summons have been issued in the suit and IA 11175/2023 has been filed as a joint application under Order XXIII Rule 3 of the CPC for passing of a decree in terms of the settlement agreement.

2. The plaint is accordingly registered as a suit. Learned Counsel for the parties are present on behalf of their respective clients. The terms of settlement between the parties read thus:

"a) The Defendant recognizes and acknowledges that "Scotch Whisky" is whisky wholly produced in Scotland in accordance with United Kingdom legislation and is a geographical indication registered in India.

b) The Defendant further recognizes and acknowledges that descriptions such as 'Blended with Scotch', 'Scotch Blended Whisky', etc., in relation to alcoholic beverages produced in India, could mislead consumers into believing that such beverages are "Scotch Whisky", rather than products of India which contain some Scotch Whisky as an ingredient.

c) The Defendant recognizes and acknowledges that words such as 'GLEN', 'LONDON', etc. are evocative of Scotland or the United Kingdom and, if such terms are used in relation to whisky, they could mislead consumers into believing that the whisky is a Scotch Whisky when it is not.

d) The Defendant agrees and undertakes before this Hon 'ble Court that it will not manufacture, bottle, sell, offer for sale, market, advertise, supply, distribute, import, export, stock and/or deal in, directly or indirectly, in any way whatsoever, in India or abroad, any whisky which is not Scotch Whisky by using the expressions or descriptions, including but not limited to, Blended with Scotch, Scotch Blended Whisky, Single Malts from different Scotland's Whisky regions, Blended with rare imported Scotch Malts, or any other reference, statement, expression or description which only refers to the Scotch Whisky component without mentioning the other constituents of the whisky or which is otherwise indicative, suggestive or evocative of Scotland or the United Kingdom or which in any manner misleads the consumer into believing or creates a false impression that the whisky is a Scotch Whisky or which otherwise alludes or suggests a nexus or association with Scotch Whisky or Scotland or United Kingdom or from committing or doing any other act so as to infringe the Plaintiff's registered GI, "Scotch Whisky";

e) The Defendant agrees and undertakes before this Hon'ble Court that it will forthwith take necessary steps to delete all misleading descriptions appearing on the bottle labels, packaging and carton of its Whiskin Craft whisky or to amend the same in accordance with paragraph 3(h) below. Towards this, the Defendant undertakes and agrees to delete or amend, inter-alia, the following descriptions :

i. "Whiskin Craft Whisky Blended with Scotch ".

ii. "Whiskin Craft Whisky Blended With Scotch and rich Malt is velvety smooth with the powerful waves of breaking flavours of toasted Dry Fruits, Honey and Dark Chocolate which are relived till the End, Whiskin Craft gives way to a long, lingering and smooth finish that delivers a perfect balanced Character of Scotch Blended Whisky. Enjoy Responsibly.

iii. "Whiskin Craft Superior Gold Reserve Grain Whisky Blended with Scotch and rich Malt is velvety smooth with the powerful waves of breaking flavours of toasted Dry Fruits, Honey and Dark Chocolate which. are relived till the End Whiskin Craft gives way to a long, lingering and smooth finish that delivers a perfect Character of Scotch Blended Whisky. Enjoy Responsibly".

f) The Defendant agrees and undertakes before this Hon 'ble Court that it will forthwith take steps to amend the carton and packaging of its Whiskin Craft whisky to include the word "AWARDS" in reasonable prominence above or as part of the logo

g) The Defendant agrees and undertakes before this Hon'ble Court that no later than August 15, 2023, it will cease all use of the misleading descriptions as set-

out above appearing on the packaging and carton of its Whiskin Craft whisky, including the existing packaging and carton which do not mention the word "AWARDS" above or as part of the logo Regarding bottle labels, the Defendant agrees and undertakes before this Hon'ble Court that it will apply for the revised labels in compliance of paragraph 3(h) with the Excise department immediately when the next Excise cycle commences in Delhi. The Defendant anticipates that the next Excise cycle may likely commence in September 2023. Immediately upon obtaining the approval of the revised label from the Excise department, the Defendant will manufacture, sell, distribute whiskies only under the revised bottle labels, and will not manufacture, sell, distribute whiskies under the existing bottle labels. In any event, the Defendant agrees and undertakes that it will not manufacture, sell, distribute whiskies under the existing bottle labels after the longstop date of December 31, 2023.

h) The Defendant agrees and undertakes before this Hon'ble Court that with regard to any whisky or whisky based drink that it manufactures, bottles, sells, offers for sale, markets, advertises, supplies, distributes, imports, exports, stocks and/or deals in, directly or indirectly, in any way whatsoever, in India or abroad in the case of products comprising a blend of Scotch Whisky and other alcohol of different origins, it will indicate each of those origins by a statement such as "A Blend of Scotch Whisky and Indian Grain Spirit" in lettering which is equally prominent and clearly legible. This indication shall appear on the front label and on each face of any gift carton or other packaging in which it is sold to the consumer.

i) The Defendant agrees and undertakes before this Hon'ble Court that no later than June 15, 2023, it will take all necessary steps to delete all misleading descriptions appearing on its website, www.whiskinspirits.com or to amend the same in accordance with paragraph 3(h) above. Towards this, the Defendant agrees and undertakes to delete or amend, inter-alia, the following descriptions/content:

A. Whiskin Craft:

"Tasting Notes"

" ... Whiskin Craft gives way to a long, lingering and smooth finish that delivers a perfect balanced character of Scotch Blended Whisky".

"Crafted to Perfection"

"By blending together the choicest Single Malts from different Scotland's Whisky regions. we created a whole that is greater than the sum of its parts, capturing the imagination with complex and powerful medley of flavours."

Videos uploaded on its Youtube channel titled "Whiskin Spirits" including those embedded on the Defendant's website, www.whiskinspirits.com, which include references to Bagpipe or stag or Scotland or Scotch, etc.

B. Dignity:

"Blended with rare Imported Scotch Malts".

C. Glider

"The Blend"

"Glider Superior Whisky blended with Scotch is made by blending superior quality triple distilled Grain ENA, Rich Indian Malt Spirit and mature Vatted Malt Scotches imported from Scotland for a smooth experience. "

j) The Defendant agrees and undertakes before this Hon'ble Court that it will not manufacture, bottle, sell, offer for sale, market, advertise, supply, distribute, import, export, stock and deal in directly or indirectly in any way whatsoever in India or abroad any whisky which is not Scotch Whisky under the mark "GLEN CRAFT" or any other mark or name including the word "GLEN" or "LONDON" or any other words, names, business names, website references, descriptions or devices deceptively or confusingly similar thereto, or which are indicative, suggestive or evocative of Scotland or the United Kingdom or which allude or suggest a nexus or association with Scotch Whisky or Scotland or the United Kingdom, or from committing or doing any other act so as to infringe the Plaintiff's registered GI Scotch Whisky.

k) The Defendant agrees and undertakes before this Hon'ble Court that no later than June 15, 2023, it will take necessary steps to amend the specification of the goods covered in its application for the trade mark GLEN CRAFT under Application No. 4426635 in class 33 from "Alcoholic Beverages" to "Scotch Whisky". The Defendant further agrees and undertakes that if the Trade Marks Office does not allow its request to amend the specification of goods covered under its Application No.4426635, it will withdraw the same within seven (7) days of becoming aware that its request has been rejected by the Trade Marks Office."

3. The Court has perused the terms of settlement and find that they are legal, enforceable and in order.

4. In view of the aforesaid terms of settlement, nothing survives for adjudication in the present suit.

5. The suit accordingly stands decreed in terms of the aforesaid terms of settlement by which learned Counsel for the parties agree that their clients would remain bound.

6. Let a decree sheet be drawn up accordingly. Miscellaneous applications are also stand disposed of.

7. The plaintiff would be entitled to complete refund of court fee, if any, deposited by it. Let the court fees be returned in the name of "K&S Partners" as the plaintiff is stated to be based in Scotland.