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

Date of Decision: 10th April, 2023

\+ CS(COMM) 322/2020

DHARAMPAL SATYAPAL SONS PRIVATE LIMITED

..... Plaintiff

Through: Ms. Vaishali Mittal, Mr. Pravin Anand, Mr. Siddhant Chamola and Mr. Shivang Sharma, Advocates.

versus

GOOGLE L.L.C. & ORS. ..... Defendants

Through: Ms. Mamta Rani Jha, Mr. Rohan Ahuja, Ms. Shruttima Ehersa, Mr. Vatsalya Vishal and Ms. Amishi Sodani, Advocates for D-1.
Defendants No. 2 and 3 proceeded *ex-parte vide* order dated 09th January, 2023.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

CS(COMM) 322/2020 and I.A. No. 6533/2023 *(under Order XIII-A Rules 3 and 6(1)(a) r/w Order VIII Rule 10 r/w Section 151 of the Code of Civil Procedure, 1908)*

1. The present lawsuit seeks permanent injunction restraining defamation, disparagement of Plaintiff's products manufactured and sold under their registered trademark "CATCH"/ "Catch" [*hereinafter*,

"***CATCH mark***"] and also infringement of copyright vested in packaging of said products.

PLAINTIFF'S CASE

2. The Plaintiff is a part of the Dharampal Satyapal Group, a conglomerate established in 1929, having a strong presence in food and beverages, hospitality, mouth fresheners, pan masala, tobacco, agro-forestry, dairy, rubber thread and infrastructure sectors. Plaintiff's trademark "CATCH" has been continuously and extensively in use since 1987 for food and beverages, including spices, seasoning, bottled natural spring water, tonic water and soda.

3. Plaintiff's products under the CATCH mark are used by large number of customers. Their spices have exquisite flavours and aromas and use the Low Temperature Grinding technology, which prevents evaporation of volatile and delicate oils from the spices. Plaintiff is committed to maintaining the highest standards of quality and hygiene and conduct routine quality checks of their products.

4. As detailed in paragraphs No. 27 and 28 of the plaint, Plaintiff has secured numerous trademark registrations for the CATCH mark as also packaging of certain products, in different classes in India as well as abroad. That apart, they also have copyright registrations for artistic works in packaging of their products such as " 

",

“  ” and “  ”.

THE IMPUGNED VIDEOS

5. Plaintiff’s grievance pertains to following three videos posted on the YouTube platform in July, 2020:

(*a*) Video titled “ *Indian Spices Tainted with Cow Urine* *Indian Food Spices Video*”, posted by a channel named TVR [Defendant No. 2], accessible on the link https://www.youtube.com/watch?v=vuQwzKILU9I [*hereinafter*, “***impugned video 1***”].

(*b*) Video titled “*Cow urine and powder dung sprays in Indian spices and products* انڈین مصالحوں میں پیشاب وگوبر کا سپرے”, posted by a channel named TVR [Defendant No. 2] available at: https://www.youtube.com/watch?v+TEIvswdnvP4 [*hereinafter*, “***impugned video 2***”]

(*c*) Video titled “ *Buyer beware, Indian Spices Tainted with Cow Urine & Cow Dung Popular Video*”, posted by a channel named “Views NNews” [Defendant No. 3], accessible at https://www.youtube.com/watch?v+SthmUYLGGa0 [*hereinafter*, “***impugned video 3***”].

6. The impugned videos claim that all Indian spices contain cow urine and cow dung and target major brands trading in spices, including the Plaintiff’s CATCH brand. Impugned video 1 displays photographs of

Plaintiff's products, with a voiceover running defamatory and disparaging statements *qua* said products. Defendant No. 2 has included various news reports, screenshots of news articles to generate a sense of authenticity amongst the viewers. Impugned video 2 is a translation of impugned video 1 in Urdu language.

7. Impugned video 3 claims to reveal facts about Indian spices, but falsely narrates that the US Food and Drug Administration ["*FDA*"] analysed spice samples and found them to contain cow urine, cow dung along with bird feathers, beetles, cow hair, rat hair and droppings. After displaying some other clips, the video displays images of Plaintiff's CATCH products with corresponding voiceover stating that "*now, it is no longer a question of whether imported Indian processed foods and edibles have cow urine and cow dung, the question is what percentage of these products have cow urine and cow dung*".

8. After gaining knowledge of the impugned videos, Plaintiff lodged multiple complaints with YouTube, which fact is well within the knowledge of Defendant No. 2.

PROCEEDINGS SO FAR

9. On the first date of hearing *i.e.*, 14th August, 2020, summons were issued to YouTube LLC (originally Defendant No.1) and Google LLC (originally Defendant No. 2) only, as the identity of Defendants No. 3 and 4 was unknown. Since Google LLC had taken over YouTube LLC, YouTube LLC was deleted from the array of parties. A fresh memo of parties was filed whereby Google LLC was re-numbered as Defendant No. 1.

10. On the same date, the following order was passed:

> " *15. Considering the averments made in the plaint as also the documents filed therewith the plaintiff has made out a prima facie case in its favour and in case no ex-parte ad-interim injunction is granted in favour of the plaintiff and against the defendants, the plaintiff will suffer an irreparable loss. Balance of convenience also lies in favour of the plaintiff. Consequently, Google LLC is directed to disable the three URL's mentioned in para-(a) of para-37 of the prayer in I.A. No. 6922/2020 under Order XXXIX Rule 1 and 2 CPC from the country domain within 72 hours of the order being uploaded on the website of this Court. The three URLs are as under:*
>
> > *() Video titled "Indian Spices Tainted with Cow Urine*  *Indian Food Spices Video which is accessible at the URL: https://www.youtube.com/watch?v=vuQwzKILU9I*
> >
> > *(i) Video titled "*  *Buyer beware, Indian Spices Tainted with Cow Urine. & Cow Dung Popular Video", which is accessible at the URL https://www.youtube.com/watch?v+SthmUYLGGa0*
> >
> > *(ii) Video titled "Cow urine and powder dung sprays in Indian spices and products* انتین مصالحوں میں پیشاب وگوبر کا سپرے *" which is accessible at: https://www.youtube.com/watch?v+TEIvswdnvP4;*
>
> *16. Google LLC is also directed to file the basic subscriber information in respect of defendant Nos. 3 and 4 with this Court within one week with copy of the same to the learned counsel for the plaintiff."*

11. Pursuant to directions noted in paragraph No. 16 of the above-noted order, Defendant No. 1 supplied the basic subscriber information of Defendants No. 2 and 3, who are impleaded as 'John Doe'. On 28th September, 2021, on Plaintiff's application [I.A. No. 632/2021], Defendants No. 2 and 3 were impleaded as YouTube Channels 'TVR' and 'Views NNews', respectively.

12. Summons in the suit were issued to Defendants No. 2 and 3 on 31st October, 2022, and served on 09th November, 2022. Since they failed to appear despite service, they were proceeded *ex-parte vide* order dated 09th January, 2023 and the ad-interim injunction granted on 14th August, 2020 was made absolute.

13. In the above circumstances, Plaintiff seeks a summary judgement

against the Defendants.

ANALYSIS AND FINDINGS

14. At the outset, Ms. Mamta Rani Jha, counsel for Defendant No. 1, informs that Defendant No. 1 – Google LLC has complied with the court directions and the impugned videos are no longer available for viewing. She adds that the impugned videos 1 and 2, uploaded on channel TVR [email ID: tvr-2908-7700@pages.plusgoogle.com] have since been taken down by the uploader themselves. As regards impugned video 3 uploaded by channel Views NNews [email ID: viewsjnews@gmail.com], Ms. Jha states that same was uploaded from the United Kingdom, and in terms of the order dated 14th August, 2020, it has been disabled for viewing in India. She further submits that Defendant No. 1 shall abide by any additional directions that the Court may issue in this regard.

15. In view of Ms. Jha's statement, Ms. Vaishali Mittal, counsel for Plaintiff, submits that the interim order dated 14th August, 2020 may be made absolute and directions be issued to ensure that if the impugned videos resurface through the same or other channels, Defendant No. 1 would take immediate steps to block their viewing within India. In support of this submission, she relies on the obligation casted on intermediaries, such as Defendant No. 1, under Rule 4(4) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code), Rules, 2021, which reads as follows:

> "***4. Additional due diligence to be observed by significant social media intermediary-***
>
> *..xxx.. ..xxx.. ..xxx..*
>
> *(4) A significant social media intermediary shall endeavour to deploy technology-*

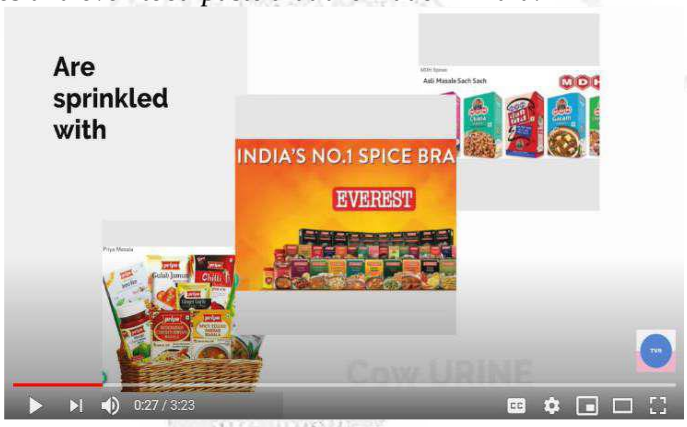
> *based measures, including automated tools or other mechanisms to proactively identify information that depicts any act or simulation in any form depicting rape, child sexual abuse or conduct, whether explicit or implicit, or any information which is exactly identical in content to information that has previously been removed or access to which has been disabled on the computer resource of such intermediary under clause (d) of sub-rule (1) of rule 3, and shall display a notice to any user attempting to access such information stating that such information has been identified by the intermediary under the categories referred to in this sub-rule[…]*"

16. Adverting now to the questions of defamation, disparagement and infringement of Plaintiff's trademark and copyright. For reference, segments of transcripts of impugned videos 1 and 3 are extracted hereinbelow:

Impugned video 1:

> "***Video Time:*** *0:02-0:28;* ***Description:*** *The video displays images of packaged spices sold under various major brands, with words like 'Have Cow Urine' and 'Cow Dung' written over the images, while the voice-over narrates that most Indian spices and products have cow urine and cow dung.*
>
> ***Male Voice-Over:*** *Before you go to an Indian store you should be aware that nowadays most Indian spices and products are sprinkled with cow urine and cow dung.*

Male Voice-Over: *Authorities in Australia, Canada, EU, U.K. and the USA are alarmed by traces of cow urine and cow dung in foods, spices, cosmetics and even toothpaste that are made in India.*



..xxx.. ..xxx.. ..xxx..

Male Voice-Over: *Traces of cow urine and cow dung have been found in most major Indian spices, edible products along with pre-packaged sweets, desert mix and wheat flour.*

Impugned video 3:

"***Male Voice-Over:*** *Now, it is no longer a question of whether imported Indian processed foods and edibles have cow urine and cow dung; the question is what percent of these products have cow urine and cow dung?*

17. The impugned videos contain defamatory remarks against Plaintiff's products, without any basis. Plaintiff has placed on record a list of ingredients contained in their products/ spices advertised in the impugned videos. They have obtained certifications from all concerned regulatory bodies and have even presented reports of an independent food analysis from a certified laboratory, which do not indicate presence of cow dung,

cow urine or any other contaminants, as alleged in the impugned videos. There is no authoritative material or underlying reason or assumption for Defendants No. 2 and 3 to make false claims and disseminate fallacious information under the garb of revealing the 'truth/facts about Indian spices'. The creators/authors have attempted to give a semblance of authenticity by displaying photographs of US FDA reports, news programmes, private studies etc., however, there is not an iota of legitimacy in such allegations as these purported reports have been skilfully created, altered and then used mischievously, in an attempt to portray that Defendants No. 2 and 3's claims are genuine.

18. The Plaintiff has a standing in the market, as evinced by their annual sales figures, advertisement expenses etc., which is being tarnished due to the content of impugned videos. A perusal of the comments to said YouTube videos shows that members of the public are being influenced and led into believing such false statements, causing grave prejudice to Plaintiff. Considering the easy and unrestricted access, there is a high probability that the defamatory videos could be shared/ seen by a large number of unsuspecting members of the public. The Court is convinced that creation and uploading of the impugned videos by Defendants No. 2 and 3 is a deliberate attempt to defame and disparage Plaintiff's goods bearing the CATCH mark. That apart, the said Defendants have published Plaintiff's registered copyrights, without their consent or authorisation, thereby infringing their copyright.

19. Per the basic subscriber information received from Defendant No. 1, notice in I.A. No. 632/2021 as well as summons in the suit were served electronically on their e-mail IDs, yet, the said Defendants have consciously

opted to evade contest in the present suit. In absence of any defence, Plaintiff's claims remain uncontroverted. Defendants No. 2 and 3 have maliciously uploaded the impugned videos containing derogatory and untrue remarks against Indian spices, particularly those sold under Plaintiff's CATCH brand, on the internet. Their *malafide* is further manifested by their inaction in removing the infringing content from YouTube after the Plaintiff had raised a complaint, which was duly acknowledged by Defendant No. 2.

20. In view of the foregoing discussion, the Court is convinced that present is a fit case for rendering of a summary judgement in terms of Order XIII-A of the Code of Civil Procedure, 1908 as amended by Commercial Courts, Commercial Division and Commercial Appellate Division of the High Court Act, 2015 ["*CPC*"], read with Rule 27 of the Delhi High Court Intellectual Property Rights Division Rules, 2022. Further, since there is no written statement(s) on behalf of Defendants No. 2 and 3, despite service, the Court is empowered to pass a judgement in terms of Order VIII Rule 10 of CPC.

21. Consequently, I.A. No. 6533/2023 is allowed and disposed of.

RELIEF

Qua Defendant No. 1

22. It is directed that in the event the impugned videos 1, 2 and 3 resurface on Defendant No. 1's YouTube platform, the Plaintiff shall be at liberty to supply the concern URLs to Defendant No. 1, who shall take appropriate action to block/ take down the same, in accordance with law. However, in case Defendant No. 1 comes to the conclusion that the content

is not identical to the impugned videos which have been injuncted, they shall inform the Plaintiff of the same, within a period of one week from the date of receipt of the request, whereafter Plaintiff shall be free to take recourse to appropriate measures available under law.

Qua Defendants No. 2 and 3

23. Ms. Mittal states that Plaintiff does not press for damages and only seeks the relief of decree of permanent injunction against the Defendants and award of costs.

24. In view of the foregoing discussion, the suit is decreed in favour of Plaintiff and against Defendants No. 2 and 3 in terms of paragraph No. 93(a) of the plaint.

25. Plaintiff is entitled to actual costs in terms of the Commercial Courts Act, 2015 and Delhi High Court (Original Side) Rules, 2018 read with Delhi High Court Intellectual Property Division Rules, 2022, recoverable jointly and severally from Defendants No. 2 and 3. Plaintiff shall file their bill of costs in terms of Rule 5 of Chapter XXIII of the Delhi High Court (Original Side) Rules, 2018 on or before 30th June, 2023. As and when the same is filed, the matter will be listed before the Taxing Officer for computation of costs.

26. The suit is decreed in the above terms. Decree sheet be drawn up.

27. Suit and pending applications are disposed of.

SANJEEV NARULA, J

APRIL 10, 2023
as
(*Corrected and released on 21st April, 2023*)