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

+ CS(COMM) 513/2022

DFM FOODS LIMITED

..... Plaintiff

Through: Mr.Dhruv Anand, Ms.Udita Patro,
Advs.

versus

CHANDEL STORE & ORS.

..... Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **28.07.2022**

IA 11792/2022 (exemption)

1. Allowed, subject to all just exceptions.

IA 11793/2022

2. This is an application seeking extension of time for filing the Court Fee.

3. For the reasons stated in the application, the time for deposit of the Court Fee is extended by a period of one week.

IA 11790/2022

4. Issue notice. Reply be filed within a period of four weeks. Rejoinder be filed within a period of two weeks thereafter. List before the Court on 22nd November, 2022.

CS(COMM) 513/2022

5. Let the plaint be registered as a suit.

6. Issue summons to the defendants to be served through all permitted modes, including electronically.

7 The summons to the defendant(s) shall indicate that the written statement(s) to the plaintiff shall be positively filed within a period of 30 days from the date of receipt of summons. Along with the written statement(s), the defendant(s) shall also file the affidavit(s) of admission/denial of the documents of the plaintiff, without which the written statement(s) shall not be taken on record.

8. Liberty is given to the plaintiff to file the replication(s) within a period of 15 days of the receipt of the written statement(s). Along with the replication(s), if any, filed by the plaintiff, the affidavit(s) of admission/denial of documents of the defendant(s) be filed by the plaintiff, without which the replication(s) shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

9. List before the Court on 22nd November, 2022.

IA 11791/2022

10. This is an application filed on behalf of the plaintiff seeking leave to file additional documents which are not in the power, possession, control or custody of the plaintiff at the moment.

11. The plaintiff may file the additional documents strictly in accordance with the provisions of the law.

12. The application stands disposed of.

IA 11789/2022

13. Issue notice to the defendant(s), to be served on the defendant(s) through all modes, including electronically, returnable on 22nd November, 2022.

14. Reply be filed within a period of four weeks. Rejoinder be filed

within a period of two weeks thereafter.

15. It is the case of the plaintiff that the plaintiff was incorporated as a company in the year 1993 and is engaged *inter alia* in manufacture of snack foods products. It sells across India and sells its snack foods under the trade marks '**CRAX**', '**NATKHAT**', '**FRITTS**' and '**CURLS**'.

16. It launched its product '**CURLS**' in December, 2016, followed by a nation-wide launch in March 2017. Between the years 2016 to 2021, the sales have grown tremendously and sales figure from 2020-2021 were to the tune of Rs.14985.58 Lakh.

17. The plaintiff claims that it has spent approximately Rs.18 Crore on advertising the products under the said brand name, with the expenditure between April, 2021 to December, 2021 itself being almost Rs.7 Crore.

18. The plaintiff asserts that its products are packed in a unique trade dress represented as under:



19. It is also the registered proprietor of the trade mark '**CRAX CURLS**' under the trade mark registration no.3667345 under Class 30 as also '**CURLS**' under the trade mark registration no. 3164035 under Class 30.

20. The plaintiff has been rigorously defending its mark by the way of various proceedings, against third parties who have been misusing their registered marks, the details of the civil suits instituted by the plaintiff have also been given in paragraph 18 of the plaint.

21. The plaintiff is aggrieved by the adoption of the identical mark as also the trade dress of the corn-based snack items by the defendants, the pictorial depiction of which is as under:



22. The plaintiff asserts that though the defendants claimed that they have stopped the using the above packaging and have adopted the new packaging with a new trade mark '**KURVY**', however, the new mark and the packaging is also deceptively-similar to that of the plaintiff, the pictorial depiction of which is as under:



23. The learned counsel for the plaintiff submits that the defendants have continued to market their product in the earlier packaging as well.

24. Having heard the learned counsel for the plaintiff, perused the plaint and the documents filed therewith, I am of the opinion that the plaintiff has been able to make out a good *prima facie* case in its favour. The marks and the packaging *prima facie* appears to be deceptively similar. The goods being of low monetary value and being sold over the counter of grocery stores, as also other small shops, the attention span of an average consumer is low and such unwary consumer can be easily deceived.

25. The balance of convenience is also in favour of the plaintiff and against the defendants.

26. The plaintiff is also likely to suffer grave, irreparable injury in case *ad-interim* injunction, as prayed for, is not granted in its favour.

27. Accordingly, the defendants, their principal officers, servants, agents, their affiliates, subsidiaries, distributors, and all others acting for and on their behalf are restrained from infringing the plaintiff's registered trade mark no. 3164035 ('**CURLS**') by using an identical or deceptively-similar trade mark and packaging in relation to the manufacture, sale, advertising, marketing etc. of its corn-based snack product or in relation to any product whether used in conjunction with its '**CURLS**' product, as also passing off their goods as those emanating from the plaintiff, till further orders.

28. Compliance with Order XXXIX Rule 3 of the Code of Civil Procedure, 1908, be made within a period of week from today.

29. List on 22nd November, 2022.

NAVIN CHAWLA, J

JULY 28, 2022/RN