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

\+ CS(COMM) 118/2022 & I.A. 16998/2023

MONSTER ENERGY COMPANY ..... Plaintiff
Through: Mr. Saif Khan, Mr. Shobhit Agarwal and Mr. Prajjwal Kushwaha, Advs.

versus

VINEET DESHWAL TRADING AS RADHA KRISHNA ENTERPRISES ..... Defendant
Through: Ms. Bhawana Nanda, Adv. For D-1

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

% 04.09.2023

1. The plaintiff is the proprietor of the following registered trademarks:

S.No.	Trademark	Application No.	Class	Date of Application	Status
1.	MONSTER	1457869	32	25/05/2006	Regd.
2.		1458027	32	26/05/2006	Regd.
3.		1869533	9, 16, 18,25	05/10/2009	Regd.
4.	MONSTER ENERGY	2473447	5, 32	06/02/2013	Regd.
5.		2684521	32	21/02/2014	Regd.

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6.		3786533	32	23/03/2018	Regd.
7.	MONSTER RIPPER	2069857	5, 32	20/12/2010	Regd.
8.	MONSTER REHAB	2166259	5, 30,32	27/06/2011	Regd.
9.	MONSTER DETOX	2330422	5, 30,32	11/05/2012	Regd.
10.	MONSTER REHABITUATE	2369012	5, 30,32	24/07/2012	Regd.
11.	MONSTER ENERGY ULTRA BLUE	2557809	5, 32	02/07/2013	Regd.
12.	MONSTER ENERGY ULTRA RED	2630427	5, 32	20/11/2013	Regd.
13.	MONSTER ENERGY ULTRA	2860571	5, 32	10/12/2014	Regd.
14.		3461397	12	18/01/2017	Regd.
15.		2417469	14	25/10/2012	Regd.
16.		2672370	22	04/02/2014	Regd.
17.		2850372	29, 30	25/11/2014	Regd.
18.	MONSTER	3354414	32	02/09/2016	Regd.
19.	JAVA MONSTER	1460434	32	08/06/2006	Regd.
20.	X-PRESSO MONSTER	2050720	5, 32	08/11/2010	Regd.
21.	MONSTER GIRL	3906269	32	03/08/2018	Regd.
22.	MONSTER	3829571	32	10/05/2018	Regd.

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	ENERGY ULTRA				
23.		3754375	32	15/02/2018	Regd.
24.	MONSTER MEAL DEAL	3708323	29, 30, 43	21/12/2017	Regd.
25.		3653917	5, 29, 30, 32, 33	10/10/2017	Regd.
26.	MONSTER HYDRO	3554854	32	23/05/2017	Regd.
27.	JAVA MONSTER	1460434	32	08/06/2006	Regd.

2. Under the aforesaid marks, the plaintiff is packing and selling energy drinks and energy beverages. The plaint also contains assertions vouchsafing the plaintiff's goodwill and reputation, both nationally as well as internationally. The plaintiff also carries out its operations through the websites www.monsterenergy.com, www.monsterbevcorp.com and www.monsterarmy.com. These websites prominently feature the MONSTER mark of the plaintiff. The plaint also provides the earnings of the plaintiff by use of the MONSTER mark which, during the year 2020 alone is to the tune of $ 10 million.

3. The plaintiff is aggrieved by the use, by the defendant, of the identical mark MONSTER, with an identical logo MONSTER, as well as a deceptively similar device mark  , whereunder the

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defendant has been selling sportswear, sports apparels and associated products, the following photographs of which are provided in para 28 of the plaint.

S. No.	Impugned Trademarks/Labels/Logos
1.	
2.	
3.	

4. The aforesaid products, submits Mr. Khan, were being sold both physically as well as online, through various e-commerce platforms. The screenshot of the sale of the defendant's products on Flipkart is also provided in para 29 of the plaint.

5. Mr. Khan submits that the defendant's products are not products which can be regarded as inexpensive, as they are in the nature of sportswear and sports equipment. Besides, Mr. Khan points out that, with clear dishonesty, the defendant has applied for registration of the

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mark  with the Registry of trademarks on 5 July 2019 on proposed to be used basis.

6. Predicated on these assertions, the plaintiff has approached this Court by means of the present suit, seeking a decree of injunction, restraining the defendant as well as all others acting on his behalf from using the mark MΦNSTER, either as a word mark or as a device mark with a lettering and style similar to that of the plaintiff, and from using the  mark for which the defendant has applied for registration either in respect of sportswear or sports apparel in respect of any goods whatsoever.

7. The plaint was accompanied by IA 2795/2022 under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908 (CPC), seeking interlocutory injunctive reliefs.

8. On 18 February 2022, this Court issued summons in the suit and passed *ex parte* interlocutory orders restraining the defendant in the following manner:

> "21. Upon hearing, this Court finds that a *prima facie* case to grant interim injunction in favour of plaintiff and against the defendant is made out. Accordingly, till further orders, injunction restraining the defendant, his partners as the case may be, agents, servants, distributors and any other persons acting for and on behalf of the defendant from selling, offering for sale, manufacturing, advertising, importing, exporting, or in any manner commercially dealing in any goods bearing the trade mark MONSTER (word per se) or any stylised representation

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thereof including  and/or Claw Icon or any mark identical or deceptively similar to the plaintiff's trademarks/logos/trade-name, amounting to infringement of plaintiff's trademark and/or passing off goods."

9. A local Commissioner was also appointed to visit the premises of the defendant and effect search and seizures. The report of the learned local Commissioner reveals that 145 articles, which bore infringing marks, were found in the premises of the defendant, all of which were inventorised and seized and continue to remain seized till date.

10. Consequent to issuance of summons, the defendant appeared before the Court on 8 July 2022 and submitted that he does not wish to continue use of the impugned mark MONSTER either as a word mark or as a device mark. The matter was referred to mediation by the Delhi High Court Mediation and Conciliation Centre before which, apparently, the defendant did not appear.

11. The defendant has, thereafter, been absent from the proceedings on all dates of hearing till 26 May 2023, when his Counsel appeared and made a statement that his client had no intention of using the impugned mark.

12. It is clear, on the face of it, that the defendant has copied the registered trademark of the plaintiff, both in word and device form. The mere insertion of the  figure above the word MONSTER, in the defendant's mark does not mitigate, in any fashion, the fact of

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infringement or of the defendant consciously seeking to pass off its products as those of the plaintiff. The word MONSTER clearly constitutes the prominent, and dominant, feature of the impugned mark. A customer of average intelligence and imperfect recollection, who knows of the plaintiff's MONSTER mark, and encounters, later, the defendant's  mark, is bound to regard both as belonging to the same person, with a mere figure of a monster added over the word by way of embellishment.

13. The defendant has filed an affidavit dated 23 August 2023 during the pendency of these proceedings, which reads thus:

> **"AFFIDAVIT ON BEHALF OF THE DEFENDANT**
>
> I, Vineet Deshwal, Trading as Radha Krishna Enterprises, R/o C-38, Wonder City 1, Newar MIET College, NH-58, Meerut, Uttar Pradesh – 250002, India, currently at New Delhi, do hereby solemnly affirm and declare as under:-
>
> i. I say that I am the Defendant in the present suit filed by the Plaintiff under the provisions of Trade Marks Act, 1999 and the Copyright Act, 1957 in addition to under common law.
>
> ii. I say that I had been, as proprietor of the entity M/s Radha Krishna Enterprises, engaged in the business of manufacturing, marketing, selling and commercially dealing in sporting products i.e. Cricket kits including cricket bats, batting leg guards, batting gloves, kitbag, thigh guards, arms guards, abdominal guards, cricket helmets, balls and other related/cognate products under identical and/or confusingly similar marks, including "**MONSTER**" and .

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iii. I say that I have stopped being engaged in the business of marketing, selling and commercially dealing in sporting products under identical and/or confusingly similar marks, including "**MONSTER**" and 

.

iv. I say that I do not wish to continue the use of the mark "**MONSTER**" and 

and I am willing to return the seized products to the manufacturer from whom they have been sourced as I am no longer carrying on such trade/ business activity.

v. I say that I undertake to remove all the billboards, signage and/or hoardings bearing the impugned mark/device/ trade dress.

vi. I say that I am currently working on a contractual basis on a project as 'the supervisor' for supervising the Water Lines being inducted on project at a daily wage of Rs 600/-.

vii. I say that there is no false statement or concealment of any material fact, document or record and I have included information that is according to me relevant for the present suit.

viii. I say that I am aware that for any false statement or concealment, I shall be liable for action taken against me under the law.

Sd.
Deponent

VERIFICATION:

Verified at New Delhi on this 23 day of AUG 2023 that the contents of the above affidavit are true and correct to the best of my knowledge and nothing material has been concealed therefrom.

Sd.
Deponent"

14. Ms. Bhawana Nanda, learned Counsel who appears for Defendant 1 submits that her client is no longer using the impugned

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mark  and does not intend to use the said mark. She, however, has no knowledge of the status of the Application No. 4226409 filed by the defendant with the Registrar of Trademarks, seeking registration of the impugned mark.

15. In view of the aforesaid affidavit, Mr. Khan seeks that the suit may be decreed and leaves it to the Court to fix appropriate costs, keeping in view the facts of the case.

16. The prayer clause in the suit reads thus:

> "58. Under the facts and circumstances of the present case the Plaintiff most respectfully prays that this Hon'ble Court may kindly be pleased to issue:
>
> a) An order and decree of permanent injunction restraining the Defendant, his partners as the case may be, agents, servants, distributors and any other persons acting for and on behalf of the Defendant from selling, offering for sale, manufacturing, advertising, importing, exporting, or in any manner commercially dealing in any goods bearing the trade mark **MONSTER (word per se)** or any stylized representation thereof including  , and/or Claw Icon or any mark identical or deceptively similar to the Plaintiff's MONSTER Trademarks/Logos/Trade-name, amounting to infringement of the Plaintiffs' registered trademarks;
>
> b) An order and decree of permanent injunction restraining the Defendant, his partners as the case may be, agents, servants, distributors and any other persons acting for and on behalf of the Defendant from substantially reproducing, issuing, communicating to the public or otherwise using the logos, labels and trade dress/packaging of the Plaintiff's products amounting to an infringement of the Plaintiff's copyright therein;

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c) An order and decree of permanent injunction restraining the Defendant, his partners as the case may be, agents, servants, distributors and any other persons acting for and on behalf of the Defendant from selling, offering for sale, advertising, manufacturing, importing, exporting, and directly or indirectly dealing in any goods bearing the trade mark **MONSTER (word per se)** or any stylised representation thereof including  and/or Claw Icon and/or its packaging or any mark identical or deceptively similar to the Plaintiff's Trademarks/Logos/Trade-name, amounting to passing off;

d) An order and decree of permanent injunction restraining the Defendant, his partners as the case may be, agents, servants, distributors and any other persons acting for and on behalf of the Defendant from selling, offering for sale, advertising, manufacturing, and directly or indirectly dealing in any goods bearing the trade mark **MONSTER (word per se)** or any stylised representation thereof including,  and/or Claw Icon and/or its packaging or any mark deceptively similar to the Plaintiff's Trademarks/Logos/Trade-name, causing dilution and tarnishment amounting to unfair competition;

e) An order for delivery-up of all the impugned materials of the Defendant including the infringing products, packaging, boxes, stationery, promotional material, dies, moulds etc. or any other material bearing the marks **MONSTER (word per se)** or any stylised representation thereof including  or any other identical or deceptively similar marks, including labels, packaging etc. to the Plaintiff;

f) An order for rendition of accounts of profits of the Defendant on account of sales of counterfeit products and a decree for the ascertained amount be passed in favour of the Plaintiff;

g) An order declaring Plaintiff's MONSTER Trademarks well-known trademarks within the meaning of Section 2(1) (zg) of the Trademarks Act, 1999;

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h) An order for damages to the tune of Rs. 2,00,01,000/- for loss of sale and reputation payable to the Plaintiff and a decree be passed against the Defendant for the said amount;

i) An order for costs of the proceedings against the Defendant; and

Any such further orders as this Hon'ble Court may pass in favour of the Plaintiff and against the Defendant."

17. In view of the aforesaid, the present suit is decreed in the following terms:

(i) There shall be a decree in terms of prayers (a) to (d) in the suit reproduced *supra*.

(ii) The defendant is also directed to deliver up, to the plaintiff, all the material which stands seized by the learned Local Commissioner on 24 February 2022 within a period of ten days from today.

(iii) In view of the facts of the case, no order for rendition of profits or for damages is being passed.

(iv) However, as the defendant acted with clear dishonesty, with the transparent intent of copying the plaintiff's mark and passing off its goods as those of the plaintiff, it is not possible for the Court to let the defendant of unconditionally. Though the affidavit filed by the defendant states that he is now earning only ₹ 600/- per day, I am in agreement with Mr. Khan that the said statement is inherently unbelievable, especially given the

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fact that the defendant was, in the past, selling sportswear and sports goods using the impugned MONSTER mark on online platforms including Flipkart. The affidavit filed by the defendant does not place on record any details regarding the earnings from such sales.

18. In view of the aforesaid, the defendant shall be liable to pay punitive costs to the plaintiff a sum of ₹ 1,00,000/- by way of a crossed cheque within a period of four weeks from today.

19. The suit stands decreed in the aforesaid terms.

20. Let a decree sheet be drawn up by the Registry accordingly.

21. In view of the statement made on behalf of learned Counsel for the defendant, the plaintiff is permitted to approach the Registry of Trademarks with the order passed today. On the basis of this order the Registry of Trademark shall forthwith proceed to pass orders treating Application No. 4226409, for registration of the MONSTER mark, as not pressed.

C.HARI SHANKAR, J

SEPTEMBER 4, 2023/*MR*

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