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

% *Judgment delivered on: 28.03.2026*

\+ **CS(COMM) 1052/2024 & 5358/2025**

RECKITT AND COLMAN OVERSEAS HYGIENCE HOME LIMITED & ORS. .....Plaintiffs

versus

MR. AKASH ARORA TRADING AS M/S GRAND CHEMICAL WORKS. ....Defendant

Advocates who appeared in this case

For the Plaintiffs : Mr. Chander M. Lall, Senior Advocate with Ms. Nancy Roy, Ms. Prakriti Varshney and Ms. Annanya Mehan, Advocates.

For the Defendant : Mr. Darpan Wadhwa, Senior Advocate with Mr. Sudeep Chatterjee, Mr. Rohan Swarup, Ms. Tanya Arora, Mr. Rajit Ghosh and Ms. Aastha Verma, Advocates.

CORAM:
HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

TEJAS KARIA, J

I.A. 46336/2024 (U/O XXXIX R-1 & 2 of Code of Civil Procedure, 1908)

1. This is an Application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, restraining the infringement of Trade Marks, passing off, infringement of Design and infringement of Copyright.

2. The present dispute concerns the infringement of the Trade Marks, Trade Dress and Bottle Designs of the toilet cleaner sold by the Plaintiffs under the Mark 'HARPIC', glass and house cleaner under the Mark 'COLIN' and disinfectants under the Mark 'LIZOL' ("**Plaintiffs' Products**"). The Plaintiffs use distinctive Trade Dresses for sale of the Plaintiffs' Products under the Marks, 'HARPIC' ' 

', 'COLIN' ' 

' 'LIZOL' ' 

' ("**Plaintiffs' Trade Dresses**").

SUBMISSIONS ON BEHALF OF THE PLAINTIFFS:

3. The learned Senior Counsel for the Plaintiffs made the following submissions:

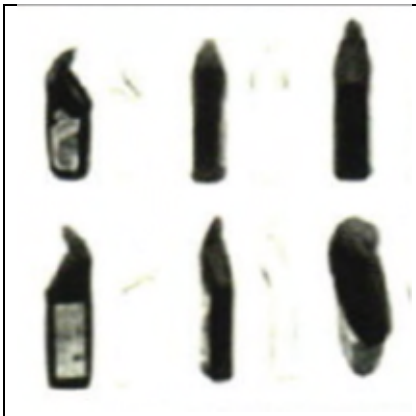
3.1. Plaintiff No. 1 is an internationally renowned transnational corporation based out of the United Kingdom. Plaintiff No. 1 is a subsidiary of Reckitt Benckiser Group Plc which has operations in almost all countries across the world, including India for many decades. Plaintiff

No. 2 is an existing company incorporated under the laws of India and is engaged in the manufacture, packaging, sale and distribution of various health and hygiene products. Plaintiff No. 2 was incorporated on 05.07.1951. Pursuant to a worldwide merger between Reckitt Colman Plc and Benckiser, a Dutch Company in 1999, the name of Plaintiff No. 2 was changed from Reckitt & Colman India Limited to Reckitt Benckiser (India) Limited on 18.12.2000.

3.2. Plaintiff No. 3 is a limited liability company incorporated under the laws of United States of America and is a part of the Plaintiffs' group of companies with operations in almost all countries across the world, including in India for many decades. Reckitt Benckiser Group Plc. is an internationally renowned transnational corporation based out of the UK and through its subsidiaries and affiliate companies, operates in several countries around the world and has operations in many countries across the world, including in India, for decades. The business of the Plaintiffs comprises various consumer products including pharmaceuticals, surface care products, toilet care products, insecticides, and food.

3.3. The Plaintiffs have been using the Mark 'HARPIC' in India since as early as 1984 and launched toilet cleaners under the Trade Mark 'HARPIC' in India in the year 2001. The Mark, 'HARPIC' is a household name in the category of toilet cleaners and is the most widely used toilet cleaner brand in the country. The Plaintiffs have obtained registrations for the Mark 'HARPIC', the details of which are as follows:

Trade Mark	Class	Regn. No.	Date of Regn.
HARPIC	3	347055	15.03.1979
HARPIC	3	370317	30.12.1980
	3	2030556	29.09.2010
HARPIC POWER PLUS	5	1473986	28.07.2006
	3	723898	18.06.1996
HARPIC POWER PLUS	3	1473987	28.07.2006
	3	3103622	23.11.2015
	3	3491010	22.02.2017

	5	3491007	22.02.2017
	3	3491009	22.02.2017
	5	3491006	22.02.2017
	5	3491008	22.02.2017

	3	3103620	23/11/2015
	3	3103621	23/11/2015
Trade Mark	**Class**	**Regn. No.**	**Date of Regn.**
	3	2485315	26.02.2013
	3	5162927	06.10.2021
	3	5145239	23.09.2021

	3	5237623	07.12.2021
	99	5162928	06.10.2021

3.4. The Plaintiffs' Products under the Mark 'HARPIC' are identified not only by the Mark 'HARPIC' but the Trade Dress for the aforesaid products also act as a source identifier of the 'HARPIC' branded toilet cleaners. A representation of the Plaintiffs' Products under the Mark, 'HARPIC' is as under:







3.5. The shape of the bottle and bottle cap, features and indentations on the bottle shape, curved pattern on the bottle shape, the distinctive style of writing ‘HARPIC’, colour scheme used in the packaging and the features and devices on the labels collectively form the Trade Dress for the Plaintiffs’ Products under the Mark, ‘HARPIC’. Over the years the shape of the Harpic bottle has remained consistent, although minor modifications have been incorporated whilst retaining the original distinctive shape. Consumers associate the shape of the Harpic bottle exclusively with the Plaintiffs’ Products under the Mark ‘HARPIC’.

3.6. The Plaintiffs have invested an enormous amount of money towards protection, promotion and advertisement of the products under the Mark, ‘HARPIC’. It is common knowledge that the advertisements and promotion of the Trade Dress bearing the Mark, ‘HARPIC’ has been undertaken *via* all possible media including radio, television, electronic, print as well as over the internet by the Plaintiffs. Owing to such expansive advertisement and promotional activities undertaken by the Plaintiffs, the Plaintiffs’ Products under the Mark, ‘HARPIC’, have acquired immense reputation and goodwill worldwide which is evident by the enormous revenue earned by the Plaintiffs by dealing with toilet cleaners under the Mark, ‘HARPIC’, which is as under:

Year	**Net Revenue (Rs. Cr.) for HARPIC Toilet Cleaner**
2023	1279.4
2022	1149.5
2021	992.7
2020	951.5
2019	925.5

3.7. The Mark, ‘HARPIC’, and the Trade Dress for the Plaintiffs’ Products under the Mark, ‘HARPIC’ are universally recognized and relied upon as identifying the Plaintiffs as the sole source of the goods and as distinguishing the Plaintiffs’ Products from the products of others. As a result, the Mark, ‘HARPIC’ and the Trade Dress for the Plaintiffs’ Products under the Mark, ‘HARPIC’ have acquired substantial goodwill and are extremely valuable commercial assets in the hands of the Plaintiffs.

3.8. The Plaintiffs had further obtained registration of the Design for the bottle used for the Plaintiffs’ Products under the Mark ‘HARPIC’ under Design Registration No. 184080 on 29.11.2000 and the Plaintiffs further launched a modified variant of the same bottle shape and obtained a Design registration for the same under Design Registration No. 191291 dated 15.08.2002 (“**Plaintiffs’ Design Registrations**”). While the Plaintiffs’ Design Registrations have expired, owing to long and extensive use, the Plaintiffs have residual goodwill in the bottle shapes used for the Plaintiffs’ Products under the Mark ‘HARPIC’.

3.9. The Plaintiffs are further dealing with glass and household cleaning products under the Mark, ‘COLIN’ since the year 1998. The Plaintiffs have obtained Trade Mark registrations for the Mark, ‘COLIN’, the details of which are as under:

Trade Mark	**Registration Number**	**Date of Registration**	**Class**
COLIN	414910	22/12/1983	3

	2442863	14/12/2012	3

3.10. The shape of the bottles and bottle cap, features and indentations on the bottle neck, the distinctive style of writing ‘COLIN’, colour scheme used in the packaging labels and the features and devices on the labels collectively form the Trade Dress for the Plaintiffs’ Products under the Mark, ‘COLIN’. The Trade Dress used for Plaintiffs’ Products under the Mark, ‘COLIN’ and the shape of the bottles of the aforesaid products also constitute the source identifier of the Plaintiffs’ Products under the Mark, ‘COLIN’. A representation of the Plaintiffs’ Products under the Mark, ‘COLIN’ is as under:



3.11. The Plaintiffs have invested an enormous amount of money towards protection, promotion and advertisement of the products under the Mark, ‘COLIN’ and the Trade Dress for the Plaintiffs’ Products under the Mark, ‘COLIN’. It is common knowledge that the advertisements and promotion of the Plaintiffs’ Products bearing the Mark, ‘COLIN’ has been undertaken *via* all possible media including radio, television, electronic, print as well as over the internet by the Plaintiffs. Owing to

such expansive advertisement and promotional activities undertaken by the Plaintiffs, the products under the Mark, 'COLIN', have acquired immense reputation and goodwill worldwide which is evident by the enormous revenue earned by the Plaintiffs by dealing with glass and home cleaners under the Mark, 'COLIN', which is as under:

Year	Net Revenue (Rs. Cr.)
2023	225
2022	195.5
2021	194.8
2020	148.3
2019	156.9

3.12. The Plaintiffs are further dealing with disinfectants under the Mark, 'LIZOL' in India since 1996. The Plaintiffs have obtained Trade Mark registrations for the Mark, 'LIZOL', the details of which are as under:

Trade Mark	Registration Number	Date of registration	Class
LIZOL	754107	30.01.1997	3
	837708	21.01.1999	3
	4056357	14.01.2019	3
	4621562	24.08.2020	3
LIZOL	4621563	24.08.2020	3
LIZOL	754108	30.01.1997	5
LIZOL	4621557	24.08.2020	5

	837709	21.01.1999	5
	4056358	14.01.2019	5
	4621555	24.08.2020	5
	4621559	24.08.2020	21
	4621560	24.08.2020	3

3.13. The shape of the bottles and bottle cap, features and indentations on the bottle neck, the distinctive style of writing ‘LIZOL’, colour scheme used in the packaging labels and the features and devices on the labels collectively form the Trade Dress for the Plaintiffs’ Products under the Mark, ‘LIZOL’. The Trade Dress used for the Plaintiffs’ Products under the Mark, ‘LIZOL’ also constitute as the source identifier of the Plaintiffs’ Products under the Mark, ‘LIZOL’. A representation of the Plaintiffs’ Products under the Mark, ‘LIZOL’ is as under:


Lizol
ALL-in-1



3.14. The Plaintiffs have invested an enormous amount of money towards protection, promotion and advertisement of the products under the Mark, 'LIZOL'. It is common knowledge that the advertisements and promotion of the Plaintiffs' Products bearing the Mark, 'LIZOL' has been undertaken *via* all possible media including radio, television, electronic, print as well as over the internet by the Plaintiffs. Owing to such expansive advertisement and promotional activities undertaken by the Plaintiffs, the products under the Mark, 'LIZOL', have acquired immense reputation and goodwill worldwide which is evident by the enormous revenue earned by the Plaintiffs by dealing with toilet cleaners under the Mark, 'LIZOL', which is as under:

Year	**Net Revenue (Rs. Cr.)**
2023	761.3
2022	708.1
2021	664.1
2020	714.8
2019	608.7

3.15. The Defendant, Mr. Akash Arora, is the proprietor of Grand Chemical Works having its registered address at Grand House, C-212/2,

Mayapuri Industrial Area, Phase-II, New Delhi-110064, India, and is engaged in manufacturing, packaging / labelling, wholesaling, retailing, marketing, supplying, distributing, exporting / importing, using and / or dealing with toilet cleaners '





', glass cleaners, '



'



and disinfectants, ' ' under the Mark, 'GAINDA' ("**Defendant's Products**").

3.16. The Defendant's toilet cleaner product is being sold in Trade Dress which is identical and / or deceptively similar to the Trade Dress for the Plaintiffs' Product under the Mark, 'HARPIC', the Defendant's glass cleaner product is being sold in a Trade Dress which is identical and / or deceptively similar to the Trade Dress for the Plaintiffs' Products under the Mark, 'COLIN' and the Defendant's surface cleaner product is being sold in a Trade Dress which is identical and / or deceptively similar to the Trade Dress for the Plaintiffs' Products under the Mark, 'LIZOL' ("**Impugned Trade Dresses**"). A

comparative table of the Plaintiffs' Products and the Defendant's Products is as under:

Plaintiffs' products under the Mark HARPIC	**Defendant's Toilet Cleaner**
	
	

HARPIC PROFESSIONAL 10X MAX CLEAN 99.9%	GAINDA TOILET CLEANER 5L
HARPIC POWER PLUS 10X  HARPIC POWER PLUS 	GAINDA TOILET CLEANER
EXTREME POWER Removes Tough Stains Sparkling Shine Fights Odors	10X 

Plaintiffs' products under the Mark COLIN	Defendant's Glass Cleaner
	
	
	

Plaintiffs' products under the Mark LIZOL	**Defendant's disinfectant product**
	

3.17. The Plaintiffs' Products and the Defendant's Products are sold through identical trade channels and placed close by on the same shelves in outlets / shops and sold from the same aisle to the same set of consumers. As far as online sales are concerned, both the Plaintiffs' Products and the Defendant's Products are sold through the same channels and listed side by side. Hence, there is huge likelihood that the relevant potential consumer would rely upon imperfect recollection, and such imperfect recollection will centre on the high degree of similarities between the product labels, trade dress, colour combination, bottle shape of Defendant's Products and the Plaintiffs' Products. Given the stark similarities between the competing Trade Dresses, the colour scheme, the Bottle Designs and specifically the whole range of products being virtually identical, the trade channels and counters being the same, there exists a strong likelihood of confusion on the part of the consuming public. Therefore, the present case is one of triple identity wherein not only the concerned class /

nature of goods are identical, the trade channels as well as the class of consumers is also the same.

3.18. The Plaintiffs have spent millions of Dollars on promoting its products under the Marks, 'HARPIC', 'COLIN' and 'LIZOL'. The Plaintiffs have an international market and are a registered Trade Mark proprietor in many countries of the world including India. The Plaintiffs apprehend that the Defendant's Products may not comply with the quality standards maintained by the Plaintiffs thereby causing irreparable harm and injury to the brand equity of the Plaintiffs.

SUBMISSIONS ON BEHALF OF THE DEFENDANT:

4. The learned Senior Counsel for the Defendant made the following submissions:

4.1. The Plaintiffs' Design Registrations under Design Registration Nos. 184080 and 191291 had expired in 2015 and 2017 respectively, placing the Designs in the public domain. The Plaintiffs are now attempting to evergreen these expired designs by securing Trade Mark registrations over the same bottle and cap shapes under Trade Mark Registrations Nos. 3491010, 3491007, 3491009, 3491006, and 3491008 ("**HARPIC Bottle and Cap Marks**"), contrary to the Designs Act, 2000 ("**Designs Act**").

4.2. By registering the Designs for the shape of the bottle in which the Plaintiffs' Products under the Mark, 'HARPIC' are sold under the Designs Act and enjoying a fifteen-year monopoly, the Plaintiffs acknowledged it as a design, not a Trade Mark. Hence, they are estopped from claiming Trade Mark protection over the same, as it violates Sections 2(d) of the Design Act and Section 2(zb) of the Trade

Marks Act, 1999 ("**Trade Marks Act**"). The Plaintiffs further misclassified their applications as Device Marks instead of shape of goods to evade proper scrutiny by the Trade Marks Registry. Consequently, the HARPIC Bottle and Cap Marks are invalid, and the infringement claim is unsustainable.

4.3. The Defendant prominently uses the Mark 'GAINDA' against which the Plaintiffs do not have any objection and a distinct Rhino logo, along with unique labels, shapes, fonts, brand names, and cap designs, all serving as clear source identifiers. These distinguishing features eliminate any likelihood of confusion. As has been held in ***Kaviraj Pandit Durga Dutt Sharma v. Navratna Pharmaceutical Laboratories***, (1965) 1 SCR 737, where sufficient added matter distinguishes the Defendant's goods, no actionable misrepresentation arises. This principle was reaffirmed in ***Intex Technologies (India) Ltd. v. AZ Tech (India)***, (2017) 239 DLT 99 (DB).

4.4. Further, since the Plaintiffs' Products are premium priced and target a different consumer base, confusion is unlikely. Moreover, where the Plaintiffs hold a registered design, a passing off claim must rest on something extra beyond the registered design, such as ornamentation, overall get-up, or trade dress as has been held in ***Havells India Ltd. v. Panasonic Life Solutions India Pvt. Ltd.***, 2022 SCC OnLine Del 1662.

4.5. A non-distinctive product shape can only be registered as a Trade Mark if consumers recognize and rely on the shape alone as a badge of origin. The shape must still independently signify the product's source. Product design cannot be inherently distinctive and is protectable as a Trade Mark only upon proof of acquired distinctiveness, as consumers

do not naturally view design alone as indicating product origin. In any event, a similar shape is used by nearly every single product in the industry due to which no monopolistic rights thereto can be conferred on the Plaintiffs.

4.6. The Plaintiffs claim monopoly over colour combinations like Blue and Red for the Trade Dress for the Plaintiffs' Products under the Mark 'HARPIC', Blue, Red and White for the Trade Dress for the Plaintiffs' Products under the Mark, 'COLIN', and Blue, Red, White and Yellow for the Trade Dress for the Plaintiffs' Products under the Mark 'LIZOL'. Such claims are legally untenable. Basic colours are not protectable under trademark law as has been held in ***Colgate Palmolive Co. Ltd. v. Patel***, 2005 (31) PTC 583 (Del), ***Britannia Industries Ltd. v. ITC Ltd.***, (2017) 240 DLT 156 (DB), ***ITC Ltd. v. Crescendo Tobacco Agency & Ors.***, 2011 (46) PTC 65 (Cal) and ***RB Health (US) LLC & Ors. v. Dabur India Ltd.***, 2020 (84) PTC 492 (Del).

4.7. The Plaintiffs themselves use multiple colours across product ranges, defeating the argument of exclusivity or secondary meaning. In the case of ***Reckitt Benckiser (India Limited) v. Cavinkare Pvt. Ltd.*** 2007 SCC OnLine Del 736, it was already held that products under the Mark, 'HARPIC' in multiple colour variants cannot claim exclusivity over any single colour scheme. The Plaintiffs have mechanically relied on *ex parte ad interim* orders passed in uncontested cases, which have no precedential value. Only final judicial decisions containing a legal principle *ratio decidendi* qualify as precedents. Interim orders based on *prima facie* or tentative findings do not have binding precedent value, especially when issued under extraordinary powers or unique

circumstances as has been held in ***Shraddha d/o Sanjay Varshney and others v. Union of India and other*** 2015(4) M.P.L.J. and ***State of Assam v. Barak Upatyaka D.U. Karmachari Sanstha***, (2009) 5 SCC 694.

4.8. A product's shape or design cannot be granted Trade Mark protection unless it has acquired secondary meaning, i.e., it must be shown that the shape alone, without any word or logo, distinctly identifies the source of the product. Functional or generic shapes are not inherently distinctive and cannot be protected unless they serve as clear source identifiers. As has been held in ***Knitpro International v. Examiner of Trade Marks through Registrar of Trade Marks***, (2022) 293 DLT 1.

4.9. The bottle shapes such as the angled nozzle and grip design for toilet cleaners, and the practical forms of glass cleaner and floor disinfectant bottles are dictated by functionality, ergonomics, and industry norms, not by an intent to indicate source. The law does not protect functional designs, and no exclusive rights can be claimed in them as has been held in ***Dabur India Ltd. v. Rajesh Kumar***, 2008 (103) DRJ 596. The colour schemes and bottle shapes used by the Defendant are widespread in the industry and commonly used by third parties. The Plaintiffs have also failed to disclose prior recognition of such third-party use and have misrepresented facts. Notably, the use of blue in toilet and glass cleaners is a well-established industry standard, symbolizing hygiene and visibility.

4.10. The Defendant launched its business in 2016. In the year 2020, the Defendant launched the Defendant's toilet cleaner product. Thus, the Defendant's Products have been widely in the market for nearly a

decade. The Defendant has invested heavily in branding and advertising, and an injunction would cause severe commercial hardship given its long market presence. In contrast, the Plaintiffs, holding a 78% market share, would not face irreparable harm. Thus, the balance of convenience is in favour of the Defendant.

REJOINDER SUBMISSIONS ON BEHALF OF THE PLAINTIFFS:

5. The learned Senior Counsel for the Plaintiffs made the following rejoinder submissions:

5.1. The learned Senior Counsel for the Defendant submitted that the Plaintiffs' registrations for HARPIC Bottle and Cap Marks are barred by law, being exactly the same as the Plaintiffs' Design Registrations which were granted protection under the Designs Act but stand expired. The Plaintiffs have made minor modifications in their bottle shape while retaining the original distinctive shape and that consumers associate the bottle shapes exclusively with the Plaintiffs' Products under the Mark 'HARPIC'. Reliance can be placed upon the Full Bench decision of this Court in ***Mohan Lall, Proprietor of Mourya Industries v. Sona Paint & Hardware***, AIR 2013 Delhi 143, wherein it has been held that a trade mark as defined under the Trade Marks Act includes shape of goods, their packaging and combination of colours. It is also a settled principle of law that dual protection from both design and trade mark law may exist where it is alleged that the configuration or shape of a container or article acts as a trade mark or trade dress.

5.2. The Defendant is wrongly relying upon the Trade and Merchandise Marks Act, 1958, to submit that once the Plaintiffs had opted for seeking protection of the shape and configuration of the bottle under

the Designs Act, the said design is not a trade mark as defined under the Trade and Merchandise Marks Act, 1958, which has been repealed by Section 159 of the Trade Marks Act which came into effect on 30.12.1999. In any case, as per the Designs Act, use of a registered design as a Trade Mark can at best be a ground for its cancellation. There is no provision under the Act which prohibits registration of a design as a Trade Mark.

5.3. The Defendant submitted that Plaintiffs' Trade Mark registrations for the HARPIC Bottle and Cap Marks are Device Marks and not shape / 3D Mark, however, this issue has been decided in favour of the Plaintiffs by the Division Bench of this Court in ***Hindustan Unilever Ltd. v. Reckitt Benckiser (India) (P) Ltd.***, (2023) 2 HCC (Del) 417, wherein it has been held that Trade Mark registrations adopted for the Harpic Bottle and Cap Marks are shape marks and not merely device marks. Further, the Division Bench has recognized the Plaintiffs' rights in the HARPIC Bottle and Cap Marks, being registered Trade Marks, gives the Plaintiffs exclusive rights to use and stop others from using the HARPIC Bottle and Cap Marks or bearing a shape which is deceptively or confusingly similar to the HARPIC Bottle and Cap Marks.

5.4. The fact that the Plaintiffs have obtained Trade Mark registrations for HARPIC Bottle and Cap Marks in both black and white as well as in colour clearly shows that the Plaintiffs are claiming rights in the distinctive colour scheme and overall Trade Dress for the Plaintiffs' Products under the Mark 'HARPIC', contrary to what is alleged by the Defendant. The Plaintiffs have obtained several other registrations for

their labels and are also the owners of copyrights in such labels / artworks. The Plaintiffs have continuously enforced their rights in the Trade Dress for the Plaintiffs' Products under the Mark 'HARPIC'.

5.5. Allegations of third party use are no defence in an infringement action as has been held in several decisions, in any case, the third parties cited by the Defendants are mostly infringers with little to no market share as has been held in ***National Bell Co. and Gupta Industrial Corporation v. Metal Goods Mfg. Co. (P) Ltd.***, AIR 1971 SC 898 , ***Pankaj Goel v. Dabur India Ltd.***, 2008 (38) PTC 49 and ***Corn Products Refining v. Shangrila Foods Products Ltd.***, AIR 1960 SC 142. The Plaintiffs have also been successful in stopping several third parties from infringing their rights and taking down all the listings and / or in getting third parties to change their product shape / trade dress. The alleged reasoning given by the Defendant that blue colour is used to indicate hygiene and freshness are frivolous and an afterthought. The colour blue of the glass cleaning product is only on account of a blue dye used by such third-parties. The entire range of the Defendant's phenyl product, which is also a hygiene product, has a completely different shape / colour combination. Toilet cleaners and glass cleaners are sold in various colours and shapes by third parties.

5.6. In the judgment of ***Midas Hygiene Industries (P) Ltd. and Another v. Sudhir Bhatia and Others***, 2004 SCC OnLine SC 106 it was held that if a party for no apparent reason adopts a deceptively similar trade mark or a deceptively similar trade dress to another, it would be difficult to avoid an order of injunction as the Court assumes that the adoption was

dishonest and indicates that the defendant tried to pass off its goods as those of the Plaintiffs.

5.7. The Defendant's argument that there is sufficient added matter to distinguish the Defendant's goods is also frivolous as evident from the detailed comparison. The Defendant is maliciously selling the Defendant's toilet cleaner product in two different bottle shapes, both of which have been copied from the HARPIC Bottle and Cap Marks.

5.8. The objections raised by the Defendant regarding delay and laches are frivolous as evident from the averments in the Plaint and the Defendant's own documents. The Plaintiffs filed the present suit as soon as it found that the Defendant is involved in the sale of the Defendant's Products using the Impugned Trade Dresses.

5.9. The Defendant has failed to raise any credible defence and the Plaintiffs have made a *prima facie* case for grant of an interim injunction. The balance of convenience is also in favour of the Plaintiffs and against the Defendant and grave and irreparable injury is being caused to the Plaintiffs on each day that the Defendant is continuing with its acts of infringement, passing off and unfair competition.

ANALYSIS AND FINDINGS:

6. Passing off is based on similarities of get-up of packaging used by the defendant that amounts to misrepresentation damaging the plaintiff. The plaintiff must prove that the get-up used by the plaintiff is distinctive and the defendant's get-up is similar enough to deceive, notwithstanding any other differences between the two sets of goods. The plaintiff must make out that the defendant's goods are calculated to be mistaken for the plaintiff's goods, and both the goods unquestionably resemble each other and the features that

resemble with each other are not common to the trade. The distinctive nature of the features adopted by the plaintiff must be ‘eye catching’ and serve to identify the goods of one particular source. The plaintiff must show that the confusion arises from those features of the getup, which are distinctive to the plaintiff taken in combination with each other. The plaintiff cannot pick and choose the elements of get-up and must be considered as a whole for comparing it with the get-up of the defendant as a whole, including the features which are not found in the plaintiff’s get-up, including the brand names or other marks.

7. The Plaintiffs have submitted that the Plaintiffs’ Products under the Mark ‘HARPIC’ were launched in India in 2001, the Plaintiffs’ Products under the Mark ‘COLIN’ were launched in India in 1998 and the Plaintiffs’ Products under the Mark ‘LIZOL’ were launched in India in 1996 and have been in continuous and uninterrupted use since then. By the Defendant’s own admission, the Plaintiffs have a market share of 78%. The Plaintiffs have obtained various trade mark registrations to protect the Intellectual Property in the Plaintiffs’ Products. The Plaintiffs have also spent a substantial amount of money on the promotion, publicity and advertisement of the Plaintiffs’ Products in all available media. The Plaintiffs also have considerable turnover in respect of Plaintiffs’ Products which is depicted by the year-on-year increase in the last five years as demonstrated by the Plaintiffs.

8. The above submissions on behalf of the Plaintiffs shows that the Plaintiffs have built considerable reputation and goodwill for the Plaintiffs’ Products over time, which is evident from the sales turnover and the marketing expenses incurred by the Plaintiffs.

9. It is the case of the Plaintiffs that the Plaintiffs' Products use distinctive Trade Dresses which have been used to sell the Plaintiffs' Products for over two and a half decades across India with only minor modifications to keep with the changing times. The Plaintiffs' Products are identified with the shape of the bottles which have several unique features. It is submitted by the Plaintiffs that the Trade Dresses for the Plaintiffs' Products, have come to be identified exclusively with the Plaintiffs on account of extensive sales, advertisement, promotion and high quality of Plaintiffs' Products.

10. The Plaintiffs have contended that the Defendant's Products are being sold in the Impugned Trade Dresses which are identical and / or deceptively similar to the Plaintiffs' Trade Dresses and this act of the Defendant is a deliberate attempt to pass off the Defendant's Products as those of the Plaintiffs. It is submitted by the Plaintiffs that the Impugned Trade Dresses lead the consumer to believe that there is an association between the Defendant's Products and the Plaintiffs, where none exists. The Plaintiffs have alleged that both the Plaintiffs' Products and the Defendant's Products look identical and are sold in bottles which have identical shapes and configuration, thus, increasing the likelihood of confusion. The use and placement of essential features of the Plaintiffs' Trade Dresses on the Impugned Trade Dresses used for the Defendant's Products will lead to confusion and / or deception in the minds of the general public.

11. When there is no valid explanation given as to why the Impugned Trade Dresses have similarity of essential features, get-up, layout, colour combination and placement of features with the Plaintiffs' Trade Dresses, the Impugned Trade Dresses are liable to be restrained. The Plaintiffs have contended that the Impugned Trade Dresses are a slavish imitation of the

Plaintiffs' Trade Dresses, which is evident from the side-by-side comparison of the Plaintiffs' Products and the Defendant's Products.

12. The Plaintiffs have contended that in passing off action, similarities rather than dissimilarities have to be taken note and the colour scheme and overall effect of the packaging have to be seen. The Plaintiffs have submitted that the Impugned Trade Dresses are completely dishonest and *mala fide* with the clear intention of passing off the Defendant's Products as those of the Plaintiffs. The Plaintiffs have also relied upon ***Midas Hygiene*** (supra) to argue that if a party for no apparent reason adopts a deceptively similar trade dress, it would be difficult to avoid an order of injunction as it is assumed that the adoption was dishonest and indicates that the defendant tried to pass off its goods as those of the plaintiff. The Plaintiffs have further submitted that the essential features of the Plaintiffs' Trade Dresses are not common to the trade and are distinctive.

13. The Defendant has submitted that the prominent House Mark of the Defendant 'GAINDA' is the distinguishing feature in the Defendant's Products, which dispels any possibility of confusion between the Defendant's Products and the Plaintiffs' Products. Further, it was contended that the Plaintiffs' Products have multiple variants with different colour combinations and the Plaintiffs cannot be allowed to monopolise all of the colours.

14. The Defendant has further submitted that the Plaintiffs have tried to evergreen the Plaintiffs' Design Registrations by registering the same as Trade Marks after the expiration of the exclusive rights to use granted to them by virtue of their registration under the Designs Act. Once the Plaintiffs have obtained registration under the Designs Act, they cannot be permitted to

register them as Trade Marks as well. Consequently, the HARPIC Bottle and Cap Marks are invalid, and the infringement claim is unsustainable.

15. The Defendant further contended that the bottle shapes such as the angled nozzle and grip design for toilet cleaners, and the practical forms of glass cleaner and floor disinfectant bottles are dictated by functionality, ergonomics, and industry norms, not by an intent to indicate source. The law does not protect functional designs, no exclusive rights can be claimed in them.

16. Having heard the learned Counsel for both the Plaintiffs and the Defendant and considering the material placed on record, the overall comparison of the Defendant's Products with the Plaintiffs' Products shows that there is an attempt to imitate the essential features of the Plaintiffs' Trade Dresses by the Impugned Trade Dresses. The Impugned Trade Dresses are deceptively similar to the Plaintiffs' Trade Dresses as the essential features of the Plaintiffs' Trade Dresses such as the colour of the packaging, the colour of the cap, the colour of the liquid, the shape of the bottle are copied in the Impugned Trade Dresses. The overall comparison of the get-up at the point of sale creates an impression that the Impugned Trade Dresses are an imitation of the essential features of the Plaintiffs' Trade Dresses. Considering the deceptive similarity of the Impugned Trade Dresses to the Plaintiffs' Trade Dresses, the judgment in ***Havells India Ltd.*** (supra) will not further the case of the Defendant.

17. It is not necessary to have exact identity for side-by-side comparison between the Impugned Trade Dresses and the Plaintiffs' Trade Dresses. It is sufficient that if there is an overall similarity in the idea or impression assessed from the perspective of a consumer of average intelligence having imperfect

recollection. A holistic view of the Impugned Trade Dresses appears to be deceptively similar to the Plaintiffs' Trade Dresses. The Defendant has not offered any explanation or *bona fide* reason for adopting the Impugned Trade Dresses having identical features to that of the Plaintiffs' Trade Dresses.

18. The submission of the learned Senior Counsel for the Defendant that Plaintiffs' registrations for HARPIC Bottle and Cap Marks are barred by law, being exactly the same as the Plaintiffs' Design Registrations which were granted protection under the Designs Act but stand expired cannot be accepted in light of the decision of the Full Bench of this Court in ***Mohan Lall*** (supra), wherein it was held that dual protection from both design and trade mark law may exist where it is alleged that the configuration or shape of a container or article acts as a trade mark or trade dress. The decision of the Five Judge Bench of this Court in ***Carlsberg Breweries vs Som Distilleries & Breweries Ltd.***, AIR 2019 Delhi 23, did not overrule this decision of the Full Bench in ***Mohan Lall*** (supra) and held that as long as the elements of the Design are not used as a trade mark but rather as a larger trade dress, the presentation of the product through its packaging and so on can be protected.

19. It is settled law that to determine the passing off, the focus must be on the similarities rather than dissimilarities. The overall appearance at first impression is crucial to identify the passing off. The meticulous side-by-side dissection is not necessary and the trade dress has to be judged as a whole. Based on the overall get-up of the Defendant's Products, it is evident that the same is likely to cause confusion as the dominant similarities between the Impugned Trade Dresses and the Plaintiffs' Trade Dresses overwhelm the minor differences. The argument that the House-Mark, 'GAINDA' will dispel the confusion, cannot be accepted in view of the overall similarity which is

evident from the holistic comparison of the Defendant's Products with the Plaintiffs' Products, therefore, the judgments in ***Kaviraj Pandit*** (supra), and ***Intex Technologies*** (supra) will not help the case of the Defendant.

20. The Plaintiffs have *prima facie* established the goodwill by showing the consistent and uninterrupted use of the Plaintiffs' Products since the last two and a half decades. Considering the sales turnover, it indicates that the Plaintiffs have a longstanding and formidable reputation.

21. The Defendant's Products were launched in 2016 and there is no dispute that the Plaintiffs' Products were well established in the market at the time of the launch of the Defendant's Products. Therefore, the Defendant cannot deny the Plaintiffs' goodwill or attempt to have a free ride on the same.

22. The Plaintiffs cannot claim monopoly on the use of blue, red, white or yellow colours or any other colour if they are considered individually. However, the distinctive combination, arrangement and presentation resulting in ensemble, which has been in use for a considerably long period have acquired secondary meaning in favour of the Plaintiffs' Products. Even though the individual components of the Plaintiffs' Trade Dresses are common to the trade, the overall get-up of the Plaintiffs' Trade Dresses requires protection. The rights of the Plaintiffs stem from the overall get-up of the Plaintiffs' Trade Dresses and not just the colours considered individually and therefore the judgments in ***Colgate Palmolive*** (supra), ***Britannia Industries*** (supra), ***ITC Ltd.*** (supra), ***RB Health*** (supra) and ***Reckitt Benckiser*** (supra) will not help the case of the Defendant.

23. The Defendant's reliance on third-party material does not disentitle the Plaintiffs as the Plaintiffs are not required to sue every small infringer as held in ***Pankaj Goel*** (supra), ***Corn Products*** (supra) and ***National Bell*** (supra).

24. The Plaintiffs have, *prima facie*, established distinctiveness in the Plaintiffs' Trade Dresses whereas the Defendant has not been able to establish any distinction between the Impugned Trade Dresses and the Plaintiffs' Trade Dresses. Accordingly, the Plaintiffs have been able to establish the ingredients of passing off as per the settled principles of law.

25. Considering the submissions made by the Parties and the case laws relied upon by them, it is directed that the Defendant, its proprietor, directors, partners, employees, servants, agents, franchises, representatives, suppliers, promoters and all acting on behalf of the Defendant are restrained from manufacturing, selling, offering for sale, advertising, directly and indirectly dealing with:

i. Toilet cleaners using the Trade Dress '



', which is deceptively similar to the Plaintiffs' Trade Dress '

' for the Plaintiffs' toilet cleaning products under the Mark 'HARPIC';

ii. Glass cleaners using the Trade Dress ‘  ’, which is deceptively similar to the Plaintiffs’ Trade Dress ‘  ’ for the Plaintiffs’ glass and house cleaning products under the Mark ‘COLIN’; and

iii. Disinfectants, using the Trade Dress ‘  ’, which is deceptively similar to the Plaintiffs’ Trade Dress ‘  ’ for the Plaintiffs’ disinfectant products under the Mark ‘LIZOL’.

26. The Application stands disposed of with the aforesaid directions.

TEJAS KARIA, J

MARCH 28, 2026/*‘AK’*