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

+ CS(COMM) 572/2021

BRITANNIA INDUSTRIES LTD Plaintiff

Through: Mr. Sandeep Sethi and
Mr. Rajshekhar Rao, Senior
Advocates with Mr. Sagar Chandra,
Ms. Ishani Chandra, Ms. Shubhie
Wahi and Ms. Sanya Kapoor,
Advocates.

versus

GOOD DAY ORAL CARE & ORS. Defendants

Through: Mr. G. Tushar Rao, Senior Advocate
with Mr. Mukul Kumar, Mr. Vizzy
George, Mr. Arunav Patnaik and
Mr. Sanjay Vashishtha, Advocates for
D-1.
Ms. Shweta Sahu for D-10.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **15.11.2021**

[VIA HYBRID MODE]

I.A. 14834/2021 (for exemption from filing clearer, typed copies, vernacular and originals of certain documents)

1. The Plaintiff shall file better copies of the exempted documents, compliant with the practice rules, before the next date of hearing.
2. The application stands disposed of.

I.A. 14833/2021 (under Order 11 Rule 1(4) read with Section 151 of the Code of Civil Procedure, 1908 seeking leave to file additional documents)

3. This is an application seeking leave to file additional documents under the Commercial Courts Act, 2015.
4. The Plaintiff, if they wish to file additional documents at a later stage, shall do so strictly in compliance with the provisions of the Commercial Courts Act, 2015.
5. Accordingly, the application stands disposed of.

I.A. 14835/2021 (for exemption from instituting pre-litigation mediation in accordance with Section 12A of the Commercial Courts Act, 2015)

6. Mr. G. Tushar Rao, Senior Counsel for Defendant No. 1 on instructions, states that the Defendants are not open to exploring the possibility of Mediation.
7. Accordingly, the application is allowed.
8. The application stands disposed of.

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9. Let the plaint be registered as a suit.
10. Issue summons. Summons are accepted by Mr. Mukul Kumar, counsel for Defendant No. 1 and Ms. Shweta Sahu, counsel for Defendant No. 10. Issue summons to the remaining Defendants, upon filing of process fee by the Plaintiff, returnable on the next date of hearing. The written statements shall be filed by the Defendants within 30 days from today or from the date of service of summons as the case may be. Along with the written statement, the Defendants shall also file an affidavit of admission/denial of the documents of the Plaintiff, without which the written statements shall not be taken on record.
11. Liberty is given to the Plaintiff to file replications within 15 days of

receipt of the written statements. Along with the replications, if any, filed by the Plaintiff, an affidavit of admission/ denial of documents of the Defendants, be filed by the Plaintiff, without which the replications 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.



12. List before the Joint Registrar for marking of exhibits on 3rd March, 2022. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

13. List before the Court for framing of issues thereafter.

I.A. 14832/2021 (under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 for interim injunction)

14. The Plaintiff by way of an accompanying suit seeks permanent injunction – restraining infringement of trademark, copyright, passing of, dilution, unfair competition, initial interest confusion, delivery up, rendition of accounts, damages etc.

15. Defendant No. 1 [Good Day Oral Care], is stated to be a manufacturer of the impugned product under the impugned mark “GOOD DAY” and is using the infringing trademark. Defendant No. 2 [JJ Dental Corporation], is the owner of the website on which the products of Defendant No. 1 are being displayed and sold. Defendant No. 3 [J.J. Orthodontics Pvt. Ltd.] and Defendant No. 4 [Mr. Mechery Johny Jiju John] are allegedly promoting and advertising the impugned products. It is averred that Defendant No. 4, in collusion with Defendant Nos. 1-3, Defendant No. 5 [Mr. Kundukulam Rapheal Margaret Sangeetha], Defendant No. 6 [Mr. Jose Johny Mecheri], Defendant No. 7 [Implant Genesis], Defendant No. 8 [Clearbite Aligners]

and Defendant No. 9 [32 Carrot], applied for the registration of the impugned mark/ device “GOOD DAY”/  bearing Application No. 4581719 on 27th July, 2020 in Class 3 and the Impugned Mark/Device “GOOD DAY”/  bearing Application No. 5131769 on 15th September, 2021 in Class 21. The impugned marks are currently under objection from the Trade Marks Registry. Further, as per the LinkedIn profile of Defendant No. 4, he claims to be the Managing Director of Defendant No. 1-3 and Defendant No. 7-8.

16. The case of the Plaintiff is as follows:

16.1. The Plaintiff has a registered trademark “GOOD DAY” which has been continuously and uninterruptedly used since 1986 for the goods *viz.* biscuits and cookies. The wordmark/ trademark “GOOD DAY” – bearing Registration No. 452003 in Class 30 has been in use since 3rd April, 1986 for goods being “*biscuits, bread and non-medicated confectionery*” and the wordmark/ trademark bearing Registration No. 4006020 in Class 30 since 23rd November, 2018 for goods being “*biscuits*”. Besides, the Plaintiff has several other registrations comprising of the wordmark “GOOD DAY” – both in India and abroad.

16.2. The details of the registration are set out in para 9 which are as follows:

<i>Trade Mark and Application No.</i>	<i>Class</i>	<i>Date of Application And User Claim</i>	<i>Class and Specification of Goods and Services</i>	<i>Status</i>	<i>Disclaimer Condition/ Association</i>
<i>GOODDAY 452003</i>	<i>30</i>	<i>Date of Application: 03/04/1986</i>	<i>Biscuits, Bread And Non Medicated</i>	<i>Registered and valid upto 03/04/2027</i>	

		<i>User Detail: Proposed to be used</i>	<i>Confectionary</i>		
<i>GOOD DAY 4006020</i>	<i>30</i>	<i>Date of Application: 23/11/2018 User Detail: 28/11/1986</i>	<i>Cakes; Biscuits; Bread; Buns; Rolls, Bakery Products; Coffee; Tea; Cocoa; Sugar; Rice; Tapioca; Sago; Artificial Coffee; Flour And Preparations Made From Cereals; Savories; Snacks; Cookies; Pastry And Confectionery; Ices; Honey; Treacle; Yeast; Baking Powder; Salt; Mustard; Vinegar Sauces (Except Salad Dressings); Spices</i>	<i>Registered and valid upto 23/11/2028</i>	<i>Associated Trade Marks 452003, 1448677, 2047527, 3780389, 3780390</i>


17. The Plaintiff claims that the wordmark “GOOD DAY” is a well-known mark and they have invested considerable time and resources for the promotion of products bearing the said trademark. The plaint sets out the sales pertaining to the product under the trademark “GOOD DAY”, as well as promotional expenses incurred by the Plaintiff. In support of this

contention, Plaintiff also relied upon the use of the “GOOD DAY” mark on various social media websites, details whereof are set out in paragraph 12 of the plaint.

18. Mr. Sandeep Sethi, Senior Counsel for the Plaintiff, along with Mr. Rajshekhar Rao, Senior Counsel, submit that in and around August, 2021, the Plaintiff was shocked to notice that the Defendant was using the mark “GOOD DAY” for Toothpaste – which is identical to Plaintiff’s well-known mark “GOOD DAY”. The Plaintiff also learnt that Defendant No. 1 is in fact operating a website under the domain name ‘gooddayoralcare.com’, which subsumes the Plaintiff’s well-known mark “GOOD DAY”. On a perusal of the impugned website, it was revealed that Defendant No. 1 had come up with three variants of the goods under the impugned mark, which are as indicated as follows:



19. Mr. Sethi relies upon several documents enclosed along with the plaint, including screenshots of the Defendants’ website affixed at paragraph 38 of the plaint, to argue that usage of identical mark by the Defendants is clearly an infringement.

20. He further submits that the *mala fides* of Defendants are evident from the fact that they not only adopted the impugned mark “GOOD DAY”, but also that they wrongly adopted several representations of the Plaintiff’s ‘smile device’ , as well, which when seen together are deceptively

similar to the Plaintiff's registered marks. Mr. Sethi submits that in view of the manner in which the Defendants are using the impugned trademark, it is evident that the general public would associate the Defendants' product with the Plaintiff's, and consequently, cause confusion in the eyes of the consumers. Mr. Sethi submits that there is sufficient material placed on record, which would indicate that the usage of the impugned mark by the Defendants would suggest an association and a mistaken identity with respect to the Plaintiff's mark.

21. Mr. G. Tushar Rao, Senior Counsel for Defendant No. 1, who appears on advance notice, makes the following submissions:

21.1. The mark "GOOD DAY" is generic mark and is being used by several other entities. In fact, the said mark has been registered in favour of under several other classes in favour of other entities. He submits that the Plaintiff, therefore, cannot claim a monopoly over the mark "GOOD DAY" or seek an injunction against the Defendants on this ground.

21.2. To support his submissions, Mr. Rao refers to the examination report pertaining to the Defendants' impugned mark, wherein the Trademarks Registry has pointed out that there is a conflicting mark "GOOD DAY", registered in favour of one Kerala Soaps and Oils Ltd. w.e.f. from 3rd November, 1982 – with respect to goods *being* 'Toothpaste', as well as, for goods *being* 'Agarbatti' in favour of another proprietor *viz.* Pitamber B. Ramnani w.e.f. 26th March, 1987. Mr. Rao submits that, in fact, there are more than twenty-five such registrations of the mark "GOOD DAY", and therefore, the Court may not grant an *ex-parte* order against the Defendants, and afford them an opportunity to them to

file a written statement and response to the application before passing any order(s).

21.3. Additionally, he submits that the Plaintiff has wrongly attempted to claim jurisdiction before this Court by making an online purchase of the Defendants' product. The documents submitted to that effect should be disregarded since such purchases were made only with the intent to show that this Court would have jurisdiction to entertain the present suit. But for these documents, the facts would indicate that the territorial jurisdiction would not lie before this Court, and instead shall lie in Chennai.

22. In rejoinder, Mr. Sethi has argued that the mark in question is a well-known mark. This, in fact, has been declared so by the Intellectual Property Appellate Board [*hereinafter*, '**IPAB**'], in order dated 23rd December, 2020 passed in ORA/68/2013/TM/AMD filed by the Plaintiff against one Mr. Rakesh Kumar Jain. Mr. Sethi submits that this matter was contested by the Respondent therein. The IPAB, after taking the note of the materials placed on record, was convinced that the Plaintiff's trademarks qualified as well-known marks within the ambit of Section 2(1)(zg) of the Trade Marks Act, 1999. Mr. Sethi refers to paragraph 47 of the afore-noted order to submit that the IPAB had found all the parameters in favour of the Plaintiff for consideration of the mark to be a well-known mark as specified under Section 11(6)(i) and Section 11(7) of the Trade Marks Act. Further, he submits that with this being the position, the use of the impugned mark by the Defendant is an infringement under Section 29(4)(b) of the Trade Marks Act. Mr. Sethi also submits that notwithstanding the registration of the trade mark "GOOD DAY" in favour of other entities, the Plaintiff is still entitled

to seek the injunction against the Defendants. He also pointed out in fact the two registrations referred to by Mr. Rao has since lapsed as per the data on the Trade Mark Registry website.

23. In support of his submissions, Mr. Sethi has relied upon the judgment of this Court in *Century Traders v. Roshan Lal Duggar*,¹ and *Dr Reddy's Laboratory v. Reddy Pharmaceuticals Limited*.²

24. The Court has considered the contentions urged by both parties. In the *prima facie* opinion of the Court, there is sufficient material placed on record by the Plaintiff which demonstrates that Plaintiff's mark has been acknowledged to be a well-known mark. The Plaintiff would, therefore, have a right to seek injunction relying upon Section 29(4) (b) of the Trade Marks Act 1999. Pertinently, the documents placed on record being the trademark application filed by Defendants, as pointed out by Mr. Sethi, demonstrates that as recently as 15th September, 2021, they have claimed the adoption of the impugned mark on "proposed to be used" basis. Thus, the Defendants are unable to convincingly demonstrate how the use of the impugned mark would not amount to infringement. The Court is presently concerned with the Defendant No. 1's use of the trademark, which is only recent and such adoption is *prima facie* not honest and is intending to take advantage of the reputation and goodwill of "GOOD DAY", which is likely to mislead an average man of ordinary intelligence. Therefore, regardless of the fact that there are previous registrations in respect of the mark "GOOD DAY" in favour of other entities, the Plaintiff would still be entitled to approach this Court.


¹ 1997 SCC Online Del 50.

² 2004 (76) DRJ 616.

25. Considering the circumstances noted above, the Court is not inclined to accept the Defendant's request to defer orders. All the rights and contentions are kept open for consideration at a later stage when the Defendants file their reply, however, at this stage, Plaintiff has established a *prima facie* case and the balance of convenience also lies in favour of the Plaintiff, and in case an *ex-parte* injunction is not granted, it is likely to cause irreparable loss to the Plaintiff.

26. In view of the above, the following reliefs are granted:

i) An *ad interim* injunction is passed against Defendant Nos. 1-9, their partners, proprietors, companies, sister concerns, directors, executives, as the case may be, its officers, servants and agents, assignees or anyone else acting for/and on their behalf from launching, selling (physically or on online platforms), manufacturing, advertising/marketing (in all media whatsoever, including but not limited to electronic media, social media, broadcast media and/or print media), offering for sale (physically or on online platforms) or in any manner dealing in goods, including but not limited to toothpastes and/or such allied and/or cognate goods bearing the impugned mark "GOOD DAY"

or device , and/or any other such mark/device, which is identical and/or deceptively similar to the Plaintiff's registered trademark "GOOD DAY";

ii) Defendant No. 10 is directed to suspend the impugned domain name '*gooddayoralcare.com*'.

27. Compliance in terms of Order XXXIX, Rule 3 of the Code of Civil Procedure, 1908, be done by the Defendants within two weeks from

today.

28. List before the Joint Registrar for completion of pleadings on 3rd March, 2022.

29. List before the Court on 4th December, 2021.

SANJEEV NARULA, J

NOVEMBER 15, 2021

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