

Radico Khaitan Ltd vs Vintage Distillers Ltd on 12 October, 2020

Author: Mukta Gupta

Bench: Mukta Gupta

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IN THE HIGH COURT OF DELHI AT NEW DELHI
CS(COMM) 441/2020
RADICO KHAITAN LTD.

Represented by:

Mr.Anirudh
Chandra, Mr.
Mr.Ayush Pu
Sinha and M
Advocates.

versus

VINTAGE DISTILLERS LTD.

Represented by: Mr.Ankit Popli, Adv

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA
ORDER

% 12.10.2020 The hearing has been conducted through Video Conferencing. I.A. 9247/2020 (exemption)

1. Allowed, subject to all just exceptions.

2. Original documents, if any, be filed within two weeks of the resumption of the normal functioning of the Court.

3. Application is disposed of.

I.A. 9246/2020 (under Order XI Rule 1 (4) Commercial Courts Act)

1. Additional documents be filed within 30 days.

2. Application is disposed of.

CS(COMM) 441/2020 I.A. 9245/2020 (under Order XXXIX Rule 1 and 2 CPC)

1. Issue summons in the suit and notice in the application to the defendants.

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2. Learned counsel for the defendant accepts summons in the suit and notice in the application.

3. Written statement and reply affidavit along with affidavit of admission/denial be filed within 30 days.

4. Replication and rejoinder affidavit, along with affidavit of admission/denial, be filed within three weeks thereafter.

5. List the suit and application on 17th February, 2021.

6. Case of the plaintiff is that the plaintiff is one of the India's largest liquor companies having 400 wholesale distribution centres and accounts for 95% of the retail outlets all over India. The plaintiff adopted the word mark 'MAGIC MOMENTS' in the year 1997 and thereafter has been selling Gin, Vodka etc. under the trademark 'MAGIC MOMENTS' from the year 2005-

o6. Over the years the plaintiff has launched many variants under the umbrella brand 'MAGIC MOMENTS' such as Remix (2008), Verve (2012) and Electra (2015). The plaintiff is not only the registered owner of the word mark 'MAGIC MOMENTS' with its variants but the owner of number of device marks with the mark 'MAGIC MOMENTS'. A list of the plaintiff's registrations of the word mark and device mark 'MAGIC MOMENTS' have been given in para-20 of the plaint. The said registrations are for alcoholic beverages, wine, liquors, whisky etc. in Class-33. Some of the registrations of the plaintiff's mark are:

Sl. No.

Trade Mark
&
Application
MAGIC MOMENTS
783401

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Signing Date:13.10.2020 07:06:56 This file is digitally signed by PS to HMJ Mukta Gupta 2 MAGIC MOMENTS EXTRA DRY GIN 1281759 3 MAGIC MOMENTS EXTRA DRY GIN 1281760 4 MAGIC MOMENTS EXTRA DRY GIN 1281761 5 MAGIC MOMENTS (LABEL) 1333996 6 MAGIC MOMENTS GRAIN VODKA (LABEL) Signing Date:13.10.2020 07:06:56 This file is digitally signed by PS to HMJ Mukta Gupta 1406196 7 MAGIC MOMENTS GRAIN VODKA (WITH LABEL) 1406198 8 VERVE MAGIC MOMENTS SUPER PREMIUM VODKA 2383766 9 VERVE MAGIC MOMENTS SUPER PREMIUM VODKA 2383768 10 M2 VERVE MAGIC MOMENTS SUPER PREMIUM VODKA 2399108 11 MAGIC MOMENTS ELECTRA AND DEVICE 2931033 12 M2 Magic Moments Electra Cosmopolitan Cranberry flavor Signing Date:13.10.2020 07:06:56 This file is digitally signed by PS to HMJ Mukta Gupta 2948227 13 M2 Magic Moments Electra Agent Orange Orange flavor 2948228 14 M2 Magic Moments Electra Starry Night Martini Chocolate & Coffee Flavour Label 3094089 15 M2 Magic Moments Electra Mojito Lemon & Mint Flavour Label

3099172 16 M2 Magic Moments Remix Grape Fruit & Watermelon Smooth Flavored Vodka Device
3596625

7. In the plaint the plaintiff has also given sales figures of its products under the various marks 'MAGIC MOMENTS' from the year 2005-06 to 2019-20. In the year 2019-20 the sales in India were 171238.26 lakhs and overseas 2169.28 lakhs.

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8. Grievance of the plaintiff in the present suit is to the adoption of the mark 'VINTAGE MOMENTS' by the defendant who has adopted this mark for the identical goods. Defendant has applied for the impugned trademark 'VINTAGE MOMENTS' in Class-33 on 26th August, 2020 on proposed to be used basis vide application No.4625185 for alcoholic beverages including Wines, Spirits, Whisky, Rum, Vodka, Gin and Brandy. The said mark has already been objected to by the Trademark Registry. The plaintiff has also screen shared the search on the Trademark Registry which shows that the pre-dominant marks registered with the word 'MOMENTS' belongs to the plaintiff and few marks registered otherwise have either been abandoned or are on proposed to be used basis for which, learned counsel for the plaintiff states, that as and when required action would be taken if necessary.

9. Considering the averments 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 ad-interim injunction is granted, the plaintiff will suffer and irreparable loss. Balance of convenience also lies in favour of the plaintiff.

10. Consequently, an ad-interim injunction is passed in favour of the plaintiff and against the defendant in terms of prayer (i) of para-6 of I.A.9245/2020 till the next date of hearing.

11. Order be uploaded on the website of this Court.

MUKTA GUPTA, J.

OCTOBER 12, 2020 'vn' Signing Date:13.10.2020 07:06:56 This file is digitally signed by PS to HMJ Mukta Gupta