

# Date Of Decision: 05Th July, 2021 In The ... vs Sagar Store & Ors on 5 July, 2021

**Author: Subramonium Prasad**

**Bench: Subramonium Prasad**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ CS(COMM) 299/2021

Date of decision: 05th July, 2021

IN THE MATTER OF:

SOCIETE DES PRODUITS NESTLE SA & ANR. .... Plaintiffs  
Through Mr.Hemant Singh, Advocate

versus

SAGAR STORE & ORS. .... Defendants  
Through Appearance not given.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

I.As. 7621-22/2021(Exemption) Allowed, subject to all just exceptions.

CS(COMM) 299/2021

1. Plaintiff be registered as a suit.

2. On the plaintiff taking steps, issue summons in the suit to the Defendants by all permissible modes. The summons shall indicate that the written statement be filed within 30 days from the date of receipt of the summons. Affidavit of admission/denial of the documents filed by the plaintiffs be filed along with written statement. Replication, thereto be filed within 30 days thereafter. Affidavit of admission/denial of documents filed by the defendants be filed with the replication.

3. List before the Joint Registrar concerned on 03.09.2021.

I.A. 7618/2021 (Stay) & I.A. 7619/2021(Under Order XXVI Rule 9 read with Order XXXIX Rule 7 and Section 151 CPC for appointment of Local Commissioner)

1. These applications are for grant of permanent injunction restraining defendants No.1, 2, 3 and 4 from infringement of trademark, copyright, of the plaintiffs and for appointing Court Commissioner(s) for seizure of the counterfeit MAGGI 2-Minutes Noodle products sold/manufactured by the defendants, who are not part of the instant suit.

2. Heard Mr. Hemant Singh, learned counsel for the plaintiffs and perused the material on record.
3. Issue notice to the defendants No.1, 2 and 3 through all modes returnable on 05.08.2021.
4. It is stated that Plaintiff No.1, Societe des Produits Nestle, S.A. is a company incorporated under the laws of Switzerland having its registered office at CH 1800, Vevey, Switzerland. It is stated that, Plaintiff No.2, Nestle India Limited ( hereinafter referred to as 'Nestle'), is a company incorporated under the Companies Act, 1956 and is one of the largest food and beverage companies in the world. It is stated that the Plaintiff No. 1 is the owner of all the trademarks used by the Plaintiff No.2. It is stated that is one of the well known and highly distinctive trademark of the plaintiffs in India since 1974. Nestle has evolved stringent norms for manufacturing its products which are well known and have established its niche in the international markets. The Nestle Group sells nearly 1 Billion products everyday under 2000 plus brands.
5. It is stated that he trademark MAGGI and (MAGGI logo) connotes and denotes source and origin of the goods and business of the plaintiffs exclusively. The plaintiffs have been manufacturing and selling variety of culinary products in India under the trademark MAGGI since 1974 under strict quality control. It is stated that as the proprietor of the trade mark MAGGI and (MAGGI logo) the plaintiffs have the exclusive right to use it. Plaintiff No.2 has been licensed and duly authorized by the plaintiff No.1 to use the trade mark MAGGI and (MAGGI logo) for manufacturing and selling products in India.
6. It is stated that apart from common law proprietary right, the plaintiffs also enjoy statutory right to the exclusive use of the trade mark MAGGI and (MAGGI logo) internationally as well as in India, conferred by the Act.
7. Mr. Hemant Singh, learned counsel for the plaintiffs states that one of the most popular products sold under the trade mark MAGGI is the MAGGI noodles famously known as '2-Minute Noodles' around the world which has been continuously and extensively since its adoption by the plaintiffs in the year 1983. It is stated that MAGGI 2-Minute Noodles product is consumed across the country and all segments of society including urban areas and the rural belt. The MAGGI 2-Minute Noodles of the plaintiffs is consumed by people of all ages, cultures, socio-economic background etc. and hence is one of the most famous products in the country known in every household comprising of different social strata.
8. It is stated that MAGGI 2-Minute Noodles has been extensively advertised through various media including TV network, newspapers, magazines, hoardings, sales promotional material, radio jingles, etc. at huge financial expense and thereby acquiring tremendous goodwill and reputation.
9. The MAGGI 2-Minute Noodles is sold in highly distinctive label, packaging, get-up, trade dress having a unique and impressionable overall label, packaging, get-up, trade dress which when arranged together, render a distinctive visual appearance.

10. It is stated that on 22.06.2021 the plaintiff received information through an independent investigator regarding manufacture and supply of counterfeit MAGGI 2-MINUTE NOODLES by the defendants in Delhi Markets on a huge scale. It is stated that defendant No.1 is a wholesaler located at A-Block, Jahangirpuri, Delhi and the defendant No.2, is a retailer located at D-8, Mahindra Park, Azadpur Mandi. The defendant No.3 is also a retailer located at G-60, Uttam Nagar, Near-Mother Dairy. The defendant No.4 having address at A-13, Naveen Vihar, Rajiv Nagar Extension is engaged in manufacture of the counterfeit MAGGI 2-Minute Noodles. It is stated that the defendants are collectively involved in the manufacture, supply and sale of counterfeit MAGGI 2-Minute Noodles. The plaintiffs have produced and compared the counterfeit products with the original products and have pointed out the difference in packaging of original products and the counterfeit products.

11. It is clear from the photographs provided by the plaintiff in the documents that a prima facie case is made out against the defendants that the defendants are engaged in manufacturing counterfeit MAGGI 2-Minute Noodles and are selling the same by infringing the plaintiffs' registered trade mark MAGGI and (MAGGI logo) and infringing the copyright, packaging of the plaintiffs'.

12. Accordingly the defendants, or their partners, employees, agents, distributors, and retailers are restrained from manufacturing and/or selling, dealing, offering for sale and advertising their products under the trade mark MAGGI and/or (MAGGI logo) and/or MAGGI 2-MINUTE NOODLES packaging of the Plaintiffs till the next date of hearing.

13. Mr. Hemant Singh, learned counsel for the plaintiffs states that apart from defendant No.4, there are several other persons who are indulging in production and sale of counterfeit MAGGI 2-Minute Noodles. He submits that the persons involved in these activities are currently unknown. He contends that unless immediate seizure and action is not taken against such persons involved in these counterfeit activities on the basis of the information, it will be impossible to control the counterfeit activities for manufacture and sale of counterfeit MAGGI 2-Minute Noodles. He submits that these products are manufactured in unhygienic conditions and can cause great harm to the health and well being of the consumers who buy these products on the belief that they are genuine.

14. This Court is inclined to pass orders in the nature of John Doe appointing Local Commissioners.

15. This Court appoints Mr. Rajat Khatri, Advocate (Mobile No. 9958319391) and Mr. Sohiti Chaudhary, Advocate (Mobile No. 9999091964) as the Court Commissioners who shall have the power to enter manufacturing facilities, godowns, locations, shops and establishments (collectively referred as "sites") of the defendants and other defendants (as may be identified from time to time by the authorized representative of the plaintiffs) and seize the products/goods, enveloped in the packaging which imitates the plaintiffs' packaging as also empty imitation packages, advertising material, labels etc. which bear a deceptive similarity to the plaintiffs' mark "MAGGI 2-Minute Noodles". The plaintiffs are directed to implead the parties/concerns (hereinafter called as "unknown defendants") as defendants in the suit.

16. This Court is inclined to pass the following directions:

i. The defendants/other defendants (i.e. unknown defendants) their partners, employees, agents, distributors, and retailers are restrained from manufacturing and/or selling, dealing, offering for sale and advertising their products in packaging which imitates that of the plaintiffs.

ii. The Court Commissioner(s) will draw up an inventory of the seized products/goods and aforementioned material. iii. The Court Commissioner(s) shall also seek and obtain particulars of the defendants such as their names and addresses (both business and residential) as also their mobile numbers and email addresses, if any.

iv. The Court Commissioner(s) will hand over the seized product/goods, packaging, advertising material and labels to the local Police Station. The Station House Officer (SHO) of the concerned area will render all possible assistance to the Court Commissioner(s) to facilitate the execution of the commission in terms of the mandate given above.

v. The samples be also sent to the laboratories under the Food Safety and Standards Act, 2006, for testing and further action be initiated against the concerned persons in case it is found that the items do not confirm to the standards of the Food Safety and Standards Act.

vi. The Court Commissioner(s) will file their report with this Court before the next date of hearing. For their efforts, the Court Commissioner(s), in the first instance, will be paid a fee of Rs.75,000/- each. In case the Court Commissioner(s) are required to visit, whether individually or together, more than two sites, additional fee will be paid after they submit their report to the Court. In addition thereto, the Court Commissioner(s) will also be reimbursed their out of pocket expenses, if any, incurred by them in the course of the execution of the commission. The burden of the fee and expenses will be borne by the plaintiffs.

vii. The Court Commissioner(s) as also the defendants who are likely to be impleaded will have the liberty to approach the Court for variation, modification or even vacation of the order passed by this Court.

viii. The Court Commissioner(s), while executing the commission, will bear in mind, that there is no intrusion of privacy or violation of norms or protocol put in place by the Government/Statutory authorities in connection with the Covide-19 pandemic.

17. It is made clear that all defences of fact and/or law shall be available to the defendants as also the other defendants who are likely to impleaded while presenting their stand before the Court in the instant suit action.

18. Let the provisions of Order XXXIX Rule 3 of the CPC be complied within five days of the receipt of a copy of this order.

19. The application i.e. I.A. 7619/2021 stands disposed of.

20. Since there has to be an element of surprise while conducting the aforementioned exercise, as requested by Mr. Singh, the Registry will upload the order passed today on the website of this Court on 12.07.2021.

21. List on 05.08.2021 before the Roster Bench.

22. Copy of the order be given dasti under the signature of the Court Master.

SUBRAMONIUM PRASAD, J.

JULY 05, 2021 hsk