



2025:DHC:6856



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

o/

*Judgment Reserved on: 13<sup>th</sup> May, 2025*  
*Judgment pronounced on: 14<sup>th</sup> August, 2025*

+ I.A. 14723/2023 & I.A. 20814/2023  
IN  
CS(COMM) 539/2023

RECKITT BENCKISER (INDIA)  
PRIVATE LIMITED

....Plaintiff

Through: Mr. C.M. Lall, Senior Advocate with  
Ms. Anuradha Salhotra, Ms. Ekta  
Sarin, Mr. Nikhil Sharma,  
Ms. Vanshika Arora and  
Ms. Annanya Mehan, Advocates.

versus

SAUSS HOME PRODUCTS PRIVATE  
LIMITED

....Defendant

Through: Mr. Gagan Gupta, Senior Advocate  
with Mr. Arkaj Kumar, Ms. Ramya  
Aggarwal, Mr. Aakarsh Mishra,  
Mr. Ishank Jha and Ms. Vaishnavi  
Bhargava, Advocates.

**CORAM:**  
**HON'BLE MR. JUSTICE AMIT BANSAL**

**JUDGMENT**

**AMIT BANSAL, J.**

1. By way of the present judgment, I shall decide I.A. 14723/2023 filed on behalf of the plaintiff under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure, 1908 (CPC) seeking interim injunction and I.A. 20814/2023 filed on behalf of the defendant under Order VII, Rules 10 and 11, CPC seeking return/rejection of plaint.



**I.A. 20814/2023 (u/O VII Rules 10 and 11, CPC)**

2. The present application has been filed on behalf of the defendant seeking return/rejection of plaint.
3. The principal ground taken by the defendant is that this Court lacks territorial jurisdiction to adjudicate the present suit on the ground that the plaintiff's registered office is situated in Haryana.
4. It is submitted that as per Section 134 of the Trade Marks Act, 1999 and/or Section 62 of the Copyright Act, 1957, the plaintiff cannot claim jurisdiction of this Court since it does not carry on business or personally works for gain in Delhi.
5. It is further stated that not only does the defendant not have any office in Delhi, but no alleged infringing goods are available in the territorial jurisdiction of this Court. The invoice produced by the plaintiff also arises out of sale by one 'Mangal Trading Company', based in Krishna Nagar, Mathura, Uttar Pradesh.
6. It is the settled position of law that an application under Order VII, Rules 10 and 11 has to be decided on the basis of a demurrer; the Court has to refer only to the averments made in the plaint along with the documents filed with it for the purpose of deciding this application. No reference can be made to the written statement filed by the defendant or on any other document filed by the defendant.
7. At this stage, reference may be made to the relevant paragraph in the plaint dealing with the issue of the jurisdiction. Paragraph 34 of the plaint is set out below:-

*"34. This Hon'ble Court has the necessary territorial jurisdiction to entertain and try the present suit, under Section 20 of the Code of Civil*



*Procedure, 1908 as the cause of action for the present suit has arisen within the Jurisdiction of this Hon'ble Court. **The Defendant is selling the products bearing the device of Robin bird in Delhi.** Additionally, the Defendant is also offering for sale, advertising and promoting its goods bearing the device on the website viz. IndiaMart.com which is accessible in New Delhi.”*

8. The plaintiff has also placed on record an invoice to show that the products of the defendant have been shipped to a consignee in Delhi for purposes of sale. (pages 15-17, volume 1 of the plaintiff's documents).

9. Further, in a suit filed by the defendant before the Commercial Court in Agra, the defendant herein (plaintiff in the suit) has specifically averred that its goods bearing the device mark of the bird are sold all over India. The relevant pleadings from the plaint before the Agra Commercial Court are set out below: -

*“12. That the Plaintiff has also spent substantial amount in advertising its said products in India and thus, have earned valuable goodwill and reputation among the public and trade in India.”*

*“18. That the Plaintiff is the Registered Owner of the trade/ device mark, DEVICE OF BIRD under the Trade Marks Act, 1999 and the Copyright Act, 1957 and is continuously using the said mark/device since the year 1976 without any hindrance or interference and is known for its quality goods all over India. Thus, the Defendant has no justification for adoption and use of the trade/ device mark(s)...”*

10. Basis the averments made in the plaint along with the documents filed therewith, at this stage, the plaintiff has established jurisdiction of this Court. Therefore, in light of the above, I do not find any merit in the present application filed by the defendant and the same is accordingly dismissed.

**I.A. 14723/2023 (u/O XXXIX Rules 1 and 2, CPC)**

11. The present application has been filed on behalf of the plaintiff



seeking grant of an interim injunction against the defendant.

12. The present suit has been filed seeking relief of permanent injunction restraining the defendant from infringing the trademarks and copyright of the plaintiff and passing off their business as that of the plaintiff and other ancillary reliefs.

13. Summons in the present suit were issued on 8<sup>th</sup> August 2023 and the defendant entered appearance on 18<sup>th</sup> October 2023.

14. Notice in the present application was also issued on 8<sup>th</sup> August 2023. However, no *ad interim* injunction order was passed in favour of the plaintiff.

15. Pleadings in the suit, as well as the present application, stand completed.

16. Thereafter, the matter was listed on various dates and submissions on behalf of the counsel for the parties in the present application were heard on 6<sup>th</sup> March 2025, 24<sup>th</sup> April 2025 and 13<sup>th</sup> May 2025, when the judgment was reserved.

### **CASE SET UP IN THE PLAINT**

17. Briefly stated, the case set up in the plaint is as follows: -

- I. The Plaintiff, Reckitt Benckiser India Private Limited, is an Indian company which is a wholly owned subsidiary of Reckitt Benckiser Group plc. (hereinafter 'Reckitt Group'). The plaintiff carries on business in the field of Fast Moving Consumer Goods (FMCG), including but not limited to bleaching preparations and other substances for laundry use, cleaning preparations and fabric stain-removing preparations.
- II. The Reckitt Group has been in existence for over 200 years and



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has operations in more than 60 countries with products sold in nearly 200 countries. It also has approximately 45 manufacturing facilities worldwide and employs around 40,000+ people worldwide.

- III. The annual turnover of the plaintiff in India for FY 2021-2022 is INR 8,000 Crores while the Reckitt Group has a global turnover of USD 17 Billion (INR 1,41,000 Crores).
- IV. The Reckitt Group adopted the trade mark 'ROBIN' in the year 1899 along with the device of the bird for use upon and in relation to its rice starch meant for the purposes of cleaning.
- V. Since the year 1899, the Reckitt Group has been continuously using the device of 'Robin' bird along with the word 'Robin', extensively in many countries across the globe. The 'Robin' marks of the Reckitt Group has been advertised extensively.
- VI. The plaintiff's first registration of 'Robin' bird device in India dates back to the year 1942. Since then, the plaintiff has applied for and secured registrations of the device of 'Robin' bird, including composite trademarks containing the device of the 'Robin' bird. A table containing various registrations granted in favour of the plaintiff are given in paragraph 10 of the plaint.
- VII. The plaintiff's first trademark registration for the mark



in India bearing no.797954 (hereinafter 'subject device mark') was granted on 7<sup>th</sup> April, 1998 in class 3 on a '*proposed to be used*' basis, and the first Copyright registration for



the same was obtained in 2001.

- VIII. The plaintiff has extensive sales for products sold under the trade mark 'ROBIN' and the device of 'Robin' bird in India, details of which are given in paragraph 15 of the plaint.
- IX. On or about May 2017, the plaintiff came to learn that the defendant has filed an application bearing no. 3446472 in class 35 seeking registration of a composite label mark containing the device of a bird, depicted in an identical manner as that of plaintiff's device of the 'Robin' bird, claiming use since 1<sup>st</sup> April, 1976. The plaintiff filed its notice of opposition bearing no.888617 against registration of the said mark.
- X. In the aforesaid opposition proceedings, the defendant neither filed a counter-statement nor did they file any evidence in support of their application.
- XI. Despite the aforesaid opposition proceedings, the defendant continued to file cleverly drafted trademark applications for the subject device mark with different descriptions without describing the device as that of a 'Robin' bird device with the intention to evade scrutiny. The defendant was granted registrations for the device mark through the said applications.
- XII. The defendant had filed a suit before the Commercial Court, Agra, i.e. Original Suit No.8/2023 (hereinafter 'Agra Suit') on 25<sup>th</sup> May, 2023 seeking a decree of permanent injunction against the plaintiff (defendant therein) from using the subject device mark. In the Agra Suit, an *ex parte ad interim* order dated 29<sup>th</sup> May, 2023 (page



1112, volume 1 of the plaintiff's documents) was passed in favour of the defendant herein, restraining the plaintiff herein from using the subject device mark.

XIII. Against the said order, an appeal was filed by the plaintiff herein before the Allahabad High Court, being FAOD no.670 of 2023 and *vide* order dated 21<sup>st</sup> June, 2023 (page 1116, volume 1 of the plaintiff's documents), the injunction order passed by the Agra Commercial Court was stayed.

18. Aggrieved by the use of the impugned mark by the defendant, the present suit was filed seeking a decree of permanent injunction on the basis of infringement and passing off, along with other ancillary reliefs.

#### **CASE SET UP IN THE WRITTEN STATEMENT**

19. In the written statement filed on behalf of the defendant, it has been pleaded as under: -

- I. The defendant, Sauss Home Products Private Limited, is a company incorporated under the Companies Act, 2013, which is engaged in, *inter alia*, the business of manufacturing and marketing of washing soap, washing powder, detergent powder and cake and their allied products.
- II. The defendant has honestly and with *bona fide* intentions, adopted



the trade/device mark of a bird, i.e. in the year 1976 through their predecessor, 'Sabun Oudyogic Utpadan



*Sahakari Samiti Ltd.*' which was the first owner of the artistic work of the bird device mark and had been using the said mark(s) in respect of the above-mentioned goods ever since.

III. The defendant is the true registered owner and/or legitimate



proprietor of the trade/device mark of a bird, i.e.

and the artistic work in the said device which corresponds to multiple copyright registrations granted in favour of the defendant, all of which are valid and subsisting. The details of the registrations obtained by the defendant are given in paragraph 7 of the written statement.

IV. The plaintiff's marks are invalid. The defendant has filed rectification petitions against trademark registrations granted in favour of the plaintiff.

V. No infringement suit is maintainable against the defendant since the defendant holds valid registrations for bird device marks that it is using.

### **SUBMISSIONS OF THE PLAINTIFF**

20. Mr. C.M. Lall, learned senior counsel appearing on behalf of the plaintiff has made the following submissions: -

- i. There is no dispute between the parties that the rival marks are identical, as both parties have filed opposition and/or rectification proceedings against each other's trademark applications/registrations granted in their favour for the bird device mark.



- ii. The defendant's bird device mark is virtually identical to the plaintiff's in all material aspects such as colour scheme, layout, get-up etc.
- iii. The plaintiff is the prior user and registered proprietor of the subject device mark. The defendant has not filed any document to establish use of the bird device mark since 1976 and has filed no document to show use prior to that of the plaintiff's registered mark.
- iv. Owing to the significant sales and advertising of the products bearing the subject device mark, the plaintiff has acquired substantial goodwill and reputation in the market in the subject device mark.
- v. The 2-page document relied on by the defendant in support of prior use, i.e. 'Sainik Newspaper', is manufactured/fabricated and cannot be relied upon.
- vi. The interim application in the Agra Suit has been dismissed by the Commercial Court, Agra *vide* order dated 25<sup>th</sup> February, 2025 (PDF page 813, volume 4 of the plaintiff's documents). No appeal against the said order has been filed till date.
- vii. There is no delay in filing the present suit at the plaintiff's end as the plaintiff only became aware of the use of the subject device mark in March, 2023.

### **SUBMISSIONS OF THE DEFENDANT**

21. Mr. Gagan Gupta, learned senior counsel appearing on behalf of the defendant has made the following submissions: -
  - i. The defendant is clearly the prior user of the subject device mark. The earliest registration granted in favour of the defendant for the subject device mark is dated 22<sup>nd</sup> June, 2006 in class 3, claiming user since 1<sup>st</sup>



April 1976.

- ii. The earliest documents evidencing use of the subject device mark by the plaintiff are from the years 2006-2007, which is subsequent to the defendant's adoption of the subject device mark.
- iii. The plaintiff has filed oppositions against four trademark applications of the defendant. Pleadings of the plaintiff in the said proceedings amount to an admission of non-use prior to the defendants.
- iv. Despite being aware of the use since May, 2017, the plaintiff only filed the present suit in August, 2023, hence the plaintiff suffers from delay and laches.

### **ANALYSIS AND FINDINGS**

22. I have heard the counsel for the parties and perused the material on record.

23. It is an undisputed position that both the plaintiff and the defendant have obtained multiple registrations for the subject device mark under the provisions of the Trade Marks Act, 1999 and the Copyright Act, 1957.

24. The present suit has been filed by the plaintiff for infringement as well as passing off. Under Section 27(2) of the Trade Marks Act, an action on the basis of passing off is maintainable *dehors* the registration granted under the Trade Marks Act. A reference may be made to the judgment of the Supreme Court in *S. Syed Mohideen v. P. Sulochana Bai*<sup>1</sup>, wherein the Supreme Court has held that the rights of the prior user are superior to the rights of a subsequent user emerging out of registration. Therefore, I proceed to decide the present application on the principles of passing off.



25. At the outset, it may be relevant to see a comparison of the marks

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<sup>1</sup> (2016) 2 SCC 683



used by the plaintiff and the defendant. The same set out below: -

Reckitt's Trade Mark	Sauss's Mark
	

26. The comparison above would show that the two marks are nearly identical. Not only is the shape of the bird deceptively similar, but the colour scheme, layout and copyright are also almost identical. Further, both the plaintiff and the defendant are using the subject device mark for identical goods, i.e. laundry and cleaning goods. Therefore, the only relevant question before this Court at this stage is to determine who is the prior adopter and user of the subject device mark.

27. It is the case of the plaintiff that it engaged the services of a famous artist, Mr. Shombit Ranjan Sengupta, to design the subject device of the 'Robin' bird. This is demonstrated from an Article on an interview with the said artist published in the 'Hindu Business Line' dated 1<sup>st</sup> July, 1999 (page 7, volume 2 of the plaintiff's documents) wherein the artist has explained the process of creating the subject device mark. Further, the Article also notes that products bearing the subject device mark were rolled out for sale nationally from November, 1998 and that the sales of the plaintiff's product have grown since the adoption of the subject device mark.

28. In support of its user, the plaintiff has also placed on record a Chartered Accountant (CA) certificate dated 2<sup>nd</sup> August, 2023, showing significant sales of goods bearing the trademark of 'Robin' and the 'Robin' Bird device from 2000 till 2023 (page 741, volume 1 of the plaintiff's



documents). It is evident from the CA certificate that the plaintiff has impressive sales for the products under the subject device mark. For the year 2022 alone, the sales figures are to the tune of Rs. 23 Crores.

29. Based on the averments made in the plaint and the documents placed on record, at a *prima facie* stage, the plaintiff has been able to establish its goodwill and reputation in the subject device mark. Further, the plaintiff has also been able to establish, on a *prima facie* basis, use of the subject device mark, at the very least, since the year 2000.

30. On the other hand, the defendant's earliest trademark application bearing the subject device mark dates back to 22<sup>nd</sup> June 2006, with a claimed prior use of 1<sup>st</sup> April 1976. The defendant published a caution notice with respect to said mark on 2<sup>nd</sup> April, 2006 in the 'Dainik Jagran' newspaper, Bareilly Edition (page 28, volume 1 of the defendant's documents).

31. On 12<sup>th</sup> December, 2007, the defendant was granted copyright registration bearing no. A-81661/2007 for its bird device mark, once again claiming first publication in 1976 (page 363, volume 1 of the defendant's documents).

32. In support of its user of the bird device from 1976, the defendant has filed two pages of one 'Sainik Newspaper', Agra dated 21<sup>st</sup> September, 1997 (PDF page 36, volume 2 of the defendant's documents). The aforesaid document was first filed in the present suit on 3<sup>rd</sup> October, 2023 pursuant to the order passed by this Court on 8<sup>th</sup> August, 2023, directing the parties to file their best evidence, including newspaper advertisements, in order to show prior user and adoption of the subject device mark. Pertinently, the 'Sainik Newspaper' was not filed by the defendant either with the plaint in



the Agra Suit or in any of the opposition proceedings before the Trade Mark Registry.

33. The 'Sainik Newspaper' filed by the defendant is dated 21<sup>st</sup> September, 1997. Pertinently, the newspaper carries news reports in respect of events which happened much after the year 1997, as detailed below.

34. The 'Sainik Newspaper' carries an Article which states that on September 20, 1997, Pakistan conducted tests of its Babar missile. The plaintiff has placed on record news articles from reputed national newspapers [Hindustan Times (English edition), PDF page 1360, Volume 2 of the plaintiff's documents and Navbharat Times (Hindi edition), PDF page 1360, Volume 2 of the plaintiff's documents] that show that the test of Babar missiles by Pakistan occurred on 12<sup>th</sup> August, 2005.

35. Similarly, the 'Sainik Newspaper' carried another Article relating to an attack on the USA's Ambassador's in car in Peshawar, Pakistan. As per newspapers placed on record by the plaintiff, [Hindustan Times (English edition), PDF page 1457, Volume 2 of the plaintiff's documents], the event occurred on 4<sup>th</sup> September, 2012 and not in 1997.

36. Counsel for the defendant does not dispute that the aforesaid events reported in the 21<sup>st</sup> September, 1997 edition of the 'Sainik Newspaper' occurred at a much later point in time. The only defence offered by the defendant is that the defendant cannot be held responsible if the newspaper has published false news of events which happened much after the date of publication. It is submitted that the newspaper editor can be summoned and an explanation can be sought from him.

37. There is no need to summon the editor of the 'Sainik Newspaper' at this stage, as at this stage, the Court only has to take a *prima facie* view for



deciding the present application. Based on the facts narrated above, on a *prima facie* view, it appears that the aforesaid newspaper is a manufactured/fabricated document and has been filed in the present suit only for the purposes of establishing prior use of the subject device mark since 1997 by the defendants.

38. The defendant has also placed reliance on the following documents to show their prior user of the subject device mark: -

- a) Certificate from the Deputy Commissioner, Sales Tax dated 20<sup>th</sup> January, 2009 showing sales from 1975 to 2009 (page 237, volume 1 of the defendant's documents).
- b) Chartered Accountant certificate 3<sup>rd</sup> May, 2023 for depicting sales figures of the defendants from the year 2017 till 2023 (page 235, volume 1 of the defendant's documents).

39. The only reference in the said documents is to the mark 'Pooja'. There is no reference to the 'Robin' device mark.

40. On a *prima facie* view, the documents filed by the defendant to establish prior use do not inspire confidence. Therefore, I am unable to accept the contention of the defendant that it adopted and has been using the subject device mark since 1<sup>st</sup> April, 1976. Consequently, in my *prima facie* view, the plaintiff has been able to establish its prior use and adoption of the aforesaid mark.

41. In fact, a similar view was taken by the Commercial Court, Agra in the order dated 25<sup>th</sup> February, 2025, while dismissing the application seeking interim injunction. It was held that none of the documents placed on record by the defendant (plaintiff therein) were able to show that the defendant was using the subject device mark since 1976.



42. It has also been contended on behalf of the defendant that the plaintiff did not use the 'Robin' device mark, and this fact has not been denied by the plaintiff in the counter-statement filed in the rectification petitions of the defendant. A bare perusal of the counter-statement filed by the plaintiff reflects that the plaintiff has specifically denied the contention of the defendant with regard to non-use (paragraph 33 of the counter-statement, page 521, volume 1 of the plaintiff's documents).

43. The defendant further contends that the plaintiff became aware of the defendant's use of the subject device mark in 2017 when the plaintiff came across the defendant's application seeking registration of a label bearing the subject device mark and filed an opposition against the same. Hence, the present suit has been filed in a highly belated manner.

44. The plaintiff submits that since the defendant never filed any counter-statement or evidence in support of its use in the aforesaid opposition proceedings, the plaintiff had no reason to believe that the defendant was using the subject device mark. Subsequently, the plaintiff became aware of later trademark registration applications filed by the defendants for the subject device mark in August, 2022. Immediately upon getting to know of the defendant's applications, the plaintiff filed notices of opposition. A legal notice was also served by the plaintiff on the defendant in March, 2023 and the present suit was filed in August, 2023. Therefore, in these circumstances, it cannot be said that there was a delay in filing the present suit.

45. In any event, it is a settled position of law that delay cannot be a defence in an action for infringement and passing off in a case where the defendant's adoption of the mark itself is dishonest. In this regard, a reference may be made to the judgment in *Hindustan Pencils Private*



*Limited v. India Stationery Products Co.*<sup>2</sup>, wherein it was held that mere inordinate delay cannot, by itself, create a bar from the grant of an interim injunction, especially in cases where the use of the mark by the defendant is fraudulent in nature. Further, in *Midas Hygiene Industries v. Sudhir Bhatia*<sup>3</sup>, the Supreme Court has held that in an action for infringement of trade mark, mere delay in instituting the suit is not sufficient to deny the relief of injunction.

46. In my considered view, the adoption of the subject device mark by the defendant is not honest and *bona fide*, and it appears the same has been adopted only to ride on the goodwill and reputation of the plaintiff.

47. In view of the discussion above, a *prima facie* case of passing off is made out on behalf of the plaintiff. The competing marks are identical and are used by the parties in relation to identical goods, i.e. laundry and cleaning products, which is likely to cause confusion and deception among the consumers who are ordinary persons of average intelligence and imperfect recollection. The balance of convenience is also in favour of the plaintiff and against the defendant.

48. Irreparable harm and injury would be caused not only to the plaintiff but also to the public at large if the defendant continues to use the infringing mark.

49. Accordingly, the defendant, its directors, employees, agents, servants, dealers, distributors, stockists, licensees and all persons and/or entities claiming through it are restrained from passing off the plaintiff's registered trademarks as detailed in paragraph 10 of the plaint, including the 'Robin'

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<sup>2</sup> AIR 1990 DELHI 19

<sup>3</sup> (2004) 3 SCC 90




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bird device mark  , or any other identical/deceptively similar mark, in any manner whatsoever, till the final adjudication of this suit.

50. Further, the defendant, its directors, employees, agents, servants, dealers, distributors, stockists, licensees and all persons and/or entities claiming through it are restrained from infringing the plaintiff's copyright in artistic work registered under no. A-59491/2001 by reproducing, printing, publishing, using and/or communicating to the public the device of bird



 and/or any other work which is a reproduction of the artistic work comprised in the plaintiff's copyright or any substantial part thereof, in any manner whatsoever, till the final adjudication of this suit.

51. Needless to state, any observations made herein are only for the purpose of adjudication of the present application and would have no bearing on the final outcome of the suit.

52. The present application stands disposed of in the above terms.

**AMIT BANSAL  
(JUDGE)**

**AUGUST 14, 2025**

*Vivek/-*