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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 435/2022, I.A. 9740/2022, I.A. 15363/2022 & I.A. 5659/2023

M/S GLOBUS SPIRITS LTD. Plaintiff
Through: Mr. Amit Jain, Ms. Sheril Bhatia
and Ms. Sreelakshmi Menon, Advs.

versus

WILD BERRIES BOTTLING PVT. LTD. Defendant
Through: Ms. Ridhima Purohit and Mr.
Saubhagya Agarwal, Advs.

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER (O R A L)

% **29.03.2023**

1. This dispute between the parties stands settled and I.A. 5659/2023, as a joint application under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 (CPC), has been filed. The settlement agreement dated 2nd March 2023, executed under the aegis of the Delhi High Court Mediation and Conciliation Centre, is annexed to the application.

2. The terms of settlement read thus:

“1. That the Parties hereby agree that adoption of the mark 'WILD LAKE', 'WILD LACE' and 'WHITE LAKE' by the Second Party was not malafide and any similarity was only coincidental.

2. The Parties hereby settle with respect to all and every claim, relief, liability, loss and/or damage of whatsoever nature against each other, that have been raised or may have been raised, pleaded, disclosed,

referred to and/or relied on, in relation to the matters pleaded in the CS Comm No. 435 of 2022, Opposition bearing No. 860585 filed in Trademark Application No. 4960980, Opposition bearing No. 1170337 filed in Trademark Application No. 4979638 and Rectification Petition No. 275469 filed in Trademark Registration No. 502421.

3. It is further agreed that no further dispute shall be raised by Parties with regard to this subject matter.

4. It is agreed that the Second Party is allowed to use and sell its pending stock of 2,61,000 bottle caps and the First Party shall neither directly nor indirectly interfere or disturb such sale.

5. It is agreed that the First Party shall not interfere directly or indirectly, with the sale of Second Party's stock of 365 cases provided the Second Party sells it by changing the old label with its new label.

6. It is further agreed that the First Party shall neither directly nor indirectly interfere/object or disturb the sale of Second Party's goods under its mark 'WILD LAKE' and 'WILD LACE' for the stock lying with the Rajasthan State Ganganagar Sugar Mills Ltd.

7. It is agreed that the First Party hereby specifically give up all claims arising against the Second Party as raised in the present suit etc and shall withdraw all the pending Litigations / Suits / Oppositions / Rectifications, instituted against the trademarks of Second Party as provided in Clause B of the Settlement Agreement, before the Hon'ble High Court of Delhi and Registrar of Trademarks.

8. It is agreed that the First Party shall not file any opposition to the trademark registration of new mark of the Second Party i.e. 'WILD BERIBS ORANGE VODKA', as filed under Application No. 5551096 and 'WILD BERIES ROSE; WILD BERIES ORANGE; WILD BERIES MINT', as filed under Application No. 5525278 or any other associated mark that the Second Party would file for registration in future.

9. It is agreed that the First Party shall not interfere/object to the usage of the mark 'WILD BERIES' for Second Party's Lime Vodka or any other flavor of Vodka or any other type of liquor.

10. It is agreed that the First Party shall not raise any dispute against Second Party regarding the First Party's bottle design registered under the Design Act, 2000 as 330932-001.

11. It is agreed that the Second Party shall abandon the usage of its mark 'WILD LACE', 'WILD LAKE' and 'WHITE LAKE' and its

trademarks under Application no. 4960980, 4979638 and 5028421 respectively, unless in the manner prescribed under the Said Order or agreed upon and mentioned in this Settlement Agreement.

12. It is agreed that the Second Party shall not adopt any new mark that is identical/ deceptively similar to the trademarks of First Party.

13. It is agreed that the Second Party shall pay a sum of Rs. 3,00,000/- (Indian Rupees Three Lakhs Only) to the First Party as an adhoc settlement amount for settlement of all the disputes and claims stated and discussed hereinabove between the Parties. The aforesaid amount shall be paid to the First Party by the Second Party by way of a demand draft which shall be tendered to the First Party upon the withdrawal of the suit CS (Comm) 435 of 2022.

14. The Second Party shall be entitled to a refund of the amount of Rs. 5,00,000/- (Indian Rupees Five Lakhs Only) deposited by the Second Party with the Registrar General of the Hon'ble Court and as per the order of the Hon'ble Court, and the First Party shall not claim any right on it or its part thereof.

15. It is agreed by the Parties that the cost incurred in instituting and representing the pending Litigations/Suits/Oppositions/Rectifications before the Hon'ble High Court of Delhi and Trademark Registry, will be borne by Parties themselves. No Party shall be held responsible or accountable for such cost/expenses incurred.

16. It is agreed by both the Parties that they shall refrain from taking any course of action contrary to the agreed terms and conditions herein.

17. In case, any of the Parties is in breach of the present Settlement Agreement, then such Party shall be liable, to pay damages amounting Rs. 2,00,000/-, to the other Party for which the other Party shall have the right to approach the Courts in addition to any other legal right.

18. Neither this Settlement Agreement nor the rights or obligations hereunder may be assigned, transferred, licensed, sub-licensed, contracted or sub-contracted directly or indirectly by any of the Parties hereto save with the prior written consent of the other Parties hereto.,

19. It is agreed that this Settlement Agreement shall be binding on the Parties, their successors in interest, and present and future Affiliates, Subsidiaries, assignees or acquirers, including any acquirer of substantially all of the assets of a Party.

20. The Parties have settled their dispute out of their own free will, without any fear, force, coercion or undue influence from any quarter, and after examining all probabilities. The Parties undertake to abide by the terms and conditions mentioned herein.

21. The Parties undertake that they are bound by this Settlement Agreement and further undertake to abide by the terms and conditions set out in the Settlement Agreement and not to dispute the same hereinafter in future.

22. By signing this Settlement Agreement, the Parties hereto state that they have no further claims or demands against each other arising out of the present Commercial Suit and have settled their disputes and differences arising out of the present Commercial Suit amicably through the process of Mediation.”

3. Learned Counsel Mr. Amit Jain on behalf of the plaintiff and Mr. Saubhagya Agarwal on behalf of the defendant are present in Court.

4. A draft of ₹ 3,00,000/- in terms of para 13 of the terms of settlement has been handed over by Mr. Agarwal to Mr. Jain in Court.

5. Though Mr. Agarwal points out that, strictly speaking, the terms of settlement envisaged withdrawal of the suit by the plaintiff, he has no objection to the suit being decreed in accordance with the terms of settlement set out hereinabove.

6. As such, nothing survives for adjudication in the suit.

7. The suit stands decreed as per the aforesaid terms of settlement by which the parties shall remain bound.

8. Let a decree sheet be drawn up accordingly.

9. The plaintiff shall be entitled to refund of Court fees, if any, deposited by it.

10. The Registry is directed to refund the amount of ₹ 5,00,000/- which stands deposited by the defendant with the Registry in terms of order dated 8th August 2022 on the defendant approaching the Registry in that regard.

11. The stock of infringing goods, seized by local Commissioner on 21st June 2022 is also directed to be released to the defendant, to be disposed of according to the aforesaid terms of settlement.

C.HARI SHANKAR, J

MARCH 29, 2023

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