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

+ CS(COMM) 441/2020

RADICO KHAITAN LTD. Plaintiff

Represented by: Mr.Anirudh Bakhru, Ms.Ishani
Chandra, Mr.Ankit Rastogi,
Mr.Ayush Puri, Mr.Raghu Vinayak
Sinha and Ms.Ritika Sharma,
Advocates.

versus

VINTAGE DISTILLERS LTD. Defendant

Represented by: Mr.Ankit Popli, Advocate.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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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.

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 2005-06. 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 No.
1	MAGIC MOMENTS 783401

2	<p>MAGIC MOMENTS EXTRA DRY GIN</p>  <p>1281759</p>
3	<p>MAGIC MOMENTS EXTRA DRY GIN</p>  <p>1281760</p>
4	<p>MAGIC MOMENTS EXTRA DRY GIN</p>  <p>1281761</p>
5	<p>MAGIC MOMENTS (LABEL)</p>  <p>1333996</p>
6	<p>MAGIC MOMENTS GRAIN VODKA (LABEL)</p>

	 <p>MAGIC MOMENTS GRAIN VODKA</p> <p>1406196</p>
7	<p>MAGIC MOMENTS GRAIN VODKA (WITH LABEL)</p>  <p>MAGIC MOMENTS GRAIN VODKA</p> <p>1406198</p>
8	<p>VERVE MAGIC MOMENTS SUPER PREMIUM VODKA</p> <p>2383766</p>
9	<p>VERVE MAGIC MOMENTS SUPER PREMIUM VODKA</p>  <p>VERVE MAGIC MOMENTS SUPER PREMIUM VODKA</p> <p>2383768</p>
10	<p>M2 VERVE MAGIC MOMENTS SUPER PREMIUM VODKA</p> <p>2399108</p>
11	<p>MAGIC MOMENTS ELECTRA AND DEVICE</p>  <p>MAGIC MOMENTS ELECTRA APPLETINI</p> <p>2931033</p>
12	<p>M2 Magic Moments Electra Cosmopolitan Cranberry flavor</p>  <p>MAGIC MOMENTS ELECTRA COSMOPOLITAN CRANBERRY</p>

	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.

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
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