HIGH COURT OF DELHI

CORAM: JUSTICE PRATHIBA M. SINGH

Date of decision: 02nd April, 2024

CS(COMM) 495/2019 & I.A. Nos. 12513/2019, 14284/2019, 2650/2021, 14468/2022

HALDIRAM INDIA PVT. LTD …PLAINTIFF

VERSUS

BERACHAH SALES CORPORATION & ORS …DEFENDANTS

Legislation:

Sections 2(1) (zg), 11(6) of the Trade Marks Act, 1999
Section 16(1)(b) of the Companies Act, 2013
Order IX Rule 6, Order XVII Rule 3 of the Civil Procedure Code
Section 2(c) of the Copyright Act, 1957
Commercial Courts Act, 2015
Delhi High Court (Original Side) Rules, 2018

Subject: Intellectual property rights infringement suit concerning the 'HALDIRAM' trademark for food products and restaurants – Declaration of the mark as well-known, and restraining the Defendants from using deceptively similar marks.

Headnotes:

Trade Mark Infringement – Permanent Injunction – Well-known Mark Declaration – Suit against Unauthorized Use of Trademark 'HALDIRAM' and 'HALDIRAM BHUJIAWALA' – Plaintiffs, Haldiram India Pvt. Ltd., seek permanent injunction against Defendants for infringing upon their registered trademarks and for passing off their products as those of Plaintiffs – Plaintiffs also seek declaration of their marks as well-known – Evidence shows extensive unauthorized use of Plaintiffs' marks by Defendants – Held,

Defendants' conduct constitutes infringement and passing off – Permanent injunction granted against Defendants from using the marks ‘HALDIRAM’, ‘HALDIRAM BHUJIAWALA’, or any deceptively similar mark – Marks ‘HALDIRAM’ and ‘HALDIRAM BHUJIAWALA’ declared as well-known trademarks. Damages of Rs. 50 lakhs awarded to Plaintiffs along with Rs. 2 lakhs as costs. [Paras 35-68]

Infringement of Trademarks – Analysis – Plaintiffs' trademarks ‘HALDIRAM’ and ‘HALDIRAM BHUJIAWALA’ found to be used by Defendants without authorization – Unauthorized use on a variety of food products and related materials – Infringement established due to Defendants' unauthorized use of Plaintiffs’ marks for identical services, satisfying the triple identity test – Defendants’ conduct found to be in violation of the Plaintiffs’ trademark rights. [Paras 40-41]

Well-known Trademark – Criteria and Declaration – 'HALDIRAM' and 'HALDIRAM BHUJIAWALA' declared as well-known trademarks – Court considered factors such as duration, extent, geographical area of use, promotion, advertising, distinctiveness, and recognition in the public – Plaintiffs’ marks found to enjoy substantial recognition and goodwill, meriting the status of well-known trademarks – Declaration to aid in broader protection of Plaintiffs’ marks against misuse and infringement. [Paras 55-66]

Damages – Assessment and Award – Plaintiffs awarded damages of Rs. 50 lakhs for infringement by Defendants – Exemplary damages granted considering the extent of unauthorized use and impact on Plaintiffs’ reputation – Defendants' failure to appear or present evidence weighed in the decision – Damages aimed at compensating Plaintiffs and deterring future infringements. [Paras 43-52]

Costs – Award – Plaintiffs awarded Rs. 2 lakhs as costs – Consideration given to Plaintiffs' legal expenses and efforts to protect their trademarks – Award in line with principles of fair compensation and discouraging frivolous litigation. [Para 53]

Referred Cases:

- Tata Sons Ltd. v. Manoj Dodia, 2011 (46) PTC 244 (Del)

- Disruptive Health Solutions v. Registrar of Trade Marks [C.A. (COMM.IPD-TM)] 133/2022
- ITC Ltd. v. Central Park Estates Private Ltd., (2022 SCC OnLine Del 4132)
- Hindustan Unilever v. Reckitt Benckiser India [RFA(OS) 50/2008]
- Uflex Ltd. v. Government of Tamil Nadu, (2021 INSC 492)

Representing Advocates:

Plaintiff: Mr. Neeraj Grover, Ms. Arpita Mishra, Mr. Kashish Sethi, Ms. Sunidhi Gupta, Ms. Ayushi Chandra, Ms. Ritu Khandelwal with Mr. SK Mishra (AR)

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been held through hybrid mode.

Background

2. The Plaintiff - Haldiram India Pvt. Ltd. has filed the present suit *inter alia* seeking protection of its mark 'HALDIRAM', and a declaration that the said mark, along with its variations such as 'HALDIRAM BHUJIAWALA' is ***'well-known'*** in terms of Section 2(1) (zg) of the Trade Marks Act, 1999 *(hereinafter, 'the Act')*. Further, by way of the present suit, the Plaintiff seeks a decree of permanent injunction, restraining the Defendants, from selling products under the impugned mark 'HALDIRAM'/ 'HALDIRAM BHUJIWALA' or any other marks that are deceptively similar to the Plaintiff's mark 'HALDIRAM'.

3. The present suit for permanent injunction, damages, rendition of accounts, passing off etc. has been filed against the following Defendants:

Defendant No.	Name of the Defendant
1.	Berachah Sales Corporation
2.	Berachah Foods India Pvt. Ltd.
3.	Haldiram Restro Private Limited
4.	Haldiram Builders Private Limited

5.	Mr. Sumit
6.	Mr. Saurab

4. Defendant Nos. 5 and 6 are the proprietor/partners and promoters of Defendant Nos. 1 to 4.

5. The Plaintiff's case is that it coined the mark 'HALDIRAM BHUJIAWALA/HALDIRAM'S' way back in 1941, derived from the nickname of the grandfather of the present promoters, who was known as *'Haldiram'*. The said mark has been used both as a trade name and as a trade mark for *Bhujia, Papad Fried, Namkeen, Saltish Daal*, Sweets, and various other edible food products since 1941. As per the plaint, starting from a small shop in Bikaner, Rajasthan, the Plaintiff has grown into one of India's largest food brands, catering to millions of people both in India and globally. The Plaintiff has a number of group companies, all featuring 'HALDIRAM'S' name as a prominent part of their mark. The Plaintiff claims to be exporting its products to more than a hundred countries. The plaint avers that the Plaintiff is maintaining high standards of hygiene and quality, with regular checks on raw materials and seasonings. According to the Plaintiff, its dedication to quality has earned the brand 'HALDIRAM'S' numerous awards and accolades over the years.

6. The 'HALDIRAM'S' mark is mainly used in two different forms:

i) One with the V shaped logo, displayed as follows *(hereinafter, 'V-shaped mark')*:

ii) The second one with the oval shaped logo *(hereinafter, 'Oval shaped mark)*:

7. The mark 'HALDIRAM'S' is also a registered trade mark and has been registered in a variety of classes, especially in respect of food products.

8. In relation to the V-shaped mark, it is claimed that the Plaintiff holds the registered trade mark 'HALDIRAM BHUJIAWALA', which includes the letters *'HRB'* arranged in a V-shaped logo, bearing registration number 285062 dated 29th December, 1972 in class 30, claiming user since 30th November, 1965. The said mark was published in the Trade Mark Journal No. 631-0 dated 16th September, 1975. The said V-shaped mark is valid across all of India, except for West Bengal. As per the plaint, exclusion of West Bengal was a deliberate choice, resulting from a Dissolution Deed dated 16th November, 1974, from the Plaintiff's previous owners. According to this deed, the Plaintiff's predecessors were given exclusive rights to use the said mark in all of India, except West Bengal. The relevant portion of the Legal Proceeding Certificate bearing no. TM-46 dated 11th December, 2019 is as follows:

"GANGA BISHAN ALIAS HALDI RAM, MOOL CHAND, SHIV KRISHAN AND KAMLA DEVI TRADING AS HALDI RAM BHUJIA WALE, AND ALSO AS CHAND MAL GANGA BISHWAN, BHUJIYA BAZAR, BIKANER; MANUFACTURERS AND MERCHANTS. BHUJIA, PAPAR FRIED, NAMKIN, SALTISH DAL BEING EDIBLE PREPARATION
INCLUDED IN CLASS 30 EXCEPT FOR SALE IN THE STATE OF WEST BENGAL. REGISTRATION RENEWED FOR A PERIOD OF 7 YEARS FROM 29TH DECEMBER, 1979.

SUBSEQUENT PROPRIETOR(S) PURSUANT TO A REQUEST ON FORM T.M. 24 DATED 22ND NOVEMBER 1985 AND ORDER THEREON DATED 15TH OCTOBER 1987 SHIV KISHAN AGGARWAL SHIV RATTAN AGGARWAL MANOHARLAL
AGGARWAL MADHUSUDAN AGGARWAL TRADING AS HALDIRAM BHUJIAWALA BHUJIA BAZAR BIKANER IS ARE REGISTERED AS SUBSEQUENT PROPRIETOR (S) OF THE MARK AS FROM 30 JULY
1985 BY VIRTUE OF DISSOPUTION DEED DATED 16TH NOVEMBER 1974 JOINT VENTURE AGREEMENT DATED 30TH MAY 1987 AND DEATH OF LATE SHRI M.C. AGGARWAL IT IS A CONDITION THAT THE MARK SHALL BE USED ONLY IN RELATION TO THE GOODS CONNECTED
IN THE COURSE OF TRADE…"

9. As per the plaint, the said V-shaped mark remains active and registered in the name of the Plaintiff as the present owner.

10. In relation to the Oval-shaped mark, the Plaintiff claims to not only have multiple registrations for 'HALDIRAM'S' and its label in different classes within India, as detailed in part of their documents, but also boasts over 100 trade mark registrations internationally. The Plaintiff is the registered proprietor of the said Oval-shaped mark under registration no. 1168994 dated 23rd January, 2003 in class 30. The said device mark was published in Journal No. 1328-1, dated 7th February, 2005. The Plaintiff has provided a list of all registration numbers in the respect of the Oval-shaped mark as part of the *'Affidavit by way of Ex-parte evidence on behalf of the Plaintiff'* dated 29th May, 2023 at paragraph 11 of the said Affidavit, and paragraph 10 of the plaint. Some the registrations are provided below:

Trade Mark	Registration No.	Date of Application	User since	Class
HALDIRAM'S (LABEL) (device)	1168994	23rd January, 2003	30th November, 2002	30
HALDIRAMS CHIPS (LABEL)	1217357	24th July, 2003	1st October, 2002	29
HALDIRAM'S MOM SPECIAL (DEVICE)	2609590	9th October, 2013	1st November, 2012	29

11. Over time, as per the Plaintiff, it has developed various distinctive and visually appealing artistic labels underlying the said 'HALDIRAM' marks. The core elements of these labels include the 'HALDIRAM'S' registered mark and the 'HR' logo within a red oval (as part of the Oval-shaped mark), prominently featured on the labels, packaging, and trade dress. As per the plaint, the said artistic labels/logos feature unique color schemes, get-up, layouts, and combinations make the Plaintiff's product packaging particularly attractive.

The Plaintiff claims that the color schemes themselves serve as distinct trade dresses. Moreover, all artistic works underlying the packaging materials are original artistic works under Section 2(c) of the Copyright Act, 1957, granting the Plaintiff exclusive reproduction rights in respect of the said artistic works. The Plaintiff additionally claims that many of these artistic works, packaging, and trade dresses have been registered with the Registrar of Copyright. As per the documents filed by the Plaintiff, the artistic work titled 'HALDIRAM'S BHUJIA (POUCH)' has been registered in the name of the Applicant-M/s. Haldi Ram India Pvt. Ltd. bearing registration no. A55103/98 dated 7th September, 1998.

12. The Plaintiff and its associate companies own several domain names related to the 'HALDIRAM' brand, including but not limited to www.haldiram.com, www.haldiram.co.in, and various others that encompass a range of Haldiram-related products and geographic extensions. The domain name www.haldiram.com was acquired by Haldiram Manufacturing Co. Pvt. Ltd., a group company of the Plaintiff, on 23rd May, 1996, shortly after the .com domains became available for registration. The Plaintiff actively maintains websites, particularly on www.haldiram.com and www.haldiramsonline.com, to showcase and sell its products online.

13. The Plaintiff's case is that the Defendants initially incorporated a company by the name *'Haldiram Restro Pvt. Ltd.'* on 27th February, 2019 as evident from the Company Master Data placed on record by the Plaintiff. Thereafter, the Plaintiff filed a petition under Section 16(1)(b) of the Companies Act, 2013, before the Office of the Regional Director (Northern Region), Registrar of Companies, New Delhi *(hereinafter, 'Regional Director')* on 22nd March, 2019. On 9th July, 2019, a Hearing Notice was issued by the Regional Director on the petition filed by the Plaintiff.

14. In the written statement to the petition filed before the Regional Director dated 2nd August, 2019, by Defendant No.6-Mr. Saurab, on behalf of Defendant No.3, it was claimed that the various trade mark applications were his registrations. According to the Defendant No. 3, 'HALDIRAM RESTRO PRIVATE LIMITED', operates exclusively in the restaurant, resort, hotel, and banquet hall sector, which is covered by class 43.

15. The Defendants had applied for trade mark registrations in this class, and the application is pending. On the other hand, the Plaintiff-Company had not obtained, nor even applied for, registration in the same class, hence, they did not own any marks under class 43. As per the Defendants, this position is supported by evidence attached as Annexure R-1 to the written statement,

and thus the petition ought to be dismissed. Additionally, according to the Defendants, there are 36 companies registered under the Companies Act, 2013 with the name *'Haldiram'*, many of which operate in the same business sector. Since, the Plaintiff did not object to these companies, nor have they objected to the Defendants' use of the said mark, hence the Defendants' use of the said name cannot be restrained. The relevant portion of the said written statement is as under:

"4. That at the very outset it is pertinent to mention here that the Respondent Company HALDIRAM RESTRO PRIVATE LIMITED has field of operation/businesssolely in the area of Restaurants/ Resorts/ Hotels/ Motels, banquet halls, farm house for parties etc. which directly falls under the Trademark Class 43 of the Trade Marks Act, 1999. Trademark Class 43 of the Trade Marks Act, 1999 includes mainly with the services for providing food, drink and temporary accommodation. The respondent have already applied for the Trademark Registration with the Trademark Registry in the similar class of goods/services i.e Trademark Class 43 and the said application is already pending for adjudication. ***Further, it is most pertinent to mention here that the Petitioner Company has not even obtained the Trademark Registration Certificate under the said class of good/services i.e. Trademark Class 43, relying upon which it is contesting the instant petition but also has not even applied for the Registration of the Trademark with the Trademark Registry in the similar class of goods/ services i.e Trademark Class 43 as dealt by the Respondent company, therefore, the petitioner is not the owner of Trademark under the said Class. The evidence which shows that the petitioner company has no Trademark Registration Certificate under Trademark Class 43 is annexed as Annexure R-1. Therefore the instant petition highly deserves to be set aside on this score only.***

…

That it is further pertinent to mention here that there are 36 different Companies registered under the Companies Act with different ROC's with the name "Haldiram", out of which, several are in the same business/field of operation. No objection has been raised by the petitioner company against the other companies till

date and furthermore, nor any company has objected to use the word "Haldiram" by the respondent company. The list of the total 36 Companies which has used the word Haldiram for its registration are annexed as Annexure R-2. Therefore, the present representation deserves to be set aside, on this score alone.

…

*10. **That as discussed above that the petitioner company is not the registered proprietor of a trade mark as mentioned in Section 16(l)(b) of the Companies Act, 2013. There the petitioner company has no right to monopolize on the word "Haldiram" when it does not own the Trademark under Class 43 of Trade Marks Act, 1999. Further, the name of the companies is not similar at all. Prima facie if we see the name of the respondent company it transpires the object of the same and sole area of the business/operations. Therefore, there is no similarity in the name of, the petitioner and respondent company and also the nature of business is also completely different**."*

16. In response to the reply of the Defendants, the Plaintiff conducted a search of the applications filed by the Defendants. As per the Plaintiff, the search results showed that on 26th November, 2018, Defendant No.5- Mr. Sumit, claiming to be the owner of Defendant No.1 firm, applied for the 'HALDIRAM BHUJIAWALA' mark in class 43 for *'services for providing food and drink, temporary accommodation'* bearing application no. 4008333 dated 26th November, 2018 on a *'Proposed To Be Used'* basis. On the same day, Defendant No.5 also applied for the mark 'HALDIRAM RESTRO' in class 43 under the same application no. 4008334. Additionally, on 22nd July, 2019, Defendant No.5 applied for the 'HALDIRAM'S' mark under no. 4242196 and the 'HALDIRAM HOTELS' bearing registration no. 4242197, both in class 43 for similar services, also on a *'Proposed To Be Used'* basis. The details of the Defendants' registrations are provided at paragraph 28 of the plaint.

17. In the meantime, the Defendants also registered the domain name www.haldiramrestro.com which, according to the *'Whois'* details, was registered on 1st April, 2019.

18. Thereafter, the Plaintiff also received a complaint from one M/s D.K. Enterprises, that it had been appointed as a C&F Agent by the Defendants for marketing and selling their products, namely, salt, oil, soda water, etc. M/s.

D.K. Enterprises claimed to have paid a sum of Rs.5 lakhs as a security to the Defendants. It alleged that Defendant No.1 took the said amount as security and then stopped responding. They submitted a complaint, that included an agreement dated 17th April, 2019, made between Defendant No.1 & 2 and M/s. D.K. Enterprises, which notably did not mention the 'HALDIRAM BHUJIAWALA' mark.

19. After making further investigations, it was further revealed that the Defendant had also launched a Facebook page and had started announcing its launch of Desi Ghee, Mustard oil, Aata, etc. in June, 2019.

20. All of the above proceedings led to the filing of the present suit.

21. Vide order dated 11th September, 2019, notice and summons were issued to the Defendants, and an *ex parte* injunction was granted in the following terms:

"8. Accordingly, the defendants, their partners / proprietor(s), directors, agents / stockiest(s) / dealers, etc. are restrained from manufacturing, selling, offering for sale, stocking, advertising, directly or indirectly dealing in Bottled Water, Soda, Mustered Oil, Pure Basmati Rice,. Wheat Flour and Iodised Salt and / or any other allied / cognate goods and / or any other goods or services under its impugned mark HALDIRAM BHUJIAWALA and / or HALDIRAM'S and / or any other marks confusing and deceptively similar mark of the plaintiffs till the next date of hearing. They are also restrained from running website under domain name www.haldiramrestro.com and from running a face book / social media page under the name HALDIRAM RESTRO till the next date of hearing."

22. The above *ex-parte ad-interim* order is continuing till today. Vide the above order, this Court appointed a Local Commissioner to seize the goods of the Defendants. The Local Commission was executed on 17th September, 2019 at the Defendants' premises situated at ***'60 - 62 Mangla Colony, Parshuram Nagar, Ambala City, Ambala-134003, Haryana'***. According to the report dated 24th September, 2019, the Local Commissioner discovered that the Defendants operated from their corporate office at 108, Mangla Colony, Ambala City, Haryana. The said office had 10-12 employees and, displayed banners and flex boards using the mark 'HALDIRAM BHUJIAWALA' to promote products like ghee, salt, wheat flour, packaged water, and basmati

rice. These items, along with others such as mustard oil, were found to be sold under the mark 'HALDIRAM BHUJIWALA'.

23. The Local Commissioner's interaction with Mr. Rajesh Kumar, the CEO, revealed that since January 2019, the Defendants were selling products under the mark 'HALDIRAM BHUJIAWALA'. Defendant No. 5-Mr. Sumit confirmed that the company started its operations in January 2019 and registered the mark 'HALDIRAM BHUJIAWALA' in Class 30. Further inspection at Shop No. 60-62, Mangla Colony, revealed 600 cartons of mustard oil and other products under the said mark. All infringing packaging materials were seized by the Local Commissioner. Additionally, expired products from 'HALDIRAM INC'., a sister concern of 'HALDIRAM'S', were found, including *Nimbu Bhujia*, *All in one namkeen*, and others, with packaging from 2018.

24. The Local Commissioner's report placed a detailed inventory of the items bearing the infringing marks 'HALDIRAM'S' and 'HALDIRAM BHUJIYAWALA'. The same is captured in a tabulated form as below:

S. No.	**Description**	**Quantity**
1.	Mustard Oil 5 ltr.	1 (5 ltr.)
2.	Mustard Oil 2 ltr.	1 (2 ltr.)
3.	(4) Ghee (empty box)	1 kg/2 ltr/5 ltr.
4.	Water bottle	1 ltr.
5.	Cartons of mustard oil	600 approx
6.	Mustard oil canisters	15 ltrs 5 bottles
7.	4 salt packets	(25 kg) (4)
S. No.	**Description**	**Quantity**
1.	Mustard Oil 5 ltr.	1 (5 ltr.)
2.	Mustard Oil 2 ltr.	1 (2 ltr.)
3.	(4) Ghee (empty box)	1 kg/2 ltr/5 ltr.
4.	Water bottle	1 ltr.
5.	Cartons of mustard oil	600 approx
6.	Mustard oil canisters	15 ltrs 5 bottles

7.	4 salt packets	(25 kg) (4)

25. In December 2019, the Defendants filed their respective written statement(s) and the affidavit of admission/denial of documents. The procedure of admission or denial stood concluded on 27th January, 2020. Following this, the admission/denial of additional documents submitted by both parties was completed on 15th November, 2021. On 9th May, 2022, this Court recorded the submission of the ld. Counsel for the Defendants that they were willing to settle the matter, and thus the matter was adjourned from time to time, as evident from order dated 25th May, 2022. However, as seen from the order from 29th July 2022, mediation efforts failed, and the ld. Counsel for the Defendants sought to be discharged from the matter. Vide 29th November 2022, the ld. Joint Registrar allowed the discharge application. To ensure the appearance of the Defendants, on 9th January 2023, fresh Court notices were issued to be served to the Defendants. Vide order dated 16th March 2023, this Court observed that the Defendants were not interested in contesting the matter, and thus, proceeded *ex-parte* against the said Defendants in accordance with Order IX Rule 6 of the Civil Procedure Code (*'CPC'*). Subsequently, as recorded by order dated 29th May, 2023, the Plaintiff filed the affidavit of evidence of the Plaintiff's Authorised Representative. Plaintiff's evidence was closed on 5th September, 2023.

Submissions

26. The case set forth in the written statement filed by the Defendants is summarised as follows:

- The Plaintiff allegedly failed to disclose certain material facts, notably that its 'HALDIRAM' marks have been opposed by the Defendants and that the Defendants have filed rectification petition in respect of the said marks under Section 57 of the Act before the Trade Marks Registry. Consequently, the marks claimed by the Plaintiff as proprietorship, are already subject to dispute by various entities.
- The plaint does not provide a clear trail of ownership of the marks from Late Shri Ganga Bishan Agarwal to the Plaintiff.
- The Plaintiff allegedly removed the name of one of the co-owners of the 'HALDIRAM BHUJIAWALA' mark, namely Ms. Kamla Devi Agarwal, widow of Shri. Rameshwar Lal Agarwal, son of Shri Ganga Bishan Agarwal, without proper consent.

- The Plaintiff erroneously stated the date of use of the 'HALDIRAM' marks as 1941 in the plaint, whereas the Plaintiff's trademark registrations indicate user since 1965.
- It is contended that the Plaintiff is not the exclusive proprietor of the 'HALDIRAM' marks, as these are purportedly owned exclusively by other entities, and the Plaintiff's marks lack distinctive character.
- The Plaintiff allegedly failed to provide evidence establishing that the disputed marks have acquired secondary meaning in relation to them or demonstrate their qualification as a well-known mark.
- The Plaintiff purportedly did not submit Legal Proceeding Certificates *('LPC')* for its other marks, warranting dismissal of the suit.
- The Defendants did not deny filing various trademark applications for the 'HALDIRAM BHUJIAWALA' mark and logo device.

27. The case of the Plaintiff in the replication is broadly as follows:

- The existence of frivolous applications for rectification or cancellation against the Plaintiff's registered trademarks does not invalidate these marks nor does it bear relevance to the present suit. The applications in question were filed by certain family members of the company's promoters or directors amidst a dispute over territorial rights to the use of the mark 'HALDIRAM'. However, this dispute does not challenge the Plaintiff's rights to use the trade mark, but rather concerns the extent of territorial use agreed upon in the said Dissolution Deed, specifically outside West Bengal. The Plaintiff maintains that their statutory and common law rights to the trade mark 'HALDIRAM' are intact and unaffected by these disputes, even against the parties involved in the applications, as affirmed by different orders of this Court.

- The Plaintiff counters the claim that the plaint does not detail the history of ownership of the said marks. It is clarified that it was unnecessary to outline the entire acquisition history of the trade mark bearing no. 285062, initially filed and registered by M/s Chandmal Gangabishan, in which Shri Gangabishan was a partner. The Defendants themselves have acknowledged the acquisition trail, which is publicly available from the Trade Marks Registry, indicating no need for detailed mention in the plaint.
- The Plaintiff specifically denies any wrongful removal of Smt. Kamla Devi Aggarwal's name. It is highlighted that Smt. Kamla Devi Aggarwal withdrew all allegations regarding the said Dissolution Deed in 2016, affirming its contents. Additionally, she voluntarily withdrew a suit claiming the Dissolution Deed was forged, evidenced by a mediation settlement and her sworn

statement before the Ld. ADJ, which has been submitted as documents in the present suit.

- Furthermore, the Plaintiff asserts that the Defendants have failed to justify the use of a mark identical to the Plaintiff's, suggesting that their adoption of the mark is *malafide* and intended to exploit the Plaintiff's established goodwill and reputation.

28. Defendants have stopped appearing in the matter. Mr. Neeraj Grover, ld. Counsel for the Plaintiff made his submissions.

29. The submission by Mr. Grover, the ld. Counsel on behalf of the Plaintiff, highlights that the sales and advertisement expenses of the Plaintiff exceed Rs. 3,500 crores, with current sales surpassing Rs. 5,000 crores. The Plaintiff possesses trade mark registrations and operates a large number of outlets both domestically and internationally. Specifically, around 40 outlets are located within the Delhi-NCR region alone. Additionally, the Plaintiff has secured foreign registrations for the 'HALDIRAM's' mark and has recently expanded into the educational sector. Mr. Grover, ld. Counsel emphasizes that the 'HALDIRAM's' mark warrants recognition as a well-known mark.

30. Regarding the disputes between family members over the use of the mark in West Bengal, Mr. Grover, ld. Counsel submits that outside the State of West Bengal, the mark enjoys significant reputation and goodwill and has been extensively used. The Plaintiffs have entered into settlement terms with the concerned family wing, which have been documented. Furthermore, he notes that the dispute with the said parties has been conclusively resolved following the recording of Mrs. Kamla Devi, the matriarch's statement, before the ld. ADJ. Another male family member had also begun using the 'HALDIRAM's' mark and was supplying goods to Delhi, leading to the granting of an injunction in ***M/s. Haldiram India Pvt. Ltd. v. M/s. Haldiram Bhujiawala Ltd. & Ors. (decision dated 2nd August, 2019, TM No. 13/18)***.

31. Insofar as the non-use of the Plaintiff's marks in the State of West Bengal is concerned—it is submitted that the reputation of the Plaintiff's 'HALDIRAM'S' marks spills over into the State of West Bengal. It is submitted that the residents of that state travel to other states of the country where the Plaintiff enjoys immense goodwill, reputation, and visibility. Plaintiff's online presence is also noticeable in the State of West Bengal. Thus, according to the Plaintiff, the mere fact that the Plaintiff does not sell its goods or run its restaurants in the State of West Bengal does not in any way cast an impediment on the Plaintiff's 'HALDIRAM'S' marks from being declared as 'well-known'. It is further submitted that with the population of West Bengal constituting around

7.8% of India's population, the use of the Plaintiff's marks in the entire territory of India, excluding this 7.8% population, does not affect the Plaintiff's entitlement to be declared as a wellknown mark.

32. Regarding the Registrar of Companies *(hereinafter, 'ROC')* proceedings, Mr. Grover, ld. Counsel mentions that they were resolved by an order dated 19th December 2019, directing change of name of *'Haldiram Restro Pvt. Ltd.'* In conclusion, he states that the Plaintiff prays for an injunction and a declaration of the mark as well-known, though it explicitly does not seek such a declaration for the State of West Bengal.

33. In relation to the declaration of 'HALDIRAM'S' as a well-known mark, the Plaintiff relies on the following decisions:

- ***Hermes International v. Crimzon Fashion Accessories Pvt. Ltd., (2023 SCC Online Del 883, paras 5 & 6)***
- ***Chapter 4 Corp v. Dhanpreet Singh Trading as Punjabi Adda, (2023 SCC Online Del 4454, paras 10-15)***
- ***Red Bull Ag v. C. Eswari & Ors., (2018 SCC Online Del 13145, paras 5,11 & 13)***
- ***ITC Limited v. Central Park Estates Private Ltd., (2022 SCC OnLine Del 4132, paras 22-37)***

34. The Plaintiff further claims damages as provided in prayer (h) of the plaint. The Plaintiff asserts entitlement to both exemplary and punitive damages amounting to Rs. 2.05 crores, along with the reimbursement of actual costs. According to the Plaintiff, the said claim arises from the Defendants' activities, which necessitated the filing of the present suit and compelled the Plaintiff to contest over 20 trade mark applications before the Registrar of Trade Marks. Further, a significant amount of packaging material, discovered in the Defendants' warehouse and bearing the Plaintiff's mark on substandard food products and water, severely tarnished and caused substantial harm to the reputation of the Plaintiff's 'HALDIRAM's' marks. On the issue of damages, the Plaintiff places reliance on the following decisions:

- ***Hindustan Lever Ltd. v. Satish Kumar, (2012 SCC OnLine Del 1378, para 23)***
- ***DS Confectionery Products Limited v. Nirmala Gupta and Anr., (2022 SCC Online Del 4013, paras 25, 28 & 30)***
- ***H.T. Media Ltd. v. Susheel Kumar, (2018 SCC Online Del 9126, paras 9,11 & 13)***

- ***Crocs Inc. v. Bata India Limited, (2019 SCC OnLine Del 6808, paras 46-51)***

Analysis

35. Heard and perused the evidence placed on record. The Plaintiff has led the evidence in the present suit, and has also placed an affidavit by way of *exparte* evidence dated 29th May, 2023. The Defendants have stopped appearing in the present suit, though the pleadings are completed. The Defendants have also filed their respective affidavits of admission and denial. Despite repeated adjournments, the Defendants have chosen not to appear in the present suit. Thus, the present is a fit case for proceeding under Order IX Rule 6 CPC read with Order XVII Rule 3 CPC.

36. The Supreme Court in ***G. Ratna Raj v. Sri. Muthukumarasamy Permanent Fund Ltd. [2019] 1 S.C.R. 845***, observed that where the Defendants were proceeded *ex-parte* and were found to not have led any evidence in the suit, the Court could only proceed under Order XVII Rule 3 (b) read with Order XVII Rule 2 of the Code for disposal of the suit by taking recourse to one of the modes directed in that behalf by Order IX of CPC, and the same would be an *ex-parte* decree. Thus, this Court can proceed to pass judgment on the basis of the pleadings and evidence filed by the Plaintiff.

37. Thus, considering the statutory and common law rights and the long usage of the mark 'HALDIRAM', as also its formative marks such as 'HALDIRAM'S' and 'HALDIRAM BHUJIAWALA', and both the V- shaped mark and the Oval-shaped mark, the Plaintiff's rights would be severally impinged if the Defendants are permitted to use the impugned name 'HALDIRAM RESTRO PVT. LTD' and the websites www.haldiramrestro.com and www.bscindia.net.

38. The Defendants' assertion that the Plaintiff did not disclose the rectification petitions filed against the Plaintiff's trade mark registrations is unfounded. This is evident as the Plaintiff has explicitly included in their plaint all details regarding the applications filed by the Defendants for the identical 'HALDIRAM'S' mark. This move by the Defendants is a diversion aimed at avoiding the central issue: they have been exploiting the Plaintiff's reputation for their own commercial benefit, and thus have proceeded to apply for registrations in respect of the said mark.

39. Moreover, in terms of Order VII Rule 14 CPC, the Plaintiff has placed on record LPCs issued by the Trade Marks Registry for both the Oval-shaped and the V-shaped marks. These documents conclusively illustrate the flow of rights associated with both marks. Therefore, the defense presented by the Defendants in their written statement lacks foundation.

40. Further, after perusing all the pleadings on record, an examination of the competing marks and logos reveals that the marks adopted by the Defendants are identical to the Plaintiff's mark 'HALDIRAM'. Further, the services for which the Defendants are using the said mark are identical, namely eateries and restaurants. An identical mark, 'HALDIRAM,' is being used for identical services and within identical trade channels or segments, thus, satisfying the triple identity test.

41. The various registrations and a demonstrable long usage of the mark 'HALDIRAM', as also the goodwill vesting in the said mark, entitles the Plaintiff to a permanent injunction. Thus, the Defendants, and all others acting for and on their behalf are restrained from, in any manner, using the impugned marks 'HALDIRAM BHUJIAWALA' and/or 'HALDIRAM's' or any other marks that are deceptively similar to the Plaintiff's marks. Accordingly, a decree of permanent injunction is granted in favour of the Plaintiff against all the Defendants, in terms of paragraphs 47(b) to 47(d) of the plaint.

42. Further, the Defendants shall delivery up for purposes of destruction of all material bearing the impugned marks 'HALDIRAM BHUJIAWALA' and/or HALDIRAM'S including packagings, pouches, labels, dies, boxes, cartons, paper bags, wrappers, banners, hoardings and any other infringing material used by the Defendants within one week. The destruction may be carried out in the presence of a Local Commissioner. For the said purpose, if the Plaintiff wishes, they are free to move an application.

Damages

43. In the context of assessment of damages, the settled legal position is that the Local Commissioner's report can be read in evidence in terms of Order XXVI Rule 10(2) CPC. This position has been settled by the recent decision of the Supreme Court in ***Committee of Management Anjuman Intezamia Masajid, Varanasi v. Rakhi Singh (2023: INSC:702)***, wherein the Supreme Court has observed that the report of the Local Commissioner and the evidence taken by him/her constitute evidence in the suit and form a part of the record. The evidentiary value of any report of the Commissioner is a matter to be tested in the suit and is open to objections including crossexamination. Accordingly, in the present case, the report of the Local Commissioner and the contents therein can be relied upon by the Court as evidence to assess the damages, as the same stands unchallenged.

44. Moreover, the Defendants have deliberately chosen to stay away from the proceedings merely to ensure that it is not required to produce its accounts. The Defendants cannot be allowed to enjoy a premium for their dishonesty. In ***M/s Inter Ikea Systems BV v. Imtiaz Ahamed & Anr [decision dated 9th September, 2016, CS (OS) 3295/2014]***, this Court observed as follows:

*"**21. The court is mindful of the fact that in such a situation where the defendant chooses to stay away from the court proceedings, he should not be permitted to enjoy the benefits of such an evasion. Any view to the contrary would result in a situation where a compliant defendant who appears in court pursuant to summons being issued, participates in the proceedings and submits his account books, etc., for assessment of damages, would end up on a worse footing, vis-a-vis a defendant who chooses to conveniently stay away after being served with the summons in the suit**. That was certainly not the intention of the Statute. Section 135 (1) of the Trademarks Act, 1999 provides that relief that may be granted in any suit for infringement of or for passing off includes injunction and at the option of the plaintiff, either damages or an account of profits. The plaintiffs in the present case have opted for claiming damages and have established beyond doubt that they have suffered damages on account of the conduct of the defendants which are a result of infringement of their trademark and copyright..."*

45. A perusal of the Local Commissioner's report shows that the inventory prepared by the LC is as under:

S. No.	**Description**	**Quantity**
1.	Mustard Oil 5 ltr.	1 (5 ltr.)
2.	Mustard Oil 2 ltr.	1 (2 ltr.)
3.	(4) Ghee (empty box)	1 kg/2 ltr/5 ltr.
4.	Water bottle	1 ltr.
5.	Cartons of mustard oil	600 approx
6.	Mustard oil canisters	15 ltrs 5 bottles

7.	4 salt packets	(25 kg) (4)
S. No.	**Description**	**Quantity**
1.	Mustard Oil 5 ltr.	1 (5 ltr.)
2.	Mustard Oil 2 ltr.	1 (2 ltr.)
3.	(4) Ghee (empty box)	1 kg/2 ltr/5 ltr.
4.	Water bottle	1 ltr.
5.	Cartons of mustard oil	600 approx
6.	Mustard oil canisters	15 ltrs 5 bottles
7.	4 salt packets	(25 kg) (4)

46. The Local Commissioner's report also shows that there was extensive use of the marks 'HALDIRAM' and 'HALDIRAM BHUJIAWALA' by the Defendants. The said marks were being used for a range of products, listed as follows:

- salt,
- mustard oil,
- wheat flour,
- bottled water
- ghee
- *Basmati* rice

47. The inventory made by the Local Commissioner also revealed a sufficient packaging material, including cartons of mustard oil bearing the name 'HALDIRAM BHUJIAWALA', as well as mustard oil canisters of 15 litres and 5 litres. Additionally, several products from HALDIRAM INC. bearing the mark 'HALDIRAM BHUJIAWALA' mark were found, such as All-in-One Namkeen, Boondi, Soan Papdi, Mini Samosa, Mustard Oil, and Signature Salted Peanuts. The relevant portion of the report filed by the Local Commissioner is as follows:

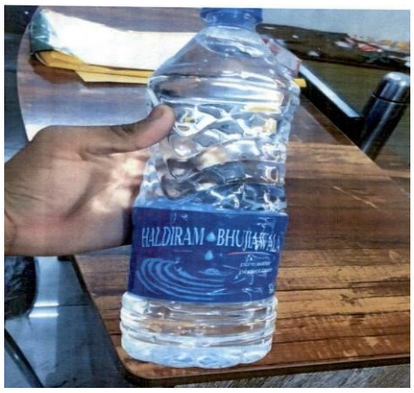
"5. On inspection, we found several products such as Ghee, ustard oil, salt, water bottle, the said products were under the trade mark of HALDIRAM BHUJIWALA. The photographs of the products under the trade mam of HALDIRAM BHUJIAWALA are marked and annexed as ANNEXURE A-5.

6. After conducting the inspection of the premises the undersigned spoke to Mr. Rajesh Kumar who claimed to be the CEO of the Defendant's Company. He told the undersigned that he has opened the Company in the name of Berachah Sales Corporation, Berachah Foods India Pvt. Ltd. And Haldiram Restro Private Limited in January, 2019 and since then they are selling products like salt, mustard oil, wheat flour, bottled water under the registered trademark of HALDIRAM BHUJIAWALA. The true copy of the statement of Rajesh Kumar and the CD video of the conversation are annexed herewith and marked as ANNEXURE A-6. 7. Thereafter, the undersigned recorded the statement of Mr. Sumit, who is the Director of the Defendant Company. He informed the undersigned that the company started its operation from January, 2019. He further told that the Defendant Company got the trademark i.e HALDIRAM BHUJIAWALA registered under Class 30. The true copy of the statement of Mr. Sumit is annexed herewith and marked as ANNEXURE A-7. The undersigned requested for keys of Shop No. 60-62, Mangla Colony, Parushuram Nagar, Ambala City from the CEO namely Mr. Rajesh Kumar. He send Mr. Sumit and Mr. Saurabh (Directors of Defendant Company) along with the undersigned to the aforesaid shop, after opening of the shutter, ***the undersigned found stack of folded cartons of mustard oil bearing the name of HALDIRAM BHUJIAWALA kept inside the shop, there were approximately 600 folded cartons of mustard oil. Thereafter, the undersigned found mustard oil canisters of 15 liters and 5 liters each, 4 sacks of salt (25 kgs) each under the name of HALDIRAM BHUJIAWALA. Photographs of the products found in the godown are annexed herewith and marked as ANNEXURE A-8****. The undersigned seized all the infringing packaging material sealed them in carton under my signature in superdarinama. Inventory list of the infringing products and superdarinama bearing signature of the undersigned is annexed herewith and marked as ANNEXURE A- 9.*

8. Several products of HALDIRAM INC. were also found like Nimbu Bujia, All in one namkeen, Boondi, Soan Papdi, Mini Samosa, Mustard Oil and i Signature salted peanuts at the shop in question. HALDIRAM INC. is sister concern of HALDIRAM'S. It

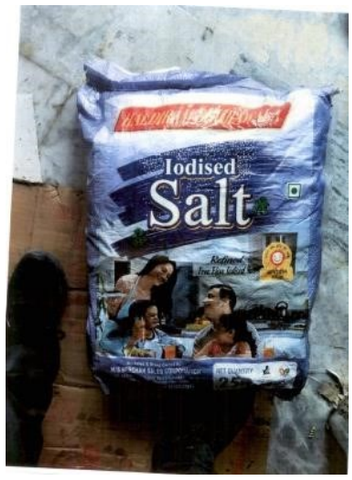
is pertinent to mention here that the packaging of the products was of 2018 and the items were expired. The photographs of products of HALDIRAM INC. is annexed herewith and marked as ANNEXURE A-10."

48. Some of the images of the found at the premises is set out below:




HALDIRAM BHUJIAWALA™
Wheat Flour
Wheat Flour in 10kg bag
Wheat Flour in 5kg bag
Haldiram Bhujiawala
100% Wheat Flour
Atta
Berachah Sales Corporation
A Group of Berachah Foods India Pvt. Ltd.


Premium
KACHI GHANI
MUSTARD OIL


Iodised
Salt


KACHI
MUSTARD OIL


HALDIRAM BHUJIAWALA
Boondi


HALDIRAM • BHUJIAWALA


HALDIRAM BHUJIAWALA
Moong Dal


HALDIRAM BHUJIAWALA
Orange Syrup


HALDIRAM BHUJIAWALA
Signature Salted Peanuts


HALDIRAM BHUJIAWALA
Mini Samosa


HALDIRAM BHUJIAWALA
Nut Cracker


HALDIRAM BHUJIAWALA
Aloo Bhujia

49. Thus, according to the report, the Defendants have been operating since January, 2019. Certain products were found having expiry date of 2018. In addition, the CEO of the Defendant company, namely, Rajesh Kumar mentioned that they got the said mark registered under class 30 sometime in 2018 itself. In or around March, 2019, it came to the knowledge of the Plaintiff that the Defendant No. 1 was also using the name 'HALDIRAM RESTRO', and further registered the said name. As can be seen from the above, the illegality is further compounded with the filing of trade mark applications by the Defendants. Thus, the present is a fit case for grant of substantial damages in favour of the Plaintiff.

50. Exemplary damages fall within the category of punitive damages and are typically awarded in extraordinary cases, taking into account the severity of the misconduct. In the context exemplary damages, a passage from the decision of House of Lords in ***Cassell & Co. Ltd. v. Broome, [1972] A.C. 1027*** is relevant, and the same is extracted below:

"As between "punitive" or "exemplary," one should, I would suppose, choose one to the exclusion of the other, since it is never wise to use two quite interchangeable terms to denote the same thing. ***Speaking for myself, I prefer "exemplary," not because "punitive" is necessarily inaccurate, but "exemplary" better expresses the policy of the law as expressed in the cases. It is intended to teach the defendant and others that "tort does not pay" by demonstrating what consequences the law inflicts rather than simply to make the defendant suffer an extra penalty for what he has done, although that does, of course, precisely describe its effect****.*

The expression "at large" should be used in general to cover all cases where awards of damages may include elements for loss of reputation, injured feelings, bad or good conduct by either party, or punishment, and where in consequence no precise limit can be set in extent. It would be convenient if, as the appellants' counsel did at the hearing. it could be extended to include damages for pain and suffering or loss of amenity. Lord Devlin uses the term in this sense in Rookes v. Barnard [1964] A.C. 1129, 1221, when he defines the phrase as meaning all cases where "the award is not limited to the pecuniary loss that can be specifically proved." But I suspect that he was there guilty of a neologism. If I am wrong, it is a convenient use and should be repeated. ***Finally, it is worth pointing out, though I doubt if a change of terminology is desirable or necessary, that there is danger in hypostatising "compensatory," "punitive," "exemplary" or "aggravated" damages at all. The epithets are all elements or considerations which may, but with the exception of the first need not, be taken into account in assessing a single sum. They are not separate heads to be added mathematically to one another****."*

51. On the aspect of exemplary damages, following the decisions of the House of Lords in ***Cassell & Co. Ltd. v. Broome, [1972] A.C. 1027*** and ***Rookes v. Barnard [1969] A.C. 1129***, the ld. Division Bench of this Court in ***Hindustan Unilever v. Reckitt Benckiser India [RFA(OS) 50/2008, decision dated 31st January, 2014]*** observed as follows:

"67. In India, the Supreme Court has affirmed the principles in Rookes (supra) and Cassel (supra). Interestingly, however, the application in those cases has been in the context of abuse of authority leading to infringement of Constitutional rights or by public authorities (ref. Ghaziabad Development Authority v. Balbir Singh, (2004) 5 SCC 6; Lucknow Development Authority v. M.K. Gupta, 1994 SCC (1) 243). As yet, however, the Supreme Court has not indicated the standards which are to be applied while awarding punitive or exemplary damages in libel, tortuous claims with economic overtones such as slander of goods, or in respect of intellectual property matters. ***The peculiarities of such cases would be the courts" need to evolve proper standards to ensure proportionality in the award of such exemplary or punitive damages. The caution in Cassel that "[d]amages remain a civil, not a criminal, remedy, even where an exemplary award is appropriate, and juries should not be encouraged to lose sight of the fact that in making such an award they are putting money into a plaintiff's pocket…." can never be lost sight of****. Furthermore – and perhaps most crucially –the punitive element of the damages should follow the damages assessed otherwise (or general) damages;* ***exemplary damages can be awarded only if the Court is "satisfied that the punitive or exemplary element is not sufficiently met within the figure which they have arrived at for the plaintiff's solatium". In other words, punitive damages should invariably follow the award of general damages (by that the Court meant that it could be an element in the determination of damages, or a separate head altogether, but never completely without determination of general damages)****. 68….*

To award punitive damages, the courts should follow the categorization indicated in Rookes (supra) and ***further grant such damages only after being satisfied that the damages awarded for the wrongdoing is inadequate in the circumstances, having regard to the three categories in Rookes and also following the five principles in Cassel.*** *The danger of not following this step by step reasoning would be ad hoc judge centric award of damages, without discussion of the extent of harm or injury suffered by the plaintiff, on a mere whim*

that the defendant"s action is so wrong that it has a "criminal" propensity or the case RFA (OS) 50/2008 Page 66 merely falls in one of the three categories mentioned in Rookes (to quote Cassel again – such event "does not of itself entitle the jury to award damages purely exemplary in character")."

52. Further, even if the inventory found is assumed to be inventory for a month, considering the nature of infringement, it would mean that the Defendants were carrying out extensive business. Some of the products had expiry dates of 2018, so clearly the Defendants commenced business much earlier than 2019. In the present suit, the Defendants have not led evidence and have stopped appearing. The actual accounts are not available and the Defendants cannot be put in a better position by not appearing. It is obvious that there is no defense for using such an established brand in the manner as is being used by the Defendants. Considering the manner in which food products of an established brand is being misused, this Court is of the opinion that even exemplary damages are justified. Hence, keeping in view the inventory of the infringing products and the conduct of the Defendants, damages of Rs. 50 lakhs are awarded in favour of the Plaintiff, in addition to costs.

53. Further, the Supreme Court in ***Uflex Ltd. v. Government of Tamil Nadu, (2021 INSC 492)*** has categorically held that award of costs should ordinarily follow in commercial matters, and should serve the purpose of curbing frivolous and vexatious litigation. In view of the decision of the Supreme Court, the Plaintiff is also entitled to actual costs, in terms of the Commercial Courts Act, 2015 and Delhi High Court (Original Side) Rules, 2018 read with IPD Rules, recoverable from the Defendants. Let the Plaintiff file its bill of costs in terms of Rule 5 of Chapter XXIII of the Delhi High Court (Original Side) Rules, 2018 within two weeks. Let the same be computed and added to final decretal amount.

54. Thus, the present suit is decreed in favour of the Plaintiff for a sum of Rs.50 lakhs on account of damages and Rs.2 lakhs are awarded as costs. Let the decree sheet be drawn up, in the above terms.

Well-known mark declaration

55. In so far as the prayer for declaration seeking recognition as a ***'wellknown mark'*** is concerned, Section 2(zg) of the Act defines a well-known mark as under:

"(zg) "well known trade mark", in relation to any goods or services, means a mark which has become so to the substantial segment of the public which uses such goods or receives such services that the use of such mark in relation to other goods or services would be likely to be taken as indicating a connection in the course of trade or rendering of services between those goods or services and a person using the mark in relation to the firstmentioned goods or services."

56. Further, Section 11(6) of the Act lays down the factors to be considered for declaration of a mark as a ***'well-known'***. The said provision reads as under:

"(6) The Registrar shall, while determining whether a trade mark is a well-known trade mark, take into account any fact which he considers relevant for determining a trade mark as a well-known trade mark including—

(i) the knowledge or recognition of that trade mark in the relevant section of the public including knowledge in India obtained as a result of promotion of the trade mark;

(ii) the duration, extent and geographical area of any use of that trade mark;

(iii) the duration, extent and geographical area of any promotion of the trade mark, including advertising or publicity and presentation, at fairs or exhibition of the goods or services to which the trade mark applies;

(iv) the duration and geographical area of any registration of or any application for registration of that trade mark under this Act to the extent that they reflect the use or recognition of the trade mark;

(v) the record of successful enforcement of the rights in that trade mark, in particular the extent to which the trade mark has been recognised as a well-known trade mark by any court or Registrar under that record."

57. In ***Tata Sons Ltd. v. Manoj Dodia, 2011 (46) PTC 244 (Del)***, a ld. Single Judge of this Court elaborated upon the principles for declaration of a mark as well known. The relevant extracts of the said decision are as under:

*"**5. A well known trademark is a mark which is widely known to the relevant general public and enjoys a comparatively high reputation amongst them. On account of advancement of technology, fast access to information, manifold increase in international business, international travel and advertising/publicity on internet, television, magazines and periodicals, which now are widely available throughout the world, of goods and services during fairs/exhibitions, more and more persons are coming to know of the trademarks, which are well known in other countries and which on account of the quality of the products being sold under those names and extensive promotional and marketing efforts have come to enjoy trans-border reputation. It is, therefore, being increasingly felt that such trademark needs to be protected not only in the countries in which they are registered but also in the countries where they are otherwise widely known in the relevant circles so that the owners of well known trademarks are encouraged to expand their business activities under those marks to other jurisdictions as well. The relevant general public in the case of a well known trademark would mean consumers, manufacturing and business circles and persons involved in the sale of the goods or service carrying such a trademark**.*

6. The doctrine of dilution, which has recently gained momentous, particularly in respect of well known trademarks emphasises that use of a well known mark even in respect of goods or services, which are not similar to those provided by the trademark owner, though it may not cause confusion amongst the consumer as to the source of goods or services, may cause damage to the reputation which the well known trademark enjoys by reducing or diluting the trademark's power to indicate the source of goods or services.

7. Another reason for growing acceptance of transborder reputation is that a person using a well known trademark even in respect of goods or services which are not similar tries to take unfair advantage of the trans-border reputation which that brand enjoys in the market and thereby tries to exploit and capitalize on the attraction and reputation which it enjoys amongst the

consumers. When a person uses another person's well known trademark, he tries to take advantage of the goodwill that well known trademark enjoys and such an act constitutes an unfair competition."

58. Further, this Court in ***Disruptive Health Solutions v. Registrar of Trade Marks [C.A. (COMM.IPD-TM)] 133/2022, decision dated 8th July 2022]*** discussed test of distinctiveness of trade marks, wherein it was observed that in the spectrum of distinctiveness, the first category of marks is of arbitrary, fanciful and invented marks, which is of absolute distinctiveness.

The relevant extract of the said decision is as follows:

"10. The general rule regarding distinctiveness is that a mark is capable of being protected if either it is inherently distinctive or has acquired distinctiveness through secondary meaning. In the spectrum of distinctiveness, the first category of marks is of arbitrary, fanciful and invented marks which is of absolute distinctiveness. Similarly, suggestive marks can also be registered due to their inherent distinctiveness. Descriptive marks can be registered as trademarks provided secondary meaning is established. Insofar as descriptive marks are concerned, just because some portion of the mark may have some reference or indication as to the products or services intended for, the same may not be liable to be rejected straightaway. In such a case, the merits of the marks would have to be considered along with the extent of usage. Other registrations of the applicant would also have a bearing on the capability of the mark obtaining registration. The owner of a mark is always entitled to expand the goods and services, as a natural consequence in expansion of business."

59. Considering the factors delineated under Section 11(6) of the Act, this

Court on various instances has considered the grant of declaration of 'wellknown' mark.

- In ***ITC Ltd. (supra)***, after considering the legal position regarding the protection of well-known marks in India and the US, this Court declared 'BUKHARA' as a well-known mark. The Court held that the mark 'BUKHARA' originated in India and enjoys substantial goodwill and reputation not only

among Indians but also among foreigners who travel to India and carry back the said reputation.

- In ***Chapter 4 Corp. (supra)***, this Court declared the 'SUPREME' redbox device mark as a 'well-known' mark in respect of apparel and clothing. The said declaration is limited to the 'SUPREME' red-box logo and does not extend to the word itself.
- In ***Glaxo Group Ltd. v. Manoj Kumar Jain (2023:DHC:6479)***, this Court declared the mark 'BETNESOL' as a 'well-known mark' in respect of pharmaceutical and medicinal items as also cognate and allied products.

60. Keeping in mind the above decisions, in the present suit, the Plaintiff has filed the following evidence to demonstrate that the mark

'HALDIRAM's' and is well-known:

- The Plaintiff and its sister concern's sales figures total to over Rs. 3500 crores in the year 2017- 18 with over Rs. 50 crores spent on advertisement during the said years. The sales figures are presently over Rs. 5000 Crores annually. The year wise sales turnover and advertisement certificates have been filed along with the plaint. In relation to *'Haldiram Products Pvt. Ltd.'*, the sales and advertisement expenses are as follows:

Financial Year	***Sales (In Rs.)***	***Advertisement (Rs.)***
2007-2008	492,212,394.00	8,819,041.00
2008-2009	579,550,506.70	9,204,170.00
2009-2010	730,836,753.46	6,816,394.68
2010-2011	976,544,724.88	2,909,141.38
2011-2012	1,087,577,597.46	5,638,296.32
2012-2013	1,143,974,429	5,946,725.99
2013-2014	1,225,155,137.23	5,344,039.88
2014-2015	1,438,712,923.59	9,378,318.54
2015-2016	1,593,434,866.00	6,223,646.27
2016-2017	1,769,023,062.00	8,428.257.00
2017-2018	2,004,288,417.00	12,164,818.00

- In addition to the above information provided, the Plaintiff has also been awarded on different occasions with accolades such as the Food Innovation Excellence Awards -2017, which have been exhibited as Ex. PW-1/9 to PW-1/21.

- The Plaintiff has also placed on record the decision titled ***'Haldiram India Pvt. Ltd. v. M/s. S.A. Food Products & Ors.' [CS(COMM) 217/2019, dated 29th April, 2019]*** where this Court has protected the Plaintiff's mark, and has injuncted the Defendants, recognising the statutory and common law rights of the Plaintiff. The decisions have been exhibited as Exhibit-PW-1/22 & Exhibit-PW-1/23.

61. Further, the Plaintiff also places reliance on the concept of spill-over reputation, where a mark's recognition and prestige transcend national borders, influencing consumer behavior in regions where the brand may not have a direct commercial presence. In terms of the decisions of the Supreme Court in ***N R Dongre v. Whirlpool Corporation, (1996) 5 SCC 714***, ***Milmet Of tho Industries v. Allergan, (2004) 12 SCC 624*** and the decision of this Court in ***ITC Ltd. (supra)***, the concept of protection of marks based on transborder reputation is well-settled.

62. In the present suit, the Plaintiff claims a well-known declaration even in respect of an area, where the right of the Plaintiff does not extend- i.e. West Bengal. The situation is peculiar in the sense that- even though the Plaintiff does not hold rights in respect of the mark 'HALDIRAM'/ 'HALDIRAM BHUJIWALA' in West Bengal, it claims that the said mark is 'well-known', throughout the territory of India, including West Bengal.

63. This Court, having considered the argument presented by the Plaintiff for the declaration of the 'HALDIRAM' and 'HALDIRAM BHUJIWALA' marks as 'well-known' across the entirety of India, including the state of West Bengal—where the Plaintiff does not exercise exclusive rights—finds a foundation in the broader principles of trade mark law (to prevent confusion) and the doctrine of spill-over reputation. The Plaintiff's case presents a unique scenario where 'HALDIRAM'S' reputation demands a flexible and evolved understanding of territorial rights in the age of global connectivity and changing market dynamics. There is no doubt that the 'HALDIRAM'S' brand, with its origins deeply rooted in India's rich culinary tradition, has not only established a presence within the national market but has also extended its influence globally, transcending geographical, cultural, and national boundaries. As evidenced by the documents placed on record, Plaintiff's global footprint is indicative of the brand's robust spill-over reputation, where the authenticity of 'HALDIRAM'S' products resonate with a diverse audience, including in those regions where the brand does not have legal presence. 64. This Court is of the opinion that the concept of a 'well-known' mark is *'dynamic'*. A well-known mark has the ability to imbue products with distinctiveness and assurance of

quality that extends beyond mere geographical confines. The Plaintiff exports its products not just within Asia, but to a large span of other countries. In this context, the claim for 'HALDIRAM' to be recognized as a 'well-known' mark throughout India, inclusive of West Bengal, is a testament to the Plaintiff's cultural and commercial imprint. Such dynamism aims to safeguard the goodwill and trust a mark commands among consumers, irrespective of territorial divisions. By granting such a declaration, the Court is also aware of the present realities of consumer perception in relation to the average consumers in the food and snacks industry.

65. Moreover, the fact that there may be a division between certain family members – territorially, would not affect the decision in declaring the mark as well-known, as it is the reputation and good-will of the mark across products and services that is being recognised by a well-known declaration.

66. Thus, this Court is of the opinion that based on the averments in the plaint, the documents on record, and the reputation of the 'HALDIRAM'S' mark and logo as gleaned from the record, it is clear that the Plaintiffs' mark and logo 'HALDIRAM', as well as the Oval-shaped mark, have acquired '***well-known'*** status. Considering the use of the mark since the 1960s in the food industry, and the factors outlined above, the mark and logo 'HALDIRAM' have achieved the status of a ***'well-known mark'***. Accordingly, a decree of declaration declaring the mark 'HALDIRAM', as well as the Ovalshaped mark, as a 'well-known' mark in respect of food items as well as in respect of restaurants and eateries, is granted. The Oval-shaped mark, which is declared well-known, is extracted below:

67. Considering the declaration granted in favour of the Plaintiff, and in view of the decree passed today, all trade mark applications filed by the Defendants seeking registration of 'HALDIRAM' and 'HALDIRAM BHUJIYAWALA' shall be rejected by the Registrar of Trademarks. Let the Plaintiff provide the details of the applications filed by the Defendants in relation to the said marks within one week to the Office of the CGPDTM.

68. The suit is decreed in the above terms. Let the decree sheet be drawn up. Suit is accordingly disposed of. All pending applications are also disposed of.

69. Let the present order be communicated to the Registrar of Trade Marks at llc-ipo@gov.in.