

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
(Intellectual Property Rights Division)

BEFORE:

The Hon'ble Justice Ravi Krishan Kapur

IA NO: GA-COM/3/2025

In
IP-COM/18/2024

EMAMI LIMITED
VS
DABUR INDIA LIMITED

For the plaintiff/respondent : Mr. Shuvasish Sengupta, Advocate
Mr. Biswarop Mukherjee, Advocate
Ms. Mini Agarwal, Advocate

For the defendant : Mr. Tilak Bose, Senior Advocate
Mr. Sudhakar Prasad, Advocate

Heard on : 24.09.2025

Judgment on : 25.09.2025

Ravi Krishan Kapur, J.:

1. This is a suit for disparagement and infringement. The plaintiff impugnes a Television Commercial (TVC) for its product 'Dabur COOL KING Icy Perfume Talc'.
2. In this application, the defendant seeks leave to rely on two additional documents (a) The modified TVC, stored in a pen drive and (b) The story board of the modified TVC.
3. By an interim order dated 11th July, 2024, this Court had restrained the defendant from airing and broadcasting the impugned advertisement. The interim order was ultimately confirmed on 17th January, 2025. The defendant had affirmed its Written Statement in September, 2024.

Pursuant to the ad-interim order dated 11th July, 2024, the defendant had also modified the impugned television commercial (TVC).

4. Thereafter, a Commissioner had been appointed to record the evidence of the parties after completion of the pleadings. The issues framed in this suit are as follows:

1. *Whether the defendant can refer to the plaintiff's products i.e. talcum and prickly heat powders, as "Saadharan" and suggest the same to be ineffective and useless and by doing so, disparage the plaintiff's talcum powder and prickly heat powders as well as cause damage to the plaintiff's goodwill and reputation in relation thereto?*
2. *Whether the defendant can identify the plaintiff's products, by way of the impugned advertisement and run down the plaintiff's products and the entire class of talcum and prickly heat powders and, if so, is the plaintiff entitled to the decree for perpetual injunction as prayed for in the present suit?*
3. *Whether the defendant can be permitted to continue airing the impugned advertisement by removing the reference to the plaintiff and/or the products of the plaintiff, in view of the recall value of the impugned TVC aired and published by the defendant, targeting the plaintiff and its powder products under the marks "Dermi Cool" and/or "Navaratna"?*
4. *Whether the plaintiff is entitled to a decree for perpetual injunction and for damages in addition thereto, as claimed in the plaint?*
5. *To what other reliefs is the plaintiff entitled to, in law and equity?*

6. *Whether the impugned advertisement disparage the plaintiff's products Dermi Cool and/or Navratna Cool Talc?*
 7. *Whether the impugned advertisement specifically identify the plaintiff's products Dermi Cool and/or Navratna Cool Talc?*
 8. *Whether the plaintiff enjoy any exclusive and statutory right in respect of the colour scheme of the bottle and container of Dermi Cool and/or Navratna Cool Talc? (emphasis added)*
5. The plaintiff has also filed its Affidavit of Evidence wherein it has sought to set up a case in their evidence that, *"Even if all references to the plaintiff's product were to be removed subsequently, keeping the remaining portions of the impugned advertisements alive, the viewers and prospective customers and consumers would continue to recall the plaintiff's product and also associate and identify the modified advertisement with the plaintiff's product, which is occurring even at present."*
 6. In substance, the plaintiff has sought to raise a new case dealing with any modified advertisement, alleging that even if the impugned TVC is modified, consumers would continue to identify the container shown in the modified advertisement, as that of the plaintiff's products.
 7. During the cross-examination of the plaintiff's witness, the defendant had confronted the witness with the modified advertisement and the same has been objected to by the plaintiff. It is submitted that the plaintiff's witness cannot be confronted with the modified advertisement at the stage of cross-examination, since the same has not been adduced in evidence. The document disclosed being Exhibit-C is a pen drive containing the original and current version of the advertisement (post the interim order) but not

the modified advertisement. This is the third version of the advertisement which also formed the subject matter of an interlocutory application i.e. GA/2/2024 whereby the defendant had sought to modify the impugned advertisement and has not been disclosed by the parties at the stage of discovery of documents.

8. It is contended on behalf of the defendant that the modified advertisement is necessary for the effective disposal of the suit in view of Issue No. 3 above. The modified advertisement has not been adduced by way of discovery and is not contained in the pen drive being Exhibit-C. In this background, the defendant has been compelled to file the instant application seeking leave of this Court to rely on the abovementioned additional documents which are relevant for complete and effective adjudication of the issues raised in the suit.
9. Order XI of the Code of Civil Procedure (as amended), *inter alia*, provides for disclosure, discovery and inspection of documents in commercial suits. Rule 1(10) and 1(11) of Order XI of the CPC provide as follows:

“(10) Save and except for sub-rule (7) (c) (iii), defendant shall not be allowed to rely on documents, which were in the defendant’s power, possession, control or custody and not disclosed along with the written statement or counterclaim, save and except by leave of Court and such leave shall be granted only upon the defendant establishing reasonable cause for non-disclosure along with the written statement or counterclaim.

(11) The written statement or counterclaim shall set out details of documents in the power, possession, control or custody of the plaintiff,

which the defendant wishes to rely upon and which have not been disclosed with the plaint, and call upon the plaintiff to produce the same.”

10. In its amended avatar, on a combined reading of Order 11 Rule 1(10) and Rule 1(11), the grounds in seeking disclosure of additional documents after the filing of the Written Statement have undoubtedly now become stringent in commercial cases. However, the same is not prohibited. The use of the words ‘*reasonable satisfaction*’ casts an obligation on the Court to consider the nature of documents sought to be disclosed as additional documents without which the discretion vested in Court cannot be exercised.
11. Admittedly, the modified advertisement sought to be relied on was the subject matter of an interlocutory application and already part of the records of this Court. During the course of the proceedings, the defendant had also relied on the modified advertisement which was made available to the plaintiff. Pleadings in respect of the same have also been filed by both parties at the interlocutory stage. Regardless of the documents being in the custody, control or possession of the defendant, non inclusion of the same neither deliberate nor intentional. There is no element of surprise and the plaintiff has had the fullest opportunity to deal with the additional documents. In such circumstances, the additional documents are necessary both for disposal for the suit and incidentally to save costs.
12. On a perusal of the application and the additional documents sought to be relied on, there is no reason as to why the same should not to be

permitted to be adduced in evidence. The issues framed directly relate to the modified advertisement. The modified advertisement which is proposed to be adduced is relevant and inter-connected to the impugned advertisement. It is well-settled that the issues can always be re-settled and even deleted at the time of hearing, if the Court so thinks fit and proper. Despite there being a complete departure in the case of a commercial suits *vis-à-vis* disclosure of additional documents, the same is not completely barred. In such circumstances, the defendant has been able to disclose reasonable cause to permit adducing the above additional documents. There is no question of any prejudice being suffered by the plaintiff. [Unreported decision of the High Court at Calcutta in *Rasandik Engineering Industries India Limited vs. West Bengal Industrial Development Corporation Limited & Anr.* CS-COM 242 of 2024 dated 25 June 2024].

13. In the light of the above discussion and keeping in view the issues raised in the suit and the stage of the evidence, the prayer for additional evidence is allowed. IA NO: GA-COM/3/2025 succeeds. There shall be an order in terms of prayer (a) of the Master's Summons.

(RAVI KRISHAN KAPUR, J.)