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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS (COMM) 271/2018

SOCIETE DES PRODUITS NESTLE,S.A & ANR Plaintiffs

Through: Mr Hemant Singh, Ms. Mamta Rani
Jha, Mr. Manish K. Mishra and Ms.
Akansha Singh, Advocates (M:
9438804704).

versus

MOHD ZAHID AND SONS & ORS. Defendants

Through: Mr. Prateek Gupta, Advocate for
FSSAI (M: 9999986972).

Ms. Sukrity Ghai, Advocate for Mr.
Devesh Singh, Adv. for Food Security
Department with Mr. Ajay Kumar
Designated Officer Bihar (M:
9654645725).

Mr. C.H. Krishna, DCA, Mr. A.K.
Singh, DO and Mr. Ranjeet Singh,
DO for Department of Food Safety
(M:9810434865, 9968193180,
9873480714).

Mr. Gaurav Kr. Pandey, Advocate for
D-4 and 4 (M: 9870526680).

Mr. Bharat Chandha, Advocate for D-
116 (M: 7217631424).

Mr. Puneet Saini, Advocate for Mr.
Vishal Gupta and Mr. Anuj Singhal,
(M: 8810633505).

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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11.03.2019

I.A. 3483/2019 & 17516/2018 (for impleadment of additional defendants)

1. These are applications for impleadment of additional defendants pursuant to orders dated 28th November, 2014 and 10th April, 2017 passed

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by this Court. The submission of learned counsel for the Plaintiffs is that the Plaintiffs received information in relation to sale of counterfeit Nescafe coffee from certain premises. Accordingly, further raids were conducted at the premises mentioned at pages 12 to 15 of I.A. 3483/2019 and page 11 of I.A. 17516/2018. The Local Commissioners made seizures of counterfeit Nescafe coffee from these premises. Accordingly, the proposed Defendants mentioned at pages 12 to 15 of I.A. 3483/2019 and page 11 of I.A. 17516/2018 are impleaded as Defendant Nos. 118-119 and Defendant Nos. 120 to 127 in the present suit. I.A. is disposed of.

I.A. 12272/2018 (68 days delay in re-filing)

2. For the reasons stated in the application the delay is condoned. I.A. is disposed of.

I.A. 716/2018 (for setting aside order dated 10th April, 2017)

3. None appears on behalf of the applicants, Defendant Nos. 58 and 59. I.A. is dismissed.

I.A. 10880/2015 (u/s 135 of the Trade Marks Act, 1999)

4. This is an application seeking leave for delivery of interrogatories on the Defendants for obtaining the details of the manufacturers. It is clear that none of the Defendants, who are retailers of counterfeit Nescafe coffee, are disclosing the source of the products. Orders have been passed in the suit to take care of this issue. There is, however, a questionnaire, which has been attached with this I.A. A copy of the same may be utilised by the officials of the FSSAI when they conduct their inspections.

5. I.A. at this moment is not pressed at this stage and is, accordingly, disposed of at this stage.



I.A. 23635/2014 (u/o XXXIX Rules 1 & 2 CPC)

6. The injunction order is extended to all the newly impleaded Defendants. Let this I.A. remain pending.

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7. Learned counsel appears on behalf of two newly impleaded defendants, Mr. Vishal Gupta and Mr. Anuj Singhal. Copies of the paper books have been provided to him. They shall file their written statements within four weeks. Both Mr. Vishal Gupta and Mr. Anuj Singhal shall remain present in the Court on the next date for recordal of their statements.

8. Mr. Ajay Kumar, Designated Officer, Bihar, Mr. C.H. Krishna, DCA, Mr. A.K. Singh, DO and Mr. Ranjeet Singh, DO have appeared on behalf of the Department of Food Safety, Government of NCT of Delhi. They have handed over the action taken report, as per which the parties mentioned in the previous order were not traceable. Only Mr. Love Grover was traceable and even there, the impugned packaging was not traced. This shows a completely sorry state of affairs, as Local Commissioners had visited all these premises and made seizures of infringing products. Clearly, the Department of Food Safety is not taking adequate steps to control the menace of counterfeit products. The report is extremely unsatisfactory and shows the completely callous nature in which counterfeiting of food products is being dealt with. The three officers, who are present today are directed to submit a detailed affidavit listing out the various actions taken by them to curb manufacturing of counterfeit product in the last two years and as to in how many cases complaints have been registered against such manufacturers or retailers. The said officers are directed to obtain the details of the premises from the counsel for the Plaintiff, who may extend his



cooperation for conducting of raids if required. The attempt should be to identify the source of the products where counterfeit manufacturing of packaging material and packing of coffee is taking place. Needless to state, the sale of counterfeit products has a deleterious effect on the health and safety of consumers and the Department has an obligation to ensure that no counterfeit packaging or manufacturing is carried out within their jurisdiction. All three officers to remain present on the next date.

9. Report would be filed two days before the next date listing out:

- (a) Specific details of the action taken in the last two years in respect of counterfeit products being sold in the market.
- (b) The number of complaints filed and registered against manufactures/sellers of counterfeit products.
- (c) The details of any further raids that may be conducted after today to identify the manufacturers of counterfeit products of Nescafe.

10. Mr. Ajay Kumar is present from the office of the Food Safety Commissioner Patna, Bihar. Letter signed by Principal Secretary, Health Department dated 8th March, 2019 has been handed over. The said letter reads as under:-

*“From,
Sanjay Kumar, IAS
Principal Secretary, Health Department
-Cum-
Food Safety commissioner,
Bihar, Patna.
To,
Sri Birendra Kumar,
Assistant Director (RCD)
Food Safety and Standards Authority of India,
FDA Bhawan, Kotla Road, New Delhi-110002.*



Patna, Dated 08/03/2019

Subject: Implementation of Hon'ble High Court, Delhi's Order, dated 20.12.2018 in the matter CS(COMM) 271/2018 titled as M/s Societe Des Produits, Nestle, S.A and ANR, (Plaintiffs) Vs Mohd. Zahid and Sons and Ors (Defendants)-regarding.

Ref: Your Office Order No.- 15017/113/2018/FSSAI-Legal, dated 09.01.2019.

Sir,

In reference to your Office Order on the subject noted above, I have to say that as per according to reports made available by D.O –cum-F.S.O, Patna the facts are as under,

(a) Designated Officer, Patna has not issued any license to the named persons of Para 4 of the Hon'ble High Court, Delhi's Order, dated 20.12.2018 in the matter CS(COMM) 271/2018 titled as M/s Societe Des Produits, Nestle, S.A and ANR, (Plaintiffs) Vs Mohd. Zahid and Sons and Ors (Defendants).

(b) License for manufacturing/sale of NESCAFE Coffee has not been issued to the said manufacturers by Licensing Authority, Patna.

(c) The concerned raid was conducted by the Agamkuan P.S., Patna and the Food Safety Office was not informed about the same. So, the Food Safety Office has no information regarding the material left on Superdari. The Agamkuan P.S has not shared the details about the material despite repeated requests.

(d) Raid and regular inspections are being made time to time for prevention for sale & manufacturing of Counterfeit Food Products in the State and all FSO's have been directed for the same.

2. As directed by you, Mr. Ajai Kumar, Designated Officer-Cum-Food Safety Officer, Patna is being



nominated for Pursue the matter in the Hon'ble High Court, Delhi.

Yours Faithfully

(sd/-)"

Sanjay Kumar

Principal Secretary, Health Department

-cum-

Food Safety Commissioner,

Bihar, Patna"

11. In the premises mentioned in the last order, there were three parties who were found manufacturing and selling counterfeit Nescafe products in the Patna area. The report, which states that none of the premises was even identifiable by the Food commissioner's office, shows that no genuine attempt is being made to curb such manufacture and packaging. The details of the three parties are mentioned in the last order. Commissions have been executed and large amount of packaging material, to the tune of 2400 finished products and 58800 units of packaging material and 450 kg of raw material was seized by commissioners appointed by this Court. Mr. Ajay Kumar from the Food Safety Commissioner officer is present. He is directed to submit to the Court:

- (a) Specific details of the actions taken in the last two years in respect of counterfeit products being sold in the market.
- (b) The number of complaints filed and registered against manufactures/sellers of counterfeit products.
- (c) Details of any further raids that may be conducted after today to identify the manufacture of counterfeit products manufactured of Nescafe.

12. Both the departments are permitted to seek the cooperation of counsels for the Plaintiff if they need to conduct any raids for identifying of



the locations. All the officers shall remain present on the next date. All the counsels who require copies of the court record are permitted to obtain the electronic copy of the same from the registry. If the Plaintiff receives any information, relating to manufacture/sale of counterfeit Nescafe coffee, they are permitted to inform the relevant department in respect of the location where the same is being carried out. Any such department, who is informed by the Plaintiff shall extend cooperation and conduct raids and also obtain information as per the questionnaire given by the Plaintiff in order to identify the source of manufactured counterfeit products.

13. List on 7th May, 2019. Interim order to continue.

14. *Dasti*.

PRATHIBA M. SINGH, J.

MARCH 11, 2019
MR