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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI****Date of Decision: 15<sup>th</sup> May, 2023**+ **CS(COMM) 49/2020****M/S HARI CHAND SHRI GOPAL** ..... PlaintiffThrough: Ms. Prachi Agarwal, Ms. Ridhie Bajaj  
and Ms. Aditi Srivastava, Advocates.

versus

**SHIB SAKTI GOPLA ZARDA FACTORY** ..... DefendantThrough: *Ex-parte vide* order dated 01<sup>st</sup>  
February, 2021.**CORAM:**  
**HON'BLE MR. JUSTICE SANJEEV NARULA****JUDGMENT****SANJEEV NARULA, J. (Oral):**

1. This judgment shall decide a lawsuit initiated by the Plaintiff, a company engaged in the manufacturing and distribution of tobacco products under various versions of the “GOPAL” trademark. The Plaintiff has filed this action seeking a permanent injunction to prohibit the Defendant from using the “GOURI GREEN” or “GOURI 700” marks, alleging that use of such marks by the Defendant constitutes infringement and passing off, resulting in the violation of its registered trademarks and copyright.


**PLAINTIFF’S CASE**

2. The Plaintiff is a part of the Gopal Group, which was established in 1942 and has since become a prominent player in the manufacturing and



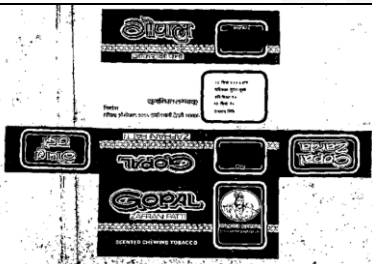

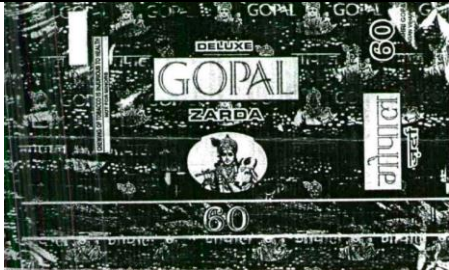


sale of tobacco products including, chewing tobacco, zarda, pan-masala, betel spice, pan-chatni. In 1950, the Plaintiff adopted the “GOPAL” mark, named after Mr. Sri Gopal Gupta, the Chairman and Partner, who holds highest stake in the Plaintiff company. Since its adoption, the “GOPAL” mark has been consistently used by the Plaintiff in combination with a logo depicting Lord Krishna playing the flute with a cow in the background, referred to as the “Lord Krishna device” hereinafter. This logo is often accompanied by various prefixes or suffixes to “GOPAL”, associated with the afore-mentioned products. Furthermore, the trademark “GOPAL” is an integral and prominently displayed component of the Plaintiff’s corporate name and trading style.

3. Over the course of its business operations, the Plaintiff has successfully obtained over a hundred trademark registrations for various forms of the “GOPAL” mark in class 34. Provided below is an illustrative list of the Plaintiff’s trademark registrations:

S.No.	Trademark	Trademark No.	User Date
1.	GOPAL	331481	01/01/1950
2.	DELUXE GOPAL ZARDA GRENE	817600	01/06/1950
3.	GOPAL GRENE	2788698	01/04/2012
4.	GOPAL ZARDA 100	817592	01/06/1950
5.		268260	11/11/1970



6.		822147	01/06/1950
7.		338031	01/01/1950
8.		355316	01/01/1968
9.		91643	01/06/1950
10.		916475	01/06/1950

4. In addition to its trademark rights, Plaintiff also possesses copyright registrations in several of its labels/ artistic works, such as



5. Plaintiff has developed a series of trade dresses for packaging, pouches, labels and containers of its products, all of which distinctly and prominently display “GOPAL” with the Lord Krishna device. Over the course of seventy years, Plaintiff has consistently employed various versions of “GOPAL” trademarks. On account of widespread use and popularity, evidenced by annual sales of approximately Rs. 376.96 crores in 2018-19 and expenditure of Rs. 2.49 crores towards promotional activities, Plaintiff is recognised as the sole source of tobacco and related products sold under the “GOPAL” trademarks.

6. The present suit pertains to the imitation of layout, get-up and colour




scheme of Plaintiff’s “” and “” products by the Defendant. The Defendant – Shib Shakti Gopla Zarda Factory, produces



chewing tobacco under the trademarks “GOURI GREEN” and “GOURI 700”, in conjunction with a logo of Lord Shiva. The Plaintiff is also aggrieved with adoption of trade name ‘Shib Shakti Gopla Zarda Factory’, which is deceptively similar to Plaintiff’s trademark. Plaintiff’s investigation revealed that Defendant had submitted trademark application No. 2837212



to register “” in class 34. However, as a result of lack of follow-up actions, the said application has been deemed to be abandoned under Section 132 of the Trademarks Act, 1999, following the order issued by the Trademarks Registry on 14<sup>th</sup> October, 2017.

7. Hence, the Defendant’s decision to adopt the impugned marks and packaging that bear a striking resemblance to the Plaintiff’s registered marks, such as “GOPAL”, “GOPAL GRENE” and “GOPAL 100” is a clear infringement of Plaintiff’s rights. This adoption also violates the Plaintiff’s common law rights in the trade get-up.

### **PROCEEDINGS THIS FAR**

8. On 31<sup>st</sup> January, 2020, the Court granted an *ex-parte* ad-interim injunction, upon the issuance of summons. The injunction restrained the Defendant from manufacturing, selling, offering for sale or dealing in tobacco products bearing the trademarks “GOURI GREEN” or “GOURI 700” or any other trademark or device depicting a Hindu God that is deceptively similar to the Plaintiff’s trademarks (“GOPAL”, “GOPAL GRENE” and “GOPAL 100”).

9. A Local Commissioner was appointed to seize goods from



Defendant's premises, that were found to be deceptively similar to those of the Plaintiff's. The commission took place on 13<sup>th</sup> February, 2020, resulting in seizure of following goods:

S.No.	Goods seized	Quantity
1.	Shib Gouri Green products, packed for sale	164 cans
2.	Shib Gouri 700 products, packed in cardboard boxes for sale	110 cans
3.	Shib Gouri 106 stickers	100 stickers

10. Despite being served with summons on 27<sup>th</sup> September, 2021, the Defendant chose not to appear or contest the present suit. Since there was no representation on their behalf and no written statement was filed, the Court proceeded *ex-parte*, as per order dated 01<sup>st</sup> February, 2022.

11. Subsequently, Plaintiff led *ex-parte* evidence by examining Mr. Manoj Gupta [PW-1]. His testimony was presented through an affidavit dated 05<sup>th</sup> July, 2022, taken on record as evidence on 24<sup>th</sup> April, 2023.

### ANALYSIS

12. A comparative analysis of the conflicting products of Plaintiff and Defendant is as under:

#### Plaintiff's "GOPAL GRENE" and Defendant's "GOURI GREEN" products

<u>Plaintiff's product</u>	<u>Defendant's product</u>
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**Plaintiff's "GOPAL 100" and Defendant's "GOURI 700" products**





13. The overall impression of Defendant's packaging for "GOURI GREEN" and "GOURI 700" products is deceptively similar to the Plaintiff's corresponding goods, outlined above. The Defendant has imitated the colour scheme of green and yellow used by the Plaintiff on their containers. The names "GOURI GREEN" and "SHIB GOURI 700" are written in an identical style as on the Plaintiff's products. Furthermore, the placement and usage of the expression "DELUXE CHEWING TOBACCO" has also been replicated from the Plaintiff's goods. Although the Plaintiff uses "GOPAL 100" and the Defendant uses "GOURI 700", the font used makes the numeral '7' resemble '1'. Both parties utilize circular devices that contain logos of Hindu deities. In the Court's opinion, difference in deities, with the Plaintiff using Lord Krishna and the Defendant using Lord Shiva, is not significant enough to distinguish the overall commercial impact rendered on an average consumer's mind. Similarly, when examining the products as a whole, the distinction between the marks "GOPAL" and "GOURI" becomes



inconsequential.

14. PW-1 has proved the certificates of trademark registrations of “GOPAL” formative marks along with the Lord Krishna device in Plaintiff’s name (Ex. PW 1/8 to 1/9 colly) as well as the trademarks search report (Ex. PW-1/10) demonstrating that Plaintiff is the sole and exclusive user of “GOPAL” trademarks and Lord Krishna device for chewing tobacco/ zarda in class 34. The continuous and uninterrupted commercial use of the “GOPAL” trademark since 1950 and resultant annual sales figures as well as advertisement expenses of Plaintiff, have also been confirmed by PW-1. The uncontested nature of the present suit and uncontroverted *ex-parte* evidence presented by the Plaintiff, successfully proves Plaintiff’s case. The evidence convincingly demonstrates that the packaging of “GOPAL GRENE” and “GOPAL 100” products is exclusively linked to the Plaintiff, in the perception of the public. Defendant’s packaging is deceptively similar thereby infringing the Plaintiff’s trademark rights.

15. Despite full knowledge, the Defendant has not contested the suit and has not filed its written statement. Based on the documents, pleadings and evidence led by the Plaintiff, the Court is satisfied that the Plaintiff is entitled to a judgment in its favour.

### **RELIEF**

16. Accordingly, the present suit is decreed in favour of Plaintiff and a permanent injunction is granted against the Defendant, in terms of paragraph No. 45 (i) to (iv) of the plaint.

17. The goods seized by Local Commissioner and handed over to Defendant on *superdari*, detailed in the Commissioner’s Report dated 21<sup>st</sup>



February, 2020, are ordered to be forthwith delivered to the Plaintiff or its authorized representative for destruction, in accordance with extant rules/regulations.

18. Plaintiff shall further be entitled to costs amounting to Rs. 7.5 lakhs, recoverable from the Defendant, which includes court fee of Rs. 2 lakhs, the expenses incurred to pursue the litigation such as the Local Commissioner's fee, and counsel's fee. Plaintiff shall file a certificate of counsel's fee, within a period of six weeks from today.

19. When it comes to the issue of damages, the burden of proof lies with the Plaintiff. Regrettably, they have not presented any evidence that supports the claimed amount of damages arising from the Defendant's actions. Plaintiff's witness has also not provided specific details on this particular aspect, which exacerbates the uncertainty. In absence of sufficient evidence, accurately assessing and quantifying the damages becomes challenging. Therefore, the Court is not inclined to grant the prayer at paragraph No. 45 (vi) of the plaint.

20. Suit is decreed in above terms. Registry is directed to draw up the decree sheet.

21. Suit and all pending applications are disposed of.

**SANJEEV NARULA, J**

**MAY 15, 2023**

as

*(Corrected and released on: 05<sup>th</sup> June, 2023)*