



Decree granted in favour of leading FMCG company

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The matter was decreed by the Hon'ble High Court of Delhi vide order dated 24th April, 2019. In July 2018, the plaintiff was informed by its investigators in China that on 29th June 2018 a ship containing large quantities of infringing toothbrushes bearing the mark COLDENT was to depart from a port at Ningbo, China and was scheduled to reach Kolkata ports via Krishnapatnam Port located in Nellore, Andhra Pradesh. Anand and Anand represented the plaintiff and apprised the Delhi High Court of this peculiar situation and also provided the court with various details such as the names of the ships, container numbers, port details etc. However, the names of the importers were initially unknown. The Hon'ble judge was further apprised of the various trademark registrations of the plaintiff and was shown the similarity between the trade dress of the plaintiff toothbrushes and the infringing Coldent toothbrushes. The Hon'ble Court noted the fact that the Defendants had used the first name of the plaintiffs trademark, and has taken 'dent' of 'dental' to make it 'Coldent', and has also taken the words, 'double action' used by the plaintiff on its toothbrushes. The Court further took note of Section 140 of the Trademarks Act vide which the proprietor or licensee of a trademark may give notice in writing to the Customs Officials to prohibit the import any goods that may amount to infringement of their registered trademarks and the Customs Officials may require the importer of the goods or his agents to produce documents and particulars in his possession relating to the goods and to furnish information regarding the importer and exporter. Further the court held that Section 2(33) of the Customs Act defines "prohibited goods" viz: 'any goods or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;' and it includes the goods the import or export of which is subject to any prohibition under the Customs Act or any other law for the time being in force, including the Trade Marks Act or the Patents Act etc. as per Section 11(2)(n) of the Customs Act. In such circumstances after hearing the Plaintiffs' arguments, the Hon'ble Court was pleased to direct the concerned customs officials to immediately freeze the contents of the concernedships and containers and to divulge the details of the goods contained therein, the details of the exporter and importer, the value and number of goods etc. to the Plaintiffs to ensure that the matter reaches its logical conclusion. Further, the Hon'ble Court directed that in case the importer is found by the Customs Authorities, he is restrained from taking custody of the goods till the next date of hearing. The importers of the infringing Coldent branded toothbrushes were identified and added as Defendants to the suit. Thereafter, the matter was decreed in favour of the Plaintiffs through a settlement agreement entered into with the Defendants wherein the Defendants acknowledged the rights of the Plaintiffs' in the well-known trademark and undertook not to use the mark Coldent or any other mark deceptively similar to the mark of plaintiff in future. The Defendants further agreed



to coordinate with the Customs Officials and destroy the infringing COLDENT branded toothbrushes as per law. The matter was decreed by the Hon'ble High Court of Delhi in the above terms vide order dated 24th April, 2019.

