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18
 19 **UNITED STATES DISTRICT COURT**
 20 **NORTHERN DISTRICT OF CALIFORNIA**
 21 **SAN FRANCISCO DIVISION**

22 AYUSH HERBS, INC.,

23 Plaintiff,

24 vs.

25 DISTACART, INC. and GENIE
 26 EXPORTS PVT. LTD.,

27 Defendants.

) Case No.: 3:22-cv-3707-CRB

) ~~PROPOSED~~ FINAL JUDGMENT
) BY CONSENT AND PERMANENT
) INJUNCTION

) CMC: Dec. 1, 2023 8:30 a.m.

1 On consent of Plaintiff Ayush Herbs, Inc. (“Plaintiff” or “Ayush Herbs”) and
2 Defendants Distacart, Inc. (“Distacart”) and Genie Exports Pvt. Ltd. (“Genie Exports”)
3 (collectively “Defendants”), having agreed that a Final Judgment By Consent
4 (“Consent Judgment”) and Permanent Injunction should be entered between them and
5 good cause appearing therefor:

6 **IT IS ORDERED, ADJUDGED AND DECREED:**

7 1. This case arose under the provisions of the Trademark Act of 1946, 15
8 U.S.C. § 1051, *et seq.*, particularly under 15 U.S.C. § 1125 and 15 U.S.C. § 1115 and
9 related claims for infringement and contributory infringement of a registered trademark
10 and unfair competition. The Court has subject matter jurisdiction pursuant to 15 U.S.C.
11 § 1121 and 28 U.S.C. §§ 1331, 1338 and 1367(a). The Court further has continuing
12 jurisdiction to enforce the terms and provisions of this Consent Judgment.

13 2. Each Defendant affirms that it has reviewed and agrees to this Consent
14 Judgment voluntarily, and that no promise or threat of any kind has been made by
15 Plaintiff, or any officer or employee of Plaintiff, to induce it to consent to entry of this
16 Consent Judgment and Permanent Injunction.

17 3. Each Defendant affirms it was represented by legal counsel in connection
18 with the negotiation of this Consent Judgment and Permanent Injunction.

19 4. Each Defendant acknowledges service of the Summons and Complaint.

20 5. Each Defendant admits that this Court has personal jurisdiction over it.

21 6. Each Defendant admits that venue properly lies with this Court.

22 7. Each Defendant waives any and all rights to appeal this action.

23 8. Each Defendant consents to the continued jurisdiction of this Court for the
24 purpose of enforcing the terms and conditions of this Consent Judgment and Permanent
25 Injunction and for any other purposes relevant to this case.

26 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

27 9. Plaintiff Ayush Herbs, Inc. (“Ayush Herbs”) is the owner of U.S.
28 Trademark Registration No. 2,493,772 in International Trademark Class 003 for

1 AYUSH HERBS for “cosmetics, namely, skincare preparations, [skin lotions, skin
2 creams] and skin moisturizers; massage oil; replenishing oil, namely, hair
3 conditioners,” as well as in International Trademark Class 005 for “herbal and
4 nutritional supplements; [medicated candy for alleviating pain and intestinal distress;
5 homeopathic and pharmaceutical preparations,] natural medicines, and herbal and
6 plant extracts for medical use, all for human and veterinary use for alleviating pain and
7 for treating gastrointestinal problems, joint ailments and stress related nervous
8 disorders.” The AYUSH HERBS Certificate of Registration is attached as Exhibit A.

9 10. Plaintiff Ayush Herbs is the owner of U.S. Trademark Registration No.
10 6,762,042 in International Class 003 for AYUSH for “Cosmetics; Hair conditioner;
11 Massage oil; Skin moisturizer; Non-medicated skin care preparations,” as well as in
12 International Class 005 for “Dietary and nutritional supplements; Herbal extracts for
13 medical purposes; Herbal supplements; Plant extracts for medical, veterinary and
14 pharmaceutical purposes.” The AYUSH Certificate of Registration is attached as
15 Exhibit B.

16 11. The AYUSH HERBS and AYUSH trademarks (collectively the “Ayush
17 Herbs Trademarks”) are valid and in full force and effect and Ayush Herbs has the
18 exclusive right to use the registered marks in connection with the goods or services
19 identified in the registration certificates.

20 12. The AYUSH HERBS trademark has become incontestable pursuant to 15
21 U.S.C. § 1065.

22 13. Ayush Herbs has used the AYUSH HERBS trademark continuously since
23 at least as early as November 1990 and has used the AYUSH trademark continuously
24 since at least as early as 1994.

25 14. Defendant Genie Exports has sold products in the United States that use
26 or display the word or term AYUSH as an element of a mark or product name, such as
27 AYUSH Kwath, AYUSH Kadha, and AYUSH-64, that Ayush Herbs alleges infringe
28 the Ayush Herbs Trademarks.

1 15. Defendant Distacart has allowed the sale of products in the United States
2 that use or display the word or term AYUSH as an element of a mark or product name,
3 such as AYUSH Kwath, AYUSH Kadha, and AYUSH-64, through its online platform
4 at distacart.com, and Ayush Herbs alleges that through these actions Distacart has
5 contributed to the infringement of the Ayush Herbs Trademarks.

6 16. Ayush Herbs contends that Defendants’ use or display of the word or term
7 AYUSH as an element of a mark or product name in United States commerce in
8 connection with the sale, offering for sale, distribution, or advertising of such products
9 is likely to cause confusion, or to cause mistake, or to deceive, and therefore constitutes
10 trademark infringement and contributory trademark infringement in violation of 15
11 U.S.C. § 1114, unfair competition in violation of 15 U.S.C. § 1125(a), and unfair
12 competition against Ayush Herbs in violation of Cal. Bus. & Prof. Code § 17200 and
13 the common law of the State of California.

14 17. On June 23, 2022, Ayush Herbs commenced the above-captioned action
15 (the “Civil Action”) by filing a Complaint against Defendants. On November 17, 2022,
16 Plaintiff filed a First Amended Complaint (the “FAC”), which is the operative
17 complaint.

18 18. Defendants expressly deny any liability in connection with Ayush Herbs’
19 claims in this Civil Action. Notwithstanding Defendants’ denial of liability, each
20 Defendant consents to a permanent injunction as set forth below.

21 19. Ayush Herbs has waived all claims for damages against Defendants,
22 including Defendants’ profits, treble damages, and attorneys’ fees and costs.

23 **ACCORDINGLY, IT IS FURTHER ORDERED, ADJUDGED AND**
24 **DECREED:**

25 20. The Court expressly determines that there is no just reason for delay in
26 entering this judgment, and pursuant to Rule 54(b) of the Federal Rules of Civil
27 Procedure, the Court directs entry of judgment for permanent injunction against each
28 Defendant as follows:

1 21. Defendants Distacart, Inc. and Genie Exports Pvt. Ltd. and all affiliated
2 or related entities, agents, officers, employees, servants, representatives, successors,
3 assigns, and attorneys, and all those in active concert or participation with any of them,
4 and all other persons acting for, with, by, through, or under authority from them, are
5 hereby **PERMANENTLY ENJOINED AND RESTRAINED** from:

6 a. manufacturing, producing, acquiring, purchasing, importing,
7 receiving, exporting, distributing, circulating, selling, offering for sale, advertising, or
8 promoting in the United States any product that bears one or more of the Ayush Herbs
9 Trademarks, any mark confusingly similar to the Ayush Herbs Trademarks, or any
10 mark that includes the word or term AYUSH as an element of a mark or product name,
11 in connection with the goods or services identified in the Ayush Herbs Trademarks’
12 registration certificates;

13 b. acting through or forming other entities or associations, or using
14 any other instrumentalities or devices, for the purpose of circumventing, evading, or
15 avoiding or otherwise violating the prohibitions referred to in subparagraph (a) above.

16 c. directly or indirectly assisting any other individual or entity in
17 engaging in or performing any of the activities referred to in subparagraph (a) above.

18 22. This Consent Judgment and Permanent Injunction shall be deemed to have
19 been served upon the Defendants at the time of its execution by the Court.

20 23. Each party shall bear its own costs and expenses, including but not limited
21 to attorneys’ fees.

22 24. This Court retains jurisdiction over the parties and the subject matter for
23 the purposes of enforcing this Consent Judgment and Permanent Injunction and the
24 Settlement Agreement between the Parties relating to this Civil Action.

25 25. This case is now closed as to all parties and claims.
26
27
28

1 **APPROVED OF AS TO FORM:**

2

3 DATED: August 22, 2023



4

HON. CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE

5

6 **CONSENTED TO BY THE PARTIES:**

7

DATED: 8/21/2023

Amin Talati Wasserman, LLP

8

By: /s/George R. Spatz

9

George R. Spatz (*pro hac vice*)

10

Manon Burns

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Attorneys for Plaintiff,

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Ayush Herbs, Inc.

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HM Law Group, LLP

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By: /s/Devasena Reddy

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Devasena Reddy

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Vani Moodley

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Attorneys for Defendants Distacart, Inc., and

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Genie Exports Pvt. Ltd.

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CERTIFICATE OF SERVICE

I hereby certify that on this 21 day of August, 2023, I caused the electronic filing of the foregoing document described as **[PROPOSED] FINAL JUDGMENT BY CONSENT AND PERMANENT INJUNCTION** through the CM/ECF system. This document will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants.

/s/Manon Burns
Manon Burns

Exhibit A

Int. Cls.: 3, 5 and 30

Prior U.S. Cls.: 1, 4, 6, 18, 44, 46, 50, 51 and 52

United States Patent and Trademark Office

Reg. No. 2,493,772

Registered Oct. 2, 2001

**TRADEMARK
PRINCIPAL REGISTER**

AYUSH HERBS

AYUSH HERBS, INC. (WASHINGTON CORPORATION)
2115 - 112TH AVENUE NE
BELLEVUE, WA 98004

FOR: COSMETICS, NAMELY, SKINCARE PREPARATIONS, SKIN LOTIONS, SKIN CREAMS AND SKIN MOISTURIZERS; MASSAGE OIL; REPLENISHING OIL, NAMELY, HAIR CONDITIONERS, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

FIRST USE 11-0-1990; IN COMMERCE 11-0-1990.

FOR: HERBAL AND NUTRITIONAL SUPPLEMENTS; MEDICATED CANDY FOR ALLEVIATING PAIN AND INTESTINAL DISTRESS; HOMEOPATHIC AND PHARMACEUTICAL PREPARATIONS, NATURAL MEDICINES, AND HERBAL AND PLANT EXTRACTS FOR MEDICAL USE, ALL FOR HUMAN AND VETERINARY USE FOR ALLEVIATING

PAIN AND FOR TREATING GASTROINTESTINAL PROBLEMS, JOINT AILMENTS AND STRESS RELATED NERVOUS DISORDERS, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 4-0-1990; IN COMMERCE 4-0-1990.

FOR: SPICES; CANDY; HERBAL CANDY; TEA AND PROCESSED HERBS, IN CLASS 30 (U.S. CL. 46).

FIRST USE 11-0-1990; IN COMMERCE 11-0-1990.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "HERBS", APART FROM THE MARK AS SHOWN.

SER. NO. 75-504,468, FILED 6-16-1998.

BRIAN RUPP, EXAMINING ATTORNEY

Exhibit B

United States of America

United States Patent and Trademark Office

AYUSH

Reg. No. 6,762,042

Registered Jun. 14, 2022

Int. Cl.: 3, 5

Trademark

Principal Register

AYUSH HERBS, INC. (WASHINGTON CORPORATION)
2239 152ND AVE NE
REDMOND, WASHINGTON 98052

CLASS 3: Cosmetics; Hair conditioner; Massage oil; Skin moisturizer; Non-medicated skin care preparations

FIRST USE 00-00-1994; IN COMMERCE 4-26-2022

CLASS 5: Dietary and nutritional supplements; Herbal extracts for medical purposes; Herbal supplements; Plant extracts for medical, veterinary and pharmaceutical purposes

FIRST USE 00-00-1994; IN COMMERCE 4-25-2022

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR

OWNER OF U.S. REG. NO. 2493772

SER. NO. 90-523,109, FILED 02-10-2021



Katherine Kelly Vidal

Director of the United States
Patent and Trademark Office

