

**IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

EC/19/2025

**SOCIETE DES PRODUCTS NESTLE S. A. AND ANR.
VS
M/S. KIT KAT FOOD PRODUCTS AND ORS**

For the Decree-Holder : Ms. Sristi Barman Roy, Adv.
Mr. Sidhartha Sharma, Adv.
Mr. Rishav Dutt, Adv.
Mr. P. Ganguly, Adv.

For Respondent no.3 : Mr. K. Kashyap, Adv.

For the Respondent no.4 : Ms. Tanuka Basu, Adv.
Ms. Shamayeni Fasih, Adv.

For the Joint
Special Officers : Mr. Rabindra Nath Pal, Adv.
Ms. Kalyani Dey, Adv.

Judgment on : 24.07.2026

Ananya Bandyopadhyay, J.:-

1. The present execution proceeding has been instituted for enforcement of the decree dated **31st July, 2023** passed in **C.S. No. 48 of 2000**, whereby the defendants, their partners, servants, agents and every person claiming through them were permanently restrained from manufacturing, marketing, selling, advertising or otherwise dealing in goods bearing the trade

mark **“KIT KAT”** or any mark, trade name or artistic representation identical with or deceptively similar thereto.

2. The decree has attained finality. Its binding character has never been questioned before any superior forum. The jurisdiction now exercised by this Court is confined to secure faithful implementation of a decree which has already crystallised into an enforceable adjudication.
3. The execution application proceeds on the allegation that notwithstanding the permanent injunction, the judgment debtors continued manufacturing and marketing chanachur under the prohibited mark through several online commercial platforms. The decree holders have relied upon online purchase records, packaging bearing the impugned mark, screenshots of e-commerce listings, cease and desist notices, take-down notices and other contemporaneous materials to demonstrate continuing acts of infringement even after the decree had become operative.
4. Considering the nature of the allegations, this Court, by order dated **21st August, 2025**, appointed Joint Special Officers to visit the premises of the judgment debtors, prepare an inventory of infringing goods and materials, and submit an independent report.
5. The Joint Special Officers have since placed their report before this Court.
6. The report records that upon visiting the original premises of **“KIT-KAT Food Products”** at **68/26A, Haripada Dutta Lane**, the establishment was found closed and the entrance stood sealed by a rusted tin enclosure. During local enquiry, however, information was received regarding the

operation of another establishment under the name “**Keka Food Products**” situated at **60/72A, Haripada Dutta Lane**.

7. The Joint Special Officers thereafter visited the said premises. During such inspection, the workmen present identified the establishment and informed the officers that the business previously carried on under the name “**KIT-KAT Chanachur**” had subsequently been renamed as “**Keka Chanachur.**”
8. The report further recorded that **Krishnapada Saha**, one of the judgment debtors, appeared before the Joint Special Officers pursuant to telephonic communication. He acknowledged his earlier association with **KIT-KAT Food Products**, stated that he presently carried on business under the name **Keka Food Products**, admitted that the design employed for the products marketed under the names **KIT-KAT** and **Keka** is substantially the same, and accepted that the former establishment has ceased operations. The Joint Special Officers also noticed workmen engaged in manufacturing activities at the premises presently occupied by **Keka Food Products**, prepared inventories, obtained photographs, collected specimen packaging and empty packets, and completed the commission entrusted to them. The report further recorded that although the learned Advocate representing the decree holders signed the field notes prepared on the spot, Mr. Krishnapada Saha and the concerned employee declined to append their signatures thereto.
9. The report, viewed as a whole, establishes that the commission directed by this Court has been faithfully executed and furnishes an independent factual

account of the position prevailing at the inspected premises on the date of inspection.

10. Subsequent thereto, Judgment Debtor Nos. 2 and 3 have jointly filed an affidavit pursuant to the order of this Court.
11. The affidavit assumes considerable significance.
12. The judgment debtors had expressly admitted that they were partners of **M/s. KIT KAT Food Products** and that the said partnership had manufactured and marketed goods bearing the trade mark "**KIT KAT.**" They have further declared that the business carried on under the said partnership has permanently ceased; that all manufacture, production and marketing under the impugned mark have been brought to a complete end; that every product bearing the offending mark has been withdrawn from commercial circulation, including retail outlets, wholesale channels, warehouses, distributors and electronic commerce platforms; that no stock, whether finished, semi-finished or raw material, bearing the prohibited mark remains in existence; that the partnership firm has formally stood dissolved with effect from **30th December, 2023**; that no business is being carried on thereafter under the dissolved partnership; that the trade mark "**KIT KAT**" has been completely abandoned; that no future application for registration of the said mark or any deceptively similar mark shall be made by them either individually or through any other entity; that every claim, if any, in respect of the impugned mark stands relinquished; and that they shall faithfully honour the decree of this Court and every right flowing therefrom.

13. These declarations are accompanied by an express undertaking that any departure therefrom would expose the deponents to proceedings for contempt.
14. Admissions made upon oath before a Court are substantive pieces of evidence. Undertakings voluntarily furnished to the Court equally acquire binding force and cannot subsequently be diluted according to convenience. A party obtaining indulgence from the Court upon the strength of solemn assurances remains under a continuing obligation to adhere to each representation contained therein.
15. The Court also bears in mind that the execution proceeding itself originated from allegations that the decree has been violated after its pronouncement. The report of the Joint Special Officers reflects circumstances requiring concern. At the same time, the affidavit now filed by the judgment debtors contains comprehensive admissions of their previous conduct and unequivocal declarations abandoning every claim to the impugned trade mark and undertaking perpetual compliance with the decree. Once the Court is satisfied that adequate measures have been taken to ensure complete and enduring compliance, the execution jurisdiction ought to mould its relief in a manner that effectively preserves the sanctity of the decree while simultaneously preventing recurrence of infringement.
16. Having regard to the admissions contained in the affidavit, the report submitted by the Joint Special Officers and the materials placed before the Court, this Court is satisfied that the undertakings furnished by Judgment Debtor Nos. 2 and 3 deserve to be accepted. Those undertakings, however,

shall not remain mere assurances recorded in the proceeding but shall constitute binding directions of this Court.

17. Accordingly, the Joint Affidavit filed by Judgment Debtor Nos. 2 and 3 is taken on record and every declaration and undertaking contained therein shall form an integral part of this order and shall bind the deponents personally as well as every person acting for or through them.
18. Judgment Debtor Nos. 1 to 3, their partners, proprietors, successors, assigns, servants, agents, representatives and every person claiming through or under them shall remain permanently restrained from manufacturing, processing, packaging, advertising, distributing, selling, offering for sale or dealing in any goods bearing the trade mark **"KIT KAT"** or any mark, label, trade dress, artistic work or commercial representation identical with or deceptively similar thereto in any manner whatsoever, whether through physical markets, wholesale channels, retail establishments, online marketplaces, e-commerce platforms, social media or any other medium.
19. The judgment debtors shall also remain bound by their undertaking not to seek registration, adoption or use of the impugned mark, or any deceptively similar mark, either in their individual capacity or through any proprietary concern, partnership, company or other business entity.
20. The inventory, photographs and materials prepared and collected by the Joint Special Officers shall remain on record. The report submitted by them is accepted and shall form part of the execution records.
21. Since the decree holders have secured the principal relief sought in execution and the judgment debtors have submitted themselves to the

continuing authority of the decree through solemn undertakings accepted by this Court, no further coercive measure is presently considered necessary.

22. It is, however, made abundantly clear that any future manufacture, sale, advertisement, distribution or commercial use of the trade mark **“KIT KAT”**, or any deceptively similar mark, by the judgment debtors or any person acting under their authority shall constitute a fresh and independent breach of the decree as well as a violation of the undertakings recorded in this order. Such breach shall entitle the decree holders to seek execution afresh together with every other remedy available in law, including proceedings for contempt, without being required to establish any further equity in their favour.

23. Subject to the aforesaid directions and the continuing obligation arising from the undertakings recorded herein, the execution application stands disposed of.

24. There shall be no order as to costs.

(Ananya Bandyopadhyay, J.)