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IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(OS) 506/2004

Decided on April 21, 2008

ATLAS CYCLE (HARYANA)

..... Plaintiff

Through Mr. Sudhir K. Makkar, Advocate.

versus

ATLAS PRODUCTS

..... Defendant

Through Mr. Sindhu Sinha, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

- 1 . Whether reporters to local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporter or not?**
- 3. Whether the judgment should be reported in the digest?**

Mr. Justice S. Ravindra Bhat: (OPEN COURT)

- 1 . In this suit the plaintiff has sought the following reliefs:-

"The Defendants, their Directors, servants, agents, representatives, distributors and assigns be restrained by a permanent injunction restraining them from using "SALTA" or any other mark or name deceptively or

confusingly similar to the trade mark “ATLAS”, either as their trade mark or part of their trade mark or indeed as part of their corporate name in respect of bicycles and bicycle parts or in any other manner whatsoever infringing the registered trade mark(s) of the Plaintiffs or passing off its goods as and for the goods of the Plaintiffs;

The Defendants, their Directors, servants, agents, representatives, distributors and assigns be ordered by a decree of mandatory injunction to hand over to the Plaintiff all goods, packaging cartons, unfinished products etc. bearing the trade mark ATLAS or any other trade mark or name which is deceptively or confusingly similar thereto. The Defendants be also ordered to hand over all dies, plates, blocks, moulds, matrix, transfers, negatives etc. bearing the trade mark “SALTA” or any other deceptively or confusingly similar trade mark or name;

The Defendants be called upon to allow inspection of their accounts to assist in ascertaining profits made by the Defendants by their unauthorized user of the trade mark “SALTA” and a decree be accordingly passed in favour of the plaintiff for the amount found due;

Costs of the present suit be awarded in favour of the Plaintiffs and against the Defendants;

Any other relief which the Hon'ble Court thinks fit and proper in the circumstances of the case be

allowed in favour of the Plaintiffs and against the Defendants.”

2. At the initial stage of hearing on 13.5.2004, on issue of application under Order XXXIX Rule 1 & 2 CPC this court issued the following order:-

“This is an application filed by the plaintiff praying for a temporary injunction restraining the defendants, their servants, agents, distributors, stockists and all others from using the trademark “SALTA” or any other trademark which is deceptively or confusingly similar to the trademark “ATLAS” of the plaintiff, either as their trademark or part of their trademark or part of their corporate name in respect of bicycles and bicycles parts and/or passing off the goods under the said trademark during the pendency of the present suit.

The plaintiff is the registered proprietor of the trademark “ATLAS” . Details of the aforesaid registration of the plaintiff is given in paragraph 4 of the application. The registration was obtained by the plaintiff as far back as August 18, 1952 and since then the plaintiff has been using the aforesaid trademark for the last about 50 years. The defendant No.1 introduced in the market bicycles under the trademark 'House of Atlas'. Being aggrieved by the aforesaid action on the part of defendant No.1, the plaintiff filed a suit in this Court which was registered as Suit No. 882/2002. By judgment and order

dated September 27, 2002 this Court granted a temporary injunction in favour of the present plaintiff restraining the said defendants from using the trademark 'House of Atlas' or any other mark which may be deceptively similar to the plaintiff's trademark 'ATLAS' in respect of bicycle and bicycle parts till the disposal of the said suit. However, this court also made it clear that there would be no injunction in respect of the user of the corporate name by the first defendant. As presently the defendants 2 and 4 have started a new firm by the name of defendant No.3 and have started manufacturing bicycles and bicycle parts using the name 'SALTA' as its trademark in relation to bicycles and bicycle parts, therefore, the present suit is filed in this court along with the present application seeking for temporary injunction. It is the stand of the plaintiff that the word 'SALTA' is derivative of the words 'ATLAS' as when the word 'ATLAS' is spelt in reverse alphabetical order the same results in the trademark of the defendants, i.e. , 'SALTA'. Both the plaintiff and defendant No.3 deal in the same goods, i.e. , in relation to the bicycles and bicycle parts. It, therefore, prima facie appears that there is an intention of using the trademark of the plaintiff in a reverse manner so as to pass off the goods of the defendants as that of the plaintiff.

It is also stated in the application that to the knowledge of the plaintiff the bicycles of the defendant NO.3 with the trademark 'SALTA' have now reached the market, whereas such a statement is denied by the counsel

appearing for defendants 3 and 4 contending, inter alia, that the said defendant No.3 is already in the market with the bicycles under the trademark 'SALTA'. Counsel appearing for the defendants submits that the said defendants have already applied for the registration of the said name 'SALTA'. However, no such registration under the trademark 'SALTA' is granted in favour of the defendant No.3 till date by the competent authority. I am also usefully refer to three judges decision of the Supreme Court in Cadila Health Care Ltd. V. Cadila Pharmaceuticals Ltd, (2001) 5 S.C.C. 73. In the said decision the Supreme Court has held that a trademark is essentially adopted to advertise one's product and to make it known to the purchaser, and that it attempts to portray the nature and, if possible, the quality of the product and over a period of time the mark may become popular. It was further held that it is usually at that stage that other people are tempted to pass off their products as that of the original owner of the mark, and that is why it is said that in a passing off action, the plaintiff's right is against the conduct of the defendant which leads to or is intended or calculated to lead to deception. The plaintiff in the present case is in the market manufacturing and marketing bicycle and bicycle parts with the trademark 'ATLAS' over a period of 50 years, whereas the defendant No.3 has now tried to enter the market with the reverse alphabets of the trademark 'ATLAS' of the plaintiff with the temptation to pass off their products as that of the original owner of

the mark. I am of the prima facie opinion that the only intention of the defendant to adopt a trademark with the reverse alphabets as that of the plaintiff is to catch on the goodwill and reputation of the plaintiff. This, of course, is my prima facie and tentative opinion for the purpose of deciding whether or not an interim injunction should be granted at this stage.

Considering the facts and circumstances of the case, I issue notices on this application to the defendants. Mr. Kamal Nijhawan, Advocate, accepts on behalf of the defendants. Reply could be filed within four weeks. Rejoinder thereto, if any, could be filed before the next date. However, in the light of the discussion aforementioned and considering the fact that a prima facie case is made out at this stage for grant of ad interim injunction at this stage, an order is passed restraining the defendants, their servants, distributors, stockists and all others acting on their behalf from using the word 'SALTA' or any other mark or name which could be said to be deceptively or confusingly similar to the trademark 'ATLAS' of the plaintiff, and/or from passing off the goods of the said defendants as that of the plaintiff till the next date. I am also of the opinion that unless such protection is granted the plaintiff would suffer irreparable loss and injury.

The injunction application shall be taken up for final arguments on the next date.

Renotify on July 8, 2004.

A copy of this order be given dasti to the counsel for the parties.

May 13, 2004

Dr. Mukundkam Sharma, J.”

3 . The above order has subsisted till date. The defendants have filed the written statement and the plaintiff has also filed its replication. Subsequently the defendant filed its affidavits.

4 . Learned counsel today submitted that the defendants have agreed not to use the mark, objected to by the plaintiff i.e. “SALTA” in respect of bicycle and bicycle parts. The affidavit on behalf of the defendant No.1 firm was filed by Sh. Ashwath Kapur, dated 12.3.2008, enclosing a copy of the minutes of the Board Meeting dated 5.11.2007, authorizing the filing of it. The affidavit has been placed on the record. Sh. Arun Kapur, the defendant No.2 has also filed an affidavit. Similarly, Sh. Akshay Kapur has filed an affidavit as defendant No.4 and defendant No.3, on the same day i.e. 12.3.2008. A copy of the Board Resolution dated 8.11.2007 of the defendant authorizing him to file the affidavit has also been placed on the record. Learned counsel for the defendant states that the suit may be decreed in terms of the affidavits.

5 . In view of the statement made and after considering the affidavits, a decree shall issue against the defendants in terms of prayer (a) of the suit.

All the applications are disposed of in the above terms.

No costs.

(S. RAVINDRA BHAT)
JUDGE

APRIL 21, 2008
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