

+ **CS(OS) 1282/2006**

GENERAL ELECTRIC COMPANY Plaintiff

Versus

Through: Ex parte.

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? NO
2. To be referred to the reporter or not? NO
3. Whether the judgment should be reported in the Digest? NO

RAJIV SAHAI ENDLAW, J.

1. The plaintiff being the registered proprietor of the trademark GENERAL ELECTRIC and GE and the GE monogram in relation to a number of services and goods has sued for restraining the defendants from using the trademark GE LITE. Though the averments in the plaint are that the defendants i.e., defendant No.3 of which the defendants 1 and 2 are partners / proprietors had applied to the Registrar of Trademark for registration of the mark GE LITE in relation to motorcycle boxes included in class 12, in the prayer paragraph, injunction is claimed for restraining the defendants from dealing in automobile parts and/or textile machines spindles or any other products or services under the trademark GE LITE. This is obviously a typographical error on account of the prayer paragraph having been lifted from the plaint in some other

suit filed by the plaintiff relating to textile machines spindles. In the body of the plaint, there is no averment that the defendants are dealing in or threatened to deal in textile machines spindles and the application for registration by the defendants, publication in the Trademark Journal whereof gave the cause of action for the suit was also for motorcycle boxes falling in class 12.

2. Vide ex parte order dated 2nd June, 2006 the defendants were restrained from using the trademark GE LITE or any other mark in infringement of plaintiff's registered trademark. Summons of the suit issued to the defendants could not be served owing to a report that there was no such firm/person or left, from the address of the defendants given by the plaintiff. The plaintiff applied for substituted service by publication and whereafter vide order dated 23rd February, 2007 the defendants were ordered to be proceeded against ex parte and the interim order made absolute during the pendency of the suit. The plaintiff has led its ex parte evidence by filing the affidavit by way of examination in chief of its constituted attorney Ms Rubi Anand. The defendants remain ex parte.

3. It is the case of the plaintiff and in evidence that the plaintiff is the registered proprietor including in India of the trademark GE MONOGRAM, GENERAL ELECTRIC GE in relation to a wide spectrum goods and services.

4. GENERAL ELECTRIC or GE is a well known trademark identified by most. GE alone is equally well known as GENERAL ELECTRIC and is always associated with the plaintiff. In fact, the

distinguishing feature of the trademark of the plaintiff and the way in which it is remembered by most is as GE. The witness of the plaintiff has proved the registrations as Exhibits P4 to P7. The registrations in the other countries have been proved as Exhibit P8.

5. Though the plaintiff has not proved the advertisement of the defendants in the Trademark Journal but at pages 1 and 2 of the list of documents dated 30th May, 2006 filed by the plaintiff is a computer print out of the said advertisement published on 10th January, 2005 pursuant to the application dated 21st July, 2003 of the defendants. The defendants have sought registration of GE LITE for manufacture of all kinds of motorcycle box included in class 12 and have claimed user since 1st April, 2000. The witness of the plaintiff has proved as Exhibit PW1/10 the opposition filed the plaintiff thereto but has not deposed as to what has been the outcome, if any, of the said opposition. The evidence of the plaintiff having remained unchallenged by the defendants, the plaintiff has become entitled to the relief of permanent injunction.

6. The plaintiff has also claimed ancillary reliefs of delivery, accounts, recovery of damages and costs. The plaintiff having not even been able to furnish the address from where the defendants, if at all, are selling, functioning, no useful purpose will be served in granting the relief of accounts or delivery to the plaintiff. As far as the damages are concerned, the publication of the advertisement in the Trade Mark Journal shows at least an attempt by the defendants to copy the trademark of the plaintiff.

7. Though, the defendants had suffixed LITE to the trademark GE of the plaintiff but in my view that would not make the mark of the defendants distinguishable from that of the plaintiff. Anyone seeing GE, even with the suffix LITE will still associate it with the plaintiff and is likely to believe and assume that the said trademark and the business being carried thereunder and/or the goods or services being supplied thereunder are of the plaintiff. The defendants have not appeared to explain or disclose the reason, if any, for their wanting to register the said trademark. The mark GE of the plaintiff is registered in class 12 relating to vehicles/apparatus for locomotion by land, air or water and the motorcycle boxes of the defendants would have been understood by anyone as a product of the plaintiff. It cannot be said that the defendants were unaware of the trademark GE of the plaintiff. The mark GE LITE has also got nothing to do with the motorcycle boxes in relation to which the defendants claimed to be using the same. There does not appear to be any reason for the defendants to adopt the said trademark other than to encash the goodwill and reputation of the plaintiff to their undue enrichment and to the detriment of the plaintiff. Undoubtedly the use of the plaintiff's trademark by anyone else even if in relation to a business not being carried on by the plaintiff causes loss and injury to the plaintiff.

8. Though the counsel for the plaintiff has pressed for damages, but save for a lip service, there is no evidence whatsoever. Except for a bare averment of the publication of the advertisement of defendants in the Trade Mark Journal and which also was not attempted to be proved, there is nothing at all to show that the

defendants were, in fact, carrying on business of manufacture and sale of the motorcycle boxes in the name and style of GE LITE or since 1st April, 2000. No evidence, whatsoever of the scale of business of the defendants or of the price at which the said box was being sold, has been led. The counsel for the plaintiff has relied on **The Heels v V.K. Abrol** MANU / DE/1559/2006, **Castrol Ltd v Ashwini Verma** (1999) 80 DLT 114, **Smithkline Beecham v S Venkataiah** 2005(31) PTC 666 (Del), **Asian Paints (India) Ltd. v Balaji Paints & Chemicals** 2006 (33) PTC 683 (Delhi), **ITC Limited v Sunil** MANU/DE/1090/2007 and **Mahindra and Mahindra Ltd. v Ashwani Kumar** MANU/DE/8421/2006.

9. However, in the absence of any evidence as aforesaid, but merely as punitive damages qua the attempt of the defendants to copy the trademark of the plaintiff, damages in the sum of Rs 1 lac are awarded to the plaintiff and against the defendants jointly and severally.

10. The suit of the plaintiff is thus decreed for the relief of permanent injunction restraining the defendants, their partners, servants, agents from manufacturing, distributing, selling, offering for sale, advertising directly or indirectly or dealing in any other manner in motorcycle boxes or in any other goods or services in or under the trademark GE LITE or under any other trademark or name similar or deceptively similar to the plaintiff's trade mark GE or GE MONOGRAM and having the effect of passing off the goods/services of the defendants as that of the plaintiff. The decree for damages in the sum of Rs 1 lac is also passed in favour of the plaintiff and

against the defendants jointly and severally. The plaintiff shall also be entitled to interest at 15% per annum on damages awarded w.e.f. 90 days of the date of the decree within which time on intimation of the plaintiff the defendants are expected to pay the amount. The plaintiff shall also be entitled to costs of the suit from the defendants.

The decree sheet be drawn up.

January 09, 2008
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**RAJIV SAHAI ENDLAW
(JUDGE)**