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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS (OS) 1298/2008

Pronounced on: 23.10.2009

M/S NICE FOOD PRODUCTS

..... PLAINTIFF

Through: Mr. Ashok Mittal, Advocate

versus

M/S KALYAN PRODUCTS

..... DEFENDANTS

Through: None

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

HON'BLE MR. JUSTICE S. RAVINDRA BHAT (Open Court)

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1. The plaintiff is a proprietorship firm. The suit claims permanent injunction, damages and delivery up, alleging that the defendants have infringed the plaintiff's trademarks, and caused injury.

2. According to the suit, the plaintiff's predecessors were in the business of manufacturing and marketing confectionaries, for more than eighteen years, in "*Goli, Toffee, Candies, Lollipops, Confectionary goods and sweets*". It is contended that the plaintiff, and through its predecessors had been continuously using the word trademarks "*Chaa-Pat*" and "*Prika's Chaa-*

Paat” as well as in the label forms, for their confectionary goods. The plaintiff concern claims registered ownership of the trademark “*Chaa-Pat*” in Classes 30 and 5, as well as in class 30, in Hindi. The registrations have been placed on record, and marked as Exh. PW-1/4 to PW-1/8.

3. The suit also alleges that the stylized label “*Prika’s Chaa-Paat*” is an original artistic work, for which the plaintiff owns copyright, (and which is used in its labels) evidenced through registration A-57577/99 and A-58500/2001. The distinctive feature of the label is the depiction of a child with a bald, large head, in yellow; the entire layout of the label, it is claimed, is unique to the plaintiff’s goods. In support of the averment, the plaintiff relies on registration certificates Ex. PW-1/9 and Ex. PW-1/10. The plaintiff’s packaging pouch is exhibited as Ex. PW-1/1.

4. The plaintiff submits that the user of the trademark and artistic devise has been continuous, since 1990 and that it has acquired a certain goodwill and reputation in respect of the goods marketed and sold by it (the plaintiff). It is stated that the plaintiff’s trademark, and use of the phrase “*Prika’s Chaa-Paat*” is inherently distinctive and was not being used by any of its competitors. The plaintiff relies on its growing sales figures, as well as copies of its invoices (marked as Ex. PW-1/140-Ex. PW-1/182) to testify its goodwill and reputation, established during the last 18 years.

5. The plaintiff alleges that in July, 2008 it learnt that the defendants are manufacturing Sweets, Golie, candies and toffees under an identical or confusingly similar word mark “*Chaafaat*” with the same device (of a bald boy with a large head) with a view to cause confusion and deception in the trade and public and to make unlawful and illegal gains. The

impugned mark, similar name and a deceptively similar label and device adopted by the defendant would show that the latter has used the plaintiff's trade mark as a model / guide while conceiving its trade mark. The plaintiff alleges, therefore, that the defendant's action amounts to infringement of its trade mark. It is claimed that the use of the impugned trade mark by the defendant is visually, structurally and phonetically identical to the plaintiff's trade mark and artistic label in respect of its goods and is bound to lead to confusion and deception amongst the purchasing public and trade. The mis-representation by the defendant is not only relatable to the origin of the goods but also to the quality of the products which are not of the same standard as that of the plaintiffs. The reason for the defendant's for doing what has been done, is to encash upon the tremendous goodwill and reputation of the reputation and plaintiff's prior used trade mark, and artistic label. It is also alleged that the products or goods are purchased by a large number of customers, who rely on the trademarks, and would fit the description of unwary customers, with imperfect recollection, who would in all probability be misled into believing that the defendant's mark is similar to those of the plaintiffs, and therefore, buy the defendant's goods based on the slavishly imitated packaging.

6. On the above averments and allegations, the plaintiff has sought the relief of perpetual injunction for restraining the defendant, its servants, retailers, stockist, distributors, representatives and agents from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in confectionary articles under the impugned trade mark artistic work "*Chaa-Paat*" and "*Prika's Chaa Paat*" or any of its variants, as used by the defendants, or any other deceptively or confusingly identical, or similar mark or label.

7. At the time of issuing summons, the court had granted an *ad-interim* injunction in the plaintiff's favour. The defendant had been served, and counsel appeared on its behalf, initially. However, no written statement was filed on its behalf, and it remained unrepresented on some dates of hearing. Consequently, it was set down *ex-parte*, and the plaintiff led its *ex-parte* evidence, through deposition of Shri. Prakash Chand Rijhwani, PW-1, who also exhibited the documents filed, by the plaintiff. He averred in support of the suit, and proved the documents placed on the record.

8. The plaintiff's mark is a word mark, as well as a label. It is not descriptive or suggestive of the products or services offered. The mark, in relation to sweets and confections is arbitrary; a coined one. The image or device of the bald boy with a large head, does not have any ready association with candies, toffees or "golas". The materials on record show that this mark has been used since quite long, for over 15 years. The plaintiff has produced documents such as invoices, etc. The plaintiff was not the initial owner of the mark, but became one due to assignment. Yet, its use has been established. Also, the plaintiff has, through the deposition of its witness, shown that sales figures have grown over the years, which can lead the court to conclude that its marks, and the goods, have acquired a certain reputation, with the consumers. In these background of facts, the use of an identical device, label, and trademark, with a similar artistic layout, by the defendant, without any explanation (since it has chosen to stay away from the proceedings) shows that there is a clear attempt to appropriate the plaintiff's goodwill and reputation.

9. In the above circumstances, the court is of the opinion that the plaintiff has proved its claim, for permanent injunction. However, as far as the question of the claim for damages is concerned, the plaintiff has not produced any evidence to show to what extent the activities of the defendant have caused it commercial or economic losses. In these circumstances, apart from directing costs, the court is of opinion that the damages claimed cannot be decreed.

10. In the light of the above discussion, the suit is decreed in terms of Para 22 (i), 22 (ii) and 22 (iii) of the suit. The plaintiff is also entitled to costs; counsel's fee is quantified at Rs. 30,000/.

DATED: October 23, 2009

S. RAVINDRA BHAT, J