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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 09.07.2010
Pronounced on : 25.08.2010

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CS(OS) 472/2006, I.A. No. 3194/2006

SKOL BREWERIES

..... Plaintiff

Through : Sh. C.M. Lall with Ms. Ekta Sarin, Ms. Jyotideep and Sh.
Subhash Bhutoria, Advocates.

Versus

UNISAFE TECHNOLOGIES

..... Defendant

Through : Sh. Sushant Singh, Advocate.

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. |

MR. JUSTICE S.RAVINDRA BHAT, J

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1. The plaintiff, in this suit, seeks the relief of permanent injunction against the defendant alleging infringement, passing off and unfair competition in respect of its trade mark, "KNOCK OUT". Other consequential reliefs are also claimed.

2. The suit avers that the plaintiff is proprietor of the brand, KNOCK OUT for beer by virtue of an assignment deed dated 27.05.2005 executed in its favour by MBL Investments Ltd, (which was later amalgamated with the plaintiff). It is stated that the said brand has been in existence for over two decades and enjoys large and established reputation both in the domestic, as well as international markets. The plaintiff, *inter alia*, is engaged in the business of brewing, distilling and marketing beer under various trademarks (Haywards 2000, Haywards 5000, Royal Challenge and Knockout). The brand KNOCK OUT has been in

existence and continuous use since 1986 (by the plaintiff's predecessor in interest). The registered trademarks of the plaintiff are:

Trade Mark	Class	Regn. No.	Date	Goods
KNOCK OUT HIGH PUNCH WITH LOGO	32	450938	11.03.1986	Beer
KNOCK OUT LABEL	32	450939	11.03.1986	Beer

The said trademark-registrations are subsisting and valid.

3. Further, it is stated that the KNOCK OUT beer is India's leading brand selling over 7 million cases, with Karnataka being the biggest market, followed by Andhra Pradesh and Maharashtra. The plaintiff has produced sales for the said brand for the years 1999 to 2004, as under:

YEAR	^ Lac Cases
1999-2000	40.92
2000-2001	40.93
2001-2002	40.58
2002-2003	51.27
2003-2004	59.77

4. The plaintiff further alludes to having spent huge sums in popularizing and advertising its brand, KNOCK OUT. The plaintiff has organised events like cine awards and horse races, engaged brand ambassadors and also come out with a collection of stories of successful men and women in a book titled “Knock Out Challenges” under the said brand. Advertising campaigns included one with the Indian Cricket Team with the tag line “KNOCK 'EM' OUT” and other with tag line “JEENE KA STRONG ANDAAZ- KNOCK OUT CHALLENGE”. The plaintiff states that the entire brand image is about manhood and strength. The advertising expenditure for two years is given as below:

YEAR	EXPENDITURE
2004-2005	₹ 51,61,955
2005-2006	₹ 89,24, 247

It is stated that by virtue of extensive sales promotion and brand building exercise and resultant huge sales turnover, the trademark, KNOCK OUT is exclusively associated with the plaintiff.

5. It is alleged that the defendant is manufacturing a self defence pepper spray under the trademark “KNOCK OUT”, using the plaintiff's brand in entirety. The domain name of defendant's website, i.e. www.knockoutspray.com also amounts to violation of the plaintiff's rights. A “cease and desist” notice dated 22.09.2005 was served to the defendant, which was duly received (reference to the A/D card). It is stated that no response was received to the said notice, therefore a second letter dated 25.11.2005 was sent, which too was received, in response to which the defendant stated that it had already replied to the first “cease and desist” notice by its response dated 28.09.2005 (a copy was enclosed) and further expressed its unwillingness to comply with the plaintiff's requests.

6. The plaintiff alleges that the actions of the defendant are with an intention to take unfair advantage of the goodwill and reputation enjoyed by its (the plaintiff's) trademark “KNOCK OUT”. The defendant's advertising campaign with the tag line- *“if your daughter gets raped tomorrow, then who is to blame, you or her”*, is developed as a weapon against men, which, according to the plaintiff, is in stark contrast to its advertising campaign which associates its alcoholic beverage with manliness and manhood. It is alleged that the said campaign has caused immense injury to the plaintiff's brand. The said campaign was withdrawn, following a controversy, which was reported on NDTV news channel.

7. In its defence, the defendant states that it has been using the trade mark KNOCK OUT, since April, 2004 in respect of a self defence pepper spray. It has spent substantial amounts to popularize its product, but the plaintiff sought this injunctive relief only in March, 2006 almost two years after the defendant started its operations. Further, the goods of the plaintiff are entirely different from those of the defendant. The plaintiff's goods fall under class 32 and the defendant's goods fall under classes 5 and 9. The defendant asserts that the plaintiff's trademark cannot become a well-known trade mark within the meaning of Section 11 (Sic 2 (1)(zg)) of the Trade Marks Act, 1999. The defendant submits that “Knock out” being a common dictionary word, which means- *“punch to the forehead or a strike to the head to cause unconsciousness”*, cannot be monopolised by the plaintiff in the manner, as is sought. The adoption of the said mark by the defendant is stated to be *bonafide*, as the meaning of the said word is descriptive of the characteristic of the product, i.e. it is meant for

self defence, and when used, it knocks-out (incapacitates) the attacker for some time, giving the victim opportunity to escape or get help. The term, “knock out” is not a coined word. The products of the plaintiff and the defendant are not sold at the same outlets and there is no scope of confusion, as the products or goods are dissimilar. It is averred that the clientele for the two products is different, and consequently, there is or can be no confusion, or even remote likelihood for confusion. The defendant, after some hearing, withdrew instructions from its counsel. The case was accordingly heard, *ex-parte*.

8. In addition to the suit averments, and besides relying on the documents, the plaintiff urges that the impugned mark cannot be allowed to be used by the defendant, as it dilutes its (the plaintiffs) trademarks, and amounts to infringement within the meaning of the term under Section 29 (4) of the Trademarks Act, 1999. It is submitted that apart from the undeniable similarity between the two marks, the capacity of the defendant’s mark to injure the plaintiffs’ trademark has a high degree of probability, particularly having regard to the kind of advertisement campaign adopted by it. Counsel urges that one of the main or principal identifying factors in relation to the plaintiff is the strength (“strong beer”) of its product, signifying a certain level of masculinity. This very quality is, however sought to be undermined by the defendant’s mark, and the way it associates it with its product, i.e. its ability to “knock out” or fell an eve teaser or a threatening man. This, submits the plaintiff, is the essence of tarnishment, and consequent dilution of the mark, which is sought to be protected by the present suit, through a claim for injunction. The plaintiff relies on the decision of this Court, reported as in *Daimler Benzaktiegesellschaft & Anr. v. Eagle Flask Industries Ltd.*, ILR (1995) 2 Del 817, where it was held that:

“14. There are marks which are different from other marks. There are names and marks which have become household words. Mercedes as name of a Car would be known to every family that has ever used a quality car. The name “Mercedes” as applied to a car, has a unique place in the world. There is hardly one who is conscious of existence of the cars/automobiles, who would not recognize the name “Mercedes” used in connection with cars. Nobody can plead in India, where “Mercedes” cars are seen on roads, where “Mercedes” have collaborated with TATAs, where there are Mercedes Benz—Tata trucks have been on roads in very large number, (known as Mercedes Benz Trucks, so long as the collaboration was there), who can plead that he is unaware of the word “Mercedes” as used with reference to car or trucks.

15. In my view, the Trade Mark law is not intended to protect a person who deliberately, sets out to take the benefit of somebody else’s reputation with reference to goods, especially so when the reputation extends worldwide. By no stretch of imagination can it be said that use for any length of time of the name “Mercedes” should be not, objected to.

16. *We must keep in mind that the plaintiff company exists in Germany. An insignificant use by too small a product may not justify spending large amounts needed in litigation. It may not be worthwhile.*

17. *However, if despite legal notice, any one big or small, continues to carry the illegitimate use of a significant world wide renowned name/mark as is being done in this case despite notice dated 04-07-1990, there cannot be any reason for not stopping the use of a world reputed name. "None should be continued to be allowed to use a world famed name to goods which have no connection with the type of goods which have generated the world wide reputation.*

18. *In the instant case, "Mercedes" is a name given to a very high priced and extremely well engineered product. In my view, the defendant cannot dilute that by user of the name Mercedes with respect to a product like a thermos or a casserole."*

The above decision was followed in *Larsen & Toubro Limited v. Lachmi Narain Traders*, ILR (2008) 2 Del 687.

9. What the plaintiff complains of here is trademark infringement, by dilution. Although dilution, is not expressly alluded to in the Act, the relevant provision is Section 29 (4); it reads as follows:

"Section 29. Infringement of registered trade marks – (1) A Registered trade mark is infringed by a person who, not being registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which is identical with, or deceptively similar to, the trade mark in relation to goods or services in respect of which the trade mark is registered and in such manner as to render the use of the mark likely to be taken as being used as a trade mark.

(4) *A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which -*

(a) *is identical with or similar to the registered trade mark; and*

(b) *is used in relation to goods or services which are not similar to those for which the trade mark is registered; and*

(c) *the registered trade mark has a reputation in India and the use of the mark without due cause takes unfair advantage of or is detrimental to, the distinctive character or repute of the registered trade mark...."*

10. In trademark dilution claims, the plaintiff has to establish the identity or similarity with the registered trademark; the goods, in question, of course, necessarily are dissimilar to the plaintiff's goods; the plaintiff has to also prove that his mark has "a reputation in India" and the use of that mark "without due cause" takes unfair advantage, or is "detrimental to" the distinctive character or repute of his (the plaintiff's) mark. At the heart of the claim is the duty to establish that the mark has "a reputation in India"– which is not a requirement in the normal class of infringement. This duty is underscored by the circumstance that infringement

(i.e. competing similar mark, in relation to similar goods) is presumed, by virtue of the mandate of Section 29 (3); there is no such presumption in trademark dilution claims, and all the elements prescribed under Section 29 (4) are to be made good, for a claim of infringement, through dilution, to succeed.

11. “Knock out” has been defined in the Oxford Shorter Dictionary, fifth edition (2002) as follows:

*“**knock out** (a) stun with a blow, known unconscious; (b) spec. knock down (a boxing opponent) for a count of 10, so disqualifying him or her; (c) defeat, esp. in a competition involving various stages; (d) colloq. make roughly or hastily; (e) US, Austral & NZ slang earn; (f) get rid of; destroy; (g) colloq. exhaust (oneself) through effort; (h) slang please greatly, astonish (freq. in pass) (i) empty (a tobacco-pipe) by tapping...”*

It is evident that the term has various meanings. Perhaps what had its origins as a sporting terminology, associated with Boxing, has now acquired different, sometimes disparate meanings, as for instance, exhaust, making roughly or hastily, destroy, emptying something, etc.

12. Dealing with whether, and to what extent a trader can claim exclusivity in relation to common words, this Court in *SBL Limited v. Himalaya Drug Company*, 67 (1997) DLT 803 (DB), through a division Bench said that:

“Nobody can claim exclusive right to use any generic word, abbreviation, or acronym which has become publici juris. In the trade of drugs it is common practice to name a drug by the name of the organ or ailment which it treats or the main ingredient of the drug. Such an organ ailment or ingredient being public jurisdiction or generic cannot be owned by anyone for use as a trademark”.

A similar view was taken by another Division Bench in *Schering Corporation v. Alkem Laboratories*. Recently, in *Rhizome Distilleries P. Ltd. & Ors. v. Pernod Ricard S.A. France & Ors.*, 165 (2009) DLT 474 too, another Division Bench underlined that common words, generic or descriptive names, do not automatically evoke protection of the Court unless a plaintiff establishes that such marks have acquired secondary meaning:

“We are reminded of the decision of the Court of Appeal in McCain International Limited v. Country Fair Foods Limited 1982 PTC 156. The learned Single Judge had granted interlocutory relief in a passing off action. The Plaintiff avowedly was the first to launch 'chipped potatoes' in the market which rather than being fried could be baked in the oven or cooked in a grill. The competing brands were 'McCain Oven Chips' and 'Country Fair Oven Chips'. The Court of Appeal was of the opinion that the case was similar to the term 'Flaked Oatmeal' in Parsons v. Gillespie 1898 AC 239 which was seen as descriptive' Reference was also made to the use of the word 'slip-on' which was also found to be descriptive; or Hedley's Malted Milk as against

Horlicks Malted Milk. We think it noteworthy that it was reiterated that it was essential for a trader to add a prefix or suffix, preferably showing origins in order to get any protection in respect of a word which is descriptive. Reference was also made to Office Cleaning Service Ltd. v. Westminster Window and General Cleaners Ltd. (1946) 63 RPC 39 where the rivals were using "Office Cleaning Services" and "Office Cleaning Association". The opinion was that where a fancy word has been chosen as a part of the name and if another trader adopts that fancy name that may be seen as inviting confusion. Keeping all these precedents in view, the Court of Appeal concluded that the use of the word 'Oven Chips' was descriptive and the prefix of 'McCain', 'Country Fair' or 'Birds Eye' were sufficient to distinguish the products. We are not faced with the employment of descriptive words but the underlying rationale is apposite, namely, that if words of common parlance are used, exclusivity cannot be claimed..."

13. *Sona Spices Pvt. Ltd. v. Soongachi Tea Industries Pvt. Ltd.*, 2007 (34) PTC 91 (Del) and *First Computers v. A. Guruprasad*, 1996 PTC (16) 27 (Mad) (DB) are authorities on the question of use by the alleged infringer, of the mark, before the plaintiff's mark was registered. In *Sona Spices*, the plaintiff was prior registered owner of trademark *Sona* and was using it same for spices and was a recent entrant in tea business. The defendant was using the same brand name for tea for around 30 years and was also a registered owner of the same brand name. This Court rejected the plaintiff's application for interim injunction on the ground that the defendant was a prior user of the mark *Sona*, in respect of tea business and the plaintiff failed to prove any established business in respect of tea. In *First Computers*, the plaintiff was trading in computers. The defendant neither manufactured, nor a sold computers; he used to train people in the use of computers. In such circumstances where the likely customers were also educated people, the Division Bench of Madras High Court did not find any ground to grant interim relief to the plaintiff. In *Britannia Industries Ltd. v. Cremica Agro Food Ltd.*, 2008 (38) PTC 89 (Del) the plaintiff was using the trademark GREETINGS in relation to biscuits, cakes and bakery products whereas the defendant's products were a combination of assorted biscuits. This Court refused to grant interim injunction and did not find it to be a *prima facie* case of interim relief to the plaintiff. In *Harrods Ltd. v. Harrodian School Ltd.*, [1996] RPC 697, the question was whether the use by the defendant of their name (Harrodian School) would lead to confusion among the public that they were misrepresenting themselves as being connected with the plaintiff (Harrods Ltd.). The injunction was refused for lack of evidence of actual deception and confusion. Millet LJ., observed:

"If any confusion really did exist then, given the time which elapsed between the publication of the brochure, the opening of the school, and the trial, I would have

expected the plaintiffs to be in a position to call evidence that some of their huge number of customers had asked for a brochure for the school or had enquired whether the store supplied uniforms for the school, or had otherwise manifested their impression that the school was connected with the store. No such evidence was called..”

14. Another consideration which has to weigh with the Court is that the term Knock Out does not inherently describe the plaintiff's product. On the other hand, the defendant's pepper spray, it is claimed, has the attribute or ability to “knock out” the unwanted physical advances of a man, which may threaten the user. The defendant's mark, in the opinion of the Court, has greater degree of association or claim to descriptiveness of the product, than the plaintiff's. Here, the observations in *British Petroleum Company Ltd v. European Petroleum Distributors Ltd.*, [1968 RPC 54], are relevant:

"In considering whether or not the mark is "inherently adapted" to distinguish the goods it is relevant to ask oneself whether and to what extent if the proposed mark was not given a statutory protection, other producers of the goods would be likely in the normal course of events to wish to use the mark themselves. In the case of a mark consisting simply of letters of the alphabet the answer to this question must depend to a large extent on the number of letters and the rarity of the combination. In the "W. & G." case (Du Cros Application) (1913) 30 R.P.C. 660 decided under the Act of 1905, the House of Lords considered the question in relation to a two-letter mark consisting of two common initial letters, W. & G. There the user was proved for some five years, but only in the London area. Registration was refused, but as I read the judgments and in particular the speech of Lord Parker that was not because the letters W. & G. were thought to be so inherently unadapted to distinguish the goods in question (taxi cabs) as to make registration in principle impossible, but because the user proved, especially as regards area, was thought not to be enough to justify registration in a case where the inherent distinctiveness of the mark was so slight. In Kerly on Trade Marks (9th Edn. (1996), paragraph 283) it is said that since the W. & G. case, two-letter marks are not registered. This case shows that as a mere matter of fact that is not so; but further I do not think that it is right to say that no two-letter mark ought ever to be registered. Of course, if the letters constitute a common combination, as they do in this case, the mark ought only to be registered on proof of user for a substantial time over the whole country, but no doubt proof of such user was given when the first B.P. mark was registered in 1921."

Kerly's Law of Trade Marks and Trade Names, Fourteenth Edition page 590, has this to say:

"In considering all of the authorities below, it must be borne in mind that they were decided in relation to passing off or under older Trade Mark Acts, with the said, the general principles are as follows:

(1) It must not be assumed that a very careful or intelligent examination of the mark will be made;

(2) But on the other hand, it can hardly be significant that unusually stupid people, "fools or idiots", or a "moron in a hurry" may be deceived.

(3) If the goods are expensive or important to the

purchasers and not of a kind usually selected without deliberations, and the customers generally educated persons, these are all matters to be considered.

(4) If some parts of the mark are common, one must consider whether people who know the distinguishing characteristics of the opponents mark would be deceived..."

15. A trademark denotes a connection in the course of trade between a manufacturer and his goods. It is an identification characterized famously as "a badge of origin". An important aspect here is that the mark should be distinctive; it should be capable of distinguishing the goods and services of one from another. The essence of trademark protection is premised on protection of consumers, from being misled. An essential condition for protection is that the mark should have acquired some distinctiveness, and the claim for that is not founded on mere continued use. In the case of a trademark dilution claim, the degree of distinctiveness, in this Court's opinion has to be higher because of the reference to acquisition (by the plaintiff) of "a reputation in India" – an element not required to be established in trademark infringement claims in respect of similar goods or products.

16. A trademark dilution claim for injunction is known as an "anti-detriment" remedy in the United Kingdom and is enacted in Sections 5 and 10 of the Trade Marks Act 1994 (U.K.), 1994. It was held, in *Daimler Chrysler AG v. Alavi*, [2001] RPC 42 that:-

"88. In my view, the best approach is just to follow the section, remembering Jacobs A.G.'s warning that it is concerned with actual effects, not risks or likelihoods. The enquiry is as follows. (1) Does the proprietor's mark have a reputation? If so, (2) is the defendant's sign sufficiently similar to it that the public are either deceived into the belief that the goods are associated with the proprietor so that the use of the sign takes unfair advantage of the mark, or alternatively causes detriment in their minds to either (a) the repute or (b) the distinctive character of the mark, or (3) even if they are not confused, does the use of the sign nonetheless have this effect, and (4) is the use complained of nonetheless with due cause. Detriment can take the form either of making the mark less attractive (tarnishing, to use Neuberger J.'s word) or less distinctive (blurring). On this analysis, VISA is of course a case of tarnishing."

The test of similarity or confusion had been indicated, in *Sabel BV v. Puma AG*, [1998] RPC 199 as follows:-

"... The likelihood of confusion must therefore be appreciated globally, taking into account all factors relevant to the circumstances of the case.... That global appreciation of the visual, aural or conceptual similarity or the marks in question, must be based on the overall impression given by the marks, bearing in mind, in particular, their distinctive and dominant components ... The average consumer

normally perceives a mark as a whole and does not proceed to analyse its various details.”

General Motors Corp v. Yplon SA, [1999] All ER (EC) 865 by the ECJ that in order to have a reputation a trade mark had to satisfy a ‘knowledge threshold’. This was described as follows:

“26 The degree of knowledge required must be considered to be reached when the earlier mark is known by a significant part of the public concerned by the products or services covered by that trade mark.

27 In examining whether this condition is fulfilled, the national court must take into consideration all the relevant facts of the case, in particular the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of the investment made by the undertaking in promoting it.”

The need to establish “linkage” or mental association of the offending mark, with that of the plaintiff’s is vitally essential for securing relief in any claim for dilution. This was emphasized as follows, by Professor McCarthy (McCarthy, J. Thomas. *McCarthy on Trademarks and Unfair Competition*, Vol. IV, 4th ed. 1996 (loose-leaf updated December 2005, release 36):

“... if a reasonable buyer is not at all likely to think of the senior user’s trademark in his or her own mind, even subtly or subliminally, then there can be no dilution. That is, how can there be any “whittling away” if the buyer, upon seeing defendant’s mark, would never, even unconsciously, think of the plaintiff’s mark? So the dilution theory presumes some kind of mental association in the reasonable buyer’s mind between the two parties and the mark. [Footnote omitted; emphasis in original; — 24:70, at p. 24-143.]”

“On the one hand, well-known mark owners say that people should not reap where they have not sown, that bad faith should be punished, that people who sidle up to their well-known marks are guilty of dishonest commercial practice. These vituperations lead nowhere. One might as well say that the well-known mark owner is reaping where it has not sown when it stops a trader in a geographic or market field remote from the owner’s fields from using the same or a similar mark uncompetitively. (D. Vaver, “Unconventional and Well-known Trade Marks”, [2005] Sing. J.L.S. 1, at p. 16)

54 *While “fame” is not a requirement of s. 22, a court required to determine the existence of goodwill capable of depreciation by a “non-confusing” use (as here) will want to take that approach into consideration, as well as more general factors such as the degree of recognition of the mark within the relevant universe of consumers, the volume of sales and the depth of market penetration of products associated with the claimant’s mark, the extent and duration of advertising and publicity accorded the claimant’s mark, the geographic reach of the claimant’s mark,*

its degree of inherent or acquired distinctiveness, whether products associated with the claimant's mark are confined to a narrow or specialized channel of trade, or move in multiple channels, and the extent to which the mark is identified with a particular quality. See generally F. W. Mostert, Famous and Well-Known Marks: An International Analysis (1997), at pp. 11-15; INTA, Protection of Well-Known Marks In the European Union, Canada and the Middle East (October 2004)."

17. There is no evidence on record, to establish that the plaintiff's KNOCK OUT has acquired distinctiveness and association with its product of such nature or fame that the consumer or user only thinks of the plaintiff's brand of beer on any reference to the expression, Knock Out. The Court is evaluating the evidence, on the basis of material on record; it is essential that the plaintiff should rely on materials, which are not conjectural, but based on reality. The plaintiff has not led any evidence to show that there was likelihood of consumer confusion, or that the defendant, knowing the plaintiff's mark, deliberately chose to use it. The plaintiff was under an obligation to prove confusion, and not rely merely on the averments in the suit, and the documents filed, which it has failed to discharge.

18. Apart from the above considerations, there are some unusual elements to this case, which the Court cannot but help noticing. The lynchpin of the plaintiffs' case is the strong message of "manliness" or machismo associated with the consumer of its KNOCK OUT beer. The plaintiff complains that this masculinity, as it were, is severely damaged by the defendant's use of the same KNOCK OUT term or mark, for the pepper spray it markets. The plaintiff is piqued, because of the manner by which the defendant is marketing, i.e. as an effective deterrent to aggressive or persistent unwanted male attention or physical advances, when it tends to threaten the (female) user. As mentioned earlier, the defendant's mark is closer in description of the product than the plaintiff's. If such is the case, the use of such an inherently descriptive mark is proper and legitimate. Furthermore, the speciousness of the plaintiff's argument is revealed if one examines it closely, for countenancing it would mean accepting that it is "masculine" or "manly" to indulge and persist in such unwarranted attentions towards women. If the argument implies that the plaintiff's product results in such "machismo" its utter untenability is laid bare, because it would amount to saying that consumption of the KNOCK OUT beer would result in such manliness that would need the use of pepper spray to stave off uncalled physical advances. Surely that is not the result desired by the plaintiff, while advancing its contentions.

19. The Court is conscious that though the competing marks are similar, the consumer base is entirely different, as is the product. There is nothing to show that trade channels are

common, or that the plaintiff's marks have acquired such degree of secondary distinctiveness that the term KNOCK OUT certainly, or almost invariably implies it or its product.

20. In view of the above conclusions, the Court is of opinion that the suit cannot succeed; it is accordingly dismissed. In the circumstances of the case, the parties are left to bear their costs.

S. RAVINDRA BHAT
(JUDGE)

AUGUST 25, 2010