

ITC LTD.

..... Plaintiff

Through : Mr. Sushant Singh,
 Ms. Parveen Prakash Chandra
 Arya,
 Mr. Tejinder Singh,
 Ms. Cherry Bhatnagar, Advs.

versus

PATNA GARMENTS AND ORS.

..... Defendants

Through : None.

CORAM :-**HON'BLE MR. JUSTICE J.R. MIDHA**

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

J.R. MIDHA, J. (Oral)

1. The plaintiff has filed this suit for permanent injunction for restraining the defendants from infringement of trademark, copyright, passing off, rendition of accounts and delivery up in respect of their trademark WILLS SPORT and the label WILLS SPORT (LOGO).

2. The summons of this suit were duly served on the defendants who entered appearance and filed their respective written statements. On 20th July, 2006, the suit was decreed against defendant No.3 in respect of prayers 46(i), (ii) and (iii). The suit thereafter continued against defendants No.1 and 2.

3. Defendants No.1 and 2 also initially agreed to settle this case with the plaintiff and the case was listed for reporting the settlement from 5th February, 2007 to 27th February, 2009. However, defendants No.1 and 2 stopped appearing thereafter and were proceeded ex-parte on 8th May, 2009.

4. The plaintiff examined one witness to prove its case. PW-1 deposed that the plaintiff adopted the trademark WILLS SPORT in 1999 and started using the same in respect of the branded apparel in July, 2000. The plaintiff is the registered proprietor of the trademark WILLS SPORT in Classes 18, 25 and 28. The copy of the trademark registration certificate bearing No.1107013 in respect of trademark WILLS SPORT in Class 25 has been proved as Ex.P-2. The plaintiff's trademark WILLS SPORT was declared as the most admired Brand launch of the year at the Images Fashion Awards 2001. In Images Fashion Awards 2002, WILLS SPORT was declared as the most admired Women's wear brand of the year. The brand name WILLS SPORT is associated with upmarket luxury image by the customers worldwide. The plaintiff apparels are extensively advertised on television and print media. The plaintiff has good reputation and goodwill in India. The plaintiff's trademark WILLS SPORTS is a well known trademark. The certificate of the Chartered Accountant regarding the total sales, advertising and marketing expenses of the plaintiff has been proved as Ex.P-3. The WILLS SPORT (LOGO) is duly registered under the Copyright Act, 1957 vide registration Certificate No.A-56398/99

proved as Ex.P-4. The plaintiff is also registered proprietor of the artistic work (Logo) ITC bearing No.A-5630/70 dated 8th June, 1970 proved as Ex.P-5. The plaintiff has used the trademark WILLS SPORT continuously since its adoption. The photographs of the samples products of the plaintiff have been proved as Ex.P-6.

5. In October, 2003, the plaintiff came across counterfeit shirts, jeans, trousers and other clothing at the premises owned by the defendants bearing counterfeit trademark WILLS SPORT. The plaintiff through Notary Public purchased samples of the said shirts, jeans and trousers on 23rd October, 2003 and 24th October, 2003. The Notarial report along with the affidavits has been proved as Ex.P-7. On making inquiry, the plaintiff came to know that defendant No.1 was the manufacturer and fabricator of the infringing goods and was selling the same in the market through its own retail outlet as well as through defendants No.2 and 3. The defendants are using identical LOGO as that of the plaintiff which is violative of the plaintiff's copyright. The photographs of the defendants samples have been proved as Ex.P-8. The stickers and labels used by the defendants have been proved as Ex.P-9.

6. Vide ex-parte ad-interim injunction order dated 21st November, 2003, the defendants were restrained from selling, marketing or distributing the wearing apparels with the plaintiff's trademark and logo WILLS SPORT or any other trademark or logo deceptively similar to that of the plaintiff.

This Court also appointed the Local Commissioners to visit the offices/sites of the defendants, whereupon the Local Commissioners visited the premises of the defendants on 27th November, 2003. The Local Commissioners found infringing items from the premises of defendants No.1 and 2. The ex-parte ad- interim injunction was made absolute by this Court vide order dated 8th May, 2009. Defendants No.1 and 2 have not cross-examined the plaintiff's witnesses and have also not led any evidence in support of their defence.

7. On the basis of the unrebutted testimony of the plaintiff's witness, the plaintiff has succeeded in proving its case. The plaintiff is the registered proprietor of the well known trademark and copyright WILLS SPORT and WILLS SPORT (LOGO) and, therefore, the defendants No.1 and 2 have no right to use said trademark and copyright. The defendants No.1 and 2 have infringed the plaintiff's trademark and copyright. The infringing goods were recovered by the learned Local Commissioners appointed by this Court which clearly proves that the defendants had infringed the trademark and copyright of the plaintiff. No objection has been filed to the reports of the Local Commissioners.

8. The plaintiff has sought punitive damages from defendants No.1 and 2. The learned counsel for the plaintiff has referred to and relied upon the judgments in the cases of ***Intel Corporation vs. Dinakaran Nair, 2006 (33) PTC 345 (Del)***, ***Time Incorporated vs. Lokesh Srivastava, 2005***

(30) PTC 3 (Del), Adidas – Salomon AG vs. Jagdish Grver, 2005 (30) PTC 308 (Del) and Microsoft Corporation vs. Yogesh Papat, 2005 (30) PTC 245 (Del). The findings of this Court in the case of **Intel Corporation vs. Dinakaran Nair** (supra) are as under:-

“13. The only other question to be examined is the claim of damages of Rs.20 lakh made in Para 48 (iii) (repeated) of the plaint. In this behalf, learned counsel has relied upon the judgments of this Court in **Relaxo Rubber Limited & Anr. v. Selection Footwear Anr., 1999 PTC (19) 578, Hindustan Machines v. Royal Electrical Appliances, 1999 PTC (19) 685** and **CS(OS) 2711/1999 M/s. L.T. Overseas Ltd. v. M/s. Guruji Trading Co. & Anr.** decided on 7.9.2003. In all these cases, damages of Rs.3 lakhs were awarded in favour of the plaintiff. In **Times Incorporated v. Lokesh Srivastava & Anr., 2005 (30) PTC 3 (Del)** apart from compensatory damages even punitive damages were awarded to discourage and dishearten law breakers who indulge in violation with impunity. In a recent Judgment in **Hero Honda Motors Ltd. v. Shree Assuramji Scooters, 125 (2005) DLT 504: 2006(32) PTC 117 (Del)** this Court has taken the view that damages in such a case should be awarded against defendants who chose to stay away from proceedings of the Court and they should not be permitted to enjoy the benefits of evasion of Court proceedings. The rationale for the same is that while defendants who appear in Court may be burdened with damages while defendants who chose to stay away from the Court would escape such damages. The actions of the defendants result in affecting the reputation of the plaintiff and every endeavour should be made for a larger public purpose to discourage such parties from indulging in acts of deception.

14. A further aspect which has been emphasized in **Time Incorporated** case (supra) is also material that the object is also to relieve pressure on the over-loaded system of criminal justice by providing civil alternative to criminal prosecution of minor crimes. The result of the

actions of defendants is that plaintiffs, instead of putting its energy for expansion of its business and sale of products, has to use its resources to be spread over a number of litigations to bring to book the offending traders in the market. Both these aspects have also been discussed in **CS (OS) No.1182/2005** titled **Asian Paints (India) Ltd. v. Balaji Paints and Chemicals & Ors.** decided on 10.03.2006. In view of the aforesaid, I am of the considered view that the plaintiff would also be entitled to damages which are quantified at Rs.3 lakhs.

15. A decree is thus passed in favour of the plaintiff and against the defendants in terms of the para 48(1) to (iii) of the plaint and the plaintiff is also entitled to a decree for damages for a sum of Rs.3 lakh against the defendants jointly and severally.”

9. In the facts and circumstances of the case, the suit is decreed in favour of the plaintiff and against defendants No.1 and 2 in terms of prayers in clause 46 (i), (ii) and (iii). Following the aforesaid judgments, a decree of punitive damages in the sum of Rs.5 lakhs is also passed in favour of the plaintiff and against defendants No.1 and 2. The plaintiff shall also be entitled to future interest on the damages at the rate of 7.5% per annum from the date of the judgment till realization. The plaintiff shall also be entitled to the costs. The decree sheet be drawn accordingly.

J.R. MIDHA, J

JANUARY 25, 2011

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