

*** THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 16.08.2011

CS(OS) No. 550/2007

AJINOMOTO CO., INC. Plaintiff
Through: Mr Pravin Anand, Adv. with Mr Dhruv
Anand and Mr Achuthan Sriekumar,
Advs.

versus

M/S SRI SHANKAR BHANDAR & ORS. Defendants
Through: Nemo.

CORAM:-

HON'BLE MR JUSTICE MANMOHAN SINGH

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

MANMOHAN SINGH, J

1. The instant has been filed by the plaintiff for injunction restraining infringement of its trademark, damages, rendition of accounts of profits and delivery up etc.

2. The brief facts of the case are that the Plaintiff is a company existing under the laws of Japan, having its registered office at 1-15-1, Kyabashi, Tokya 104-8315, Jap. It is stated by the plaintiff that it is the registered proprietor of the trade mark 'AJI-NO-MOTO' written both in English as well as in Japanese characters on bowl device in respect of

monosodium glutamate. Plaintiffs' predecessor in title S. Suzuki Pharmaceutical Co. which was incorporated in 1907 started marketing monosodium glutamate in 1908 and in 1909 it adopted the trade mark AJI-NO-MOTO and since then it has been using the same continuously and extensively.

3. It is stated by the plaintiff that AJI-NO-MOTO and the BOWL DEVICE for monosodium glutamate is a well known trade mark and the consumers recognize the origin as that from the plaintiff. Further, it is stated that apart from the trade mark AJI-NO-MOTO the plaintiff has also been using BOWL DEVICE which was adopted in the year 1911 and the Japanese characters of the trade mark AJI-NO-MOTO on its packaging of monosodium glutamate.

4. The trade mark AJI-NO-MOTO is registered in more than 150 countries and using BOWL DEVICE with Japanese characters is registered in around 32 countries. The list of such trademark registrations has been filed by the plaintiff as Mark K along with the evidence affidavit. In the year 2003, the Plaintiff started a subsidiary retailing company in India named Ajinomoto India Private Limited. In India, plaintiff is the registered proprietor of various trademarks the details of same is given pages 9-10 of the evidence affidavit. The trademarks of the plaintiff have been extensively advertised in India.

5. In the month of December 2006, the Plaintiff came to know that the defendants are also using the Plaintiff's trademark AJI-NO-MOTO and the same bowl device in relation to the sale of their products for Monosodium Glutamate. Being aggrieved, the plaintiff filed the present suit. The matter was listed for the time on 26.03.2007 and on that day the court granted *ex-parte* ad-interim injunction in favour of the plaintiff and against the defendants and further appointed local commissioners to visit the places where the impugned goods of the defendants were stored.

6. It appears from the orders that after the execution of local commission in compliance of order dated 26.03.2007 the parties settled the matter and on 10.11.2008 the matter was lawfully compromised between the plaintiff and defendant Nos. 1, 3, and 4. Defendant No.2 was ordered to be deleted from the array of defendants. Thus the instant suit survived against the sole surviving defendant i.e. defendant No.5, who has been proceeded *ex-parte* vide Order dated 25.01. 2010 of this Court. The relevant extract of the said order reads as under:

“By an order dated 10.11.2008 a settlement was recorded between the plaintiffs and the defendant nos. 1, 3 & 4. The suit against the said defendants was decreed in terms of an I.A. No. 13621/2008. By the very same order defendant no.2 was deleted from the array of parties. The only defendant, in respect of which the suit survives, is defendant no.5. The learned counsel for the plaintiff has taken

steps for effecting service on defendant no.5 through Publication. The learned Jt. Registrar in the order dated 07.01.2010 has observed that the service on defendant no.5 has been effected by publication. None has entered appearance on behalf of defendant no.5. Accordingly, defendant no.5 is proceeded ex-parte.”

7. The Plaintiff has filed its evidence by way of affidavit of Mr. Masaki Yasui against the said defendant No.5 and along with that it has filed the photographs of its products in India as Mark E. Copies of various brochures, pamphlets and other promotional material of the plaintiff to advertise its products in India have been filed as Mark F. The original promotional literature and original sample advertisements appearing in newspapers and magazines in India have been filed as Ex PW 1/3 and Ex PW 1/4, respectively. The original sample advertisements of the plaintiffs’ products in Indonesia, Nigeria and Brazil have been filed as Ex PW 1/5.

8. The list of expenses incurred by the plaintiff and its subsidiaries on advertisement during the last few years has been provided on pages 4-5 of the evidence affidavit. The copies of specimen advertisements of the plaintiff’s products for monosodium glutamate bearing the trademark AJI-NO-MOTO, around the world are filed as Mark G (Colly.). A copy of the press release announcing the plaintiff’s official partnership with Japan Olympics Committee is filed as Mark H.

Copy of the literature on monosodium glutamate has been filed as Mark I.

9. Copies of certificates pertaining to the registered trademarks of the plaintiff in India have been filed as Mark T (Colly.) and the original certificates as Ex PW 1/7 (Colly.).The copies of AJI-NO-MOTO trademark registration certificates worldwide are filed as Mark L. A list of trademark registrations for the Japanese characters (AJI-NO-MOTO) and copies of the corresponding trademark registration certificates are filed as Mark M and Mark N (Colly.) respectively. The list of trademark registrations for AJI-NO-MOTO and the BOWL DEVICE, which are 47 in number, in various classes, around the world is filed as Mark O.

10. Copies of Orders passed in favour of the plaintiff by this court granting an ex-parte and interim injunction and final order are filed as Mark P (Colly.).Copies of Judgments of the United States District Court, upholding the trademark AJI-NO-MOTO and BOWL DEVICE as well as restraining infringement of the plaintiff's well known trademarks are filed as Mark Q. The copies of the opposition in Peru and Thailand wherein third parties were withheld from applying for trademarks that were deceptively similar to the plaintiff's trademark are filed as Mark R. The notarized declaration and copies of judgments obtained from NARA are filed as Ex PW 1/6.

11. The plaintiff has also filed the copies of extracts of the 1987, 1988, 2001 and 2002 editions of the Journal of Japanese Group of AIPPI, listing AJI-NO-MOTO and some of its other trademarks as well known/famous marks as Mark S (Colly.).

12. Further, the plaintiff has filed an affidavit of Mr. T.K. Das, Regional Manager of Globe Detective Agency Pvt. Ltd. that was engaged by the plaintiff to survey the markets of Kolkata & Howrah for the infringing goods of the defendants along with annexures has been filed as Ex PW-1/8 wherein he has stated that when he visited the store of defendant No.5, he purchased a pouch containing monosodium glutamate bearing the trademark Ajinomoto and bowl device from the said party. The coloured photocopy of the said pouch has been annexed as Annexure E.

13. By order dated 26.03.2007 Mr. Gurinder Pal Singh was appointed as the local commissioner to visit the premises of defendant No.5. It appears from the report dated 31.03.2007 of the said local commissioner the premises of defendant No.5 could not be located. The relevant extract of his report reads as under:

“Despite the best efforts of the investigator and despite my best efforts too to locate the address, we could not locate it. In the circumstances, we could not execute the said commission at Defendant No.5 given address in the memo of parties, more so because no such address was found.”

14. The evidence filed by the plaintiff has gone un rebutted. Since the defendant No.5 neither contested the suit nor filed the written statement, therefore, I am of the considered view that the plaintiff is entitled for a decree of permanent injunction against the defendant No.5 also in terms of para 24 (a), (b) and (c) of the plaint. The suit of the plaintiff is decreed in terms of para 24 (a), (b) and (c) of the plaint against the defendant No.5. Since no infringing material was recovered from the premises of the defendant No.5, the relief of damages is not being granted. However, the plaintiff shall be entitled for the cost. The decree be drawn accordingly. All pending applications stand disposed of.

MANMOHAN SINGH, J

AUGUST 16, 2011

jk/dp