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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(OS) 380/2008

% ***Order delivered on: 22.09.2011***

MARICO LIMITED Plaintiff
Through: Ms.Anuradha Salhotra and Ms.Doyel
Sengupta, Advocates

versus

M/S HIND COSMETICS Defendant
Through:

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI

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

G.S.SISTANI, J. (ORAL)

1. Plaintiff has filed the present suit for permanent injunction, account of profits, infringement of trademarks under Sections 29, 134, 135 of the Trademarks Act and for passing of and damages. Plaintiff is a limited company incorporated under the Companies Act, 1956.
2. Summons were issued in the suit and notice in the application. While issuing summons, this court had restrained defendants from using "MANJAL" or any other similar name as a trademark in relation to the same or similar goods and also to offer for sale such goods bearing the same kind of packaging or design which is deceptively similar so as to cause confusion in the minds of the general public. A local commissioner was also appointed to enter the premises of

the defendant, to take charge, possession and control of the impugned goods bearing the trademark, "MANJAL" or any other mark similar to plaintiff's product. The local commissioner visited the premises of the defendant, seized the goods and handed over the goods to the defendant on *Superdari*. After service the defendant entered appearance, however, no written statement was filed neither defendant was represented by any counsel, on the subsequent dates. Accordingly, defendant was proceeded ex parte on 14.01.2009.

3. The plaintiff has filed *ex parte* evidence of Mr.Agnimitra Sinha, the Head-Legal of the plaintiff (PW-1). In the affidavit the witness has deposed that the suit was signed and verified by one Mr.Amit Rai, who was working with the plaintiff as the legal manager. He confirmed the signatures on the plaint and supporting affidavit as those of Mr.Agnimitra Sinha.
4. The witness has deposed that the plaintiff is a leading manufacturer and merchant of inter alia various consumer products for the past over 20 years and is a leading provider of skin care services and global branded player in "Beauty and Wellness Solutions". The products of the plaintiff are widely sold all over India with the plaintiff's marketing and distribution network which reaches persons even in far flung areas of the country. The plaintiff's distribution network covers every Indian town with a population of over 20,000/- persons. The witness has also deposed that the plaintiff is the owner of various trademarks in respect to diverse products in India

and abroad. Some of the well known trademarks owned by the plaintiff are SAFFOLA, PARACHUTE, SWEEKAR, HAIR AND CARE, MEDIKER, NIHAR, REVIVE, KAYA SUNDARI, SILK-N-SHINE, MANJAL, etc. The witness has further deposed that by virtue of their extensive use, publicity and promotion over the decades the above said trademarks have established enormous and enviable reputation and goodwill in India and are associated exclusively with the plaintiff. The plaintiff is also the proprietor of the trademark MANJAL in respect of herbal bath soap registered in India under No.1109980 in class 3 as on 07.06.2002 in respect of ayurvedic bath soap. The said trademark was registered in the name of Oriental Extractions Pvt. Ltd. which was subsequently assigned to the plaintiff vide deed of assignment dated 03.01.2006 together with goodwill of the business. Copy of the assignment deed has been exhibited as Ex.P-2. It has also been deposed that the plaintiff got assignment deed adjudicated by the Collector of Stamps Pondicherry and the Collector adjudicated the same vide its order dated 20.12.2007 and the stamp duty was paid in Pondicherry on 02.01.2008. A copy of the challan has been exhibited as Ex.P-3. The application for recordal of the plaintiff as a subsequent proprietor of trademark MANJAL was filed by the plaintiff with the Registrar Trademark, Chennai and the said application is pending. Copy of the said application has been exhibited as Ex.P-4. A copy of the receipt of the said application having been filed has been exhibited as Ex.P-5. Shri Sinha has further deposed that by virtue of the aforesaid

assignment of the registered trade-mark MANJAL, the plaintiff has the exclusive right to use the trademark MANJAL in relation to the goods for which the mark is registered namely ayurvedic bath soap. The original certified copy of the registration certificate for the mark MANJAL under registration No.1109980 is marked as Ex.P-6. As per the evidence the gross turnover of the goods sold under the trademark MANJAL for the financial year 2005-06 and 2006-07 are reproduced below:

YEAR	VOLUME	GROSS TURNOVER	ADVT. EXPENSES
2005-06	229	249	38
2006-07	1298	1463	517

5. The original certificate from the Chartered Accountant showing all India annual sales figure and sales promotional figure of the plaintiff under the trademark MANJAL has been marked as Ex.P-7. It has also been deposed that the plaintiff's reputation and goodwill in the mark MANJAL has not come only from sales alone. The plaintiff's goods under the trademark MANJAL are advertised in a wide variety of Media including newspaper and print media as well on the radio and in the recent years the mark has been advertised on television and the plaintiff has spent Rs.555 lacs from the year 2005 to 2007 on the promotion of its goods under the trademark MANJAL. The original certificate dated 19.02.2008 from M/s.Bates David Enterprises along with advertisements titled 'Renuka' and 'Arangetram' have also been filed by the plaintiff and are marked as Ex.P-8 & 9 respectively. As per Sh.Sinha plaintiff learnt that the defendant was selling bath soaps under the trademark MANJAL

along with word NICE in clear infringement of the plaintiff's exclusive rights in its trademark MANJAL and the defendant had not only lifted the entire word MANJAL, mark of the plaintiff, but had also adopted the device of the plant on the packaging which was deceptively similar to the plaintiff's packaging, as shown in the plaint. The original earlier packaging and the recent packaging of the plaintiff's soap under the mark MANJAL have been exhibited as Ex.P-10 and Ex.11 and the original packing of the defendant's soap has been exhibited as Ex.P-12. The witness has also deposed that a cease and desist letter was sent to the defendant on 31.07.2006 copy of which has been marked as Ex.P-13. By a reply issued on behalf of the defendant dated 22.08.2006 the defendant refused to comply with the requisitions contained in the communication of the plaintiff. The reply dated 22.08.2006 has been exhibited as Ex.P-14.

6. Counsel for the plaintiff submits that in view of the evidence filed by the plaintiff which has gone unrebutted, the present suit of the plaintiff be decreed.
7. I have heard counsel for the plaintiff. Having regard to the evidence on record, the plaintiff has been able to establish the essential ingredients of section 29(1) of the Trademarks Act in view of trademark MANJAL, which is registered in India under No.1109980 in class 3 as on 07.06.2002 in respect of ayurvedic bath soap. The certified copy of the registration has been filed which is exhibited as Ex.P-6. Documents placed on record also establish that plaintiff is the subsequent proprietor of the aforesaid trademark which was duly assigned in

favour of the plaintiff vide a deed of assignment marked Ex.P-2 and an application in the form of TM-24 for recordal of the plaintiff as the subsequent proprietor has also been filed with the Registrar of Trademarks, which is marked as Ex.P-4. Counsel has relied upon **Astrazeneca U.K. Ltd. and And Vs. Orchid Chemicals & Pharmaceuticals Ltd.** 2006 (32) PTC 733 DEL, **Grandlay Electricals (India) Ltd. Vs. Vidya Batra** 1998 PTC (18) 646 (Del), **Sun Pharmaceuticals Ltd. Vs. Cipla Ltd.** 2009 (39) PTC 347 (Del.) and **Nirma Limited Vs. Nimma International & Anr.** CS(OS)No.1826/2008 PTC 2010 (42) 307 (Del.), in support of her contention that the suit for infringement can be brought by the subsequent proprietor during the pendency of the recordal of the assignment. The user of the trademark by a person who is not a registered proprietor or a person, who has not been authorized to use trademark, is also a necessary ingredient which has been duly satisfied by the plaintiff, as the defendant, M/s.Hindi Cosmetic is neither registered proprietor nor permitted user of the mark MANJAL. Comparing of both the marks showed that the mark of the defendant is identical or deceptively similar to the trademark of the plaintiff and in fact defendant has used the identical registered trademark as that of the plaintiff being MANJAL and is being used in the course of trade and he is also affixing the same name to identical goods. Counsel for the has relied upon **Kaviraj Pandit Dutt Sharma Vs. Navaratna Pharmaceuticals Laboratories** AIR 1965 SC 980, wherein it has been held that “Where the two marks are identical, no further question arise

for, then the infringement is made out.” In the case of **Ruston and Hornby Ltd. Vs. Zamindara** AIR 1970 SC 1649, it has been held that *“In an infringement action the issue is : Is the defendant using a mark which is the same as or which is colourable imitation of the Plaintiff’s registered trade mark.”*

8. Having regard to the fact that plaintiff is a registered proprietor of the trademark MANJAL and also the fact that based on the assignment deed, the plaintiff has also applied to the Registrar Trademark for recordal of the plaintiff as the subsequent proprietor. The plaintiff has also prayed for damages in the sum of Rs.5.0 lakhs. In the case of **Time Incorporated vs. Lokesh Srivastava & Anr.**, 2005 (30) PTC 3 (Del), this Court observed that punitive damages are founded on the philosophy of corrective justice and as such, in appropriate cases these must be awarded to give a signal to the wrong doers that the law does not take a breach merely as a matter between rival parties but feels concerned about those also who are not party to the lis but suffer on account of the breach. In the case of **Hero Honda Motors Ltd. vs. Shree Assuramji Scooters**, 2006 (32) PTC 117 (Del), this court noticing that the defendant had chosen to stay away from the proceedings of the Court felt that in such case punitive damages need to be awarded, since otherwise the defendant, who appears in the court and submits its account books would be liable for damages whereas a party which chooses to stay away from the Court proceedings would escape the liability on account of the failure of the availability of account books. In **Microsoft Corporatin vs. Deepak**

Raval MIPR 2007 (1) 72, this Court observed that in our country the Courts are becoming sensitive to the growing menace of piracy and have started granting punitive damages even in cases where due to absence of defendant, the exact figures of sale made by them under the infringing copyright and/or trademark, exact damages are not available. The justification given by the court for award of compulsory damages was to make up for the loss suffered by the plaintiff and deter a wrong doer and like-minded from indulging in such unlawful activities. In **Larsen and Toubro Limited vs. Chagan Bhai Patel** : MIPR 2009(1) 194, this court observed that it would be encouraging the violators of intellectual property, if the defendants notwithstanding having not contested the suit are not burdened with punitive damages.

9. For the reasons stated hereinabove, the present suit is decreed. Plaintiff would be entitled to damages of Rs.2.0 lakhs.

10. The goods seized by the Local Commissioner which are lying with defendant, shall be destroyed by the defendant in the presence of the representative of the plaintiff.

I.A. No.2586/2008 (STAY)

11. In view of the order passed in the suit, application stands disposed of.

G.S.SISTANI,J

SEPTEMBER 22, 2011
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