

IN THE HIGH COURT OF DELHI: NEW DELHI

+ CS (OS) No. 656/2005

Judgment reserved on 2nd August, 2011

% Judgment delivered on 5th August, 2011

M/s. CASTROL LIMITED & ANR.

.....PLAINTIFFS

Through: Mr. Sushant Singh, Mr. P.C. Arya, Mr. Gautam Panjwani and Ms. Parveen, Mr. V.K. Sinha and Mr. V.K. Shukla, Advs. for the Plaintiff.

Versus

M/s. RAMESH RAJPUT & ORS.

..... DEFENDANTS

Through: Ex-parte

Coram:

HON'BLE MR. JUSTICE A.K. PATHAK

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

A.K. PATHAK, J.

1. Plaintiffs have filed this suit against the defendants for passing of a decree of injunction in relation to the infringement of trademark and copyright, rendition of accounts and delivery of all the infringing material.

2. It is alleged in the plaint that plaintiff no.1 Castrol Ltd. is a company incorporated under the laws of England. Plaintiff No.1, interalia, is involved in manufacture, processing, and marketing of high grade lubricating oil products in United Kingdom and several other countries in the world. Plaintiff No.1 commenced its activities in India in the year 1919 in its then name C.C. Wakefield & Co. Ltd which was changed to CASTROL LTD in 1960. On 31st May, 1979, plaintiff No.2, CASTROL INDIA LTD was incorporated under the Indian Companies Act, 1956,

having its registered office at Technopolis Knowledge Park, Mahakali Caves Road, Chakala, Andheri (East), Mumbai and regional office at 5th Floor, East Towers, NBCC Place, Pragati Vihar, Bhishma Pitamah Marg, New Delhi – 110003 with the object of processing and marketing high grade automotive and industrial lubricants and specialty products in India. Plaintiffs have been carrying on large scale business which, inter alia, includes processing of and trading in high grade automotive and industrial lubricants, greases, brake fluids, wood preservatives, metal cleaning compounds, hydraulic fluids, anti-freezing compounds etc.

3. Plaintiff is the registered proprietor of the trade marks, namely, CASTROL, CASTROL GTX, DEUSOL, CASTROL SUPER TT and CASTROL CRB in respect of oils for heating, lighting, lubricating, industrial oils, greases, hydraulic fluids etc. All the above said trademarks have been renewed from time to time and are still subsisting on the Register of Trademarks and plaintiff No.2 is the permitted user of the said trade marks in India. The trade mark 'CASTROL' is dominant in the automotive sector for which they manufacture and market a wide variety of products. Plaintiff also uses packaging material with distinctive color scheme, get up, layout and artistic features. Plaintiff is the owner of the copyright of the artistic work shown on the packaging material and has exclusive right to reproduce, publish and distribute the same.

4. Plaintiffs have been extensively advertising their products through various print media including newspapers, magazines and trade journals, leaflets and other promotional literature depicting the said trademarks which have been extensively distributed to all the plaintiffs' dealers throughout the country. The annual expenditure incurred by the plaintiff runs in crores of rupees. In paragraphs 11 and 12 of the plaint, plaintiffs have given details of their annual turnover, however, figures of last three

years in this regard would be sufficient to indicate the reputation of plaintiffs:-

Annual turnover of goods sold by the plaintiff No. 1 under the trade mark CASTROL in United Kingdom	
YEARS	VALUE IN POUNDS STERLING
1994-95	1481000,000
1995-96	1784000,000
1996-97	1846000,000
Annual turnover of goods sold by the plaintiff No. 1 under the trade mark CASTROL in world over	
YEARS	VALUE IN POUNDS STERLING
1994	1587000,000
1995	1910000,000
1996	1989000,000
Annual turnover of goods sold by the plaintiff No. 2 under the trade mark CASTROL in India	
YEAR ENDED	VALUE IN RS.
December 1995	7,14,20,01,000.00
December 1996	8,88,24,52,000.00
December 1997	9,93,03,00,000.00

5. In the month of September 1989, plaintiffs came to know that defendant no.1, ex-employee of plaintiff no.2, was marketing and selling spurious oil and brake fluid under the trade mark CASTROL, CASTROL GTX EXTRA and CASTROL UNIVERSAL BREAK FLUID. Defendant no.1 stocks the spurious oils under the above said trademarks in his godown. It is alleged in the plaint that Defendant nos. 1 & 2 are getting filled and packed the said spurious oil through defendant nos.3 to 5 and one Mr. Ramesh Gupta. The trademark used by the defendants is identical to that of the plaintiffs. Even the packaging material used by the defendants is identical to that of the plaintiff, inasmuch as, the color scheme, get up, layout and arrangement of the features is also same. Defendants have not

been authorized by the plaintiffs to market and sell any of its products or to use its trademark.

6. On 3rd October 1998, plaintiff no. 2, through a Notary Public had purchased the spurious goods from the defendants and had analyzed it in its laboratory and found that it was not marketed or sold by the plaintiffs. Thus, defendants have infringed the trademark of the plaintiffs and also its copyright on the artistic work of the packaging material. It is alleged that defendants have malafidely adopted plaintiffs trade mark so as to pass off its inferior quality goods as that of plaintiffs' genuine goods and make illegal profit over it. Defendants are also using names and addresses of the plaintiffs. They are creating confusion amongst the prospective customers by misrepresentation and deception thereby causing great prejudice to the reputation of the plaintiffs as well as financial losses.

7. Defendants were served by way of publication of summons in the newspaper "The Statesman" dated 6th May, 2008. Despite service, defendants did not appear in court and were proceeded against ex-parte.

8. Plaintiff has led ex-parte evidence by way of affidavit. PW1 Mr. Muralidhar Subramaniam, Constituted Attorney of Plaintiff no.1 and Head of Trade Marks of plaintiff no.2, has supported the averments made in the plaint and has also proved the relevant documents. Copy of Power of Attorney has been exhibited as Ex. PW1/1. Trademark registration certificates have been collectively exhibited as Ex. PW1/3. Sample of plaintiffs' products/ packaging material is Ex. PW1/4. Literature of plaintiff is marked as Ex. PW1/5. Notarial reports dated 3/10/1998 and 13/2/1999 along with affidavits of Notary are marked as Ex. PW1/6 and Ex. PW1/7. Quality test report of the products seized from defendants' premises is marked as Ex. PW1/8.

9. In view of the ex parte evidence, documentary and by way of affidavit, plaintiffs have been successful in disclosing a case of infringement of trademark and copyright so as to enable them to obtain a decree for injunction. The literature and sample of packaging material placed on record clearly shows that color scheme, get up, layout and arrangement of the features used by the defendants on its products is identical to that of plaintiffs in *toto*.

10. For the foregoing reasons, a decree of injunction is passed in favor of the plaintiffs and against the defendants in terms of prayer (a), (b) and (c) of paragraph 28 of the plaint with costs. Decree sheet be drawn.

A.K. PATHAK, J.

August 5, 2011

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