

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Pronounced on: 26.07.2011

+ **CS(OS) No.929/2005**

**CASIO KEISANKI KABUSHIKI
KAISHA**

.....

Plaintiff

- versus -

RAKESH SETHI AND ORS

.....Defendants

Advocates who appeared in this case:

For the Plaintiff: Mr.Abhai Pandey & Ms.Swati
Setia, Advocates

For the Defendant: None.

CORAM:-

HON'BLE MR JUSTICE V.K. JAIN

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

V.K. JAIN, J. (ORAL)

1. This is a suit for injunction, damages and delivery up of the infringing products and material. The plaintiff which is also trading as Casio Computer Company Limited, is registered in Japan. The plaintiff also has a subsidiary company incorporated in India. The plaintiff company was

founded by Late Kashio Tadao in April, 1946 and claims to be the inventor of world's first compact, all electric calculator. The plaintiff company is manufacturing a large number of products including calculators. The plaintiff is the owner of the trademark CASIO which was adopted and is being used by it since 1957. The plaintiff company has presence all over world, including in India, and had sale of yen 382154 million, 440567 million and 523528 million in the year 2001-2002, 2002-03 & 2003-04 respectively, and claims to be spending huge amounts in promotion and publicity of its products, being sold under the trademark CASIO. The trademark CASIO is registered in India in various classes including class 9 in respect of electronic computing installations and apparatus; electric and electronic apparatus for use in the calculation and furnishing of data and statistical information; apparatus for recording, tabulating, reproducing, translating or classifying data; calculating copying, billing and sorting machines, printing apparatus and parts and fittings for all the aforesaid goods; tapes prepared for use in recording data by means of electric or electronic impulse, and spools and cases for such tape; and punched cards for use in data

processing, all for use in or with electronic computing installations and apparatus. The plaintiff company had sale of Rs 19.45 crores, Rs. 19.12.crores and Rs 16.97 crores in the year 2002-2003, 2003- 2004 and 2004-2005 respectively from calculators alone in India. The market price of various models of calculators being manufactured and sold by the plaintiff company in India is as under:-

MODEL	MRP (In Rupees)
fx-82MS	375
fx-85 MS	445
fx 350 MS	375
fx 100MS	545
fx 115MS	625
fx 95MS	540
fx 570MS	615
fx 991 MS	625

2. It is alleged that on receiving complaints of inferior quality calculators being available in the Indian market under the trademark CASIO, the plaintiff company commissioned a survey in November 2004 in the New Lajpat

Rai Market, Delhi, which is the wholesale market for electronic goods. The investigation in April, 2005 confirmed that defendant No.1, trading under the name and style of M.K.Traders, was selling calculators to the defendant Nos. 2 to 5 under the trademark CASIO. The investigator appointed by the plaintiff company purchased models of fx 350 MS and fx 82MS from defendant no.1, fx 570MS from defendant Nos. 2 to 3, fx 100MS from defendant No.4 and fx 991Ms from defendant No.5. These calculators look like those of the plaintiff company and were being sold under the trademark CASIO. The price at which the defendants were selling these calculators is also a clear indicator that these calculators are counterfeit calculators. It is also claimed that the quality of this counterfeit calculator is inferior and a number of important features are missing from them. It is further claimed that the layout of the keys and the nuts of the calculators purchased from the defendants is different from that of the genuine CASIO calculators manufactured by the plaintiff. The calculators of the plaintiff have batteries working at 1.5V and have only one battery whereas the calculators purchased from the defendants have batteries which work at 3V, normally with two 1.5V batteries or one

3.0V lithium battery. In plaintiff's calculators, key operations are stored in a buffer but such A feature is absent in the defendants calculators.

3. It is also alleged that by using the plaintiff's reputed and well known trademark CASIO with regard to the counterfeit calculators, the defendants are blatantly passing off their products as that of the defendants besides infringing the registered trademark of the plaintiff company. It is also alleged that the defendants have adopted the trademark CASIO with the mala fide intention of trading upon the tremendous reputation and goodwill which the plaintiff's products enjoy in the market.

4. The plaintiff has sought injunction restraining the defendants from manufacturing, selling or advertising calculators or any other product under the trademark CASIO or any other product which is similar to its trademark CASIO. The plaintiff has also sought direction to the defendants to disclose the source of counterfeit calculators and list of customers. It has also sought a mandatory injunction directing the defendants to advertise a public apology for the misuse of the plaintiff's trademark. The plaintiff is also claiming delivery up of infringing

product and other material bearing the trademark CASIO, besides rendition of accounts in respect of the profits illegally earned by the defendants on account of use of trademark Casio. However, the learned counsel for the plaintiff states that the plaintiff's company is pressing only for relief for perpetual injunction, restraining the defendants from manufacturing, selling, advertising or promoting any calculator bearing the trademark CASIO or any other trademark identical with or deceptively similar in the aforesaid trademark manufactured by the plaintiff company.

5. Defendant No.5 had filed the written statement, contested the suit but later on compromised with the plaintiff. In view of the settlement between the plaintiff and defendant No.5, the suit was decreed in terms of the prayers made in para-26 (i), (ii),(iii) and (v) of the plaint. Defendants 1 to 4 were proceeded ex parte vide orders dated 18.07.2006.

6. The plaintiff has filed affidavits of its attorney Mr. Vedant Pujari as well as the affidavit of Mr. Maheshwar Kumar by way of evidence. In his affidavit by way of evidence, Mr. Maheshwar Kumar has stated that he was engaged by the plaintiff for conducting a survey in New

Lajpat Rai Market in April, 2005 to verify the availability of counterfeit CASIO calculators. During his investigation, he visited the Shop of M.K. Traders at 14B/6, Moolchand Market near Gauri Shankar Mandir, Chandani Chowk and met Mr. Rakesh Sethi who claimed to be the owner of the shop and handed over his business card, which is Annexure A to his affidavit. On enquiry about CASIO calculators, Mr. Rakesh Sethi informed me that he was the wholesale supplier of calculators in various markets and could supply any quality of counterfeit CASIO calculators. Mr. Rakesh Sethi took him to his godown at 7B/1, Pleasure Garden, behind Gauri Shankar Mandir, New Lajpat Rai Market, Chandani Chowk, Delhi where a huge stock of counterfeit CASIO calculators had been stored. He purchased CASIO branded fx-82MS & fx350MS calculators from Mr. Sethi for a price of Rs 300/-. Mr. Sethi issued him the receipt which is Annexure -B to the affidavit. The photographs of the counterfeit calculators purchased by him from Mr. Rakesh Sethi are Annexure-C at C-1 to the affidavit. He has further stated that he also visited with Mr. Sethi at Shop No.188, P.G.Market, Ground Floor, near Gauri Shankar Mandir, New Lajpat Rai Market, Chandani Chowk, Delhi

where he met Mr. Amit Sachdeva who introduced himself as the owner of the shop and also gave him his business card which is Annexure –G to the affidavit. Mr. Sachdeva showed him a range of fx series of CASIO calculators and he purchased a CASIO branded fx-100MS calculator from him for a price of Rs.185/- without a cash receipt. The photograph of the calculator is Annexure-H to his affidavit. The investigator also visited Kapoor Electronic, 384, New Lajpat Rai Market, Chandani Chowk, Delhi and met Mr. Sandeep Kapoor who introduced himself as the owner of the shop. Mr. Kapoor gave him his business card which is Annexure-E to his affidavit. On enquiry, Mr. Kapoor informed me that each piece of Casio calculator would cost Rs190/-, whereas on bulk purchase the price would be Rs.150/- per piece. He purchased one fx-570 calculator from Mr. Kapoor without a cash receipt. The photograph of that calculator is Annexure –F to the affidavit of the witness. During conversation Mr. Kapoor informed him that he could arrange large quantity of these calculators. On later visit to the shop of Mr. Kapoor, he found that the name of the shop had been changed by him from Kapoor Electronics to Ruchika Corporation.

7. In his affidavit by way of evidence, Mr. Vedant Pujari has stated that he is the constituted attorney of the plaintiff company vide power of attorney Ex.PW1/1. He has also supported on oath the case of the plaintiff company as set up in the plaint and has stated that the trademark CASIO is being used by the plaintiff company since the year 1957 in respect of the calculators of various types and is a coined word of the plaintiff company and has no obvious meaning. He has further stated that this trademark is associated solely and exclusively with the plaintiff-company and also forms a key, essential and dominant part of its corporate name and trading style. People all over the world recognize the trademark as well as corporate name CASIO as belonging to the Casio Group. According to the witness CASIO calculators are being imported and marketed in India by Casio India Company Ltd. which had sale of Rs.19.45 crores, 19.12 crores and 16.97 crores in the year 2002-2003, 2003-2004 and 2004-2005 respectively, from calculators alone. He has further stated that the MRP of models fx-82M, fx-350MS, fx 100MS and fx 570MS are Rs 375/-, Rs375/- , Rs545/- and Rs 615/- respectively in India. He has claimed that the defendants are selling

counterfeit CASIO products and the price at which they are selling these calculators is also a clear indication of their being counterfeit products. According to him these calculators are not of the same quality as that of the plaintiff and a number of important features are missing from them. He has also stated that the defendants have not been authorized by the plaintiffs to sell CASIO calculators and the packaging as well as labeling on their calculators is also different from that of the plaintiff. According to the plaintiffs, difference between plaintiffs' products and the products of the defendants can be ascertained from a comparison of the photographs filed in the Court.

8. Ex.PW-1/12 (Colly) are the documents evidencing registration of the word trade mark CASIO in the name of the plaintiff Company in respect of various products including calculators. It is thus evident that the plaintiff is the registered proprietor of the trade mark CASIO in India in respect of calculators.

9. I see no reason to disbelieve the evidence of Mr. Mahesh Kumar who was appointed as the investigator by the plaintiff Company to carry out survey in new Lajpat Rai Market and verify the availability of fake calculators being

sold under the trade mark CASIO. The deposition of Mr. Mahesh Kumar coupled with the documents collected by him would show that defendant No.1 Mr. Rakesh Sethi was carrying business under the name and style of M/s. M.K.Traders and he had sold one fx 350 MS and fx 82 MS calculators to the witness for Rs.150/- each. The deposition of the investigator coupled with the deposition of Mr. Vedant Pujari would show that the products purchased by the investigator from defendant No.1 were not genuine calculators manufactured by the plaintiff company and were in fact counterfeits products bearing the registered trade mark 'Casio' of the plaintiff company. As stated by Mr. Pujari, some essential features provided in the genuine calculators manufactured by the plaintiff company are absent in these calculators. The price at which these products were purchased by the investigator also indicates that they cannot be genuine CASIO products. The MRP of fx 82 MS is Rs.375/- whereas that of fx 350 ms is Rs.375/-. Had the product sold by defendant No.1 to the investigator being genuine products, he could not have sold them at Rs.150/- per calculator. The packaging and labeling of these calculators is also different from that of the plaintiff.

It thus stands established that defendant No.1 has been selling calculators bearing the registered trade mark CASIO of the plaintiff company on the calculators which were not manufactured by the plaintiff- company. He has thereby infringed the registered trade mark of the plaintiff company.

10. The deposition of the investigator shows that he purchased one fx 100 MS calculator from defendant No.4 Amit Sachdeva for Rs.185/-. The deposition of the investigator and Mr. Pujari coupled with the photographs of the calculator purchased from this defendant would show that this calculator though bearing the trade mark CASIO of the plaintiff company is not a genuine CASIO product and has not been manufactured by the plaintiff company. By selling this product, defendant No.4 has also infringed the registered trade mark CASIO of the plaintiff company. It is also evident from the affidavit of the investigator that defendant No.3 Sandeep Kapoor also sold one fx-570 MS calculator to him for Rs.190/- and also expressed willingness to provide these calculators in large number at a short notice. This calculator is also a counterfeit CASIO product, as is evident from the deposition of the investigator and Mr. Pujari. Not only certain key features of the genuine

calculator are missing from this calculator, the price at which it had been sold is also indicative of its being a counterfeit product. As far as defendant No.4 - Mr. Deepu is concerned, he appears to be a partner of Kapoor Electronics as is evident from the business card which is Annexure 'E' to the affidavit of investigator. This business card indicates that both Sandeep Kapoor as well as Deepu had been carrying business under the name and style of Kapoor Electronics, at New Lajpat Rai Market, Chandni Chowk, New Delhi. Since the calculator was purchased from the premises of Kapoor Electronics, both defendants No.2 & 3, have infringed the registered trade mark of the plaintiff company by selling a counterfeit calculator bearing the registered trade mark CASIO of the plaintiff company.

11. The use of the trade mark CASIO on the counterfeit calculators also amounts to passing off those products as those of the plaintiff on account of use of the trademark CASIO on them, the purchaser of these products from the defendants would naturally presume them to be genuine CASIO product manufactured by the plaintiff company. The obvious intention of the defendants in selling calculators bearing the trade mark 'Casio, despite the same

not being genuine product manufactured by the plaintiff company, is to encash on the tremendous reputation and goodwill which the brand CASIO enjoys throughout the world including India, in respect of the calculators. It cannot be disputed that CASIO is almost a household name as far as the calculators are concerned and the products manufactured by the plaintiff are considered to be highly reliable and of superior quality. If the quality of the counterfeit products being sold by the defendants under the trade mark CASIO is not found to be as good as the quality of genuine product manufactured and sold by the plaintiff company, this is likely to dilute the brand value of the trade mark CASIO and cause immense damage to the reputation and goodwill which this brand enjoys in the market. The consumer buying a fake product on the assumption that it was a genuine product manufactured by the plaintiff company, may, on finding the quality to be inferior, assume that the quality of the product being manufactured and sold by the plaintiff company has gone down and that, in turn, may substantially impair the business interests of the plaintiff company. Even otherwise, it is in the interest of the consumer as well that he does not buy a fake product

bearing the trade mark CASIO in a mistaken belief that he was purchasing a genuine product.

12. For the reasons given in the preceding paragraph, I hold that defendants No.1 to 4 have not only infringed the registered trade mark of the plaintiff company, but have also passing off fake product as genuine products of the plaintiff company.

ORDER

A decree of perpetual injunction with costs is hereby, passed in favour of the plaintiff and against defendants No.1 to 4 restraining them from manufacturing, selling, promoting or advertising any calculator bearing the trade mark CASIO or any other mark identical with or deceptively similar to the trade mark CASIO, unless it is a genuine calculator manufactured by the plaintiff company.

Decree sheet be drawn accordingly.

(V.K. JAIN)
JUDGE

JULY 26, 2011
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