

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Pronounced on:01.02.2011

+ **CS(OS) No. 1958/2006**

LARSEN & TOUBRO LIMITED (L&T) Plaintiff

- versus -

LEUCI COMMUNICATIONS & ORS. Defendant

Advocates who appeared in this case:

For the Plaintiff: Mr Somiran Sharma and Mr
Siddharth Vivek, Advs.

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 of the infringing material. The plaintiff is a company incorporated under the Companies Act. The plaintiff-company holds copyright in respect of trademark/logo *LT* (in a circle) vide Registration No.1169145 dated 24th January, 2003 under Class 9 under 4th Schedule to Trademarks Act, 1999. Two Danish Nationals, Henning Holck-Larsen and Soren Kristian Tourbo started business in

the partnership, which they established in the year 1938. The partnership firm was later converted into a Limited Company and the plaintiff-company which was incorporated on 07th February, 1946 took over the business of the partnership firm set up by those two Danish nationals. The plaintiff-company is carrying business in India as also any other countries for last many years and claims that the word Larsen and/or Turbo have come to be associated by the traders and members of the public exclusively with the plaintiff-company which is also known by a short name L&T, 'L' standing for Larsen and 'T' standing for Turbo. The plaintiff-company has a number of subsidiary companies which also use the name Larsen & Turbo as a part of their corporate name. The trademark/logo *LT* is registered in the name of the plaintiff No. 1 also in various other classes viz. 2, 3, 4, 5, 7, 8, 9, 10 ,1 1, 12 ,1 3, 14, 15, 16, 17 ,18 ,21 ,22 ,23, 24, 25, 26, 27, 29, 31 and 33. The plaintiff-company claims turnover of Rs 10124 crores, 10212 crores and 13965 crores during the years 2002-03, 2003-04, 2004-05 respectively. It claims annual profit after tax of Rs 433 crores, Rs 533 crores, Rs 984 crore s respectively during these years. It is also alleged that the plaintiff-company

incurred expenditure of Rs 43 crores, Rs 26 crores and Rs 30 crores respectively during these periods, on advertising its mark and products.

2. It is alleged that on 25th September, 2006, Mr Santanu Das, Sales Engineer in the Jamshedpur office of the plaintiff-company purchased a charger from a shop in Muzaffarpur in Bihar and found that though the charger was made in China, *L&T* logo (in a circle) was printed on the top of the carton and it was also found engraved on the charger itself. It is alleged that use and adoption of the mark *L&T* by the defendants is likely to cause confusion and give an impression to the public that the defendants are associated with the plaintiff-company. It is also alleged that the defendants have adopted/copied the mark of the plaintiff in respect of goods mentioned in Class 9 which are covered by the plaintiff's registered mark and have thereby infringed the said trademark. It is also claimed that the whole intention of the defendants in adopting and using the trademark/logo of the plaintiff is to pass off their products as those of the plaintiff and to represent to the public that they are in some way connected with the plaintiff-company. The plaintiff has sought an injunction restraining the

defendant from using its trademark/logo LT or any other mark which is deceptively similar to the registered trademark/logo of the plaintiff-company. The plaintiff has also sought injunction restraining the defendant from passing off its goods/products as those of the plaintiff-company. Damages amounting to Rs 20,01,600/- have also claimed by the plaintiff from the defendants. The plaintiff has also sought destruction of the infringing goods and packing material, etc.

3. The suit was filed against 8 defendants. However, vide order dated 1st December, 2006, the suit against defendants 1 to 6 was decreed in term of the compromise between them and the plaintiff-company. Defendant No.8 was proceeded ex parte on 11th September, 2007, whereas defendant No. 7 was proceeded ex parte on 04th August, 2008.

4. The plaintiff has filed the affidavit of Mr K.R. Patla, Vice-President of the plaintiff-company, by way of ex parte evidence. In his affidavit, Mr Patla has supported, on oath, the case set up by the plaintiff-company and has stated that defendants Nos. 7 and 8 are engaged in the business of manufacturing, cell phones, chargers and have purportedly

got registered the logo comprising L&T written in a circle and the logo being used by the defendants is identical to the registered trademark of the plaintiff. He has also stated that the trademark consisting of L&T logo of the plaintiff is a registered in various classes viz. 2, 3, 4, 5, 7, 8, 9, 10 ,1 1, 12 ,1 3, 14, 15, 16, 17 ,18 ,21 ,22 ,23, 24, 25, 26, 27, 29, 31 and 33. He has further stated that the plaintiff is the Registered properties of the trademark LT in class 09 bearing Registration No. 260583 in respect of electric switches, electric switchboards, electric control systems, electric contractors, circuit breakers and voltage boosters from 14th November, 1969, Registration No. 311128 in respect of electric switch gear and parts thereof included in class 09 from 25th December, 1975 and Registration No. 1169145 in respect of irons, tape recorders, stereos, audio and video systems and cassettes, T.V. computers and fax machines, etc. telephones, switches, sockets, plugs, wire and cables, electronic gas lighters, parts and accessories, etc. included in class 09 from 24th January, 2003. He has further stated that the mark/logo LT has acquired so much distinctiveness that its use by any person other than the plaintiff is bound to cause confusion among the traders and

the members of the public and convey an impression that the person using the said mark/logo was a subsidiary or associate of the company or is connected with it. He further stated that the names L&T or its abbreviated form, *LT* have been used exclusively and extensively by the plaintiff for over half a century in India and have come to be exclusively associated with it and/or its group companies. He has also claimed that the goods and services under the name L&T have come to be associated with goods and services of highest quality. According to him, the plaintiff-company had turnover of Rs 10124 crores, 10212 crores and 13965 crores during the years 2002-03, 2003-04, 2004-05 respectively whereas it had profit after tax of Rs 433 crores, Rs 533 crores, Rs 984 crores respectively during this period. According to him, the plaintiff-company incurred expenditure of Rs 43 crores, Rs 26 crores and Rs 30 crores respectively during these years on advertising its mark and products.

5. He further stated that Mr Santanu Das, Sales Engineer in the office of the plaintiff-company at Jamshedpur while buying a charger on 25th September, 2006 came across a charger which was being sold in a

carton having *LT* logo printed on it. The logo *LT* was also found engraved on the charger. Mr Dass returned to Jamshedpur and informed his seniors about the same. He has further stated that the plaintiff has neither authorized nor permitted the defendants to use the mark/logo.

6. A perusal of the Registration Certificate issued by the Trademark Registry in October, 2005 shows that the plaintiff-company is the registered proprietor of the trademark/logo *LT* (written in a circle) since 24th January, 2003, in respect of irons, tape recorders, stereos, audio and video systems and cassettes, T.V. computers and fax machines, etc. telephones, switches, sockets, plugs, wire and cables, electronic gas lighters, parts and accessories, scientific, nautical, surveying electrical apparatus and instruments (including wireless), photographic, cinematographic, optical, weighing, measuring, signaling, checking (supervision), life saving and teaching apparatus and instruments, coin or counter feed apparatus, talking machines, cash registers, calculating machines, fire extinguishing apparatus included in class 09.

7. The registration of trademark/logo *LT* (in a circle) has been granted to the plaintiff-company not only in

respect of telephones, but also their parts and accessories. It is difficult to dispute that mobile phones would be included in the list of telephones. A charger of a mobile telephone is an essential accessory and the mobile telephone cannot be charged without using the charger meant for the purpose. Hence, it cannot be disputed that the plaintiff-company holds copyright in mark/logo *LT* (written in a circle) in respect of mobile phone chargers and this right is being held by the plaintiff-company continuously since 24th January, 2003, the registration being valid for 10 years.

8. A perusal of the carton in which the charger was purchased by an employee of the plaintiff-company would show that the mark/logo *LT* (in a circle) of the plaintiff-company has been simply re-produced on the carton. Though use of the word ® alongwith the mark/logo *LT* in a circle gives an impression that the mark/logo used on the carton was a registered mark/logo of the manufacturer of the product, the defendants have not come forward to contest the suit and to claim any copyright in the aforesaid mark/logo. Since the plaintiff-company holds copyright in

the mark/logo *LT* (in a circle) in respect of telephone accessories which would include a mobile phone charger, the defendants have no right to use the aforesaid mark/logo on the carton in which the charger is being sold by them.

9. A trademark is infringed if either the same mark or a mark deceptively similar to that mark is used, without a license from its proprietor. In the case before this Court, the mark/logo being used on the carton of the charger being a reproduction of the registered trademark/logo of the plaintiff company, the defendants have infringed the registered trademark/log of the plaintiff by using that mark on the carton of their charger.

10. The mark *LT*, on account of its continuous user by the plaintiff company and considering the multifarious nature of the activities in which the plaintiff company is engaged, has come to be so associated with the plaintiff company and, therefore, anyone coming across a product bearing the name/logo *LT* is likely to get confused and assume that either this product was being manufactured and/or marketed by plaintiff company and/or that the plaintiff company was somehow or the other associated with the manufacturing/marketing of that product. If another

company uses this trademark/logo of the plaintiff company, the customer, particularly if he happen to be an unwary customer is likely to assume that the company manufacturing and/or marketing the product bearing the mark/logo LT was either a group company/subsidiary company of the plaintiff or had some kind of arrangement/agreement with it for use of the aforesaid mark/logo.

11. The defendants have not come forward to explain as to why they chose to use the registered mark/logo of the plaintiff company on the products being manufactured and/or sold by them. The obvious inference, therefore, is that the defendants wanted to encash upon the tremendous goodwill and reputation, which the plaintiff company enjoys amongst traders and members of the public by using the registered mark/logo of the plaintiff company. In fact, the writing on the carton indicates as if the product was manufactured by the plaintiff company in technical collaboration with Lucent Transco Ltd. Taiwan, which obviously is false to the knowledge of the defendants. Therefore, they are clearly passing off their product as that of the plaintiff company.

12. When a consumer buys a product bearing the name/logo of the plaintiff company, he expects that product to be of a high standard and quality. If, on purchasing the product being manufactured and/or sold by the defendants under the mark/name LT, he finds that the quality of the product is not as good as he expected in respect of a product of the plaintiff company, that is likely not only to affect the credibility and reputation of the plaintiff company as a quality manufacturer of goods but also to erode its image as a corporate and dilute the brand equity which the mark LT enjoys in the market. It is, therefore, necessary not only in the interest of the plaintiff company but also in the interest of the members of the public that the defendants are not allowed to use the mark/logo of the plaintiff company.

13. During the course of arguments, I asked the learned counsel for the plaintiff as to how the decree, if passed by this Court, would be executed since defendant Nos. 7 and 8 do not have any property in the jurisdiction of this Court and are companies based in foreign countries. The learned counsel for the plaintiff has pointed out that under the Intellectual Property Rights (Imported Goods)

Enforcement Rules, 2007 framed by the Central Government in exercise of the powers conferred upon it by sub-section (1) of section 156 of the Customs Act, 1962, the plaintiff company being the right holder in respect of the registered trademark/logo *LT* (in a circle) can give a notice to the Commissioner of Customs or any Customs officer authorized in this behalf by him, at the port of import of goods, informing him of infringement of its intellectual property rights and requesting him to suspend the clearance of goods, which are found to be infringing the rights of the plaintiff company in respect of its registered mark/logo. Rule 8 of the aforesaid Rules provides that the Commissioner or the officer duly authorized by him in this behalf shall allow the holder of intellectual property right as also the importer or their duly authorized representative to examine the goods, clearance of which has been suspended and may also allow samples to be taken by them for testing and analysis to assist him in determining whether the goods are pirated, counterfeit or otherwise infringe an intellectual property right. Rule 4 of the aforesaid Rules provides for registration of the notice given to the Commissioner by the right holder. Sub-rule 3 of Rule 4 provides that the

Commissioner granting the registration of the notice shall inform immediately through a letter by speed post or through electronic mode, all Custom offices covered by the notice of the details of the notice. Rule 6 provides that after the grant of registration of notice by the Commissioner on due examination, the import of allegedly infringing goods into India shall be deemed as prohibited within the meaning of Section 11 of the Customs Act, 1962. No doubt, the notice envisaged in the Rules can be given by the holder of the registered trademark even without a decree of the Court but, it is difficult to dispute that once the Court accepts a claim alleging copyright as also its infringement by the defendant, it is likely to have at least a strong persuasive value for the Commissioner or the Customs Officers duly authorized by him, in registering the notice given by the right holder to him under the provisions contained in the Rules. This way, the decree will definitely help in preventing import and sale of these goods in India, thereby substantially serving the purpose of the plaintiff company.

14. For the reasons given in the preceding paragraphs, defendant Nos. 7 and 8 are hereby restrained from manufacturing, selling, exporting, distributing or marketing

any mobile charger using the registered mark/logo *LT* (in a circle) of the plaintiff company either on the product or on its packaging. Defendant Nos. 7 and 8 are also directed to destroy within eight weeks all the chargers and packaging, which bear the registered mark/logo of the plaintiff company. The plaintiff company has not proved any actual damages.

15. In the case of **Times Incorporated v. 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. Raj Scooters**, CS(OS) No.851/2004 decided on 29th November, 2005, 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 to 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. Also, the Court needs to take note of the fact that a lot of energy and resources are spent in litigating against those who infringe the trademark and copyright of others and try to encash upon the goodwill and reputation of other brands by passing of their goods and/or services as those of that well known brand. Considering the nature of the infringement and with a view to dissuade others from indulging into such activities, it is imperative that some punitive damages are awarded to the plaintiff company. I, therefore, award punitive damages amounting to Rs.50,000/- to the plaintiff company against defendant Nos. 7 and 8. In the facts and circumstances of the case, there shall be no order as to costs. No other relief is claimed and granted. Decree sheet be prepared accordingly. The plaintiff shall be at liberty to supply a copy of the order to the Commissioner of Customs for information and necessary action.

(V.K. JAIN)
JUDGE

FEBRUARY 01, 2011
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