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

+ CS (OS) 2410/2009

% *Judgment dated 31.10.2011*

M/S. CHETAN CABLETRONICS PVT. LTD. ...PLAINTIFF

VERSUS

M/S. GOPI ENTERPRISES ...DEFENDANT

**CORAM:**

**HON'BLE MR. JUSTICE G.S.SISTANI**

**G.S.SISTANI, J (ORAL).**

1. Plaintiff has filed the present suit under Sections 134 and 135 read with Section 27(2) of the Trade Marks Act, 1999, for permanent injunction restraining, infringement, passing off and rendition of accounts.
2. Summons in the suit and notice in the application were issued on 16.12.2009. As despite service none appeared on behalf of the defendant, defendant was proceeded *ex parte* on 26.7.2011, when interim order restraining defendant was also passed.
3. The plaintiff has filed affidavit by way of evidence of Sh.Rakesh Goel, Director of M/s. Chetan Cabletronics Pvt. Ltd., which has been marked as Exhibit PW-1/A. In the affidavit Mr.Rakesh Goel has stated that he is the Director of the plaintiff company and has been authorized vide Board Resolution dated 15.10.2009, which has been exhibited as **Ex-PW1/1** to file and institute the suit. He has further stated that the plaintiff company is duly incorporated under the provisions of the Indian Companies Act, 1956.

Memorandum and Articles of Association of the plaintiff company has been exhibited as **Ex-PW1/2**. He has also deposed that the plaintiff is an old established company, is known country wide and the objects for which the company is established are to manufacture, assemble, erect, install, import, sell, fabricate, design, distribute, repair, maintain, marketing of electronics & instruments, equipments, components and accessories such as computer, floppy, discs, cables, assemblies, key-boards, dish antenna, MATV, CATV, TVRO system and other related electronics apparatus and instruments included in class 09 (hereinafter referred to as the said goods) for the last several years. He has next stated that in the year 1990 one M/s. Goyal Udyog having its office at E-39, South Anarkali Gali No. 27, Delhi-51 had adopted and conceived the trade mark **CHETAN (label)** (hereinafter referred to as the said trade mark) in respect of wires and cables included in class-9 and had applied for registration of the said trade mark in the trade mark registry in the year 1994 and the same was registered as trademark registration no. 618928. The said Goyal Udyog was using the trade mark **CHETAN (label)** continuously and uninterruptedly till the year 2003 when the said trade mark was assigned by M/s. Goyal Udyog in favour of the plaintiff company vide assignment deed dated 30.3.2003 and the same has been marked as **MARK-A**. This witness has also deposed that the copyright in respect of its artistic work of the said trade mark was also applied by M/s. Goyal Udyog in the year 2001 in the trade mark registry and after obtaining the no objection certificate the same was filed with the copyright office in the year 2004 and finally the copyright was registered in the year 2005 vide certificate no. A-70746/2005. The said copyright certificate marked has been exhibited as

**Ex-PW1/3.** It has been further deposed that as the trademark **CHETAN (label)** was already assigned to the plaintiff the copyright was also assigned in favour of the plaintiff vide copyright assignment deed dated 15.06.2005, which has been marked B.

4. PW-1 has further deposed that the plaintiff company also applied for registration of trademark CHETAN in the year 2004 and the same has been registered vide no. 1264336 for the goods, electronics and electrical apparatus and instruments included in class 9 and the same is marked has been exhibited as Ex-PW1/4. He has further deposed that the plaintiff company as such is the registered proprietor of the trade mark **CHETAN (label)** and copyright holder of its artistic work in relation to the aforementioned goods included in class-9 vide aforementioned assignment deeds and registration number. The plaintiff company is the exclusive owner of the said trade mark and copyright. The plaintiff has been using the said trade mark in a distinctive get up, make up and artistic manner. This witness has also deposed that the aforesaid trade mark of the plaintiff has acquired valuable and immense goodwill and reputation in the market because of the excellent quality of the products and high preference of the consumers for the same. The trade name/mark, CHETAN of the plaintiff has acquired secondary meaning in relation to the plaintiff's trade and business activities. It is also deposed that the plaintiff company, in order to acquire statutory rights with regard to the said trade mark via CHETAN filed application for their registration in respect of the said goods in different classes of the Trade Marks Act. The said applications were filed in the office of the Trade Mark Registry at New Delhi and the same were accepted and are pending for registration in respective classes of the Trade

Marks Act as the mark was found to be inherently adopted to distinguish the goods of the plaintiffs. The said registration of the trade mark **CHETAN (label)** and copyright certificate of the same are legal, valid and regular and is still subsisting in law. He has also deposed that in respect of assignment deeds of the trade mark **CHETAN (label)** and copyright of the same, TM-24 have also been filed with the Trade Marks Registry, Delhi. As such the plaintiff is the registered proprietor of the trade mark CHETAN in class 9.

5. PW-1 has also deposed the plaintiff company is the proprietor of the said trade mark CHETAN in respect of said goods included in class 9 on account of its prior adoption and serious, continuous user thereof. The plaintiff being the assignee (copyright) by the originator vide assignment deed dated 15.06.2005 and owner of the trade mark/label CHETAN and copyright, is also entitled to protection of the copyright. The plaintiff has been honestly, bonafidely and in the course of trade using its said trade mark as proprietor thereof continuously, commercially, openly exclusively and to the exclusion of others without any interruption or interference from any corner whatsoever and has built up an envious, enormous and valuable trade, goodwill and reputation in respect thereof. The plaintiff company is the proprietor and prior user of its trade mark. The said goods and business being carried on by the plaintiff under its said trade mark is very extensive and the goods and the business of the plaintiff has distributed in major parts of the country. The said goods and business there under are identified as exclusively originating from the plaintiff's source and are identified with the plaintiff. The said trade mark has already become distinctive and associated with the plaintiff and plaintiff's said goods and business on

account of its long, continuous, extensive and exclusive user thereof since the year 1990. This witness has next deposed that the plaintiff's goods and business under its said trade mark has acquired tremendous goodwill and envious reputation in the global market as well. The plaintiff company under the said trade mark has already carried out huge sales since its said adoption and user. This witness has also filed computer generated copies of year wise sale of the plaintiff's company from the year 2005 to 2009 along with the affidavit, which has been marked as C (Colly).

6. This witness has further deposed that the plaintiff company has been continuously promoting its sale of said good and business under its said trade mark through different media and modes such as advertisement in newspaper, trade magazines, distribution of trade literatures, trade novelties and through sales promotional schemes. The plaintiff company has already spent substantial amount of money on the publicity of the said trade mark/label and in consequence thereof the said trade mark enjoys indelible, envious, solid, enduring and first class reputation in the markets. The computer generated copies of year wise expenditure incurred by the plaintiff company on account of advertisement and publicity of its trade mark since the year 2006-2009 have been filed along with the affidavit and the same have been marked D (Colly). The copies of advertisement materials in respect of the trade mark of the plaintiff company published in business magazine is marked as **Ex-PW-1/5**. It is also deposed that the plaintiff company maintains the highest standard of quality and sale of its goods and business and in furtherance has obtained all necessary Governmental licenses, which includes licenses from the Sales Tax and Income Tax Department etc. The certificate issued by NSIC and the permanent

registration certificate issued by Govt. of Rajasthan in favour of the plaintiff company have been exhibited as **Ex-PW-1/6 & Ex-PW-1/7.** It is also deposed that the plaintiff's said trade mark has already become distinctive indicium of the plaintiff and the plaintiff's said goods and business there under. The purchasing public, trade and public at large associates, identifies and distinguishes the said trade mark with the plaintiff and plaintiff's goods and business alone, as alleged. The sale of plaintiff's goods and business are dependant on its said trade mark. The said trade mark of the plaintiff has acquired secondary significance denoting the said goods and business of the plaintiff and is recognized with the plaintiff's source alone. The copies of sale bills/invoices issued by the plaintiff company and the advertisement bills/invoices issued against the plaintiff company have been exhibited as **Ex-PW-1/8 (Colly).**

7. PW-1 has further deposed that the plaintiff company is the lawful proprietor of its said trade mark under statutory law as well as common law being the global registered proprietor thereof. The plaintiff has the exclusive rights to use, publish, reproduce or otherwise deal with its said trade mark in relation to the said goods and no body can be permitted to use the same or identical with or a deceptively similar trade mark for the same/similar/allied/cognate goods and business as that of the plaintiff or for that matter for any specification of goods and business without the leave and license of the plaintiff. Any such user would amount to infringement of plaintiff's proprietary rights in the said trade mark. PW-1 has further deposed that that the defendant has adopted an identical/deceptively similar trade mark **CHETAN (label)** in relation to electronics goods, like submersible winding wire, super enameled copper, winding wire etc.

(hereinafter referred to as the impugned trade mark and impugned goods respectively). The defendant is not the proprietor of the impugned trade mark and has no right to adopt or use the same and is doing so without the leave and license of the plaintiff. It is further deposed that defendant has no proprietary rights for the impugned trade mark CHETAN in relation to aforementioned impugned goods included in class 9. It is also deposed that the impugned trade mark **CHETAN (label)** is identical with and deceptively similar to the said trade mark of the plaintiff. They are identical with and deceptively similar in each and every respect including phonetically, visually, structurally, in its basic idea and in its essential features. It is next deposed that by the impugned adoption and user, the defendant has infringed and/or passed off and also infringing and/or pass and violate the plaintiff's proprietary rights in its said trade mark. It has further been deposed that the defendant herein, now with the malafide intention and ulterior motive, has adopted the deceptively phonetically, visually and confusingly similar and identical trade mark CHETAN and similar way of writing CHETAN, trade dresses, expressions, for the goods included in class 9, which are identical with and/or deceptively and confusingly similar to plaintiff's registered trade mark **CHETAN (label)** and its artistic work, out of greed and with a view to calculate deception and confusion in the market and to the purchasing public, for which the defendant has no explanation at all for the adoption of impugned trade mark and label pertaining to the plaintiff herein and it is not conceivable that aforesaid defendant was not fully aware about the goodwill and reputation of the products and the plaintiff and the registered trade mark of the plaintiff and its artistic work.

8. PW-1 has next deposed that the unwary class of purchasers are bound to be deceived in purchasing the aforesaid defendant's goods under the impression as the goods are also emanating from plaintiff's sources and/or have some business connection and/of defendant is a sister concern of the plaintiff. The defendant has attempted to ride piggy back on the plaintiff's goodwill and reputation, who is the registered proprietor mark **CHETAN (label)** holder of artistic work, colour combinations on the packaging material of the goods of the plaintiff which has already become distinctive and is associated with the plaintiff.
9. It is next deposed by PW-1 that the plaintiff became aware of the defendant's impugned adoption and use of impugned trade mark CHETAN in the first week of October, 2009 when the application for registration of the impugned trade mark CHETAN was published in the Trade Mark Journal No. 1424. The plaintiff immediately launched an inquiry in the trade and business and upon inquiry it was revealed that the defendant is doing the nefarious act of infringement and/or passing off plaintiff's registered trade name and trade mark. The defendant is soliciting its trade and business throughout the country. The defendant is trying to solicit the dealers/distributors of plaintiff in order to give special discount and further in order to encash the goodwill and reputation of the plaintiff and to spoil the well established market and trade of the plaintiff. It is also deposed that the defendant by its impugned adoption and user is completely in violation of the plaintiff's proprietary rights in the said trade mark in relation to said goods. The defendant's impugned activities also amount to unfair and unethical trade practice and competition, which on its very face is illegal and contrary to law and thus the plaintiff being aggrieved by the said

publication of the impugned trade mark CHETAN immediately filed its notice of opposition vide (TM-5) application no. 1694107 and same is pending disposal before the Trade Marks Registry.

10. Rakesh Goel has further deposed that the defendant is not the proprietor of the impugned trade mark and trade name and has no right to adopt or use the same as a trade mark and/or trade name or in any other manner whatsoever including under the law of equity, common law and statutory law in respect of the impugned business or allied/cognate thereto being in complete violation of the plaintiff's rights amounting to inter-alia, infringement, passing off and violation of trade mark, falsification and unfair trade practices. PW-1 has also deposed that the impugned adoption and user by the defendant is dishonest, tainted, malafide and fraudulent. The defendant adopted and started using the impugned trade mark and trade name in respect of the impugned goods and business out of positive greed and with a view to take advantage and to trade upon the reputation and goodwill of the plaintiff and further with a view to calculate confusion and deception in the market and to pass off their impugned goods and business as those of the plaintiff and to make easy money at the cost of the plaintiff. The packaging materials of the plaintiff company and the defendant with their respective trade mark/label have been exhibited as **Ex-PW-1/9 & Ex-PW-1/10**. It is also deposed that the goods being sold by the plaintiff as well as the defendant are of the same/similar nature. The defendant's impugned goods are of sub-standard and inferior quality which are directly affecting the sale of the plaintiff's goods bearing said trade mark and further diluting/damaging and tarnishing the hard earned goodwill and reputation of the plaintiff. The impugned trade mark and

trade name is a reproduction/replication of the plaintiff's said trade mark. The impugned goods of the defendant being sold under the impugned trade mark and trade name are same to those of the plaintiff. The trade/business and ordinary purchasers are also common. Due to the defendants impugned activities, the plaintiff is suffering tremendously in trade and business and also in terms of goodwill and reputation and the plaintiff's said proprietary rights are being violated and being reduced to nullity. The innocent purchasers are being deceived and irreparable loss and serious mischief is being caused to the plaintiff and to the trade and consuming public. The loss to the plaintiff cannot be calculated in terms of money nor can it be so compensated.

11. It is next deposed by PW-1 that the defendant is liable to render the accounts as to ascertain the profits earned by the defendants illegal trade activities of infringement of registered trade mark **CHETAN (label)** and artistic work of **CHETAN (label)** all of the goods which are being passed off by the defendants and all of wrappers, cartons, labels, blocks, dyes and other incriminating materials bearing the trade mark CHETAN and artistic work of CHETAN are liable to be destroyed by an order of this Hon'ble Court.
12. I have heard learned counsel for the plaintiff and also perused the plaint, the accompanying documents and the evidence led by the plaintiff. The evidence of the plaintiff remained unrebutted. The copyright of the plaintiff was duly registered and the copyright certificate has been filed on record, which has been marked as Exhibit PW-1/3. The plaintiff has been able to establish that the trademark CHETAN (label) was already assigned to the plaintiff. The copyright was also assigned to the plaintiff by Assignment

Deed dated 15.6.2005. The plaintiff applied for registration of its trade mark CHETAN (label) in the year 2004, which has been duly registered vide no.1264336 for electronics and electrical apparatus and instruments included in Class 9 (PW-1/4), which clearly establishes that the plaintiff is the registered proprietor of the trademark CHETAN (label) and also holds the copyright for its artistic work in relation to goods included in Class 9. The plaintiff has also been able to establish that they have acquired valuable and immense goodwill and reputation in the market. The plaintiff has been regularly advertising under its said trade mark in business magazines. The plaintiff has also placed on record copies of advertisement bills and invoices (PW-1/8). Plaintiff has also been able to show that the defendant has adopted an identical trade mark CHETAN (label) with respect to identical goods and in same class. The name of the defendant's trademark is visually, phonetically and structurally similar as that of the plaintiff and, thus, the defendant has infringed and violated the plaintiff's proprietary rights in the trade mark, which is likely to cause confusion in the public at large and it is also likely to dilute the trade mark of the plaintiff. I am satisfied that the unwary class of purchasers would get deceived that the defendant's goods are emanating from the plaintiff's source or the defendant has some business connection and or that the defendant is a sister concern of the petitioner. Defendant cannot be permitted to ride over the goodwill and reputation of the plaintiff who is the registered proprietor of the trade mark CHETAN (label) and holder of the artistic work, combination on the packaging material of the goods of the plaintiff.

13. Plaintiff has also claimed damages for loss of reputation, business and cost of proceedings. It is trite to say that the defendant has deliberately stayed away from the present proceedings with the result that an enquiry into the accounts of the defendant for determination of damages cannot take place. The infringement of the trademark of the plaintiff is not in dispute. Counsel for the plaintiff in support of his case has placed reliance on *Time Incorporated v. Lokesh Srivastava and Anr.*, 2005 (30) PTC 3 (Del) where apart from compensatory damages of Rs.5 lakhs, punitive damages have also been awarded. Justice R.C. Chopra, has set out in *Time Incorporated's case (supra)* that punitive damages are founded on the philosophy of corrective justice.
14. Accordingly, present suit is decreed in favour of the plaintiff and against the defendant in terms of para 29 (a), (b), (c), (d) and (f) of the plaint with costs. Plaintiff would be entitled to damages to the tune of Rs.3.00 lakhs. Decree sheet be drawn up accordingly.

**G.S.SISTANI, J**

**OCTOBER 31, 2011**

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