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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(OS) 277/2006

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Judgment Delivered on: 05.01.2012

SHRINIVAS SUGGANDHALAYA

..... Plaintiff

Through: Mr.Sushant Singh and Mr.Tajender
Singh, Advocates

versus

P.S.LAKSHMI KALAVATHI AND ANR

..... Defendant

Through

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. (ORAL)

1. Plaintiff has filed the present suit for permanent injunction, infringement of copyright, unfair trade practices, damages and delivery up etc. against the defendants. On 15.02.2006 summons were issued in the suit. While issuing notice in the application (I.A. No.1723/2006), this court had restrained the defendants their servants, agents, stockiest from manufacturing, selling, offering to sell, distributing, exporting the scented agarbatti and all other allied and cognate goods with or without using trademark NAGCHAMPA having colour scheme, layout, get up and arrangement of features like Annexure E to the plaint. The defendants entered appearance and filed their written statement. The written statement is not on record. However, on 09.11.2011 counsel for the defendants sought discharge from the case, and the request of Mr.Atul Bandhu, counsel for the defendant was allowed by the Joint Registrar. Thereafter, court notice was issued to the defendants, but the defendants

have chosen not to appear in the matter and on 03.01.2012, defendants were proceeded *ex parte*.

2. Despite the matter being passed over twice, none has chosen to appear on behalf of the defendants. Case of the plaintiff as set out in the plaint is that plaintiff has invented and adopted a trademark 'NAGCHAMPA' in respect of *Agarbatties*. The plaintiff also invented and adopted a special label/ packaging having a distinctive colour scheme and get up with a blue background with white letters wherein words SHRINIVAS SUGANDHALAYA 'NAG CHAMPA' are written in a distinctive white script. The said blue background has also a monogram SS in a Circle. The said monogram SS in a distinctive colour scheme and get up is also printed on the side of the packages. The entire label consisting of the words 'NAG CHAMPA Agarbatties' also bears a legend of 'Satya Sai Baba 'NAG CHAMPA Agarbatties' and the name of the firm appears in a distinctive letterings. The plaintiff claims that the packaging is the original artistic work within the meaning of Section 2(c) of the Copyright Act, 1957.
3. The plaintiff has learnt in the first week of December, 2005 that the defendants have also started business of manufacturing and selling spurious scent Agarbatti bearing the trademark NAG CHAMPA under the similar/ identical cartons. This led to the filing of the present suit. The plaintiff has filed affidavit of K.G. Monga, the constituted attorney of the plaintiff, which is exhibited as Ex./-1/A. Copy of the power of attorney is exhibited as Ex.P-1/1. This witness (P-1) has deposed that the firm, M/s Shrinivas Sugandhalaya is a partnership firm registered under the Indian Partnership Act and having its office at E-107, Ansa Industrial Estate, Saki Vihar Road, Saki Naka, Mumbai-400 072 having its Delhi Office at 6702, Khari Baoli, Delhi-110 006. This witness has also

deposed that plaintiff, M/s Shrinivas Sugandhalaya is in existence since 1964 and is one of the largest and leading manufacturers of scented and Masala Agarbatties and other such allied products.

4. It is also deposed that in order to distinguish the goods of the manufacture from similar goods, the plaintiff invented and adopted a trade mark 'NAGCHAMPA' in respect of Agarbatties; the plaintiff also invented adopted a special label/ packaging having a distinctive colour scheme and get up with a blue background with white letters wherein the words Shrinivas Sugandhalaya 'NAG CHAMPA' are written in a distinctive white script; and the said blue background also has a monogram SS in a Circle. The said monogram SS in a distinctive colour scheme and get up is also pasted on the side of the packages. The entire label consisting the words 'NAG CHAMPA Agarbatties' also bears a legend of 'Satya Sai Baba NAG CHAMPA Agarbatties' and the name of the Firm appears in a distinctive letterings. The packaging of the plaintiff is an original artistic work within the meaning of Section 2 (c) of the Copyright Act, 1957 and the plaintiff is the owner of the same.
5. P-1 has also deposed that the plaintiff had also obtained the registration of the said label/packaging under the Copyright Act, 1957 and the said registration is numbered as No.A-50803/90/CO. The said registration is valid and subsisting. Copy of the said Copyright Certificate, is exhibited as Ex. P-1/2.
6. This witness has also deposed that the plaintiff has applied for registration of the said trademark under Application No.519207 in Class 3 claiming user of the said trade mark since 1974. The said Application is advertised in the trademark Journal no.1104 dated 1/6/1995; and the application is pending for issuance of Registration Certificate. Copy of the said trademark journal is exhibited as Ex. P-1/3. It has also been deposed that

the plaintiffs are the owners of the copyright and trademark appearing on the label described hereinabove. Copy of the said specimen of the label / carton are exhibited as Ex. P-1/4.

7. P-1 has deposed that 'Satya Sai Baba Nagchampa Agarbatties' are sold throughout the length and breadth of the country. The annual sale of 'NAG CHAMPA Agarbatties' is in crores of Rupees; and the NAG CHAMPA Agarbatties are also exported to countries like U.S.A., U.K., Australia, Germany etc. The plaintiff earns valuable foreign exchange for the country; and the statements of sales which are duly attested by Chartered Accountant are exhibited as Ex. P-1/5. Copies of the invoices for the last five years are collectively exhibited as Ex.P-1/6. It has also been deposed that the 'NAG CHAMPA Agarbatties' are sold on a very large and extensive scale and members of the public and trade associate with the plaintiff's Agarbatties with special reference to the trademark 'NAG CHAMPA' and the entire colour scheme and get up of the label.
8. P-1 has also deposed that the plaintiff is the owner of the cartons and Labels bearing the said trademarks. The said cartons/labels have unique colour scheme, get up and design appearing thereon. The company has subsisting copyrights in the said labels and cartons. By virtue of longstanding use, publicity and a wide range of activities, as detailed above, carried on by the plaintiff under the NAG CHAMPA, the said trademark has come to be exclusively associated with its goods and business; and under these circumstances, there cannot be a possible explanation for any trader to adopt the trademark NAG CHAMPA in relation to its goods.
9. P-1 has next deposed that during the first week of December, 2005 the plaintiffs came to know regarding the involvement of defendants in the business of manufacturing and selling of spurious Scented Agarbatti

bearing the trademark NAG CHAMPA under the similar/ identical cartons. The plaintiff has procured sample of infringing goods from the defendant, which bears Trade mark of the plaintiff having identical colour scheme, get up, logo. In fact, the defendant has copied the entire label / trademark of the plaintiff feature by feature. The goods sold by the defendants under the trademark NAG CHAMPA are also scented aggarbatti, hence they are guilty of infringement of copyright of the plaintiff as well as passing off their goods as that of the plaintiff. Copy of the Specimen label/carton used by the defendant is exhibited as Ex. P-1/7.

10. This witness has also deposed that the plaintiff immediately issued a legal notice to the defendants through its Trade Mark Attorneys on 10th December, 2005, copy whereof is exhibited alongwith postal receipt as Ex. P-1/8, requiring the defendants to stop using the impugned trade mark/carton, however, the defendants have not accepted the legal notice sent by the plaintiff's attorney, which was returned as un-served with the remarks "*Not claimed*". Hence plaintiff was left with no other option but to initiate the present proceedings before this Hon'ble Court.
11. It has also been deposed that as far as the goods of the defendant are concerned, it is quite clear that the goods purchased from the defendants bearing the trademarks NAG CHAMPA with identical colour scheme etc are not manufactured by the plaintiff and are of sub-standard quality. The defendants have copied the trademark of the plaintiffs in all respects. Therefore, the defendants are guilty of infringement of copyright and they are passing off the goods of the plaintiffs.
12. This witness has also deposed that the plaintiff has never authorized and or permitted the defendants to manufacture the said goods bearing the trademarks mentioned therein on its behalf nor has authorized him at any time to do so. The adoption and use of the said trademark with identical

colour scheme by the defendant is fraudulent; it is done by a *malafide* intention of passing off their goods under the trademark NAG CHAMPA as that of the plaintiffs; and the defendants are running an illegal business without the authority of the plaintiffs.

13. P-1 has also deposed that the defendants have not only copied the trade marks of the plaintiffs but also get up, layout, arrangement of all features are identical in all respects; and the defendants have reproduced the artistic work in totality. Hence, the defendants are also guilty of infringement of copyright as claimed by the plaintiffs.
14. This witness has also deposed that the defendants are creating a misrepresentation in the course of the trade to the prospective customers that is likely to lead to immense confusion and deception; and the misrepresentation is calculated to cause damage and injury both to the plaintiffs' business and to their reputation and goodwill and the consumer and general public. It is further deposed that the defendants have attempted to make a deliberate misrepresentation to the purchasing public otherwise it cannot be a matter of coincidence. It is a systematic attempt by the defendants to derive unfair advantage and cause misrepresentation. The misrepresentation is bound to cause confusion and deception in the minds of the purchasing public.
15. Mr.Monga has also deposed that the defendants' infringing scheme is dishonest one and motivated by desire to usurp the vast reputation and goodwill, which is enjoyed by the plaintiffs. The defendants' infringing scheme is calculated to cause loss and injury to the plaintiffs' reputation and business and dilute the distinctiveness of their trademarks and layout of the product. The loss and injury to the plaintiffs' reputation due to the said dilution is not capable of being calculated in monetary terms.
16. P-1 has further deposed that by its wrongful action the defendants have

earned huge and illegal profits; and the plaintiffs have suffered irreparable loss, injury and damage due to the illegal action of the defendants; and the plaintiff. It is also deposed that at present the plaintiff is filing a suit for damages accounts to the tune of Rs.20 lakhs.

17. This witness has deposed that the plaintiffs have been extremely vigilant about the protection of their trademarks and copyrights from misuse by the third parties and has accordingly taken appropriate legal action from time to time.
18. P-1 has deposed that the social dispute between the parties is different altogether and the defendants cannot deny that the defendants have infringed the copyright of the plaintiff and are also using the same trade mark in relation to the same business.
19. P-1 has also deposed that the defendants are guilty of infringement of copyright and they are also passing off their goods as that of the plaintiff. The defendants have made a huge amount by doing the illegal activities.
20. I have heard counsel for the plaintiff and also perused the affidavit by way of evidence and the documents placed on record. The evidence of the plaintiff remained unrebutted. The plaintiff has established that the plaintiff has been carrying on its business under the invented and adopted trademark 'NAGCHAMPA' in respect of agarbatti with a special label/ packaging, having a distinctive colour scheme and get up. Plaintiff has also been able to show that the word NAGCHAMPA is written in a distinctive white script, blue background and also a monogram SS in a Circle along with legend of 'Satya Sai Baba'. The plaintiff has thus been able to establish that the packaging of the plaintiff is an original artistic work within the meaning of Section 2(c) of the Copyright Act, 1957 and the plaintiff is the owner of the same. The plaintiff has also obtained the registration of the said label/packaging under the Copyright Act, 1957 and

the registration is numbered as No.A-50803/90/CO. The said registration is valid and subsisting. The plaintiff has applied for registration of the said trademark under Application No.519207 in Class 3 claiming user of the said trade mark since 1974. The Application has also been advertised in the trademark Journal no.1104 dated 1/6/1995, copy of which has been exhibited as Ex. P-1/3. The defendants are using the identical trademark NAGCHAMPA in respect to identical goods and have also been copied the packaging, colour scheme of the plaintiff. I am satisfied that the motive of the defendant is dishonest and defendant is trying to ride over the reputation and goodwill of the plaintiff by trying to pass off their goods as that of the plaintiff. The defendant is attempting to counterfeit the products of the plaintiff and pass off its goods as that of the plaintiff. The plaintiff has copied the essential features of the product of the plaintiff. This not only causes loss of profits to the plaintiff, but results in inferior products made available to the public at large who are deceived by the conduct of the defendant.

21. For the reasons stated above, the plaintiff has made out a case for grant of decree as prayed in the plaint. Interim order dated 15.02.2006 is confirmed and the suit is decreed in favour of the plaintiff and against the defendants.

G.S.SISTANI,J

JANUARY 05, 2012

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