

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

Judgment reserved on: 11.10.2013

% Judgment delivered on: 07.11.2013

+ CS(OS) 2290/2006 and I.A. No. 13796/2006

ANCHOR HEALTH & BEAUTY CARE PVT.LTD..... Plaintiffs

**Through: Ms. Suhasini Raina & Mr. Ashutosh
Kumar, Advocates.**

versus

SHIVAM HYGIENES INDIA PVT. LTD. Defendant

Through:

**CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI**

J U D G M E N T

VIPIN SANGHI, J.

1. The plaintiff has filed the present suit alleging infringement of its trademark ANCHOR by the defendant and, consequently, seeking a decree of permanent injunction to restrain the defendant, its principal officers, family members, stockists, servants, agents and anyone acting for and on its behalf from using the said mark, or the device, or any other mark or device that is identical or deceptively similar, or is a colorable imitation of the plaintiffs' mark and device for a range of products such as Tea, Amla, Gulab Jal, Coffee, salt, etc., which may result in infringement of copyright and the registered trademark, or passing off, or may amount to acts of unfair

competition and dilution of the plaintiff's registered trademark and copyright. The plaintiff also seeks a decree of rendition of accounts of profits/ damages against the defendant and for a decree for the amount found due upon accounts being taken. The plaintiff prays for an order of delivery of all the material of the defendants bearing the impugned mark, packaging material, pouches, moulds, dyes, shells, cartons, packaging and publicity material etc. for destruction/ erasure.

2. The plaintiff No.1 Anchor Health & Beauty Care Pvt. Ltd.- a company incorporated under the Companies ct, 1956, and plaintiff No.2 Anchor Kenwood Electricals are claimed to belong to the ANCHOR group of companies. Whereas the plaintiff No.1 was incorporated as a company, plaintiff No.2 is a proprietary concern of Sh.S.D. Family Trust. The plaintiffs state that the said group was started in the year 1963 with the trademark and logo ANCHOR by Mr. Damji Lalji Shah and his brother Mr. Jadavji Lalji Shah. The initial range of products offered by the plaintiffs were switches, which were manufactured from a small unit in Mumbai. However, over the past 45 years the group had spread, and is claimed to be a truly Indian Multinational having a large range of products.

3. The plaintiffs claim that they entered into the Fast Moving Consumer Goods (FMCG) market in the year 1996 by introducing Anchor White Tooth Paste, Gel Tooth Paste, Dyna Soap and confectionery items. The plaintiffs claim that they have a large range of products including electrical accessories, lighting appliances, fittings, cosmetics and toilet preparations, soaps, tooth brushes and tooth pastes, medicinal and pharmaceutical preparations, kitchen wares, etc. It is claimed that the plaintiffs' business

under the mark ANCHOR with the device of ANCHOR has grown manifold and the plaintiffs' business is one of the most successful business houses in India. The total turnover of the group under the mark/ name ANCHOR is claimed to be Rs.900 Crores. The plaintiffs' claim that they have 18 manufacturing units at 5 locations and employs more than 10,000 people. They claim to have 65 branch offices and over 3 lakh retail outlets in almost every nook & corner of the country. The plaintiffs claim to have entered into collaboration with multinational companies to procure technology for their products. The plaintiffs claim that their products are sold not only in India, but are also exported in various other countries including Nepal and Dubai. The plaintiffs claim that they have distribution set ups in countries like Dubai, Oman, Saudi Arabia, etc. The registered mark and device of the plaintiffs are as follows:



4. The plaintiffs claim user of their mark ANCHOR in a large number of classes and for a large specification of goods since the year 1963. The class wise registration claimed to have been obtained by the plaintiffs for its mark ANCHOR and the device aforesaid is as follows:

S. No	T.M. No.	Class	Date	Name of proprietor
1	906487	3	29.02.00	Anchor Health & Beauty Care Pvt. Ltd.
2	1194576	3	25.04.03	Anchor Health & Beauty Care Pvt. Ltd.
3	1256961	3	23.12.03	Anchor Health & Beauty Care Pvt. Ltd.
4	544807	4	06.02.91	Anchor Electronics & Electricals Pvt. Ltd.
5	323287	5	24.02.77	Anchor Industries
6	509584	7	02.05.89	Anchor Electronics & Electricals Pvt. Ltd.
7	544811	7	06.02.91	Anchor Electronics & Electricals Pvt. Ltd.
8	345728	9	13.02.79	Anchor Industries
9	275559	9	14.10.71	Victor Industries
10	352513	9	18.08.79	Anchor Industries
11	331093B	9	30.11.77	Anchor Industries
12	834120	9	28.12.98	Anchor Kenwood Electricals
13	309182	9	13.10.75	Calico Industries
14	834119	9	28.12.98	Anchor Kenwood Electricals
15	328261	9	27.08.77	Anchor Industries
16	631549	9	22.06.94	Anchor Electricals Pvt. Ltd.
17	631548	9	22.06.94	Anchor Electricals Pvt. Ltd.
18	544817	10	06.02.91	Anchor Electronics &

				Electricals Pvt. Ltd.
19	215818	11	30.05.63	Anchor Kenwood Electricals
20	352514	11	18.08.79	Anchor Industries
21	631553	11	22.06.94	Anchor Electricals Pvt. Ltd.
22	834123	11	28.12.98	Anchor Kenwood Electricals
23	834121	11	28.12.98	Anchor Kenwood Electricals
24	631552	11	22.06.94	Anchor Electrical Pvt. Ltd.
25	328262	11	27.08.77	Anchor Industries
26	345729	11	13.02.79	Anchor Industries also trading as Calico Industries
27	544809	13	06.02.91	Anchor Electronics & Electricals Pvt. Ltd.
28	544808	14	06.02.91	Anchor Electronics & Electricals Pvt. Ltd.
29	509588	14	02.05.89	Anchor Electronics & Electricals
30	544816	15	06.02.91	Anchor Electronics & Electricals Pvt. Ltd.
31	544815	18	06.02.91	Anchor Electronics & Electricals Pvt. Ltd.
32	529288	19	08.05.90	Anchor Electronics & Electricals
33	328260	20	27.08.77	Anchor Industries
34	309834	21	10.11.75	Anchor Industries
35	631554	21	22.06.94	Anchor Health & Beauty Care Pvt. Ltd.
36	631555	21	22.06.94	Anchor Health & Beauty Care Pvt. Ltd.
37	1256960	21	23.12.03	Anchor Health & Beauty Care Pvt. Ltd.

38	529287	22	08.05.90	Anchor Electronics & Electricals
39	544813	24	06.02.91	Anchor Electronics & Electricals Ltd.
40	544876	27	07.02.91	Anchor Electronics & Electricals Pvt. Ltd.
41	509583	28	02.05.89	Anchor Electronics & Electricals
42	544874	29	07.02.91	Anchor Electronics & Electricals Pvt. Ltd.
43	1192936	30	21.04.03	Anchor Health & Beauty Care Pvt. Ltd.
44	1018844	30	20.6. 01	Anchor Health & Beauty Care Pvt. Ltd.
45	122950	30	1.09.03	Anchor Health & Beauty Care Pvt. Ltd.
46	544872	31	07.02.91	Anchor Electronics & Electricals Pvt. Ltd.
47	544868	32	07.02.91	Anchor Electronics & Electricals Ltd.
48	544869	33	07.02.91	Anchor Electronics & Electricals Pvt. Ltd.
49	1330222	35	05.01.05	Anchor Health & Beauty Care Pvt. Ltd.
50	1334218	35	25.01.05	Anchor Electronics & Electricals Pvt. Ltd.
51	1334807	38	28.01.05	Anchor Electronics & Electricals Pvt. Ltd.
52	1330221	38	05.01. 05	Anchor Health & Beauty Care Pvt. Ltd.
53	1335137	39	31.01. 05	Anchor Electronics & Electricals Pvt. Ltd.
54	1335140	42	31.01. 05	Anchor Electronics & Electricals Pvt. Ltd.

5. The plaintiffs claim that the mark ANCHOR is registered in a large number of countries and applications for registration are pending in several countries. The countries where the said mark is registered in favour of the plaintiffs, or where registrations are pending are stated to be as follows:

“AUSTRALIA, AZERBAIJAN, BAHRAIN, BANGLADESH, BHUTAN, BRAZIL, BRUNEI, CANADA, CHINA, ESTONIA, EUCADOR, EUROPE, GUINEA (GUYANA), HONG KONG, INDONESIA, JORDAN, IRAQ, ISRAEL, KAZAKHSTAN, KENYA, KOREA, KYRGYSTAN, LEBANON, LYBIA, LATVIA, LITHUANIA, MALAYSIA, MYANMAR, NEPAL, NEW ZEALAND, OMAN, PAKISTAN, PARAGUAY, PERU, QATAR, RUSSIA, SAUDI ARABIA, SIERRA LEONE, SRI LANKA, SOUTH AFRICA, SUDAN, SYRIA, TUNIJIA, THAILAND, SINGAPORE, TAIWAN, TAJIKISTAN, TUNISIA, TURKMENISTAN, TANZANIA, U.A.E., UGANDA, URUGUAY, U.S.A., UZBEKISTAN, VIETNAM, YEMEN.”

6. The claim of the plaintiffs is that apart from the statutory rights in the trademark ANCHOR, the plaintiffs also enjoy common law rights in their mark and logo owing to such extensive, long and continuous use. The plaintiffs claim that owing to the diverse business interest of the plaintiffs in a wide range of products being marketed under the mark ANCHOR, the use of the said mark for any product, especially a FMCG would be associated with the plaintiffs immediately. The plaintiffs also claim registration of its copyright in its mark, logo and label under the following details:

Date	Registration No.	Name of the proprietor
14.03.1997	A-53808/97	Anchor Kenwood Electricals P. Ltd.
29.08.2002	A-62188/02	Anchor Kenwood Electricals

29.08.2002	A-62189/02	Anchor Kenwood Electricals
29.08.2002	A-62192/02	Anchor Kenwood Electricals

7. The grievance of the plaintiffs is that the defendants were found to be using the trademark ANCHOR along with a device similar to that of the plaintiffs in respect of Tea. The plaintiffs have placed on record the packaging material used by the defendants to market their CTC Tea under the brand ANCHOR with the device of ANCHOR. The defendants have used the mark ANCHOR and the device in the following manner:



8. The plaintiffs have disclosed that the defendant applied for registration of its mark ANCHOR on 21.10.2004 claiming user since 01.01.1999 to which the plaintiffs had filed its opposition. On the premise that the use of the aforesaid mark and logo by the defendant amounts to infringement of the plaintiffs registered trademarks and infringement of its copyright, amount to passing off, the plaintiff has preferred the present suit.

9. Summons was issued in the suit on 12.12.2006. The Court also passed an ex-parte order of injunction restraining the defendant, its principal officers, family members, stockists, servants, agents, etc. from using the trade name ANCHOR or its logo/ device or any other mark and device which is identical, or deceptively similar to that of plaintiffs' trademark ANCHOR for selling tea or cognate goods. The Court also appointed Local Commissioners to visit the premises of the defendant and make and inventory of infringing products which bear the mark and device ANCHOR and which are identical/ similar to the plaintiffs' mark and device. Several other directions were also issued to the Local Commissioners.

10. On 18.01.2007, the defendant entered appearance through counsel and sought time to file written statement. Four weeks time was granted for the said purpose. However, the same was not filed. On 02.04.2007, learned counsel for the defendant stated that the parties are negotiating a compromise and that he had communicated the terms of settlement to learned counsel for the plaintiffs. On 19.04.2007, adjournment was sought on behalf of learned counsel for the defendant. Thereafter the defendant stopped appearing in the matter. The defendant did not file any written statement. Consequently, the right to file the written statement was closed

on 14.12.2007. The plaintiffs were granted time to file affidavit by way of evidence with documents. The plaintiffs filed the evidence of Mr. Mayur S. Gala, S/o Mr. Shanti Lal Gala towards examination-in-chief, which was tendered before the learned Joint Registrar on 21.07.2011 as Exhibit PW-1/A. The said witness also exhibited several documents which shall be referred to, wherever necessary. The witness exhibited a few more documents on 14.05.2013. Some of the original documents were seen and returned by the learned Joint Registrar. Even at that stage the defendant did not appear to cross-examine the plaintiffs' witness.

11. The deposition of the plaintiffs' witness is in tune with the averments made in the plaint. The same has not been controverted and I see no reason for not accepting the same. The original packaging and carton used by the defendant is Exhibit PW-1/8. The copies of the registration certificates of the mark ANCHOR in favour of the plaintiffs are Exhibit PW-1/4 (Colly.). These are a large number of registrations running into about 86 pages. Amongst the registrations exhibited as PW1/4, are trademark registration certificate dated 07.02.1990 in Class 29 for "*Tinned Canned Preserved, Frozen, Vegetables, Fruit, Food, Jellies, Jams, Cashews, Walnuts, Dry Fruits, Pickles, Pulps, Sea Food*", trademark registration certificate dated 07.02.1991 in Class 32 in respect of "*Aerated Water, Essences for Beverages, Fruit Juices, Mineral Water, Syrups*", trademark registration certificate dated 21.04.2003 in Class 30 for "*Chocolates, Tea, Coffee, Confectionary, Spices.....*". Also exhibited as PW1/4 are the plaintiff's registrations in respect of a wide variety of goods ranging from pillow covers, carpets, rugs, games, alcoholic beverages, ropes, awnings, cookers,

electronics, jewellery, electric fans, lamps, tubes etc. Copies of the foreign registrations obtained by the plaintiffs are Exhibit PW-1/5. The plaintiffs also claim common law rights in its mark and logo. Owing to its extensive long and continuous use, the plaintiffs claim that it enjoys enormous brand equity and is reckoned with well-known marks in India. Exhibit PW-1/3 (Colly.) are the letters dated 14.06.2008 selecting ANCHOR as a super brand 2006-07 on the cover of the magazine “**Engineering Review**” of July 2006. The original brochure of the plaintiffs is Exhibit PW-1/2. Exhibit PW-1/6 are the various advertisements issued by the plaintiffs pertaining to the mark ANCHOR. Exhibit PW-1/7 are the copies of the copyright certificates in respect of copyright registration for the mark/ logo/ label ANCHOR. Exhibit PW-1/10 (Colly.) is the extract from the trademark journal in respect of the application made by the defendant for registration of the said mark. Exhibit PW-1/11 (Colly.) are copies of the oppositions filed by the plaintiffs. Exhibit PW-1/12 (Colly.) is the status reports in respect of the applications made by the defendant-which show that the same are opposed. The report of the Local Commissioner appointed by this Court Mr. Yoginder Pal Singh dated 21.12.2006 is Exhibit PW-1/9. Along with the report, the Local Commissioner has filed on record the sample packets recovered from the defendant which contain the same packaging as filed by the plaintiffs.

12. In support of her submission, learned counsel for the plaintiffs has relied upon the following judgments where the Court granted injunctive relief against the use of similar mark in unrelated/ different goods:

- (i) ***Tata Sons Ltd. Vs. Tata Industrial Recruitment***, 164 (2009) DLT 95: 2009 (41) PTC 753 (Del);
- (ii) ***Aktiebolaget Volvo and Ors. Vs. Kishore Purohit and Ors.***, 2011 (45) PTC 207(Del);
- (iii) ***Tata Sons Ltd. Vs. Manoj Dodia and Ors.***, 2011 (46) PTC 244 (Del);
- (iv) ***T.V. Venugopal Vs. Ushodaya Enterprises Ltd. and Anr.***, (2011) 4 SCC 85;
- (v) ***General Electric Company Vs. Mr. J. Singh & Ors.***, 2011 II AD (Delhi) 18;
- (vi) ***Mahendra & Mahendra Paper Mills Vs. Mahindra & Mahindra Ltd.***, (2002) 2 SCC 147;
- (vii) ***Daimler Benz Aktiegesellschaft and Anr. Vs. Eagle Flask Industries Ltd.***, 1993 (27) DRJ 615;
- (viii) ***Bata India Limited Vs. Pyare Lal & Co., Meerut City and Ors.***, AIR 1985 All 242;
- (ix) ***Hamdard National Foundation Vs. Abdul Jalil***, 2008 (38) PTC 109 (Del); and
- (x) ***Bharati Cellular Ltd. and Anr. Vs. Jai Distillers P. Ltd.***, 2006 (33) PTC 220 (Bom).

13. In ***General Electric Company*** (supra), relying upon the decision in ***Tata Sons*** (supra), the Court observed that “*In the case before this Court,*

the mark of the plaintiff GE (monogram) irrespective of the form in which it is written and the circle in which the letters are enclosed, will be pronounced as GE. The mark used/proposed to be used by the defendant being GE, there is absolute phonetically similarity between the two marks. It can therefore hardly be disputed that the mark GE used/proposed to be used by the defendants is similar to the mark GE (monogram) of the plaintiff. If a person goes to the mark seeking to buy a product of the plaintiff company he would ask for the product of GE and if a product bearing the trademark GE, in plain letters of English alphabets is offered to him, he is likely to take it as a product of the plaintiff company irrespective of the fact that neither the letters GE are written in a stylized form in which the letters in the trademark GE (monogram) of the plaintiff nor are they enclosed in a circle. To him what matters are the letters GE.”

14. In the present case, the impugned mark adopted by the defendant bears the same word “ANCHOR” as that of the plaintiff. Owing to the fact that the plaintiff’s mark is associated with FMCG products like soaps , toothpastes etc, amongst other goods, the use of the word “ANCHOR” by the defendant in respect of FMCG products, like tea in the instant case, is likely to mislead a consumer into believing that the defendant’s product is offered by the plaintiffs. A consumer with imperfect memory is likely to remember the name “Anchor” and associate the defendant’s goods with those of the plaintiffs, even if the logo of the defendant isn’t identical to the plaintiff’s trademark, but bears a close resemblance to it. What is of greater significance is the use of the word “ANCHOR” by the defendant.

15. The products sold under the impugned mark are available at the same stores, on the same shelves, where the plaintiff offers for sale its FMCG goods and therefore there exists a high likelihood of confusion amongst consumers. Reference may be made to *Hamdard National Foundation* (supra), where the Court observed –

“29. The goods are to some extent dissimilar; yet there is likelihood of confusion or deception, on account of overlapping trade channels. The plaintiff's argument that both its goods and those of the defendant can be purchased from the same traders, cannot be brushed aside. If this is taken together with the fact that the plaintiff's Hamdard brand is also host to an entire range of food products such as soft drink concentrates and recipes, like Rooh Afza, etc, which are sold commonly across the country, even in grocery or small departmental and utility stores, which also sell foodgrains, the plaintiff's apprehensions are not fanciful. In these circumstances, the court is of the opinion that the plaintiff has been able to establish, prima facie, that though the goods are dissimilar, the degree of resemblance, and nature of products is such that the defendants goods are likely to be confused with that of those of the plaintiffs, and the latter is likely to suffer from such injurious association.”

16. In my view, the observations in *Hamdard National Foundation* (supra) squarely apply to the facts of the present case. As already discussed above, the plaintiff has valid and subsisting registrations in various classes in respect of goods such as jams, jellies, tinned foods, confectionary items etc which are offered for sale in the same stores as the defendant's product i.e. tea. Furthermore, the plaintiff also has a valid registration in Class 30 which includes tea. Therefore, there is no doubt that there exists great room for deception.

17. Notably, even in cases where the goods offered under the impugned mark are not cognate to the plaintiff's goods, the Courts have leaned in favour of preventing a party from riding on another's goodwill to mislead the consumers.

18. In ***Bata India Limited*** (supra), the plaintiffs' trademark "Bata" was registered in respect of canvas, rubber, leather shoes etc. The defendants were using the impugned mark "Batafoam" in respect of mattresses, sofas, cushions etc. The Court restrained the defendant from using the impugned mark observing that *"the user of the name 'Bata' to any product may give rise in the mind of 'unwary purchaser of average intelligence and imperfect recollection' that it is a product by the plaintiff. It is this impression which may ultimately cause damage to the reputation of the plaintiff. It amounts to an invasion of his right vis a vis the name 'Bata'. The moot point to be considered in an action for passing off where goods marketed by the defendants are likely to cause an impression in the mind of the purchaser that he is buying the goods of 'Bata'. If it creates this impression, it would be a case for the grant of a temporary injunction for the duration of the suit. If this is not done, the plaintiff may suffer an irreparable injury."*

19. Learned counsel for the plaintiffs also places reliance on the following cases where Courts have granted damages in ex-parte matters:

- (i) ***Time Incorporated Vs. Lokesh Srivastava & Anr.***, 2005 (30) PTC 3 (Del);
- (ii) ***Microsoft Corporation Vs. I. Sadiq Batcha & Ors.***, 2009 (40) PTC 477 (Del); and

(iii) *St. Ives Laboratories INC Vs. Sunny Bakshi & Anr.*, 2009 (41) PTC 231 (Del).

20. In *Time Incorporated* (supra), the Court observed as follows-

“1..... In Mathias v. Accordingly Economy Lodging, Inc. reported in 347 F.3d 672 (7th Cir. 2003) the factors underlying the grant of punitive damages were discussed and it was observed that one function of punitive damages is to relieve the pressure on an overloaded system of criminal justice by providing a civil alternative to criminal prosecution of minor crimes. It was further observed that the award of punitive damages serves the additional purpose of limiting the defendant's ability to profit from its fraud by escaping detection and prosecution. If a tortfeasor is caught only half the time he commits torts, then when he is caught he should be punished twice as heavily in order to make up for the times he gets away. This Court feels that this approach is necessitated further for the reason that it is very difficult for a plaintiff to give proof of actual damages suffered by him as the defendants who indulge in such activities never maintain proper accounts of their transactions since they know that the same are objectionable and unlawful. In the present case, the claim of punitive damages is of Rs. 5 lacs only which can be safely awarded. Had it been higher even, this court would not have hesitated in awarding the same. This Court is of the view that the punitive damages should be really punitive and not flee bite and quantum thereof should depend upon the flagrancy of infringement.”
(emphasis supplied)

21. In view of the aforesaid discussion, and the aspects that the trademarks are identical and logos are confusingly and deceptively similar and are being used by the defendant in respect of cognate goods, in my view, the plaintiffs have made out a case for grant of injunctive relief, as prayed for in the plaint and for award of damages against the defendant.

Accordingly, the suit is decreed in terms of prayer (a) of para 25 of the plaint. A further decree is passed in favour of the plaintiffs and against the defendant for Rs.5 Lakhs towards damages. The plaintiffs shall also be entitled to costs, which are quantified at Rs.25,000/-.

(VIPIN SANGHI)
JUDGE

NOVEMBER 07, 2013
BSR