

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 21st April, 2014
Judgment Pronounced on: 01st July, 2014

CS(OS) 1218/2007

M/S CROMPTON GREAVES LTD. PLAINTIFF

Through: Mr. Sushant Singh, Advocate

Versus

M/S KUSHA APPLIANCES & ANOTHER DEFENDANTS

Through: Nemo

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJEEV SACHDEVA, J.

1. The Plaintiff has filed the present suit for permanent injunction against the Defendants for restraining the Defendants from infringing the trademark, copyright and for passing off, of the goods of the Defendant as that of the Plaintiffs.
2. The Plaintiff contends that the predecessor of the Plaintiff was founded in 1878 and consequent to subsequent mergers etc. in 1937, the present company was established in Bombay and subsequently the name of the company was changed to the present form.

3. The Plaintiff is engaged in designing, manufacturing and marketing high-technology electrical products and services related to electrical equipments, power generation, transmission, distribution as well as executing turnkey projects. The Plaintiff's trade name "Crompton" was invented by the Plaintiff's predecessors in 1937 and the trademark and trade name "Crompton Greaves" and the "CG" logo device was introduced in 1966 and 1995 respectively. The Plaintiff claims to have been using the said trademarks continuously in respect of various products including cooler kits. The Plaintiff contends that a lot of time, effort and amount has been spent in promoting and marketing the brand image of the trademark "Crompton Greaves" and the "CG" logo device. It is contended that the said trademark and the logo by virtue of their inherent distinctiveness connote and denote the Plaintiff only.
4. The trademark of the Plaintiff's "Crompton Greaves" and the Logo mark "CG" is registered in various classes for various goods and is stated to be renewed from time to time.

5. The Plaintiff claims to have invested large sums of money to advertise and promote its cooler kits and has substantial sales figure of the cooler kits.
6. As per the Plaintiff in January, 2007, the Plaintiff received a complaint from one of its consumers, i.e., Guru Jambheshwar University of Science & Technology, Hissar, complaining malfunctioning and inferior quality make of desert cooler fan purchased from the Defendants. On further inquiries and on testing of the products, the Plaintiff came to know that the cooler kits manufacture by the Defendants though were virtually identical/replica of the Plaintiff's cooler kits bearing trademark "Crompton Greave" along with device "CG" but were not the cooler kits manufactured by the Plaintiff. The Plaintiff contends that the Defendants are manufacturing inferior quality cooler kits and are using the trademark and logo of the Plaintiff, thus, infringing the trademark and device CG of the Plaintiff and passing off their inferior quality goods as the goods of the Plaintiff.
7. It is in these circumstances, that the Plaintiff filed the present suit for injunction and damages. Originally, only Defendant No. 1 was a party to the suit.

8. Summons in the suit were issued to the Defendant No. 1 by order dated 10.7.2007 and the Defendant was restrained from manufacturing, marketing or selling the items or cooler kits along with goods and other using the mark “Crompton Greaves” with or without logo “CG” or any other deceptively similar mark.
9. The Defendant Kusha Appliances filed its written statement contending that the said Defendant is not a manufacturer nor is marketing or selling any Cooler kits. However, for the purposes of supply to the Guru Jambheshwar University of Science & Technology, it had purchased cooler kits from M/s Sneha Enterprises and supplied the same to the University. It is contended that the University has not paid any amount to the Defendant for supply of the Cooler kits. It is contended that the said Defendant had bonafidely purchased the kits from M/s Sneha Enterprises not knowing that the same were fake or sub-standard. It is contended that it was one time transaction and was a bona fide error on the part of the Defendant.
10. By order dated 07.07.2008 M/s Sneha Enterprises was impleaded as Defendant No. 2 to the suit. The said Defendant No. 2 could not be served by the ordinary

process and as such was served by way of publication. Despite service none appeared for the said Defendant. It was proceeded ex parte on 03.05.2011.

11. By order dated 04.05.2012 it was recorded that in view of the stand taken and the admission by Defendant No. 1 that they had not manufactured or sold any infringing product, no issue qua Defendant No. 1 was required to be framed. The Plaintiff was directed to lead ex parte evidence. Thereafter the Defendant No. 1 stopped appearing and as such the Defendant No. 1 was also proceeded ex parte on 04.02.2014. None appeared for the Defendants at the time of the hearing of the suit. The Plaintiff has filed the ex parte evidence of the constituted attorney of the Plaintiff.
12. The Plaintiff has proved on record the power of attorney in favour of the authorized representative to sign, verify and institute the present proceedings. The power of attorney has been exhibited as Exhibit PW 1 / 1. The Power of Attorney in favour of the deponent has been proved as Exhibit PW 1 / 2. The certificate of incorporation issued consequent to change of name has been exhibited as Exhibit PW 1 / 3. The deponent has deposed about the extensive usage of the marks by the

Plaintiff. He has deposed about the invention of the mark “Crompton” in 1937 and adoption of the name “Crompton Greaves” and “CG” logo device in 1966 and 1995 respectively. The deponent has deposed about the registration of the mark in various classes and registration certificates have been exhibited collectively as Exhibit PW 1 / 5. The Copyright registration certificate has been exhibited as Exhibit PW 1 / 6. The sales figure of the Plaintiff have been proved on record by Exhibit PW 1 / 7 and brochure and advertising material of the Plaintiff company is exhibited as Exhibit PW 1 / 8. The Plaintiff have proved investment of large sums of money for advertisement and promotion of the cooler kits and random investments have been proved and marked as Exhibit PW 1 / 9. The complaint received by the Plaintiff from Guru Jambheshwar University of Science & Technology along with the photographs of the product sold by the Defendant and the invoices issued by the Defendants have been exhibited as Exhibit PW 1 / 10 & 11.

13. The Plaintiff has also deposed about the sub-standard quality of the products manufactured by the Defendants. The Plaintiff has also deposed about the

delusion and erosion of goodwill on account of sale of sub-standard goods of the identical trademark with or without the identical “CG” logo.

14. None has appeared to cross-examine the witness of the Plaintiff. No evidence has been led on behalf of the Defendants. The testimony of the witness of the Plaintiff is unrebutted and no material has been placed on record by the Defendants to contradict the testimony of the Plaintiff. The Plaintiff has accordingly duly proved the averments of the plaint.
15. Under Section 28 of the Trademark Act, 1999 (hereinafter referred to as the Act) exclusive rights are conferred on the registered proprietor of the trademark to use the said trademark and obtain the relief of injunction. Under Section 29(1) of the Act, use of identical mark in respect of identical goods in the course of trade would amount to infringement of the trademark.
16. The Supreme Court in the case of ***BELL CO. VS METAL GOODS MFQ. CO. AIR 1971 SC 898*** has laid down that on registration of a trademark the registered proprietor gets under section 28 the exclusive right to the use of

such trade marks in relation to the goods in respect of which the trade mark is registered and to obtain relief in respect of any infringement of such trade mark.

17. The Supreme Court has further laid down in **AMERICAN HOME PRODUCTS VS MAC LABORATORIES AIR 1986 SC 137** that when a person gets his trade mark registered, he acquires valuable rights by reason of such registration. Registration of his trade mark give him the exclusive right to the use of the trade mark in connection with the goods in respect of which it is registered and if there is any invasion of this right by any other person using a mark which is the same or deceptively similar to his trade mark, he can protect his trade mark by an action for infringement in which he can obtain injunction.
18. The Defendants have not disputed the case of the Plaintiff. The Defendant No. 1 has contended that the infringing goods have been procured from the Defendant No. 2 and supplied to Guru Jambheshwar University under the mistaken belief / *bona fide* belief that they are goods of the Plaintiff. The Defendant No. 2 has chosen not to file any written statement. There is no denial to the plea of the Plaintiff that the Defendants

have illegally used the registered trademark CROMPTON GREAVES, CROMPTON and CG logo of the Plaintiff.

19. The use of the trademark CROMPTON GREAVES by the Defendants in relation to inferior quality cooler kits would cause confusion and deception and would be detrimental to the distinctive character and repute of the trademark CROMPTON GREAVES of the Plaintiff
20. The Plaintiff by its sale figures (Exhibit PW1/7), advertisements (Exhibit PW1/8) and registration certificates (Exhibit PW1/5) has established goodwill and reputation amongst public relating to the trademark CROMPTON GREAVES. The use of identical trademarks in relation to identical goods i.e. cooler kits, pump sets etc., would result in confusion and deception and thereby mislead the public by causing passing off amongst the minds of public.
21. The Plaintiff has proved that it is the owner of the copyright in CG logo bearing no. A-75632/2006 (Exhibit No. PW1/6). The Defendants by using the said copyrighted logo have committed infringement of copyright in the “CG” logo of the Plaintiff.

22. In view of the above, I am of the considered opinion that the Plaintiff is entitled to a decree of permanent and mandatory injunction and also of delivery up in terms of Para 24 (a) to (d) of the Plaint.
23. With regard to the prayer of the Plaintiff for a decree for recovery of damages for Rs. 20,00,000/- is concerned, counsel for the Plaintiff has relied upon the Judgment of this Court in ***TIME INCORPORATED VS. LOKESH SRIVASTAVA AND ANR 116 (2005) DLT 599*** to contend that the Courts dealing with actions for infringement of trademarks, copy rights, patents etc. should not only grant compensatory damages but award punitive damages also with a view to discourage and dishearten law breakers who indulge in violations with impunity out of lust for money so that they realize that in case they are caught, they would be liable not only to reimburse the aggrieved party but would be liable to pay punitive damages also, which may spell financial disaster for them.
24. In the case of **HERO HONDA MOTORS LTD. V. SHREE ASSURAMJI SCOOTERS, 125 (2005) DLT 504** this court has taken the view that damages in such a case should be awarded against Defendants who choose to stay

away from proceedings of the court and they should not be permitted to enjoy the benefits of evasion of court proceedings. The rationale for the same is that while Defendants who appear in court may be burdened with damages while Defendants who choose to stay away from the court would escape such damages. The actions of the Defendants result in affecting the reputation of the Plaintiff and every endeavour should be made for a larger public purpose to discourage such parties from indulging in acts of deception.

25. In the present case, the Defendant No. 1 has contended that it had mistakenly purchased the offending goods from the Defendant No. 2 and further that it had not even received any payment for the sale made to Guru Jambheshwar University of Science & Technology, Hissar. Nothing has been placed on record by the Plaintiff to contradict the stand of the Defendant No. 1. However as regards the Defendant No. 2 is concerned, it has chosen to stay away from the proceedings and has not filed any defense to the pleas of the Plaintiff and to contradict the stand taken by the Defendant No. 1. I am accordingly of the considered opinion that the Plaintiff

is entitled to damages from the Defendant No. 2 which are quantified at Rs. 3 lakhs.

26. A decree is thus passed in favour of the Plaintiff and against the Defendants in terms of the Para 24 (a) to (d) of the plaint and the Plaintiff is also entitled to a decree for damages for a sum of Rs 3 lakhs against the Defendant No. 2 (M/s Sneha Enterprises).
27. The Plaintiff shall also be entitled to costs.
28. Decree sheet be drawn up accordingly.

SANJEEV SACHDEVA, J

July 01, 2014
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