

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of decision: 10th December, 2014

+

CS(OS) 1976/2011

HPL ELECTRIC & POWER PVT LTD

.... Plaintiff

Through: Mr. Neeraj Grover and Mr. Sumant
Narang, Advocate

versus

M/S HINDUSTAN ELECTRIC LAMPS & ANR

..... Defendant

Through: None

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. (ORAL)

1. Present suit has been filed by the plaintiffs for permanent injunction restraining infringement of trademarks, copyright, passing off, unfair competition, delivery up and recovery of damages.
2. Summons in the suit and notice in the application under Order XXXIX Rules 1 & 2, were issued on 12.08.2011. On an application for appointment of Local Commissioner filed by the plaintiff, a Local Commissioner was appointed on 12.08.2011. Counsel for the defendants entered appearance on 25.11.2011 and sought time to file written statement. Defendants failed to file their written statement.
3. None appeared for the defendants on 17.05.2012, consequently, defendants were proceeded ex parte vide order dated 17.05.2012.
4. Plaintiff has filed affidavit by way of evidence of Mr. Deepak Singhal (PW1), company secretary and authorised signatory of plaintiff company and the same has been exhibited as **Ex.PW1/X**. The true

extracts of the resolution dated 29.07.2011 have been exhibited as **Ex.PW1/1**.

5. PW1 has deposed in his evidence that plaintiff is a Private Limited Company originally incorporated as HPL SOCOMEC PRIVATE LIMITED in the year 1992. Copy of the Original Certificate of Incorporation of the plaintiff company has been exhibited as **Ex.PW1/2**. Further the name of the plaintiff company has been changed to HPL Electric & Power Private Limited by virtue of a Fresh Certificate of Incorporation upon change of name issued by the Registrar of Companies, NCT of Delhi & Haryana dated 10th March, 2010. Copy of the Fresh Certificate of Incorporation consequent upon change of name of the plaintiff company has been exhibited as **Ex.PW1/3**.
6. PW1 has also deposed that the plaintiff company was incorporated as a part of the HPL Group, in process of expansion of group into various fields & areas. The HPL Group has been serving the Indian Markets since 1950's with time tested, reliable, and well proven products focusing in the fields of Electronic Energy Meters, Energy Management Systems, LT Switchgears, Protection Devices, CFL Lamps, Luminaries, Wires & Cables.
7. PW1 has further deposed that as per records available with the plaintiff, the plaintiff (through its predecessor in interest & title) had coined, invented and adopted, way back in the 1950's, an inherently distinctive trademark **HPL** in relation to manufacture and sale of goods manufactured by it. Simultaneously, the plaintiff (the term hereinafter shall mean and include the predecessor in interest and title of the plaintiff, and other components of HPL group unless otherwise specified) also coined a distinctive logo mark i.e.  which consists of the trade mark HPL represented in a highly distinctive manner in a rhombus device.

8. PW1 has next deposed that the goods under the said marks **HPL** and/or  manufactured by the plaintiff were an instant hit in the market. The goods of the plaintiff have been extensively distributed and sold all over India. By virtue of such long, continuous and extensive use made in respect of trade mark(s) **HPL** and/or , the plaintiff has acquired and retained a high reputation and goodwill in the market. Thus the plaintiff has an exclusive right to the use of trade mark(s) **HPL** and/or  in relation to all electrical, energy management, lighting & related goods under common law by virtue of priority in use and adoption.
9. Further, as a part of its expansion process, the plaintiff in the year 2007 started an ambitious project for manufacturing CFL Lamps. The said manufacturing of CFL Lamps was started in a group company HPL Protection Technologies Ltd. which company was later vide an order dated 28.05.2008 passed by this Court in Company Petition No. 175 of 2008 amalgamated with the plaintiff company.
10. PW1 has also deposed that soon after the foray of the plaintiff company in the field of manufacturing & distribution of CFL lamps, it became the leader in the said segment with a manufacturing capacity of 25 Lakh CFL lamps per year. The plaintiff company manufactures a complete range of CFL's from 5 watts to 85 watts in Mini & standard sizes. It has also deposed that in the year 2009, the plaintiff executed the single largest order for supply of 42 lakh pieces of CFL lamps to the Government of Himachal Pradesh. The same is slated as one of the biggest single largest supplies of CFL by any manufacturer. The Plaintiff company has been supplying its CFL's to various state governments under various government schemes whereby CFL Lamps have been procured to be distributed among masses to promote the use of energy conserving CFL's

against the traditional GLS bulbs which consume much more electrical energy and are highly inefficient in terms thereof.

11. PW1 has further deposed that apart from the common law rights acquired in the aforesaid trademark(s) by virtue of priority in adoption and the continuous and extensive use, the plaintiff also holds and retains statutory rights to the exclusive use of the trade mark(s) **HPL** and/or  by virtue of registration of the said trademarks as detailed below:

<i>Registration No. /dated</i>	<i>Class</i>	<i>In respect of (goods)</i>
307339/ 1/8/1975 	11	<i>Carbons for electric lamps, electric lamps, bulbs, tubes for lighting, torches, electric radiators, coolers, electric heating apparatus fans, geysers, water heaters, gas lighters, cooking apparatus, hot cases, hot plates, immersion rods, room heaters, warming trays, coffee percolators, ovens, fluorescent light fittings, air conditioning apparatus, cooling machines, heat exchangers.</i>
527714/ 9/4/1990 	11	<i>Installations for lighting, heating, steam system generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purpose included in class 11</i>
527711/ 9/4/1990 	7	<i>Machines and machine tools, motors (except for vehicles), machine couplings and belting (except for vehicles), large size agricultural implements, incubators.</i>

527708/ 9/4/1990 	9	<i>scientific, nautical, surveying and electrical apparatus and instruments (including wireless) photographic, cinematographic, optical, weighing, measuring, signaling checking (supervision) life saving and teaching apparatus and coin or counter-freed apparatus; talking machines; cash registers; calculating machines; fire-extinguishing apparatus.</i>

The aforesaid registration(s) are valid and duly subsisting in accordance with law. Copies of the legal proceeding certificate/registration certificate/online status downloaded from the official website of the trademarks registry of the abovementioned registrations have been exhibited as **Ex.PW1/4** to **Ex.PW1/9**.

12. PW1 has next deposed that for the purpose of packing and marketing their goods under the trademark HPL the plaintiff uses distinctive and unique packaging labels on which the trade mark/house mark(s) **HPL** and/or  are represented in a unique and artistic manner. The plaintiff has numerous packaging(s) for its various product(s) which packaging(s) have a unique and original get-up, lay out, colour combination and arrangement. The original artistic work(s) in respect of said packaging(s) were conceived, designed and created by professional artist(s) for and on behalf of the plaintiff from time to time and as such the plaintiff is the owner of the copyright subsisting in the said artistic work(s) under the provisions of Copyright Act, 1957. The plaintiff has thus an exclusive right to reproduce any of the artistic features thereof in any material form. It has also been deposed that one such popular packaging of the plaintiff

is that of the mono carton of the plaintiff's CFL lamp having unique and original get-up, lay out, colour combination of Red & white colour and arrangement. An original carton of the plaintiff has been exhibited as **Ex.PW1/10**.

13. PW1 has further deposed that the plaintiff has established large and extensive sales of its products under its trade mark(s) **HPL** and/or  during the past years and has also been spending huge and substantial amount of money on the publicity of its goods under the said trademarks. The sales of the plaintiff have increased in huge proportions by leaps and bounds every year which fact is evident from the popularity the goods of the plaintiff in the market. The year wise statement of sales achieved during the past ten years are detailed as follows:

Financial year	Sales figures (in Rs)	Advertisement Expenses (in Rs.)
2002-03	66,23,49,409/-	1,12,421/-
2003-04	35,17,97,977/-	3,38,966/-
2004-05	66,64,11,314/-	17,99,923/-
2005-06	89,23,79,892/-	31,51,066/-
2006-07	121,54,00,233/-	9,87,690/-
2007-08	230,16,55,040/-	20,33,432/-
2008-09	409,30,30,382/-	78,19,415/-
2009-10	486,07,30,262/-	1,17,17,325/-
2010-11	615,51,84,891/-	1,24,27,563/-

14. PW1 has next deposed that on account of continuous and extensive user of the trademark(s) **HPL** and/or  in relation to Electronic Energy Meters, Energy Management Systems, LT Switchgears, Protection Devices, CFL Lamps, Luminaries, Wires & Cables etc. manufactured and sold by the plaintiff, the trade mark(s) **HPL** and/or  denote and connote the goods manufactured by the plaintiff and of none else. The public and the members of the trade, associate the trade mark(s) **HPL** and/or  exclusively with the goods of the plaintiff. Copies of a few sample invoices depicting the extensive sales of goods under the mark HPL have been exhibited as **Ex.PW1/11** to **Ex.PW1/73**.
15. PW1 has also deposed that the plaintiff has presence on the world wide web and is the owner of the domain name www.hplindia.com and the trade mark(s) **HPL** and/or  are prominently featured on the plaintiff's website, which was registered on 10th October, 2007. The website is accessible to consumers all around the world, including India and provides extensive information about plaintiff, its trademarks and its products.
16. PW1 has further deposed that the plaintiff has in the past launched huge media and publicity campaigns in print as well as electronic media. The plaintiff has till date spent crores of rupees on the publicity of the trademark(s) **HPL** and/or . Further the plaintiff has received huge unsolicited press coverage by the reputed print as well as electronic media in all its ventures and the same has tremendously helped the plaintiff in achieving new heights of its goodwill and reputation amongst the members of trade and purchasing public. Copies of a few Bills of advertisements, and the advertisements in leading magazines have been exhibited as **Ex.PW1/74** to **Ex.PW1/116**. Copies of extracts from

unsolicited press coverage have been exhibited as **Ex.PW1/117** to **Ex.PW1/126**. Copies of plaintiff's in-house News Magazine having extensive circulation have been exhibited as **Ex.PW1/127**.

17. PW1 has next deposed that in the month of July, 2011, the attention of the plaintiff was drawn to a almost counterfeit product available on small counters at various places including rural areas and villages in Delhi and neighboring states of Haryana and Uttar Pradesh bearing the mark **HEL** which is most deceptively and confusingly similar to the plaintiff's registered trade mark **HPL**. The said product bears the name of the defendant no.1 as the manufacturer. The said product is being sold by various retailers in Delhi and surrounding areas and the defendant no.2 is one such retailer who was found selling such impugned CFL Lamp and from whom the plaintiff's representative purchased samples of such lamp. Two original cartons of defendants have been exhibited as **Ex.PW1/128** and **ExPW1/129**. No invoice of such sale was issued by the defendant no.2.
18. PW1, Mr.Deepak, has also deposed that defendants have slavishly and blatantly copied and reproduced each and every artistic feature of the plaintiff's packaging including the colour combination, get up, layout, descriptive features etc. to the minutest detail and the defendants have used deceptively similar trade mark **HEL** on said packaging. The said packaging(s) further revealed that the same do not adhere to Standard of Weight & Measures (Packaged Commodity) Rules, 1977 and even the Bureau of Indian Standard Rules, 1987, which make it mandatory for such CFL lamps to conform to the ISI standards and attain such certification. Further, one of the said packaging neither contains the address of the defendants nor any customer care number or other mandatory details. The aforesaid supports that infringing goods are being sold without any

payment of government taxes, duties and clandestinely without issuance of proper cash memos. The sale of the impugned product is thus also in contravention of various statutes.

19. PW1 has further deposed that the defendants had very cleverly chosen the impugned trade mark for the reason that the alphabets **HPL** of the plaintiff are structurally and phonetically similar to **HEL**. While the plaintiff represents its trade mark **HPL** in a red rhombus device, the defendants have represented the impugned mark **HEL** in a red square device. All other descriptive features of the plaintiff's packaging are also reproduced by the defendants in an identical manner.
20. PW1 has next deposed that the manufacture and sale/ offer for sale CFL Lamps under the impugned mark **HEL** by the defendants amount to infringement of the plaintiff's registered trademark **HPL**. Further, the impugned goods of the defendants are being packed in packaging labels which have identical get-up, lay out, colour combination and arrangement as those of the plaintiff and amounts to infringement of copyright of the plaintiff. It has also been deposed that the defendants by imitating and exposing for sale a carton and container identical to those of the plaintiff has indulged into acts amounting to tort of passing off and unfair competition.
21. PW1 has also deposed that the aforesaid acts of piracy, infringement and passing off being committed by the defendants, the unwary class of purchaser of the plaintiff's goods are bound to be deceived and cheated into buying the inferior quality goods of the defendants considering the same to be quality products of the plaintiff amounting to the tort of passing off. The confusion and deception was inevitable in the facts and circumstances of the case, which in turn, caused immense damage to the high reputation of the plaintiff with the purchasing public and members of

trade. The damage to plaintiff's goodwill and reputation is inevitable in view of the fact that the nature of goods is such that they are purchased mainly by all classes of consumers including semi-literate, illiterate, children, house wives and other persons having average intelligence and imperfect recollection.

22. Further, the adoption and/or use of the mark **HEL** as trademark by the defendants was not only dishonest and tainted but was also actuated with malafides of earning profits in an illegal manner. The defendants had no justification for the adoption and/or use of mark which is the most deceptively and confusingly similar mark to plaintiff's registered trade mark **HPL**. The defendants further had no justification for adoption of identical cartons bearing identical containers having same get-up, lay out, colour combination and artistic features. The aforesaid demonstrates that similarity between the marks and labels of the plaintiff and the defendants was not a mere co-incidence but the impugned mark and label were adopted by the defendants keeping in mind the plaintiff's trade mark, packaging and with a view to come as close as possible to the plaintiff's well known mark **HPL** in order to cash upon the immense goodwill and reputation existing in favour of the plaintiff throughout the length and breadth of India.
23. PW1 has next deposed that when the local commissioner visited the premises of the defendants, he found huge quantity of packed and semi packed goods and also packing material in huge quantity bearing the trademark **HEL**. The way the defendants were packing the goods clearly showed the low quality of the goods being distributed by the defendants.
24. PW1 has also deposed that due to the aforesaid availability of the infringing goods clandestinely and illegally manufactured and sold by the defendants, the purchasing public was deceived and therefore the same

was bound to have a direct effect on the sales of the original goods of the plaintiff. Further, the invaluable reputation of the plaintiff company which has been earned after lot of efforts, time and money on advertisement is also in danger of being damaged seriously due to the inferior quality of the goods of the defendants which are being sold in the market as the goods of the plaintiff. As such the Plaintiff therefore estimates the damages to the extent of at least Rs. 20,05,000/-.

25. I have heard counsel for the plaintiff and carefully perused the documents which have been placed on record along with the affidavit by way of evidence which has been filed. Evidence of the plaintiff has gone unchallenged and un-rebutted. Copies of the legal proceeding certificate/registration certificate/online status of the plaintiff's trademarks, downloaded from the official website of the trademark registry, have been exhibited as **Ex.PW1/4** to **Ex.PW1/9**. An original carton of the plaintiff has been exhibited as **Ex.PW1/10**. Copies of a few sample invoices depicting the extensive sales of goods under the mark **HPL** have been exhibited as **Ex.PW1/11** to **Ex.PW1/73**. Copies of a few Bills of advertisements, and the advertisements in leading magazines have been exhibited as **Ex.PW1/74** to **Ex.PW1/116**. Copies of extracts from unsolicited press coverage have been exhibited as **Ex.PW1/117** to **Ex.PW1/126**.
26. On the basis of the documents placed on record, plaintiff has been able to establish that it is the registered proprietor of the trade mark(s) **HPL** and/or  thereby having exclusive statutory right to use thereof. Plaintiff has also established that the mono carton of the plaintiff's CFL lamp having unique and original get-up, lay out, colour combination and arrangement, is an original artistic work under the provisions of Copyright Act and the plaintiff is the owner thereof. Plaintiff has further established

that on account of huge amount spent on advertisements and publicity of the goods under the trademarks **HPL** and/or , plaintiff has been able to generate huge sales and further built an unparalleled goodwill and reputation with respect to the trademarks **HPL** and/or . Plaintiff has also established that the defendants by adopting deceptively similar trademark **HEL** and similar packaging with respect to identical goods, have infringed the statutory rights of the plaintiff in its trademarks **HPL** and/or  and copyright in the packaging.

27. In a very recent judgment delivered by another bench of this court, *The Indian Hotels Company Ltd. Vs. Ashwajeet Garg and Ors.* CS(OS) 394/2012, decided on 01.05.2014, following observations were made:

“23.

39. In *Kaviraj Pandit Durga Dutt Sharma vs. Navaratna Pharmaceutical Laboratories* 1965 SCR (1) 737, the Hon'ble Apex Court in the following paras held as under: "In an action for infringement, the Plaintiff must, no doubt, make out that the use of the Defendant's mark is likely to deceive, but where the similarity between the Plaintiffs and the Defendant's mark is so close either visually, phonetically or otherwise and the court reaches the conclusion that there is an imitation, no further evidence is required to establish that the Plaintiffs rights are violated. Expressed in another way, if the essential features of the trade mark of the Plaintiff have been adopted by the Defendant, the fact that the get-up, packing and other writing or marks on the goods or on the packets in which he offers his goods for sale show marked differences, or indicate clearly a trade origin different from that of the registered proprietor of the mark would be immaterial;..... When once the use by the Defendant of the mark which is claimed to infringe the Plaintiffs mark is shown to be "in the course of trade", the question whether there has been an infringement is

to be decided by comparison of the two marks. Where the two marks are identical no further questions arise; for then the infringement is made out...."

28. In a judgment delivered by another bench of this court, *Mind Gym Ltd.v. Mindgym Kids Library Pvt. Ltd* CS (OS) 1029/2013, decided on 21.03.2014, plaintiffs who were carrying on business under the trade mark 'MIND GYM' sought permanent injunction against the defendants restraining them from infringing and/or passing off the plaintiff's rights by using the trademark 'MINDGYM' as part of latter's corporate name/trademark. Following observations were made by the court:-

"9.....

(ii) In the case of Evergreen Sweet House Vs. Ever Green and Ors., 2008 (38) PTC 325 (Del), it was observed as under:

15. A mark, is said to be deceptively similar to another (Section 2(1) (h), Trademarks Act, 1999) if it so nearly resembles that other mark as to be likely to deceive or cause confusion. Section 29(1) deals with a situation where the defendant uses a mark, which is identical or deceptively similar to that of the plaintiff, in respect of the same goods or services, and in such manner that it is likely that such use is taken as being an use as a trademark. This amounts to infringement. To fall within Section 29(1), the defendant's use of the mark must be so that it is likely that the public assumes that the said mark is used as a trademark. Section 29(2) deals with three situations; one where the defendants mark is identical to that of the plaintiff and in respect of similar goods. Two, where the marks are similar and in respect of goods which are identical or similar. Three, the marks as well as the goods are identical. Infringement does not take place if only one of the three ingredients are satisfied; the plaintiff has to prove that use by the defendant is likely to cause

confusion on the part of the public or is likely to have an association with the registered mark.

[Emphasis Supplied]

29. I am of the view that the impugned trademark of the defendants is deceptively similar to the plaintiff's trademark. The use of the trademark **HEL** and a similar logo by the defendant, in relation to identical goods, is likely to dilute the distinctive character of the plaintiff's trademarks **HPL** and/or  and the same is likely to erode the goodwill and reputation of the plaintiff among its existing as well as potential customers in the market. The adoption and use of the deceptively similar trademark by the defendants in relation to identical products amounts to an infringement of the plaintiff's statutory rights in the registered trademarks **HPL** and/or  . Furthermore, the defendants have adopted identical cartons bearing identical containers having same get up, lay out, colour combination and artistic features as that of the plaintiff. Also, the defendants have in a *mala fide*, dishonest and an unethical manner is encashing upon the goodwill and reputation of the plaintiff's, established by the latter over the period of years.
30. In the case of **Laxmikant V. Patel Vs. Chetanbhai Shah And Another**, reported at (2002) 3 SCC 65, Apex court made following observation:

“.....The law does not permit any one to carry on his business in such a way as would persuade the customers or clients in believing that his goods or services belonging to someone else are his or are associated therewith. It does not matter whether the latter person does so fraudulently or otherwise. The reasons are two. Firstly, honesty and fair play are, and ought to be, the basic policies in the world of business. Secondly, when a person adopts or intends to adopt a name in connection with his business or services which

already belongs to someone else it results in confusion and has propensity of diverting the customers and clients of someone else to himself and thereby resulting in injury.”

31. In view of the above, the plaintiff is entitled to a decree of permanent injunction against the defendant manufacturing, selling, offering for sale CFL lamps and/or other lighting goods and/or other cognate and/or allied goods under the mark **HEL** and/or any other marks as may be identical and/or deceptively similar to the plaintiff’s trademark **HPL** and also from reproducing any of the artistic features of the packaging label of the plaintiff’s product “HPL CFL lamp” in terms of prayers (a), (b) (c) and (d) in paragraph 44 of the plaint.
32. Plaintiff has also claimed damages alongwith delivery up of all the infringing goods bearing the trademark **HEL** including packaging(s) cartons, labels, stickers, dies, blocks and/or other publicity material bearing the impugned trademark **HEL**. However, plaintiff restricts its claim to punitive damages.
33. In *Microsoft Corporation v. Deepak Raval* reported at MIPR 2007 (1) 72, this Court observed that in our country the Courts are becoming sensitive to the growing menace of piracy and have started granting punitive damages even in cases where due to absence of Defendant, the exact figures of sale made by them under the infringing copyright and/or trademark, exact damages are not available. The justification given by the Court for award of compulsory damages was to make up for the loss suffered by the plaintiff and deter a wrong doer and like-minded from indulging in such unlawful activities.
34. In *Larsen and Toubro Limited v. Chagan Bhai Patel* reported at MIPR 2009 (1) 194, this Court has observed that it would be encouraging the

violators of intellectual property, if the Defendants notwithstanding having not contested the suit are not burdened with punitive damages.

35. In case of **Time Incorporated v. Lokesh Srivastava and Anr.**, reported at 2005 (30) PTC 3 (Del), the court has recognized third type of damages as punitive damages apart from compensatory and nominal damages. The court has held that:

“The award of compensatory damages are aimed at deterring a wrong doer and the like minded from indulging in such unlawful activities.”

"This Court has no hesitation in saying that the time has come when the Courts dealing actions infringement of trademark, 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."

36. For the reasons stated above, the plaintiff has made out a case for grant of decree as prayed in the plaint. Accordingly, the order dated 12.08.2011 is confirmed and the suit is decreed in favour of the plaintiff and against the defendants. Plaintiff is also entitled to damages to the tune of Rs.2.00 lacs.
37. Decree sheet be drawn up accordingly.

(G.S.SISTANI)
JUDGE

DECEMBER 10, 2014
ssn /pdf