

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

% *Date of Judgment :06.02.2015.*

+ CS(OS) 86/2008 & I.A. No.598/2008 (under Order XXXIX Rules 1 & 2 of the CPC)

CASTROL LIMITED & ANR

..... Plaintiffs

Through Mr. Sushant Singh, Adv.

versus

MR. HARSHAL MAHAJAN & ORS

..... Defendants

Through None.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 Present suit has been filed by the two plaintiffs. Castrol Limited is plaintiff No. 1, having its registered office at United Kingdom. Plaintiff No. 2 Castrol India Ltd. is a company incorporated under the Companies Act, 1956 in India carrying on business on large scale and extensively in processing and trading in automotive and industrial lubricants, greases and other speciality products. The plaintiff no. 1 is the registered proprietor of trademark 'CASTROL' registered in India vide registration

No.260626 in class 4 dated 17.11.1969 in respect of industrial oils and greases, hydraulic fluids being oils, lubricants etc. It is also the registered proprietor of trademark 'GTX' in class 4 having being registered on 11.10.1991 in respect of (other than edible oils and fats and essential oils) lubricants etc. These marks have been continuously put to use by the plaintiffs. It also has a copyright registration in respect of 'CASTROL GTX EXTRA' bearing registration No. A- 62525/2002. It is also the owner of trademark 'ACTIV' which is used by plaintiff No.1 along with 'ACTIV' other well known trademark 'CASTROL'. 'CASTROL ACTIV'/'ACTIV' is used by the plaintiffs extensively and continuously. An application for registration of the trademark 'ACTIV' is pending before the competent authority. The plaintiffs are also using particular label in respect of its products under the trademark 'CASTROL ACTIVE'. Its product is conceived and adopted the trademark label having a unique design, layout and colour scheme. The artistic features of the get up and layout have been extensively devised and depicted in various print media. The expenditures on advertisement are enormous. It has built up an unparalleled reputation and goodwill.

2 On 26.10.2007, the plaintiffs learnt that the defendants are indulging in illegal activities and have illegally adopted the trademark of the plaintiffs. The defendants are manufacturing and marketing the products of the plaintiffs. They have copied the trademark and logo of the plaintiffs in all respects. This adoption of the trademark of the plaintiffs is fraudulent and is done with a malafide intention and this has caused huge losses to the plaintiff not only in monetary terms but even in terms of loss to its reputation and goodwill.

3 Present suit has accordingly been filed praying for a relief of permanent injunction and seeking a restraint on the infringement of the trademark of the plaintiff. Restraint on passing off, delivery up of goods and damages to the tune of Rs.20 lacs have also been prayed for.

4 There are five defendants, all of whom have been served.

5 Written statement was filed by defendants No. 2 & 5. It was stated that defendants No. 2 & 5 have no connection with defendant no. 4 which is allegedly carrying on its business at Madhya Pradesh and who even as per the plaintiffs, was infringing the goods of the plaintiffs.

Submission is that there is no cause of action which has arisen against defendants No. 2 & 5.

6 On 01.12.2010, the plaintiffs and defendant No.4 had compromised their dispute; the compromise being lawful and binding, the prayer for taking on record that compromise was allowed and the suit of the plaintiffs in terms of prayer (a), (b) & (c) had been decreed. Defendant No.1 inspite of service had not filed any written statement. Defence of defendant No. 3 had been struck off on 15.12.2010. On 05.08.2014, since none had appeared for defendants No. 1, 2, 3 & 5, they had been proceeded ex-parte. The compromise arrived at between the plaintiffs and defendant No.4 had also been noted. Matter was fixed for ex-parte final arguments.

7 The plaintiff had entered into the witness box and had reiterated all the averments made in the plaint on oath. The registration certificates of the trademark 'CASTROL' were proved as Ex.PW-1/2. The registration certificate of the trademark 'GTX' was proved as Ex.PW-1/3 and copyright registration certificate of 'CASTROL GTX EXTRA' bearing registration No.A-62525/2002 was proved as Ex.PW-1/4. The

sale figure and advertisement expenses incurred by the plaintiffs in terms of their product were collectively proved as Ex.PW-1/5. The images of the products of the defendants had been proved as Ex.PW-1/11.

8 The plaintiffs have been able to successfully prove their case.

9 Accordingly, a decree of permanent injunction is passed in favour of the plaintiff and against defendants No. 1, 2, 3 & 5 restraining the defendants, their servants, agents, stockists from filing, selling, marketing, offering for sale any packaging/label/empty container, used/re-cycled and reconditioned in respect of the industrial oil, engine oil, lubricants, grease under the trademark 'SUPER CTX' or any other mark which is deceptively similar with the plaintiffs' trademarks and logo amounting to infringement of the plaintiffs' registered trademarks. A decree of permanent injunction is passed in favour of the plaintiff and against defendants No. 1, 2, 3 & 5 restraining the defendants, their partners or proprietors as the case may be, their officers, servants, agents and representatives from filing, selling, offering for sale, advertising, directly or indirectly dealing in industrial oil including 2T engine oil or

any other allied and cognate goods under the impugned packing material and from using mark 'SUPER CTX', shape and configuration of the container similar to that of the plaintiffs and any other trademark or label which may amount to passing off of their goods as the goods of the plaintiffs.

10 A decree of permanent injunction is passed in favour of the plaintiffs and against defendants No. 1, 2, 3 & 5 restraining the defendants, their partners or proprietors, as the case may be, their officers, servants, agents and representatives from reproducing, printing or publishing, selling or offering for sale any label or the impugned packaging which is a colourable imitation or substantial reproduction of the plaintiffs' 'CASTROL ACTIV' packaging amounting to infringement of copyright.

11 The plaintiffs have also claimed damages. In the affidavit by way of evidence it has been reiterated that the use of the infringing trademark by the defendants has caused huge losses to the plaintiffs not only in monetary terms, but also to the goodwill and reputation of the plaintiffs. The plaintiffs have also made out a case for entitlement of damages.

12 In 2006 (33) PTC 683 (Del) Asian Paints (India) Ltd. Vs. Balaji Paints and Chemicals and Ors. where the defendant was ex parte; in a claim for damages a Bench of this Court had granted Rs.3 lacs as damages to the plaintiff including costs of the suit. This Court is inclined to follow the ratio of the said judgment which while granting damages in this context had noted as under:

“The result of the actions of defendants is that plaintiffs, instead of putting its energy for expansion of its business and sale of products, has to use its resources to be spread over a number of litigations to bring to book the offending traders in the market.”

13 Plaintiffs are accordingly entitled to damages quantified at Rs.1 lac. Cost of the suit also be granted in favour of the plaintiffs. They are also entitled to the delivery of the impugned finished and unfinished material lying with the defendants which is violative of the trade mark of the plaintiffs.

14 Suit disposed of.

INDERMEET KAUR, J

FEBRUARY 06, 2015

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