

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO. 122 OF 2014

Rallis India Limited]
having its registered office]
at 156/157, Nariman]
Bhavan, 15th Floor, 227,]
Nariman Point,] ... Plaintiff

Mumbai 400021

Versus

RPH Crop Science Pvt. Ltd.,]
having its registered office at]
Plot No. G- 1138, Road- 1/C,]
Kishan Gate, Metoda, GIDC,

Rajkot, Gujarat- 360 021 ... Defendant

Mr. Hiren Kamod, Advocate a/w Ms. Sakshi Pande i/b W.S. Kane & Co,
Advocates for the Plaintiff.

Mr. Surendra Jangam, Sr. Officer- Legal and Constituted Attorney of the
Plaintiff above-named present.

None for the Defendant.

CORAM : S. J. KATHAWALLA, J.

DATE : July 1, 2015

JUDGMENT:

1. The Plaintiff is a company incorporated under the Companies Act, 1913,
having its registered office at the address mentioned in the cause title above

and has been carrying on an old, established and well known business as manufacturer of and / or trader in, inter alia, fungicides.

2. According to the Plaintiff, the Defendant is a private limited company incorporated under the Companies Act, 1956 and carries on similar business as manufacturer of and / or trader in fungicides.

3. The Plaintiff has filed the present suit against the Defendant, inter alia, for an order and perpetual injunction restraining the Defendant from in any manner whatsoever, infringing the Plaintiff's registered trade mark CONTAF/CONTAF PLUS bearing Nos.1677793 and 1741851 both in class 05 and also from passing off the Defendant's goods as and for those of the Plaintiff's goods and/or enabling others to do so by using the impugned trade mark Conta/Conta Plus or any other trade mark deceptively similar to the Plaintiff's registered trade marks in respect of fungicides or any other goods for which the Plaintiff's trade marks have been registered.

4. Since the Plaintiff has its registered office in Mumbai and carries on its business in Mumbai, this Court has jurisdiction to try and entertain this Suit with respect to the cause of action for infringement by virtue of Section 134 of The Trade Marks Act, 1999 (hereinafter, "the Act"). The Plaintiff had filed

Leave Petition No. 10 of 2014 for obtaining leave under Clause XIV of the Letters Patent to combine the cause of action for passing off with the cause of action for infringement, which leave was granted by this Court by an order dated 28th January, 2014.

5. The Plaintiff had also taken out Notice of Motion (L) No. 53 of 2014 seeking ad-interim and interim reliefs. By an order dated 10th February, 2014, the said Notice of Motion (L) No. 53 of 2014 was made absolute against the Defendant in terms of prayer clauses (a) and (b) of the said Notice of Motion.

6. By an order dated 10th June, 2015 of this Court, the above Suit was directed to be listed under the caption 'For Ex-parte decree' against the Defendant.

7. The Plaintiff has filed the Affidavit dated 1st July, 2015 in lieu of Examination-in-Chief of Mr. Surendra Jangam who is the Sr. Officer- Legal and Constituted Attorney of the Plaintiff Company, along with the Compilation of Documents which are taken on record and marked as Exhibits- P-1 to P-8.

8. Mr. Kamod, the Ld. Advocate for the Plaintiff submits that the Plaintiff carries on an old, established and reputed business, inter alia as manufacturer of and / or trader in, inter alia, fungicides. He states that sometime in the year

2004, the Plaintiff adopted a rectangular label mark having a white background and comprising of the word “**Contaf PLUS**” written across the centre, the word “**Contaf**” in black ink and the word “**PLUS**” in red ink in capital letters, with a device of green plant with three leaves in between the words “**Contaf**” and “**PLUS**” for use in respect of its fungicide, with a view to distinguish its said goods from same/similar goods of others. The Plaintiff also adopted a blue coloured triangular shaped bottle with a grey coloured round cap having uniformly placed vertical protrusions along the outer surface of the said cap for packaging its systemic fungicide and affixed the said trade mark label on the said bottle. He states that even a cursory look at the said bottle reveals its unique, attractive and distinctive shape and colour scheme. Color photographs of the Plaintiff’s bottles at different angles containing the Plaintiff’s trade mark “**Contaf PLUS**” are at Exhibits “P-2 and P-3” to the Compilation of Documents.

9. Mr. Kamod submits that on 21st April 2008, the Plaintiff applied for and obtained registration of the word mark **CONTAF** under the Trade Marks Act, 1999 under No.1677793 in Class 05, which registration is valid till 18th April, 2018. The original certified copy of the entries in the Register of Trade Marks relating to the Plaintiff’s registered trade mark **CONTAF** bearing registration

no. 1677793 in Class 05 for use in legal proceedings is at Exhibit P-4 of the Compilation of Documents. He submits that on 10th October 2008, the Plaintiff applied for and obtained registration of the word mark **CONTAF PLUS** under the Trade Marks Act, 1999 under No.1741851 in class 05, which registration is valid until 10th October, 2018. The original certified copy of the entries in the Register of Trade Marks relating to the Plaintiff's registered trade mark CONTAF PLUS bearing no. 1741851 in Class 05 for use in legal proceedings is at Exhibit P-5 of the Compilation of Documents.

10. The Plaintiff has submitted that in the fourth week of December, 2013, the Plaintiff came to learn that the Defendant is manufacturing and/or trading in fungicides under the word mark/ trade mark label "**Conta Plus**". It is submitted that the Defendant's impugned trade mark label and bottle are almost identical with and/or deceptively similar to the Plaintiff's word marks/trade mark label CONTAF/CONTAF PLUS and the bottle. It is further submitted that the Defendant's impugned trade mark label is also rectangular, has a white background and comprises of the word mark "**Conta Plus**" written across the centre of the said rectangular label, the word "**Conta**" in dark blue ink and the word "**Plus**" in red ink, with a device of green plant with leaves in between the words "**Conta**" and "**Plus**". It is submitted that the impugned word mark "**Conta Plus**" as also the Defendant's above described

trade mark label is visually and phonetically almost identical with the Plaintiff's registered trade marks. It is further submitted that the impugned trade mark label is affixed by the Defendant on a bottle which has shape and colour scheme identical with the shape and colour scheme of the Plaintiff's said bottle, in that the shape of the impugned bottle is also triangular and it has blue colour with the grey round cap having uniformly placed vertical protrusions along the outer surface of the said cap. Color photographs of the Defendant's bottle bearing the impugned trade mark label, taken from different angles are at Exhibits "P-7" and "P-8" to the Compilation of Documents.

11. Mr. Kamod submits that the Plaintiff is the registered proprietor of the said trade mark CONTAF PLUS bearing registration No. 1677793 and 1741851 both in Class 05. He further submits that since the year 2004-2005, the Plaintiff has been continuously and extensively using the said trade mark label in respect of the said goods of its manufacture and/or origin. He submits that since inception, the Plaintiff has effected large sales of its goods packed in the bottles bearing the said trade mark label "**Contaf PLUS**". He submits that the Plaintiff has also taken efforts to popularize its goods sold in the bottles bearing the trade mark label "**Contaf PLUS**" and has spent substantial

sums of money on publicity and sales promotional activities carried on in respect of its said goods. He submits that due to superior quality of the said goods sold in the said bottle bearing the said trade mark label as also due to long, continuous and extensive user of the said trade mark label and the said bottle and wide publicity given thereto, the said trade mark label and the said bottle have acquired immense reputation and goodwill in India. The Plaintiff has submitted that for the period between 2008-2009 and 2012-2013, the Plaintiff's total annual sales of its said goods sold under the said bottle bearing the said trade mark label were in tune of Rs.307.6 crores and the total publicity and promotional expenses in respect of its said goods bearing the said trade mark label were in tune of Rs.6.16 crores.

12. Mr. Kamod submits that the Plaintiff's said trade mark label and the said bottle have become immensely popular and well-known throughout India and distinctive of the Plaintiff's aforesaid goods and have come to be exclusively associated by the traders and members of the public with the Plaintiff and its said goods and none else. He submits that the said trade mark label/bottle and the Plaintiff's said goods command and enjoy tremendous trust and confidence of the people with respect to the standard of quality and effectiveness of the said goods. He contends that the Plaintiff's goods packed

in the said bottle bearing the said trade mark label are being purchased mostly by semi-literate/illiterate farmers. He contends that the said consumers identify and/or demand the Plaintiff's goods by reference to the word CONTAF/CONTAF PLUS and/or the said trade mark label as a whole and/or the said bottle and/or unique, attractive and distinctive design, layout, get-up and colour combination thereof. He submits that each of the aforesaid features, are the essential features and are separately associated with the Plaintiff and its said goods.

13. Mr. Kamod submits that in view of the above, valuable statutory and common law rights have come to be vested in the Plaintiff. He submits that the Defendant is using the impugned trademark "**CONTA PLUS**" in respect of identical goods (i.e. fungicides) covered by the registration of the Plaintiff. He submits that even the shape, colour scheme, layout and design of the impugned bottle bearing the impugned trade mark label is identical to that of the Plaintiff's said bottle. He therefore contends that in view of the aforesaid, the trade as well as the public is likely to get confused and deceived with regard to the origin and source of the impugned goods of the Defendant and there is a high likelihood of the public mistaking the impugned goods of the Defendant as those of the Plaintiff.

14. Mr. Kamod submits that the Plaintiff has been vigilantly protecting its aforesaid exclusive right to the use of the trade mark CONTAF/CONTAF PLUS. He submits that in or about April 2012, the Plaintiff came to learn that one Solar Crop Science had started manufacturing and/or trading in Systemic Fungicide under a trade mark label which was also rectangular, had a white background and comprised of the word mark “Coltaf PLUS” written across the centre of the said rectangular label, the word “Coltaf” in black ink and the word “PLUS” in red ink in capital letters, with a device of green plant with three leaves in between the words “Coltaf” and “PLUS”. The Plaintiff therefore filed Suit No. 2519 of 2012 in this Court against said Solar Crop Science for restraining them from using the impugned trade mark label. The Plaintiff also took out Notice of Motion No.2520 of 2012 for temporary injunction. It is submitted that pursuant to an application made by the Plaintiff for ex-parte ad-interim injunction against the said Defendant, this Court was pleased to grant relief in terms of prayer clauses (a) and (c) of the above Notice of Motion vide its order dated 30th November, 2012. It is submitted that thereafter, Consent Terms were entered into between the Plaintiff and the said Defendant and the suit was decreed in terms of the Consent Terms dated 21st January 2013. The learned Advocate for the Plaintiff

submits that by Order dated 22nd January 2013, a decree was passed against the Defendant in terms of prayer clauses (a) and (b) of the plaint; and damages of Rs.50,000/- were awarded in favor of the Plaintiff. The original certified copy of the said Consent Order dated 22nd January, 2013 passed by the Court alongwith the duly signed Consent Terms dated 21st January 2013 in Suit No.2519 of 2012 is at Exhibit P-6 to the Compilation of Documents.

15. Mr. Kamod submits that the Defendant's impugned trade mark **"Conta Plus"** is visually and phonetically similar to the Plaintiff's said registered trademarks **"CONTAF"** and **"CONTAF PLUS"**. He submits that as the Defendant is using the impugned trade mark Conta Plus in respect of fungicide which goods are same as the goods for which the Plaintiff has secured registrations of its said trade marks **"CONTAF"** and **"CONTAF PLUS"**, the Defendant is guilty of infringing the Plaintiff's registered trade marks **"CONTAF"** and **"CONTAF PLUS"** bearing Nos.1677793 and 1741851 ..

16. Mr. Kamod submits that the Plaintiff's goods bearing the mark CONTAF/CONTAF PLUS are being sold throughout India and thus the Defendant was aware and/or ought to have been aware of the existence of the Plaintiff's mark CONTAF/CONTAF PLUS. He submits that the adoption by the Defendant of the impugned mark **"CONTA PLUS"** is a dishonest and

deliberate attempt to encash and trade upon the goodwill and reputation of the Plaintiff. He submits that if the Defendant is not restrained from continuing the acts of infringement and passing off by use of the impugned mark “**CONTA PLUS**”, the Plaintiff will suffer irreparable loss and injury.

17. I have considered the submissions made on behalf of the Plaintiff and have also perused the pleadings and the evidence led by the Plaintiff. After consideration of the same, I find merit in the submissions made on behalf of the Plaintiff. The Plaintiff has proved all its contentions satisfactorily by providing substantial material in support of the same. It is clear that the impugned mark CONTA / CONTA PLUS is identical with and/or deceptively similar to the Plaintiff's registered trademark CONTAF/CONTAF PLUS. The said rival marks are also being used in respect of fungicides. Hence, the continued use of the impugned trademark by Defendant is bound to create confusion and deception in the minds of the public. The following table of comparison between the Plaintiff's said trade mark/ label/bottle and the Defendant's impugned trade mark/ label/bottle clearly brings out the deceptive similarity between the rival trade marks/labels/bottles.

Sr. No.	PLAINTIFF'S TRADE MARK/ LABEL/BOTTLE”	DEFENDANT'S IMPUGNED TRADE MARK/ LABEL/BOTTLE

		
1	Word mark “Contaf PLUS”	Word mark “Conta Plus”
2.	Label Rectangular in shape	Label Rectangular in shape
3	Word mark “ Contaf PLUS ” written across the centre of the rectangular label.	Word mark “ Conta Plus ” written across the centre of the rectangular label.
4	Label has a white background on which the word “ Contaf ” is written in black ink and the word “ PLUS ” is written in red ink.	Label has a white background on which the word “ Conta ” is written in dark blue ink and the word “ Plus ” is written in red ink
5	Device of green plant with three leaves is placed in between the words “ Contaf ” and “ PLUS ”	Device of green plant with leaves is placed in between the words “ Conta ” and “ Plus ”
6	Label is affixed on a blue coloured triangular shaped bottle with a grey coloured	Label is affixed on a blue coloured triangular shaped bottle with a grey coloured

	round cap having uniformly placed vertical protrusions along the outer surface of the said cap.	round cap having uniformly placed vertical protrusions along the outer surface of the said cap.
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18. The Defendant has remained absent despite the service of Writ of Summons by the Plaintiff. There is no written statement on record. Thus, there is no explanation provided or defence raised by the Defendant in respect of the use of the impugned mark Conta / Conta Plus which is identical with and/or deceptively similar to the Plaintiff's registered trademark CONTAF/CONTAF PLUS. The evidence of the Plaintiff is therefore uncontroverted. It is quite clear that Defendant by use of the impugned mark is dishonestly attempting to trade on the goodwill and reputation of the Plaintiff thereby causing irreparable loss and damage to the Plaintiff. In view thereof, it is clearly established that the Defendant is infringing the trademark of the Plaintiff and is passing off its goods as that of the Plaintiff's goods.

19. The Plaintiff is not pressing for damages other than punitive damages. In the circumstances, suit is decreed against the Defendant in terms of Prayer Clauses (a), (b) and (d) of the Plaint, which prayers are reproduced hereunder :

(a) that the Defendant by itself, its directors, servants, agents, stockists, distributors and dealers be restrained by a permanent order and injunction of this Court from infringing the Plaintiff's registered trade marks CONTAF/CONTAF PLUS bearing Nos.1677793 and 1741851 both in class 05 by using the impugned trade marks Conta/Conta Pous or any other trade mark deceptively similar to the Plaintiff's said registered trade marks bearing Nos.1677793 and 1741851 both in class 05 in respect of fungicide or any other goods for which the said trade marks have been registered or in respect of similar goods or in any other manner whatsoever;

(b) that the Defendant by itself, its directors, servants, agents, stockists, distributors and dealers be restrained by a permanent order and injunction of this Court from manufacturing and/or selling and/or marketing and/or distributing and/or trading and/or exhibiting for sale and/or advertising and/or otherwise dealing in fungicide or similar goods packed in the impugned bottle or under or bearing the impugned trade mark label shown in Exhibits D-1 and D-2 hereto or under or bearing the word mark Conta/Conta Plus or any other trade mark label /

work mark deceptively similar to the Plaintiff's well known trade mark label shown in Exhibits A-1 and A-2 hereto or to the word mark CONTAF or CONTAF PLUS or packed in any other bottle similar to the Plaintiff's bottle shown in Exhibits A-1 and A-2 hereto so as to pass off or enable others to pass off the Defendant's goods as and for the Plaintiff's well known goods or in any other manner whatsoever;

(d) that the Defendant be ordered and decreed to deliver up to the Plaintiff for destruction all the goods, bottles, labels, wrappers, dies, literature, blocks and packing material and things bearing the impugned trade mark/label and/or packed in the impugned bottle shown in Exhibits D-1 and D-2 hereto;

20. Costs to be quantified as per rules.

21. Considering the nature of infringement and with a view to dissuade others from indulging into such activities it is imperative that some punitive damages be awarded to the Plaintiff. I, therefore award punitive damages amounting to Rs.1,00,000/- to the Plaintiff and against the Defendant .

22. The office shall return the original documents to the Advocates for the Plaintiff upon the Advocates for the Plaintiff handing over photostat copies of

the said documents duly certified by them as true copies. Refund of court fee, if any, as per rules.

(S. J. KATHAWALLA, J)