

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1293 of 2016 (O&M)

DATE OF DECISION: 11.03.2016

M/s Lehra Agro Fuel Industries

....Appellant

versus

Lehra Fuel Tech Pvt. Ltd. and others

.....Respondents

CORAM:- HON'BLE MR. S.J. VAZIFDAR, ACTING CHIEF JUSTICE

Present: Mr. Sunil Chadha, Senior Advocate with
Ms. Swati Verma, Advocate for the appellant

Mr. Ajay Sahai, Advocate
Mr. Rahul Rajput, Advocate, and
Mr. Himanshu Raj, Advocate for respondent No.1

Respondents No.2 and 3 proforma parties

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S.J. VAZIFDAR, ACTING CHIEF JUSTICE: (Oral)

This is an appeal against the order of the learned Additional District Judge, Ludhiana, in the interlocutory application filed by the first respondent in its suit which is an action for infringement and passing off. The order restrains the appellant/respondent from passing off its goods as the goods of respondent No.1/plaintiff by applying on them marks deceptively similar to respondent No.1's trademark.

2. The respondent No.1 claims to be the proprietor of the mark "LEHRA". The mark has been registered under several

classes including classes 7 and 35. The applications for registration were made from the year 2007 onwards claiming user from the year 1995. The respondent No.1's user of the mark since the year 1995 has not been contested.

3. The appellant claims to have used the mark since the year 2007. Indeed, respondent No.1 has relied upon the appellant's application for registration of the identical mark also under classes 7 and 35 claiming user from the year 1994. This application was made on 12.10.2012 i.e. the date on which the suit was filed. The application is for a device mark wherein the word "LEHRA" is a prominent and dominant feature. The respondent No.1 relied upon this application for registration to counter the appellant's contention that the word "LEHRA" can never be registered. The contention is that it is not distinctive of respondent No.1's products as it is a name of a village.

4. The respondent No.1's reliance upon the appellant's application for registration of the mark "LEHRA" is well founded at least at the interlocutory stage. Absent anything else, it is reasonable to presume that the appellant itself considers the mark to be distinctive and capable of registration.

5. The learned counsel appearing on behalf of respondent No.1 has also relied upon the judgment of a learned

Single Judge of this Court in *M/s Banwari Lal Sham Lal Vs. Registrar of Trade Marks, Bombay and another*, 1954 PLR 309 wherein it is observed as follows:-

"The present case is wholly different. The place "Landra" is a small insignificant village where the only persons manufacturing chaff cutting machines are the respondents Amin Chand & Sons and as was said in *Mangolia's* case (supra), Landra does not become a geographical name simply because some place upon the earth's surface has been called by it. By the registration of this mark no confusion or embarrassment is likely to be caused. The evidence shows that it is not even known to many people as being a village and expecting some of those who were importing it into their respective towns the name was associated with the goods of the manufacturers i.e. Amin Chand & Sons and not with the place of its manufacture, and it cannot be said that it is not distinctive of the goods of respondent No.2 or that it is not adapted to distinguish."

Prima facie, at least, therefore, the contention on behalf of the appellant that the mark cannot be registered being the name of a place is not well founded. This, however, is not a conclusive finding. The contentions of the parties in this regard are kept open including in the rectification proceedings adopted by the appellant against respondent No.1.

6. Mr. Chadha, learned senior counsel appearing on behalf of the appellant also relied upon the fact that several other entities have also used the mark "LEHRA".

7. The argument of the mark being common to the trade requires more than the parties having applied for registration. There is nothing to indicate the user of the

mark by such parties who have applied for or obtained registration of the mark.

8. The appeal is, therefore, dismissed.

The application for expediting the suit must be made before the learned trial Court.

11.03.2016

Amodh/parkash*

**(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE**