

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

% *Judgment reserved on : 28.04.2017*
Judgment delivered on : 02.05.2017

+ CS(COMM) 258/2016

PEST CONTROL (INDIA) PVT LTDPlaintiff

Through: Ms. Krwttika Vijay and Mr. Pundreek
Dwivedi, Advocates.

Versus

PEST CONTROL INNOVATIVE PVT LTD. ...Defendant

Through: None.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1. The present suit has been filed by the plaintiff against the defendant for permanent injunction restraining infringement of trademark, copyright, passing off, delivery up, rendition of accounts of profits as also damages.

2. The plaintiff, Pest Control (India) Pvt. Ltd. is a company established in 1954, incorporated under the provisions of the Companies Act, 1956, and is the first and the largest pest management company in the country. It has been offering a comprehensive range of Professional Pest Management Services and Quality Products and Equipment. Plaintiff, registered under the

trademark of 'PCI', being registered in the year 1984 in Class 5 has been offering, selling, providing, offering for sale its products and services for approx. 60 years under the mark 'PCI'. 'PCI' is not only Plaintiffs trade name but also Plaintiffs Trademark, House Mark, Service mark and trading style since the time of its inception. The registered trade mark 'PCI' of the plaintiff qualifies as an original artistic work and has been duly registered Copyright vide registrations Nos. A-70750/2005 dated 28.04.2005 and A-69235/2005 dated 05.04.2005. It is stated that one of the registrations A-40931/83 is registered from the year 1983. The plaintiffs copyright in this label is valid and subsisting. The label is used by the plaintiff in connection with its business and has become synonymous with it. The plaintiff also owns the domain name www.pestcontrolindia.com which provides prospective customers access to the plaintiffs products and other services of the plaintiff. Plaintiffs registered mark "PCI" is well known mark within the meaning of section 11(6) and 11(7) of the Trade Marks Act, 1999.

3. The Defendant, Pest Control Innovators Pvt. Ltd. is a company providing, marketing, exporting, offering pest control and pest management services under an identical trademark "PCI" and a deceptively similar trade name/ trading style "Pest Control Innovative."

4. In June, 2013 it came to the knowledge of the plaintiff that the Defendant is blatantly, using and providing services under an identical trademark “PCI”. The impugned mark of the Defendant is identical in part and deceptively/phonetically similar as a whole to the Plaintiffs trademark “PCI”.

5. A cease and desist letter dated 5.06.2013 was sent to the defendant wherein plaintiff objected to the defendant’s act of providing services under the impugned trade name ie. “Pest Control Innovative” which is deceptively similar to plaintiffs trade name/trading style “Pest Control India”.

6. Defendant in its reply to the cease and desist letter dated 27.08.2013 denied any infringing activities on its part and stated that at the time of incorporation on 30.03.2011 it was known as “Dazzle Unlimited Services Pvt. Ltd.” and it was only on 27.12.2012 it changed its name to “Pest Control Innovative Pvt. Ltd.” However, petitioner finds no justification for the sudden change of the name from “Dazzal Unlimited Services Pvt. Ltd.” to “Pest Control Innovative Pvt Ltd.”

7. Present suit has accordingly been filed praying for a relief of permanent injunction and seeking a restraint on the infringement of the trademark, copyright, and passing off, delivery up of goods of the plaintiff.

Rendition of accounts of profits and damages to the tune of Rs.20, 01,000/- have also been prayed for.

8. In the course of proceedings of the suit, on 18.02.2014 an ex-parte ad-interim injunction was granted in favour of the plaintiff and against the defendants restraining them from using the plaintiffs registered trademark 'PCI' or any other deceptively similar trademark for its products.

9. Summons of the suit was issued to the defendant on 20.08.2014 who despite of the service did not appear and the right to file the written statement was closed. The defendant was proceeded ex-parte on 14.10.2015. The ex-parte ad-interim injunction was then made absolute on 07.10.2016.

10. Ex parte evidence by way of affidavit of PW-1 (Mr Parvez Nowrojee Vice President-Strategic HR & CRM) has been filed. PW-1 has reiterated all the averments made in the plaint and has proved various documents delineated as Ex.PW1/1 to Ex.PW-1/25 and documents marked as Mark A to Mark F.

11. The plaintiff has established and proved its case. In view of the testimony of the witness of the plaintiff i.e. PW-1 as also documentary evidence adduced and proved in the court, the plaintiff is entitled to a decree of permanent injunction. It is clear that the defendant's have copied the

plaintiff's trademark 'PCI' and its copyright subsisting in the label 'PCI'. This adoption of the trademark of the plaintiff is fraudulent and has caused injury, loss and damage to its name, business goodwill and reputation.

12. Accordingly, the suit of the plaintiff is decreed and by way of the permanent injunction, the defendant's, its directors, wholesalers, distributors, partners, or proprietor as the case may be, their officers, servants and agents and all others acting for and on their behalf are restrained from using the plaintiff's trademark PCI and from selling, offering, providing, offering to provide, advertising, directly or indirectly dealing in pest control and pest management services including fumigation, home-care services for cockroaches, ants etc or other services under the trademark PCI and trade name/trade style "Pest Control Innovative" or any other deceptively similar trademark with the plaintiff's and copyright in label PCI amounting to infringement/passing off the plaintiff's registered trademarks as also from misrepresenting or holding out to be connected or related to the plaintiff in any manner whatsoever.

13. The defendant is also directed to destroy all the goods, dies, blocks, cartons, labels, and any other infringing material bearing the trademark and the label 'PCI' or any other deceptively similar trademark/label(s).

14. As far as damages are concerned, the plaintiff has claimed damages to the tune of Rs 20,01,000/-. In the affidavit by way of evidence it has been reiterated that the use of the infringing trademark by the defendant's has caused injury, loss and damage to its name, business goodwill and reputation of the plaintiff.

15. Reference in this regard maybe had to the judgment of this court in **116 (2005) Delhi Law Times 599, Time Incorporated vs. Lokesh Srivastava and Anr.** wherein it has held as follows:-

“ This Court has no hesitation in saying that the time has come when the Courts dealing 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. **In Mathias v. Accordingly Economy Lodging, Inc. reported in 347 F.3d 672 (7th Cir. 2003)** the factors underlying the grant of punitive damages were discussed and it was observed that one function of punitive damages is to relieve the pressure on an overloaded system of criminal justice by providing a civil alternative to criminal prosecution of minor crimes. It was further observed that the award of punitive damages serves the additional purpose of limiting the defendant's ability to profit from its fraud by escaping detection and prosecution. If a torfeasor is caught only half the time he commits torts, then when he is caught he should be punished twice as

heavily in order to make up for the times he gets away This Court feels that this approach is necessitated further for the reason that it is very difficult for a plaintiff to give proof of actual damages suffered by him as the defendants who indulge in such activities never maintain proper accounts of their transactions since they know that the same are objectionable and unlawful. In the present case, the claim of punitive damages is of Rs. 5 lacs only which can be safely awarded. Had it been higher even, this court would not have hesitated in awarding the same. This Court is of the view that the punitive damages should be really punitive and not flee bite and quantum thereof should depend upon the flagrancy of infringement.”

16. In the above context, the plaintiff has made out a case for entitlement of damages. Accordingly a sum of Rs. 15 Lakhs is awarded as damages. Cost of the suit also be granted in favour of the plaintiff. Decree sheet be drawn. File be consigned to record room.

INDERMEET KAUR, J

MAY, 02, 2017

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