

\$~

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

+ **CS(COMM) 492/2016**

M/S RSPL LIMITED

Through

..... Plaintiff

Mr.Sanjeev Singh with
Mr.Sudhir Balyan and
Mr. D.K.Yadav, Advocates.

versus

M/S S K ENTERPRISES

Through

..... Defendant

None

%

Date of Decision: 27th November, 2017

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J (Oral):

1. Present suit has been filed for permanent injunction restraining infringement of trademark, copyright, passing off, delivery up and rendition of accounts, damages etc. against the defendant. The prayer clause in the suit is reproduced hereinbelow:-

"47 That the Plaintiff, therefore, prays:-

(A) For a decree of permanent injunction restraining the Defendant by themselves as also through their individual partners/proprietors, directors, agents, representatives, distributors, assigns, stockiest etc., and all others acting for and on behalf of the Defendant from manufacturing,

selling, using, displaying, advertising, importing/exporting or by any other mode or manner dealing with the impugned trade mark



DHARI and trademark/label/packaging/wrapper/trade dress



of DHARI and tag line “Pehle Istemal Karen PHir Vishwas Karen” or any other trade mark/label/packaging and trade dress and tag line identical with or deceptively similar to the Plaintiff’s said well known trade mark GHARI and/or trademark / label / packaging / wrapper /trade dress of GHARI and GHARI LABEL and/or tag line “Pehle Istemal Karen Phir Vishwas Karen” in relation to the impugned goods or in relation to any other goods/products and/or services or from doing any other acts or deeds amounting to:-

i. infringement of Plaintiff’s said well known trade mark GHARI and/or trademark/label/packaging/wrapper/trade dress of GHARI and GHARI LABEL.

ii. passing off or otherwise violation by way of passing off of the Plaintiff’s said well known trade mark GHARI and/or trademark/label/packaging/wrapper/trade dress of GHARI and GHARI LABEL as well as tag line “Pehle Istemal Karen Phir Vishwas Karen”.

iii. Infringement of Plaintiff’s copyrights in the artistic work involved in Plaintiff’s said well known trademark / label / packaging / wrapper /trade dress of GHARI and GHARI LABEL and

punch line “Pehle Istemal Karen Phir Vishwas Karen”.

- (B) For an order for delivery up of all the impugned finished and unfinished material of the Defendant bearing the impugned trade mark/label/packaging/wrapper/trade dress*



DHARI and tag line “Pehle Istemal Karen Phir Vishwas Karen” including any other trade mark/label/wrapper/trade dress identical with and deceptively similar to it including blocks and labels, display boards, sign boards, trade literature, advertisement material etc. to the Plaintiff for purposes of destruction/erasure.

- (C) For an order for rendition of accounts of profits earned by the defendant by their impugned illegal trade activities and a decree for the amount so found in favour of the plaintiff on such rendition of accounts.*

- (D) In the alternative to the rendition of accounts, for a decree of Rs.20,00,500/- (Rupees Twenty Lakh and Five Hundred Only) on account of damages sustained by the Plaintiff due to the impugned acts of the Defendants.*

- (E) For an order for costs of the proceedings; and*

- (F) For such other and further relief(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.”*

2. At the outset, learned counsel for plaintiff gives up prayers (B), (C) and (D) of the prayer clause to the suit. The statement made by learned counsel for plaintiff is accepted by this Court and plaintiff is held bound by the same.

3. Vide order dated 28th August, 2015 this Court granted an ex-parte ad interim injunction in favour of the plaintiff and against the defendant, which was confirmed vide order dated 30th May, 2017 till disposal of the suit. This Court further appointed a Local Commissioner to visit the premises of the defendant. The relevant portion of the order dated 28th August, 2015 is reproduced hereinbelow:-

“...In the above facts, defendant its directors, proprietor, partner, agents, assigns, distributors, representatives are restrained from using the mark ‘DHARI’ which is deceptively similar to plaintiff’s trade mark ‘GHARI’. Defendant is also restrained from using the label, packaging, wrapper, trade dress for its product as that of plaintiff’s products ‘GHARI’...”

4. Since the defendant did not appear despite service, it was proceeded ex-parte vide order dated 30th May, 2017.

5. In the plaint, it has been averred that the plaintiff is an established business concern and engaged in the trade and business of manufacture and sale of different kinds of washing soaps and detergents.

6. It is stated that the plaintiff adopted the trademark/label GHARI in the year 1975 and has registrations for the mark GHARI in Classes 1 to 34 of the Trade Marks Act, 1999. However, the plaintiff became the proprietor of the device of GHARI / (watch), by virtue of Release/Relinquishment Deed dated 13th July, 1997 and Deed of Assignment dated 20th October, 1999, along with goodwill in favour

of the predecessor of the plaintiff company. The plaintiff also coined, conceived and adopted the GHARI trademark/label/package/trade dress with the punch line "*Pahle Istemal Karen Phir Vishwas Karen*" in the year 1988.

7. It is stated in the plaint that the plaintiff is the registered proprietor of the copyright involved in the artistic work namely getup, lettering style, colour scheme, placement of words, artistic features etc. of the GHARI trade mark/label/package/trade dress. The art work involved in the plaintiff's said trade mark/label/package/trade dress is original within the meaning of the Copyright Act, 1957. The copyrights in the artistic work of the said trade mark/label/package/trade dress are also duly registered in favour of the plaintiff under the provisions of Copyright Act, 1957. It is further stated that the plaintiff has been commercially using and reproducing all its aforesaid copyrights in the course of its trade and business.

8. It is averred in the plaint that the plaintiff is a 3800 crore diversified conglomerate, which is committed for value for money propositions and credited with several innovations over last four decades. It is stated that the GHARI Detergents brand is one of the well known brand in the FMCG market and is currently ranked as largest selling brand in its category with more than 26% market share and that the plaintiff company has achieved a turnover of more than Rs. 3,64,479.57 lacs for the year 2013-14. It is further stated that the plaintiff has been continuously advertising and promoting its said

trade mark/label/package/trae dress and the expenditure on advertising and promotion for the year 2013-14 was Rs. 4,768.83 Lacs.

9. It is stated in the plaint that the plaintiff's GHARI trade mark/label/package/trae dress and said punch lines have already become distinctive indicium of the plaintiff and plaintiff's goods and business. The said trade mark/label/package/trae dress and said punch lines have acquired secondary significance, denoting the goods and business of the plaintiff. It is stated that the public and members of the trade associate, identify and distinguish the said trade mark/label/package/trae dress and said punch lines with the plaintiff and plaintiff's goods and business alone.

10. Learned counsel for the plaintiff states that in the second week of August, 2015, it came to the plaintiff's knowledge that the defendant was dishonestly and unauthorizedly engaged in the trade of selling washing soaps, powder, detergent etc. He states that the defendant has copied the plaintiff's GHARI trade mark/label/package/trae dress in exactitude and the impugned goods and business of the defendant are also of the same/similar and allied/cognate nature as that of the Plaintiff. He states that the juxtaposition of the rival trademarks/label speaks volume of the dishonest adoption of the defendant. A pictorial representation of the plaintiff's and defendant's product is reproduced hereinbelow:-

Plaintiff's product



Defendant's product



11. Learned counsel for the plaintiff states that the defendant has scanned the complete wrapper of the plaintiff's GHARI trade mark/label/packaging/trade dress and has replaced the Hindi word



GHARI with the Hindi word DHARI which is visually and phonetically identical to the said trade mark/label of plaintiff. He states that the colours, colour combination of the packaging/trade dress of the defendant and that of the plaintiff are identical. The defendant, he states, has also adopted the similar punch line/tag line "*Pehle Istemal Karen Phir Vishwas Karen*" in respect of detergent powder.

12. Learned counsel for the plaintiff states that the impugned trade mark/labels/packaging/wrapper also has the device of GHARI in yellow colour which is identical and deceptively similar and again amounts to infringement and passing off of the said trademark and label/wrapper/trade dress of plaintiff. He further states that the defendant has substantially copied the GHARI mark/label/packaging/wrapper with its all features and artistic works, layout design, lettering style, get up, make up, colour combination and idea thereof.

13. Learned counsel for the plaintiff states that the defendant is not the proprietor of the impugned trade mark/label/packaging/wrapper and has adopted and is using the same without leave and license of the plaintiff with a view to take advantage and to trade upon the reputation of the plaintiff therein and to cause confusion among unwary consumers.

14. The plaintiff has filed its ex-parte evidence by way of affidavit of Mr. Manoj Singh (PW1), authorized representative of the plaintiff to prove the facts in the plaint and has examined Mr. Vinay Kumar (PW2) official of the Trade Marks Registry to prove the registration of the trademark of the plaintiff.

15. The PW1 has proved the sale bills/invoices as Ex.PW1/3(Colly) and advertisement material of the plaintiff as Ex.PW1/4(Colly). The PW1 has further proved various order passed in favour of the plaintiff as Ex.PW1/6(Colly).

16. The PW2 has proved the registration certificates of the plaintiff's trademarks as Ex.PW2/1(Colly).

17. Having heard learned counsel for plaintiff as well as having perused the papers, this Court is of the view that due to extensive use over substantial period of time, the plaintiff's GHARI mark and logo have acquired reputation and goodwill in the marks in India.

18. From the evidence on record, it is apparent that without any explicit permission or authorisation to use the plaintiff's trademark and trade name, the defendant had malafidely infringed the trademark GHARI of the plaintiff and was engaged in the sale of washing soaps, powder, detergent etc. under the mark DHARI. The relevant portion of the Local Commissioner's report dated 01st October, 2015 is reproduced hereinbelow:-:-

“6. That the photographs of the infringing material and the premises, that is, M/s S.K. Enterprises, at house number-14, Manohar Pura, Kachhi Basti, Jagat Pura, Jaipur, Rajasthan were also taken. The photographs of the counterfeit/infringing were given to the advocate of the

plaintiff company Mr. Sudhir Balyan.

xxx

xxx

xxx

10. That the inspection of the goods were carried out by the accompanying authorized representative and after thorough inspection of the goods, the technical experts/authorized representative found all the infringing material in the premises. True Typed Copy and Original Inventory list of the infringing materials has been annexed herewith as Annexure LC-4."

19. Further, as the plaintiff's evidence has gone un rebutted, said evidence is accepted as true and correct. The Supreme Court in ***Ramesh Chand Ardawatiya Vs. Anil Panjwani, AIR 2003 SC 2508*** has held as under:-

"33.In the absence of denial of plaint averments the burden of proof on the plaintiff is not very heavy. A prima facie proof of the relevant facts constituting the cause of action would suffice and the court would grant the plaintiff such relief as to which he may in law be found entitled. In a case which has proceeded ex parte the court is not bound to frame issues under Order 14 and deliver the judgment on every issue as required by Order 20 Rule 5. Yet the trial court should scrutinize the available pleadings and documents, consider the evidence adduced, and would do well to frame the "points for determination" and proceed to construct the ex parte judgment dealing with the points at issue one by one. Merely because the defendant is absent the court shall not admit evidence the admissibility whereof is excluded by law nor permit its decision being influenced by irrelevant or inadmissible evidence."

20. Consequently, the allegation that the trademark, logo and label GHARI used by defendant amounts to infringement of plaintiff's trademark and copyright, is correct. The use of the impugned mark by the defendant was bound to cause loss and injury to the plaintiff and immense public harm.

21. Accordingly, present suit is decreed in accordance with the paragraph 47(A) along with the actual costs incurred by the plaintiff. The cost shall amongst others include the lawyers' fees, local commissioner's fee as well as the amounts spent on purchasing the court fees. Registry is directed to prepare a decree sheet accordingly.

NOVEMBER 27, 2017
rn/js

MANMOHAN, J