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

+ **CS(COMM) 559/2016**

SHREE SANT KRIPA INTELLECTUAL & ANR.

..... Plaintiffs

Through: Mr. Shailen Bhatia, Advocate with
Ms. Priyanka Anand and Mr. Nikhil
Mittal, Advocates

versus

SYSKA MOBILE SEMI CONDUCTORS & ORS.

..... Defendants

Through: None

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Date of Decision: 11th September, 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 copyright, passing off of trademark, trade name, damages, delivery up etc. The prayer clause in the suit is reproduced hereinbelow:-

"a) An order for permanent injunction restraining the Defendants, its partners, its officers, as the case may be, its servants, agents, dealers, distributors and all others, acting for and on its behalf from manufacturing, exporting, selling, offering for sale, exhibiting, advertising, directly or

indirectly dealing in any goods/services such as LED Products, Laptop, Network, Monitors and other cognate/allied goods/services under the trade mark/trade name SYSKA or any other identical/deceptively similar mark to the Plaintiff's trade mark SYSKA with prefix and suffix or from doing any other thing such as using the website with the word SYSKA or doing other anything which is likely to lead to confusion or deception thereby resulting in passing off the Defendant's goods/services as those of the Plaintiffs.

b) An Order for permanent injunction restraining the Defendant, its partners officers, as the case may be, its servants, agents, dealers, distributors and all others, acting for and on its behalf from manufacturing, exporting, selling, offering for sale, exhibiting, advertising goods/services such as LED Products, Laptop, Network, Monitors and other cognate/allied goods under the trade mark/trade name SYSKA or any other deceptive, label/carton to the Plaintiff's claim of Copyright in the artistic work titled as SYSKA and its label/carton.

c) An Order for permanent injunction restraining the Defendants, its partners, its officers, as the case may be, its servants, agents, dealers, distributors and all others, acting for and on its behalf from using the identical logo of the Plaintiff.

d) An Order for permanent injunction restraining the Defendants, its partners, its officers, as the case may be, its servants, agents, dealers, distributors and all others, acting for and on its behalf from falsely representing to the public that it can provide training/employment in the organizations associated with the Plaintiffs or providing training in so called Syska Group.

e) *An order for delivery up of all material including labels, blocks, dies, strips, cartons, stationery, literature or any other printed matter bearing the impugned mark for the purpose of destruction and/or erasure.*

f) *For an Order of damages made on account of use of the trade mark SYSKA by the Defendant to the tune of Rs.5 Crores.*

Any further Order/Orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case may also be passed in favour of the Plaintiffs and against the Defendants."

2. At the outset, learned counsel for plaintiffs gives up prayers (e) and (f) of the prayer clause to the suit. The statement made by learned counsel for plaintiffs is accepted by this Court and plaintiffs are held bound by the same.

3. Vide order dated 06th April, 2015 this Court granted an ex-parte ad interim injunction in favour of the plaintiffs and against the defendants. This court further appointed two Local Commissioners to visit the premises of defendant nos. 1 and 2. The relevant portion of the ex-parte injunction order is reproduced hereinbelow:-

"10. Accordingly, till the next date of hearing, the defendants, their partners, officers, servants, agents etc. are restrained from using the trademark/trade name, "SYSKA" or any other trademark/trade name, either singularly or in conjunction with other words, which is deceptively similar/identical to the plaintiffs' trade mark,



,in respect of the goods/services offered by them.

4. Since the defendants did not appear despite service, they were proceeded ex-parte vide order dated 28th September, 2015.

5. It has been averred in the plaint that plaintiff no.1 is a partnership firm and the partners of the plaintiff no.1/firm are the directors of the plaintiff no.2/company. The plaintiff no.1 is the proprietor of the trademark SYSKA and has issued licenses in favour of the plaintiff no.2, authorising them to use the trademark,  SYSKA. Plaintiff no.1/firm was constituted in the year 2013 and is stated to be in the business of manufacturing, selling and distributing LED light products, mobile phone accessories, services pertaining to downloading of movies on telephones, insurance of mobile phone etc. The main object of the said firm is to develop and maintain intellectual properties, i.e., trademark, copyright, design, patent etc. and to license the same to its associate entities. The plaintiff no. 1/firm has devised various marks such as “SYSKA”, “SYSKA LED light years ahead”, “SYSKA LED” lounge, “SYSKA ACCESSORIES”, “SYSKA gadget secure” etc.

6. It has been stated in the plaint that the trademark,  SYSKA was adopted in the year 2013 by the predecessors-in-interest of the plaintiff no.1 and assigned to it, vide Assignment Deeds dated 19th October, 2013. The pending trademark applications were also assigned by the previous entities to the plaintiff no.1/firm, who has sought substitution of its name in the records of the Registrar of Trademarks. The plaintiff no.1/firm has copyright registrations in the trademarks, “SYSKA ACCESSORIES” and “SYSKA LED LIGHT YEARS AHEAD” and it has filed various trademark applications.

7. Learned counsel of the plaintiffs states that the plaintiffs have sold LED light products worth Rs. 300 crores (approx.). He states that the licensees of the plaintiff no.1 have sold mobile accessories worth Rs.68 crores. He further states that the plaintiffs have spent considerable amounts in advertising and publishing the trade mark

SYSKA and its logo,  .

8. Learned counsel of the plaintiffs contends that the trademark SYSKA has become a household name and that the people associate the said mark exclusively with the plaintiffs and its associated entities.

9. Learned counsel for plaintiffs states that the defendants have hosted a website under the domain name, www.syskamobilecorporation.com, and are using the plaintiffs SYSKA logo on the said website and are claiming to have offices in Dubai, Taiwan, etc. He states, that upon investigation it was found that the defendants are making such claims with the ulterior motive to cheat the public and cause damage to the plaintiffs' reputation.

10. Learned counsel for the plaintiffs states that the defendants are involved in the business of providing employment to youngsters after charging a huge fees and are engaging in the practice of assuring employment in the plaintiffs' firms/companies. He states that the plaintiffs received information that the defendants had approached various institutions like K.N.Modi foundation etc. seeking campus placements. He states that such representations made by the defendants are false to their knowledge as the plaintiffs have never authorised them for making such representations.

11. Learned counsel for the plaintiffs states that the defendants have

illegally adopted their trade name, SYSKA for undertaking their activities, including printing t-shirts with the logo and mark,  SYSKA which is identical to the plaintiffs' logo.

12. Learned counsel for plaintiffs contends that the adoption of their trademark/trade name by the defendants is with the motive of deceiving the public at large.

13. The plaintiffs have filed their ex-parte evidence by way of affidavit of Mr. Raj Kumar (PW1). The plaintiffs' witness has proved the aforesaid averments as well as copies of the Copyright registrations in favour of the plaintiffs as Ex.PW1/10 and Ex.PW1/11 respectively. The plaintiffs' witness has further proved that the plaintiffs' trademark SYSKA is being advertised through the medium of television and magazine as Ex.PW1/18 and Ex.PW1/19 (pages 173-184). The PW1 has also proved the screenshots taken from the defendants' website under the name of www.syskamobilecorporation.com as Ex.PW1/21. The plaintiffs' witness has proved the business activities of the defendants as Ex.PW1/24, Ex.PW1/25 and Ex.PW1/26.

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

15. From the evidence on record, it is apparent that without any explicit permission or licence to use the plaintiffs name or logo, the defendants have been blatantly using the plaintiffs name and logo on

their website, amounting to unauthorised reproduction of the plaintiffs' trademark and copyrighted logo.

16. Further, as the plaintiffs' 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."

17. Consequently, the allegation that the trademark and logo pertaining to SYSKA being used by defendants on their website amounts to infringement of plaintiffs' copyright, is accepted. The use of illegal trade activities by the defendants is bound to cause incalculable losses, harm and injury to the plaintiffs and immense public harm.

18. Accordingly, present suit is decreed in accordance with the paragraph 48(a), (b), (c) and (d) of the plaint along with the actual costs. 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.

MANMOHAN, J

SEPTEMBER 11, 2017

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