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

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Reserved on: 20th September, 2017
Pronounced on: 25th September, 2017

+ **CS(COMM) 1368/2016**

AHUJA RADIOS

..... Plaintiff

Through : Mr.Raunaq Kamath and
Ms.Prakriti Sharma, Advocates.

versus

H K SOUND ELECTRONICS & ANR

..... Defendants

Through : None being *ex parte*.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. The plaintiff has filed this suit for permanent injunction, infringement of trademark, passing off, damages, dilution, rendition of accounts against the defendants.

2. The plaintiff is a partnership firm registered under the Partnership Act and instituted this suit through Shri Sandeep Ahuja, partner. The plaintiff claims to be the largest manufacturer of Public Address System (PAS) and audio equipments in India. The plaintiff has been engaged in the developing, marketing, exporting of various PAS and audio equipments under the trademark 'AHUJA, **AHUJA** since the year 1940. One of the best selling products of the plaintiff company is the amplifier under the model SSB120.

3. Allegedly, the plaintiff has established a strong international presence and exports its PAS and quality equipments to 50 countries across the five continents and such systems are fitted with latest equipments to facilitate the manufacturer of high quality systems. The plaintiff has received various prestigious awards for its outstanding performance in the field of PAS and audio systems. The PAS are installed at various prominent places including the Indian Parliament (Lok Sabha), Indian Railways, Indian Army, Indian Air Force etc.

4. The plaintiff has wide range of PAS and audio equipments viz amplifiers, mixers, microphones, speakers etc. All the products are manufactured, marketed and exported by the plaintiff since the year 1940 have been sold under the trademark AHUJA, **AHUJA** (the Ahuja Device) and said trademarks are identified as source of original of plaintiff's product and coupled with the quality of these products have been widely accepted and acquired tremendous goodwill and reputation that has been further reinforced and strengthened by the plaintiff prior adoption and use of the trademark. The plaintiff is also the registered proprietor of the trademark AHUJA, **AHUJA** (the Ahuja Device) and model numbers used in relation to the wide range of electronic products including the PAS in India as detailed in annexure A. The said trademark have been renewed and are subsisting in the office of Registrar of Trademark.

5. The defendant No.1 is an entity having its place of business in Mumbai and is engaged in the business of selling counterfeit AHUJA PAS and audio equipments and whereas the defendant No.2 is an entity which is also engaged in the same business of selling counterfeit audio

systems and equipments. In August, 2014, the plaintiff had surveyed the markets of Mumbai so as to find out the entities involved in selling of counterfeit PAS including the amplifiers under the plaintiff's trademark and found that the defendants were the one who were engaged in selling the counterfeit products. On 07.08.2014, the investigators of the plaintiff procured counterfeit amplifier under the model No.SSB 120 from the defendants which was containing some features viz its price was less than the price of the original SSB 120 AHUJA RADIOS, packing/carton does not bear the date of the manufacturing or the MRP; the label printed at the reverse side contain certain spelling errors; the serial number printed on the amplifier was in six digits instead of 7 digits as of the plaintiff; the quality of the amplifier purchased from the defendants was far inferior.

6. The defendants, thus are not only violating various laws and rules but also are selling inferior equipments under the name of the plaintiff and thus putting the plaintiff to loss of their goodwill and sale. Such indiscriminated use of the plaintiff trademark, device and model numbers amount to infringement of the plaintiff registered trademark, device and model numbers 136189, 313757, 1495014 and hence, the plaintiff has sought a decree of permanent injunction against the defendants, delivery up of the impugned material, rendition of accounts and damages to the tune of ₹20.05 Lac.

7. The defendants were served, but did not appear and hence were proceeded ex parte vide order dated 12.03.2015.

8. The plaintiff has proved its case through its sole witness PW1 Sh.Sonu Khurana, the authorized representative of plaintiff who has

proved his affidavit *Ex.PW1/A* and relied upon the documents *Ex.PW1/1* to *Ex.PW1/20*. The originals of *Ex.PW1/6* to *Ex.PW1/9*, were placed in CS (OS) No.446/2013 which were also summoned on the said date.

9. The witness *PW1* reiterated the case of the plaintiff and had proved the copy of authorization letter dated 27.05.2014 in his favour by Mr.Sandeep Ahuja as *Ex.PW1/1*; the partnership deed in favour of Mr.Sandeep Ahuja as *Ex.PW1/2*; copies of brochures/extract of internet material in favour of plaintiff products as *Ex.PW1/3*; catalogue of plaintiff company as *Ex.PW1/4*; copies of internet details of the product and carton of the plaintiff product SSB 120 as *Ex.PW1/5*; copies of sale invoices of plaintiff's product for the different period from the year 1985 to 2006 as *Ex.PW1/6 (Colly)*; copy of publication extract as *Ex.PW1/7*; copies of registered trademark bearing Nos.136189, 313757, 1495014 in favour of the plaintiff as *Ex.PW1/8* to *Ex.PW1/10*; copies of orders passed by this Court in favour of plaintiff in different suits as *Ex.PW1/11*; affidavit dated 12.08.2014 of Mr.Nripendera Kashyap, the investigator engaged by the plaintiff as *Ex.PW1/12*; photographs/print out of the premises of both defendants as *Ex.PW1/13*; print out/photograph of amplifier and carton purchased from the defendants as *Ex.PW1/14*; printout/snap shots of business cards of both defendants as *Ex.PW1/15* and *Ex.PW1/16*; print out of warranty card accompanied with counterfeit product purchased from the defendants as *Ex.PW1/17*; scanned print out of the bill of purchase of counterfeit amplifier purchased from the defendants as *Ex.PW1/18*; original reports of the learned Local Commissioners appointed in this Court vide order dated 13.08.2014 as *Ex.PW1/19* and *Ex.PW1/20*.

10. The acts of the defendants in adopting and using the identical/deceptively similar impugned mark in respect of identical goods has caused and will continue to cause irreparable damage and loss to the plaintiffs business under its AHUJA mark. Further, the impugned mark which forms a part of their trading name, infringes the rights of the plaintiffs under Section 29 (5) of the Act. The defendants are rather dealing in the goods which are identical to the goods of the plaintiff.

11. It is also settled law in infringement cases, if Court that the defendant's mark is closely, visually and phonetically similar, then no further proof is necessary as held in *Kaviraj Pandit Durga Dutt Sharma vs Navarattana Pharmaceutical Lab.* AIR 1965 SC 980.

12. In *Mex Switchgears Pvt Ltd vs Max Switchgears Pvt Ltd* CS (OS) 1299/2013 this Court observed that the essential features of rival marks are to be considered in determining infringement.

13. The adoption of the impugned mark by Defendants this is mala fide, calculated to take advantage of the reputation and goodwill earned by plaintiffs' AHUJA mark. Such acts of the defendants are bound to cause deception and confusion resulting in damage to plaintiff's reputation and goodwill. The defendants are, therefore, attempting to pass-off their goods under the Impugned mark as those of the plaintiffs. All ingredients of passing-off also stand satisfied. It is also settled law that passing off is maintainable even in cases of a well know mark. (*Bloomberg Finance LP v. Prafull Saklecha & Ors.* CS (OS) 2963/2012).

14. From the perusal of the record above, the plaintiff has been able to prove the defendants adoption and selling of counterfeit products bearing registered trademark of the device and model numbers of the plaintiff which do not originate from the plaintiff, unequivocally amounts to the infringement of the plaintiffs registered trademark bearing Nos.136189, 313757, 1495014 and amounts to passing of their goods and business as this is without authorization/affiliation by the plaintiff and hence, the plaintiff is entitled to a decree for reliefs prayed in sub paras (a) to (c) of prayer clause of the plaint to the following effect:-

(a) an order of permanent injunction restraining the Defendants, their principal officers, partners, servants, representatives, agents, distributors and any other persons acting for and on behalf of the Defendants from dealing in Public Address Systems and Sound Equipment including amplifiers bearing model No.SSB 120 under the trade mark AHUJA with or without the AHUJA DEVICE (**AHUJA**) or any other trade mark, device and/or model number deceptively similar to the Plaintiffs trade mark, device and/or model numbers or doing any other act as is likely to lead to infringement of trade mark Nos. 136189, 313757 and 1495014 in class 9, as set out in the plaint;

(b) an order of permanent injunction restraining the Defendants, its principal officers, partners, servants, representatives, agents, distributors and any other persons acting for and on behalf of the Defendants from dealing in Public Address Systems and Sound Equipment including amplifiers bearing model No. SSB 120 M under the trade mark AHUJA with or without the AHUJA DEVICE (**AHUJA**) or any other trade mark, device and/or model number deceptively similar to the Plaintiffs trade

mark, device and/or model numbers or doing any other act amounting to passing off their products as those of the Plaintiff; and

(c) an order of permanent injunction restraining the Defendants, its principal officers, partners, servants, representatives, agents, distributors and any other persons acting for and on behalf of the Defendants from dealing in Public Address Systems and Sound Equipment including amplifiers bearing model No. SSB 120 M under the trade mark AHUJA with or without the AHUJA DEVICE (**AHUJA**) or any other trade mark, device and/or model number deceptively similar to the Plaintiffs trade mark, device and/or model numbers or doing any other act amounting dilution or tarnishment of the Plaintiffs trademarks.

The suit is decreed in terms of prayers above.

15. Besides above the learned counsel for plaintiff have claimed the rendition of accounts of profit illegally earned by defendants or in the alternate damages to the extent of ₹20,05,000/-. The plaintiff are more concerned with the punitive damages and rely upon *Jockey International Inc & Anr vs. R. Chandra Mohan & Ors* 211 (2014) DLT 757 which read as under:-

“43. I am in agreement with the aforesaid submission of learned counsel for the plaintiffs that damages in such cases must be awarded and a defendants, who chooses to stay away from the proceedings of the Court, should not be permitted to enjoy the benefits of evasion of court proceedings. Any view to the contrary would result in a situation where a defendants who appears in Court and submits its account books would be liable for damages, while another defendants who, chooses to stay away from court proceedings

would escape the liability on account of failure of the availability of account books. A party who chooses not to participate in court proceedings and stays away must, thus, suffer the consequences of damages as stated and set out by the plaintiffs. There is a larger public purpose involved to discourage such parties from indulging in such acts of deception and, thus, even if the same has a punitive element, it must be granted. R.C. Chopra, J. has very succinctly set out in Time Incorporated's case (supra) that punitive damages are founded on the philosophy of corrective justice.”

16. Under the given facts and circumstances of this case where the defendants reclused itself from the proceedings, cannot be permitted to enjoy the benefits of evasion or covert priorities as has been selling the goods and has been infringing the plaintiffs' mark certainly makes the defendants liable to pay the punitive damages to the plaintiff. Hence, a decree for a sum of ₹3,00,000/- in favour of the plaintiff and against defendants, is passed on account of infringing the registered marks. The plaintiff shall also be entitled to interest @ 12% pa on the damages so awarded from the date of filing of the suit till the date of realisation. Costs of the suit is also awarded to the plaintiffs. Decree Sheet be drawn.

YOGESH KHANNA, J

SEPTEMBER 25, 2017

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