

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

% Decided on: 4th September, 2017

+ **CS(COMM) 1517/2016**

M/S INSTAPOWER LTD. Plaintiff

Represented by: Mr. Mudit Gupta,
Advocates

versus

M/S ALPHA INTERIORS PVT LTD & ORS.Defendants

Represented by: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Plaintiff is a limited company duly registered under the Companies Act having its registered office at New Delhi and has filed the present suit through Shri S.P. Singh, its AGM (administration) and duly authorized attorney. In the plaint it is claimed that plaintiff is a renowned company dealing in UPS systems inverters etc. since the year 1992 and since the year 2003, the company has been manufacturing and selling energy efficient lighting systems including solar power based systems. In the year 2003, plaintiff developed an energy saving aviation warning light which was in conformity to ICAO/FAA standards. The plaintiff is also the proprietor/owner of the

design patents of the aforesaid light and its parts registered vide design Nos. 193575 dated 24th October, 2003, 194630 dated 23rd February, 2004 and 212550 dated 19th September, 2007. The plaintiff's products under the aforesaid trademark are not only marketed/sold and advertised in India but also have been marketed/sold extensively in various countries of the world like Malaysia, UAE, Tanzania, Kenya, Nigeria, Sri Lanka, UK either directly by the plaintiff or through its franchises. Plaintiff's products have become synonymous with energy efficient lighting systems and has established its position as energy efficient lighting system giant with Bureau of Energy Efficiency, having recognized the plaintiff as an Energy Saving Consultancy Organization. The plaintiff has won various awards for having the best stores in specialized fairs organized by the industry to promote energy efficient lighting products.

2. In/around August 2009, plaintiff noticed infringement of its design patent by the defendants whereafter the plaintiff immediately send a legal notice to defendant No. 2 to stop the manufacturing, marketing and offering for sale LED based energy efficient aviation warning light. However, defendant No. 2 failed to respond to the notice. Plaintiff also came across the defendants selling the same light during the trade fair "LED Expo" held in Pragati Maidan, New Delhi from 18th December, 2009 to 20th December, 2009.

3. Plaintiff filed the present suit seeking the following reliefs:

(a) *A decree for permanent injunction restraining the Defendants, its partners, servants, distributors, retailers*

and wholesalers, agents and representatives and assigns from manufacturing and selling energy efficient aviation warning light similar to the Plaintiff's registered design patent.

(b) The Defendants, its proprietor or partners, servants, agents and representative be ordered by a mandatory injunction to handover to the Plaintiff all raw material, packaging material, moulds used in the manufacturing of the energy efficient aviation warning light similar to the Plaintiff's registered patent.

(c) The Defendants be called upon to allow inspection of its accounts to assist in ascertaining the profits made by its offending acts and a decree be passed in favour of the Plaintiff and against the Defendants for the amount found due;

(d) Costs of the suit be awarded to the Plaintiff;

4. Summons in the suit were issued to the defendants on 1st June, 2010. Defendants entered appearance on 27th July, 2010. Plaint was amended and the same was taken on record vide order dated 23rd November, 2010. Written Statement to the amended plaint was filed by the defendants whereby all the averments and allegations were denied. Preliminary objection with respect to fraud and misconduct of the plaintiff and the suit be rejected for misjoinder of parties and lack of jurisdiction were taken by the defendants.

5. On completion of pleadings by the parties, the following issues were settled:

1. Whether the plaintiff is entitled to a decree of permanent injunction restraining the defendants, its

partners etc. from manufacturing and selling energy efficient aviation warning light similar to plaintiff's registered design patent? (OPP).

2. Whether the plaintiff is entitled to decree of mandatory injunction whereby the defendants be ordered to handover to the plaintiff all raw material, packing material, moulds etc. used by the defendants in manufacturing of energy efficient aviation warning light similar to plaintiff's registered design patent?(OPP)

3. Whether the defendants be called upon to allow inspection of its accounts in ascertaining the profits made by them by their offending acts? (OPP)

4. Whether this Court has no territorial jurisdiction to entertain the present suit? (OPD)

5. Whether there is no similarity of design between the two products? (OPD)

6. Whether the present suit suffers from mis-joinder of parties? (OPD)

7. Whether several products with the same design and technology are available in the market and if so, their effect? (OPD)

8. Whether the present suit has been filed only to curb market competition? (OPD)

9. Relief.

6. plaintiff filed the affidavit by way of evidence of PW-1 Mr. H.R. Vaish. However, since nobody was present on behalf of the defendants, right of the defendants to cross examine the plaintiff's

witness was closed vide order dated 29th July, 2015. The defendants were proceeded ex parte vide order dated 30th November, 2015.

7. H.R. Vaish (PW-1) tendered his evidence by way of affidavit (Ex. PW-1/1) whereby it was stated that he was the managing director of the plaintiff company and had authorized Shri S.P. Singh to file the present suit. He placed on record the certificate of incorporation of the plaintiff company (Ex. P-1), certified documents containing extracts from the minutes of the meeting of Board of Directors of the plaintiff company authorizing Shri S.P. Singh to file the present suit (Ex. P-2), special power of attorney in his favour (Ex. P-3) and the company profile (Ex. P-4). Certificate of registration of design for “LED Based Aviation Light” being design No. 193575 dated 24th October, 2003 was exhibited as Ex. P-5 and the certificate of registration of design for “Signaling Light” being design No. 212550 dated 19th September, 2007 as Ex. P-6.

8. Plaintiff proved its sale figures of the goods sold vide Ex.P-18 as under:

Sales turnover of domestic operations (in Lacs)

<i>Year</i>	<i>Domestic</i>	<i>Export</i>	<i>Total</i>
<i>2004-05</i>	<i>61.17</i>		<i>61.17</i>
<i>2005-06</i>	<i>110.19</i>	<i>25.15</i>	<i>135.14</i>
<i>2006-07</i>	<i>204.95</i>	<i>77.28</i>	<i>282.23</i>
<i>2007-08</i>	<i>611.31</i>	<i>15.66</i>	<i>626.97</i>
<i>2008-09</i>	<i>717.09</i>	<i>100.00</i>	<i>817.09</i>
<i>2009-10 (till 30.11.09)</i>	<i>610.44</i>	<i>519.67</i>	<i>1130.11</i>

9. It is stated that the plaintiff company has spend enormous amount of money in promoting its range of products. The plaintiff regularly advertises in almost all newspapers and magazines published and distributed in India. Plaintiff's advertisement appear in Times of India, The Hindustan Times, Rajasthan Patrika, Deccan Chronicle, Hindu, Economic Times, etc. The bills/newspaper having advertisement of the plaintiff company are collectively exhibited as Ex. P-15.

10. Plaintiff has been regularly participating in exhibitions organized across the country by Indian Society of Lighting Engineers, Solar Tech, Renewable Energy, Power Gen, Airport Expo, International Trade Fair, IEEMA, LED Expo, Elecrama and internationally in Greece and Dubai. The list of participants at Pragati Maidan exhibition was exhibited as Ex.P-16 and the invoices of exhibitions Expomedia as Ex.P-13 and P-14. The invoices as proof of participation in exhibitions in foreign countries to promote the plaintiff's products were exhibited as Ex.P-17.

11. Exhibiting the sales report of the plaintiff company as Ex.P-18 the sales promotions expenditure incurred by the Plaintiff in the last few year were also proved vide Ex.P-18 as under:

Year	Sales Promotion Figures (In Lacs)
2005-06	₹ 5.50 Lacs (A&E) + 0.41 (B.P) = 5.91 Lacs
2006-07	₹ 13.01 Lacs (A&E) + 1.41 (B.P) = 14.42 Lacs
2007-08	₹ 11.96 Lacs (A&E) + 4.65 (B.P) = 16.61 Lacs
2008-09	₹ 11.86 Lacs (A&E) + 3.01 (B.P) = 14.87 Lacs

(A&E) stands for advertisement & Exhibition exp, (B.P) stand for Business promotion.

12. The plaintiff company has been recognized as a R&D organization by Department of Scientific and Industrial Research, Govt. of India and the certificate of renewal of R&D centre was exhibited as Ex.P-12.

13. The plaintiff company advertises its products extensively through electronic media and is doing direct marketing by sending its product brochures to prospective buyers and consumers. The brochures of the plaintiff company were collectively exhibited as Ex.P-8.

14. Office copy of the legal notice sent to defendant No.2 was exhibited as Ex.PW-1/B. Defendant No.2 is manufacturing and selling its products through defendant No.1. The brochure of defendants with visiting card was exhibited as Ex.P-7 and Photographs of the stall of the defendant as Ex.PW-1/C. The sale invoice of the defendant and comparative picture of infringed products of plaintiff were exhibited as Ex.P-9 and Ex.PW-1/D respectively.

Bottom View



Kripa Telecom

Instapower Ltd.

Top View



Kripa Telecom

Instapower Ltd.

Front View



Kripa Telecom

Instapower Ltd.

15. Mr. S. Santosh Kumar Dora (PW-2), working as General Manager, incharge of technical work including Research and Development, tendered his evidence by way of affidavit (Ex.PW-2/A) whereby he relied upon the documents already exhibited as Ex.P-5, Ex.P-6 , Ex.PW-1/A, Ex.PW-1/C & Ex.PW-1/D by PW-1 H.R. Vaish. Santosh Kumar Dora also filed an additional affidavit being Ex.PW-2/A1. He stated that in August, 2009, the plaintiff company came to know that the Design Copyright of its Aviation Warning Light was being infringed by defendant No. 2. At that time, the plaintiff was selling the said Aviation Warning Light at ₹2,000/- per unit to its customers. The invoice dated 15th September, 2009 for sale of 25 units of the said low intensity aviation light/ aviation warning light was exhibited as Ex.PW-2/A, the invoice dated 16th March, 2010 for sale of 4 units of the aforesaid light as Ex.PW-2/B and the invoice dated 28th September, 2010 for sale of 10 units of the aforesaid light as Ex. PW-2/C. The Report showing cost of raw material for the said Low intensity aviation light for one unit was exhibited as Ex.PW-2/D.

16. Evidence of the plaintiff has gone un rebutted. Even in a case where the plaintiff leads ex-parte evidence it is the bounden duty of the Court to see that it has a territorial and pecuniary jurisdiction to try the suit. Though defendant No.2 has its registered office at Bangalore, however from the documents placed on record the plaintiff has shown that the defendants have been carrying on work/ business jointly at the fair at Pragati Maidan, Delhi and also through defendant No.1, its authorized dealer. Thus part of cause of action has arisen in Delhi.

Further, this Court also has the pecuniary jurisdiction in view of the averments in the plaint.

17. In view of the discussion aforesaid plaintiff has been able to prove that the defendants were infringing the registered design of the plaintiff. Since the plaintiff has not led evidence with respect to profits earned by the defendants, prayer (c) cannot be allowed. Consequently, the suit is decreed in favour of the plaintiff and against the defendants in terms of prayer (a) and (b). Cost of ₹50,000/- is awarded in favour of the plaintiff to be paid by the defendants equally.

SEPTEMBER 04, 2017
‘ga/yo’

(MUKTA GUPTA)
JUDGE