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

Date of decision: 27th September, 2018.

+ **CS(COMM) 397/2018**

M/S SHREE RAJMOTI INDUSTRIES Plaintiff

Through: Mr. Pankaj Kumar & Mr. Vinay
Kumar Shukla, Advocates (M-
9810438450).

versus

M/S SHRI VISHWAPRABHA FOOD PRODUCTS PVT
LTD Defendant

Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

CS(COMM) 397/2018 and I.A. 10672/2014 (for stay)

1. The present suit for permanent injunction seeks restraint on infringement of trademark, passing off, etc. The Plaintiff claims to be the owner of the trademark 'RAJMOTI', which was adopted by it in the year 1962. The word 'RAJMOTI' is used as a trademark in a distinctive logo form and as a word mark, in respect of edible oils including groundnut oil and cotton seed oil. The Plaintiff has expanded the product range into mineral and aerated waters, beers, non-alcoholic drinks, fruit drinks, juices, syrups, etc. The word 'RAJMOTI' is also an essential and significant feature of the Plaintiff's trade name – M/s Shree Rajmoti Industries. The Plaintiff's trademark 'RAJMOTI', in various forms, including the label form is

registered in classes 29, 31, 35, 32 and 42. The Plaintiff also claims that it has registered under the Indian Copyright Act, 1957 the 'RAJMOTI' logo vide registration no. A-61228/2002. The Plaintiff's website – www.rajmoti.com also promotes the business of the Plaintiff. The Plaintiff thus claims statutory and common law rights in the mark - 'RAJMOTI'.

2. The Defendant - M/S Shri Vishwaprabha Food Products Pvt. Ltd., Kolhapur is engaged in the manufacturing and trade of rice. According to the Plaintiff, the Defendant adopted the mark 'RAJMOTI RICE' and also filed a trademark application in respect thereof. The Plaintiff claims that the adoption and use by the Defendant of an identical mark in respect of rice constitutes infringement and passing off. Accordingly, the Plaintiff prays for the following reliefs:

“(a) For a decree of permanent injunction restraining the Defendant by itself as also through its individual proprietors, partners, directors, agents, representatives, distributors, assigns, stockiest(s) and all others acting for and on behalf of the Defendant from manufacturing, using, selling, soliciting, exporting, displaying, advertising or by any other mode or manner dealing with or carrying on their impugned goods and business of rice and allied/cognate goods or any specification of goods and business under the impugned Trademark/Label bearing the word/mark RAJMOTI RICE or any other Trademark/Label identical with or deceptively similar to the Plaintiffs aforesaid Trademark/Trade Name consisting of the word RAJMOTI or from doing any other acts amounting to or likely to-

(i). Infringing the registered Trademarks of the Plaintiff under No. 289191 in class 29, 791444 in class 29, 1318742 in class 29, 1345896 in class 31, 1380312 in class 32, 1380308 in class 35 and 1380304 in class

42.

(ii). *Passing off and violate the Plaintiff's rights in Plaintiffs aforesaid Trademark/Label RAJMOTI.*

(iii). *Violating the Plaintiff's rights in Plaintiffs aforesaid Trade name consisting of the word RAJMOTI.*

(iv). *Violating the Plaintiff's rights In Plaintiffs aforesaid domain name www.rajmoti.com consisting of the word RAJMOTI.*

(b). *Restraining the Defendant from disposing off or dealing with its assets including its shops and premises at M/s Shri Vishwaprabha Food Products, Pvt. Ltd., A/P-Rukadi, Tal- Hatkangale, Dist-Kolhapur-416118 and its stocks-in-trade or any other assets as may be brought to the notice of this Hon'ble Court during the course of the proceedings and on the defendants disclosure thereof and which the defendants are called upon to disclose and/or on Its ascertainment by the Plaintiff as the Plaintiff is not aware of the same as per Section 135 (2) (c) of the Trademarks Act, 1999 as it could adversely effect the Plaintiff's ability to recover the costs and pecuniary relief thereon.*

(c) *For an order for delivery up of all the impugned finished and unfinished materials bearing the impugned and violative Trademark/Trade Name or any other deceptively similar Trademark/label including its blocks, labels, display boards, sign boards, trade literatures and goods etc. to the Plaintiff for the purposes of destruction and erasure.*

(e) *For an order for cost of proceedings and*

(f) *For such other and further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case. ”*

3. The suit was listed before this Court on 28th May, 2014, when a Learned Single Judge had granted an exparte ad interim injunction in the

following terms:

“ ...

The plaintiff has been able to make out a strong prima facie case for the grant of an ex parte ad-interim injunction in its favour. In case, the injunction is not granted, the plaintiff will suffer an irreparable loss. Therefore, till the next date of hearing, the defendant, proprietors, partners, directors, agents, representatives, distributors, assigns, stockiest(s) and all others acting for an on behalf of the defendant are restrained from manufacturing, using, selling, soliciting, exporting, displaying, advertising or by any other mode or manner dealing with or carrying on their impugned goods and business of rice and allied/cognate goods or any specification of goods and business under the impugned trademark/label bearing the word/mark RAJMOTI RICE or any other trademark/label identical with or deceptively similar to the plaintiff's trademark/trade name consisting of the word RAJMOTI which may amount to infringing the registered trademarks of the plaintiff under No.289191 in class 29, 791444 in class 29, 1318742 in class 29, 1345896 in class 31, 1380312 in class 12, 1380308 in class 35 and 1380304 in class 42 and passing off. Compliance of Order XXXIX Rule 3 Code of Civil Procedure be made within two weeks.”

On the said date, the Court had also appointed a Local Commissioner. However, it is the case of the Plaintiff that the Local Commission was not executed as the Defendant had got wind of the order passed and had removed the goods.

4. The Defendant thereafter put in appearance in the matter and filed its written statement. The same however remained under objection for a very long time and on 26th March, 2015, the defence of the Defendant was struck

off. On 8th July, 2015, counsel for the Defendant entered appearance and expressed ignorance about the defence having been struck off. It however appears that no steps were taken thereafter to re-file the written statement and on 10th March, 2016, the Plaintiff was directed to file evidence by way of affidavit. The affidavit by way of evidence has now been filed and the statement of the Plaintiff's witness was also recorded. Since the Plaintiff did not file any original documents, the documents have not been exhibited.

5. The Court has perused the pleadings and the documents on record. The Plaintiff has placed on record copies of the printouts from the official website of the Trade Marks Registry, to show its registrations. Even the printout of the Defendant's trade mark application has been placed on record. The documents which are readily accessible from publicly available records are therefore considered for the purposes of the present order. The same are not challenged by the Defendant. The Written statement is itself not on record, as it was under objections but was never brought on record. The competing marks are set out below:



6. The simple question is as to whether the use of the mark '*RAJMOTI*' for rice would constitute violation of the rights of the Plaintiff. There is no doubt that the Plaintiff has been using the trademark '*RAJMOTI*' in respect of edible oil for several decades now. The various registrations of the Plaintiff have been placed on record. The Defendant's mark having come to the knowledge of the Plaintiff, the Plaintiff immediately placed its objections on the record of the Trademark Registry vide letter dated 18th March, 2014. The Plaintiff has also placed on record the status report of the trademark application of the Defendant. The Defendant claims to be the user of the mark since 2007, however, it failed to place on record any documents in support thereof.

7. As per the sales figures of the Plaintiff, the sales of the Plaintiff are in crores and several invoices have been placed on record to show the extensive use of the mark. Advertisements and pictures of billboards, etc. have also been placed on record. Though the said documents are not exhibited, there is no reason to doubt the authenticity of the same. The photographs show display boards of the mark *RAJMOTI* in different locations.

8. Oil and rice by their very nature are sold from *Kirana* stores and super markets and are in fact placed side by side or in close proximity in such stores and shops. The class of customers is also identical. It is usual for the owner of a trademark to use a particular mark for a product and to thereafter expand the same into similar products and cognate and allied goods. As held in *Laxmikant Patel v Chetanbhai Shah and Anr.* (2002) 3 SCC 65,

passing off is to be judged not merely from the existing user of the competing parties, but from a futuristic perspective i.e., future market expansion is to be taken into consideration. The Supreme Court held as under:

8. It is common in trade and business for a trader or a businessman to adopt a name and/or mark under which he would carry on his trade or business. According to Kerly (Law of Trade Marks and Trade Names, 12th Edn., para 16.49), the name under which a business trades will almost always be a trade mark (or if the business provides services, a service mark, or both). Independently of questions of trade or service mark, however, the name of a business (a trading business or any other) will normally have attached to it a goodwill that the courts will protect. An action for passing-off will then lie wherever the defendant company's name, or its intended name, is calculated to deceive, and so to divert business from the plaintiff, or to occasion a confusion between the two businesses. If this is not made out there is no case. The ground is not to be limited to the date of the proceedings; the court will have regard to the way in which the business may be carried on in the future, and to its not being carried on precisely as carried on at the date of the proceedings. Where there is probability of confusion in business, an injunction will be granted even though the defendants adopted the name innocently.

9. Under Section 29(2) of the Trade Marks Act, 1999, in order to constitute infringement, if the trademark is identical to the registered trade mark, it is sufficient if the goods are either identical or similar. This is clear from reading of Section 29(2)(a) of the Trade Marks Act which is set out herein below:

“29...

(2) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which because

(a) its identity with the registered trade mark and the similarity of the goods or services covered by such registered trade mark.”

10. The nature of the products being as they are i.e. edible oil and water on the one hand and rice on the other, they are articles of human consumption and thus constitute similar or cognate/allied goods. Under these circumstances, the Plaintiff is entitled to a decree for permanent injunction as prayed.

11. However, since the actual product of the Defendant is not on record and the Local Commission was also not executed, the extent of use of the Defendant is not clear. Under these circumstances, no decree for damages, rendition of accounts or delivery up is liable to be passed. Decree is granted in terms of paragraph 34(a) of the Plaint. Decree sheet be drawn.

12. In the facts and circumstances, no order as to costs.

**PRATHIBA M. SINGH
JUDGE**

SEPTEMBER 27, 2018

Rahul