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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(COMM) 574/2017 & I.As. 6484/2015 AND 94/2017

SAMSUNG ELECTRONICS

COMPANY LIMITED & ANR.

.....Plaintiffs

Through: Mr. Karan Bajaj, Advocate with

Ms. Kangan Roda and Mr. Dhruv Nayar,
Advocates.

Versus

A.SHAJAHANTRADING AS

M/s. S.S.ENTERPRISES AND ORS.

..... Defendants

Through:

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Date of Decision: 10th April, 2018.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J (Oral)

1. Present suit has been filed against the defendants for permanent injunction for infringement of trademarks and copyright, passing off, unfair competition, dilution, rendition of accounts, delivery up and recovery of damages etc. The prayer clause in the present suit is reproduced hereinbelow:-

“A. A decree of permanent injunction be passed restraining the Defendants, their partners, agents, distributors, franchisees, representatives and assigns from:

- i. *Manufacturing, importing, marketing, offering for sale, selling, exporting and/or using the Plaintiffs' well-known and registered trade marks "SAMSUNG", "SAMSUNG device/ ", "SAMSUNG GALAXY TAB", "SAMSUNG GALAXY S" and/or any other trade mark, device, logo, name or any derivative which is identical and/or deceptively and confusingly similar to Plaintiffs' registered trade marks either as a trade mark, trading name, domain name etc. or a part thereof, or as a part of the packaging, artwork, get-up, layout, design or in any other manner whatsoever so as to infringe the registered trade marks of the Plaintiffs;*

- ii. *Manufacturing, importing, marketing, offering for sale, selling, exporting and/or using the Plaintiffs' well-known and trade marks "SAMSUNG", "SAMSUNG oval device/ ", "SAMSUNG GALAXY/GALAXY", "SAMSUNG GALAXY TAB/GALAXY TAB", SAMSUNG GALAXY S" series namely SAMSUNG GALAXY S, SAMSUNG GALAXY S II, SAMSUNG GALAXY S III, SAMSUNG GALAXY S4, SAMSUNG GALAXY S5", SAMSUNG GALAXY NOTE series namely SAMSUNG GALAXY NOTE 1, SAMSUNG GALAXY NOTE 2, SAMSUNG GALAXY NOTE 3, SAMSUNG GALAXY NOTE 4" and/or any other trade mark, device, logo, name or any derivative which is identical and/or deceptively and confusingly similar to Plaintiffs' trade marks either as a trade mark, trading name, domain name etc. or a part thereof, or as a part of the packaging, artwork, get-up, layout, design or in any other manner whatsoever so as to pass off their products as that of the Plaintiffs;*

- iii. *Manufacturing, importing, marketing, offering for sale, selling, exporting and/or using the impugned products bearing the marks SAMTEL, SMTEL CALAYX, SAMOSANG or any other trade mark, device, logo, name*

or any derivative which is identical and/or deceptively and confusingly similar to Plaintiffs' trade marks

"SAMSUNG", "SAMSUNG oval device/ ", "SAMSUNG GALAXY/GALAXY", "SAMSUNG GALAXY TAB/GALAXY TAB", "SAMSUNG GALAXY S series namely SAMSUNG GALAXY S, SAMSUNG GALAXY S II, SAMSUNG GALAXY S III, SAMSUNG GALAXY S4, SAMSUNG GALAXY S5", "SAMSUNG GALAXY NOTE series namely SAMSUNG" GALAXY NOTE 1, SAMSUNG GALAXY NOTE 2, SAMSUNG GALAXY NOTE 3, SAMSUNG GALAXY NOTE 4" either as a trade mark, trading name, domain name etc. or a part thereof, or as a part of the packaging, artwork, get-up, layout, design or in any other manner whatsoever so as to infringe the registered trade marks of the Plaintiffs or pass off their products as that of the Plaintiffs;

- iv. Copying, reproducing, adopting and/or using the Plaintiffs' artistic oval device/logo  and/or any other artistic work, which slavishly imitates the Plaintiffs' said artistic device/logo, in entirety or part thereof, as a part of the packaging, artwork, get-up, layout, design or in any other manner whatsoever so as to infringe upon the Plaintiffs' copyright;*

B. A decree of a mandatory injunction be passed thereby directing that the Defendants, their partners, employees, agents, distributors, franchisees, representatives and assigns to:

- i. Deliver to the Plaintiffs' attorneys or nominated representatives for destruction all finished and/or unfinished products, labels, signs, stickers, prints, packaging, boxes, wrappers and any other advertisement/packaging material in their possession or under their control, bearing the Plaintiffs' trade marks or any other mark similar to the Plaintiffs' trade marks.*

- ii. Recall all the finished and/or unfinished products, marketing, promotional and/or advertising materials etc. that bear or incorporate the Plaintiffs' trade marks including "SAMSUNG", "SAMSUNG oval device/ ", "SAMSUNG GALAXY/GALAXY", "SAMSUNG GALAXY TAB/GALAXY TAB", "SAMSUNG GALAXY S series namely SAMSUNG GALAXY S, SAMSUNG GALAXY S II, SAMSUNG GALAXY S III, SAMSUNG GALAXY S4, SAMSUNG GALAXY S5", "SAMSUNG GALAXY NOTE series namely SAMSUNG GALAXY NOTE 1, SAMSUNG GALAXY NOTE 2, SAMSUNG GALAXY NOTE 3, SAMSUNG GALAXY NOTE 4" or any other mark similar to the Plaintiffs' said trade marks, which has been manufactured, distributed, sold and/or exported by the Defendants and their own costs.
- iii. Disclose on oath the exact constitution and details of all such manufacturers / importers / wholesalers / retailers involved in the manufacturing/distribution/marketing etc. of counterfeit and impugned products manufactured or sold under the marks "SAMSUNG", "SAMSUNG oval device/ ", "SAMSUNG GALAXY/GALAXY", "SAMSUNG GALAXY TAB/GALAXY TAB", "SAMSUNG GALAXY S series namely SAMSUNG GALAXY S, SAMSUNG GALAXY S II, SAMSUNG GALAXY S III, SAMSUNG GALAXY S4, SAMSUNG GALAXY S5 etc.", "SAMSUNG GALAXY NOTE series namely SAMSUNG GALAXY NOTE 1, SAMSUNG GALAXY NOTE 2, SAMSUNG GALAXY NOTE 3, SAMSUNG GALAXY NOTE 4", or any other mark similar to the Plaintiffs' marks, as the case may be;
- C. The Defendants be required to render an account of all transactions concerning the offending activities set out in the plaint and the Plaintiffs be then given the option of

choosing either award of damages (including penal damages) or accounts for profits for the amount found due.

D. Costs of the suit be awarded to the Plaintiff; and

E. Any other relief which the Hon'ble Court deems and proper in the facts and circumstances of the case be allowed in favour of the Plaintiffs and against the Defendants."

2. On 27th March 2015, this Court granted an ex parte ad interim injunction in favour of the plaintiffs and against the defendants. The relevant portion of the said order is reproduced hereinbelow:-

"In the circumstances, till the next date of hearing, the defendants and their partners, agents, distributors, franchisees, representatives and assigns and all other acting for and on behalf of the defendants, are restrained from:-

- i. Manufacturing, importing, marketing, offering for sale, selling, exporting and/or using the Plaintiffs' well-known and registered trade marks "SAMSUNG", "SAMSUNG device/ ", "SAMSUNG GALAXY TAB", "SAMSUNG GALAXY S" and/or any other trade mark, device, logo, name or any derivative which is identical and/or deceptively and confusingly similar to Plaintiffs' registered trade marks either as a trade mark, trading name, domain name etc. or a part thereof, or as a part of the packaging, artwork, get-up, layout, design or in any other manner whatsoever so as to infringe the registered trade marks of the Plaintiffs;*
- ii. Manufacturing, importing, marketing, offering for sale, selling, exporting and/or using the Plaintiffs' well-known and trade marks "SAMSUNG", "SAMSUNG oval device/ ", "SAMSUNG GALAXY/GALAXY",*

“SAMSUNG GALAXY TAB/GALAXY TAB”, “SAMSUNG GALAXY S series namely SAMSUNG GALAXY S, SAMSUNG GALAXY S II, SAMSUNG GALAXY S III, SAMSUNG GALAXY S4, SAMSUNG GALAXY S5”, “SAMSUNG GALAXY NOTE series namely SAMSUNG” GALAXY NOTE 1, SAMSUNG GALAXY NOTE 2, SAMSUNG GALAXY NOTE 3, SAMSUNG GALAXY NOTE 4” and/or any other trade mark, device, logo, name or any derivative which is identical and/or deceptively and confusingly similar to Plaintiffs’ trade marks either as a trade mark, trading name domain name etc. or a part thereof, or as a part of the packaging, artwork, get-up, layout, design or in any other manner whatsoever so as to pass off their products as that of the Plaintiffs;

- iii. *Manufacturing, importing, marketing, offering for sale, selling, exporting and/or using the impugned products bearing the marks SAMTEL and SMTEL CALAYX, or any other trade mark, device, logo, name or any derivative which is identical and/or deceptively and confusingly similar to Plaintiffs’ trade marks “SAMSUNG”, “SAMSUNG oval device/ ”, “SAMSUNG GALAXY/GALAXY”, “SAMSUNG GALAXY TAB/GALAXY TAB”, “SAMSUNG GALAXY S series namely SAMSUNG GALAXY S, SAMSUNG GALAXY S II, SAMSUNG GALAXY S III, SAMSUNG GALAXY S4, SAMSUNG GALAXY S5”, “SAMSUNG GALAXY NOTE series namely SAMSUNG” GALAXY NOTE 1, SAMSUNG GALAXY NOTE 2, SAMSUNG GALAXY NOTE 3, SAMSUNG GALAXY NOTE 4” either as a trade mark, trading name, domain name etc. or a part thereof, or as a part of the packaging, artwork, get-up, layout, design or in any other manner whatsoever so as to infringe the registered trade marks of the Plaintiffs or pass off their products as that of the Plaintiffs;*

iv. *Copying, reproducing, adopting and/or using the Plaintiffs'*

artistic oval device/logo  and/or any other artistic work, which slavishly imitates the Plaintiffs' said artistic device/logo, in entirety or part thereof, as a part of the packaging, artwork, get-up, layout, design or in any other manner whatsoever so as to infringe upon the Plaintiffs' copyright;

The plaintiffs shall comply with the provisions of Order XXXIX, rule 3 of the CPC within four (4) weeks."

3. Vide orders dated 12th October, 2017 and 16th March, 2018, the right of the defendant no. 16 and the defendant nos. 3 to 5, 10,12,13,17 to 28, to file written statements was closed respectively. Additionally, vide the same order dated 16th March, 2018, defendant nos. 1,2,6 to 9, 11, 14 and 15 stood served, despite service, the aforementioned defendants have neither appeared nor filed written statements.

4. Today, none appears for the defendants. Consequently, they are proceeded ex-parte.

5. Learned counsel for the plaintiffs states that he has instructions only to press for the prayers (A) and (D) of the prayer clause of the plaint. The statement made by learned counsel for the plaintiffs is accepted by this Court and the plaintiffs are held bound by the same.

6. Learned counsel for the plaintiffs states that in view of the judgment of this Court in ***Satya Infrastructure Ltd. & Ors. Vs. Satya Infra & Estates Pvt. Ltd.***, the present suit should be decreed qua the reliefs in prayers (A) and (D) of the prayer clause of the plaint. The relevant portion of the judgment in ***Satya Infrastructure Ltd. & Ors.*** (Supra) relied upon by learned counsel for the plaintiffs is reproduced hereinbelow:-

“I am of the opinion that no purpose will be served in such cases by directing the plaintiffs to lead ex parte evidence in the form of affidavit by way of examination-in-chief and which invariably is a repetition of the contents of the plaint. The plaint otherwise, as per the amended CPC, besides being verified, is also supported by affidavits of the plaintiffs. I fail to fathom any reason for according any additional sanctity to the affidavit by way of examination-in-chief than to the affidavit in support of the plaint or to any exhibit marks being put on the documents which have been filed by the plaintiffs and are already on record. I have therefore heard the counsel for the plaintiffs on merits qua the relief of injunction.”

7. The contentions and submissions advanced by the learned counsel for the plaintiffs are as under:-

- (i) The Plaintiff no.1, Samsung Electronic Company Limited, is a corporation organized and existing under the laws of the Republic of Korea and the plaintiff no. 2, Samsung India Electronics Private Limited, is a wholly owned subsidiary of the plaintiff no. 1 and incorporated under the Companies Act, 1956, and is a leading manufacturer and provider of high-tech consumer electronics and telecommunications products in India.
- (ii) The Plaintiffs are a part of the Samsung group of companies engaged in the business of manufacturing and trading in telecommunication devices, such as mobile phones, tablets, hand-held devices, smart phones, GSM and CDMA mobile phones, TVs, DVD players TVs, DVD players, home theater systems, etc. The plaintiffs’ global market share in mobile phones is stated to be almost 25% and their market share in the

telecom products market in India is 31.5%. The plaintiffs claim to have more than 285 worldwide operations in 67 countries and are employing 425,000 employees worldwide.

- (iii) The plaintiff no. 1 is the registered proprietor of the well known trademarks, "SAMSUNG", "SAMSUNG

DEVICE/  "SAMSUNG GALAXY" and "SAMSUNG GALAXY TAB".

- (iv) Plaintiff no. 1 is also the owner of copyright in the original artistic work of the oval device/logo  . The said oval device is protected as an original artistic work under Section 2(c) of the Copyright Act, 1957. The said artistic work is protected in India by virtue of Section 41 of the Copyright Act, 1957.

- (v) The net sales figure of the plaintiff no. 2 in the financial year 2012-13 was Rs. 11,328 crores.

- (vi) In or around March, 2015, the plaintiffs learnt that several vendors in Chennai are manufacturing, importing and/or selling counterfeit products such as mobile phones, tablets, mobile accessories including mobile covers, flip covers etc. bearing the plaintiffs' aforementioned trademarks.

- (vii) Upon receipt of the aforesaid information, plaintiffs instructed an independent investigator to conduct a market survey which revealed that there are several parties engaged in the manufacture, import and/or sale of counterfeit products bearing

the plaintiffs' trademarks. The survey further revealed that some of the defendants are manufacturing, importing and/or selling mobile phones, tablets, mobile accessories bearing the name SAMTEL, SMTEL, CALAYX, SAMOSANG which are virtually identical and confusingly similar to the plaintiffs' trademarks.

(viii) Upon physical inspection of the counterfeit, the plaintiffs have found that the said products/counterfeits are made from inferior quality raw material and are sold at a much lower price by the defendants. Since the impugned products/ counterfeits are virtually identical to the original products of the plaintiffs, the customers are easily misled by the defendants, thereby causing immense loss and injury to the plaintiffs.

8. In the opinion of this Court, the defendants have no real prospect of defending the claim, as some of the defendants have not entered appearance and none of the defendants have filed their written statement or denied the documents of the plaintiffs. Further, the plaintiffs are the registered user of the trade marks in question.

9. In view of the above, the suit is decreed in favour of the plaintiffs and against the aforementioned defendants in terms of prayer clause (A) and (D) of the plaint. The costs shall amongst others include the lawyer's fees, fees of the local commissioners as well as the amount spent on Court-fees. Registry is directed to prepare a decree sheet accordingly.

10. Consequently, the present suit and pending application stand disposed of.

MANMOHAN, J

APRIL 10, 2018

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