

\$~OS-5

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 895/2017**

M/S. AJANTA INDIA LTD. Plaintiff
Through Ms.Nupur Lamba and Ms.Aishwarya
Chaturvedi, Advs.

versus

MR. SANJAY AGGARWAL Defendant
Through Mr.Manoj Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **07.02.2019**

1. This suit is filed for permanent injunction restraining infringement of trade mark, infringement of copyright, passing-off, dilution, rendition of accounts, etc. It has been pleaded that a decree of permanent injunction be passed to restrain the defendant, etc. from using the impugned mark/logo device AJANTA and also from using any other identical or deceptive or similar mark which infringes the plaintiff's mark AJANTA.
2. It has been pleaded in the plaint that the plaintiff and its predecessor-in-title are the original adopters of the trade mark AJANTA which is a word mark adopted in 1971 by Mr.O.R. Patel, the founder of the Ajanta Group. It is pleaded that the plaintiff is the registered proprietor of the trade mark AJANTA.
3. Learned counsel for the plaintiff states that an application for registration of the trade mark AJANTA under Class 9 was filed on 08.11.1990 and the trade mark is registered under Class 9.
4. The defendant has filed written statement. The written statement is not in the prescribed format as required in a commercial suit. It is also not supported by the statement of truth and is not signed on every page. That

apart, there is no real dispute raised in the written statement. It has been claimed that the said trade mark was adopted by the father of the plaintiff who was trading as M/s. Aggarwal Electricals at Sant Nagar, Delhi since 2005. He moved an application for registration of the trade mark under Class 9 before the Trade Mark Registry on 11.05.2009.

5. Though it is claimed in the written statement that the mark was accepted by the Registrar and published in the journal but the copy of the publication shows that it was actually abandoned.

6. Any continuous use of the trade mark by the defendant would be contrary to the statutory and common law rights of the plaintiff. The plaintiff/its predecessor has been using the trade mark since 1971. It has also been used in respect of electrical items which forms part of class 9. Registration of the trade mark has been applied in 1990 and the plaintiff has been using it since then.

7. In my opinion, there is no bona fide defence raised by the defendant.

8. At this stage, learned counsel for the defendant says that they do not propose to use the trade mark AJANTA or any other mark deceptively similar to the trade mark of the plaintiff.

9. In view of the above, a decree is passed in favour of the plaintiff and against the defendant in terms of prayer (B) of the plaint.

10. Learned counsel for the plaintiff has pointed out that the Local Commissioner who had visited the premises had found large amount of items using the impugned trade mark lying with the defendant. A perusal of the report of the Local Commissioner shows that the following goods were found lying at the premises:-

S.No.	Product Type	Quantity of boxes	No.of places in each box
1.	Socket fuse, Daksh Series	550	10
2.	Socket Gold Series	1770	10
3.	Socket Play Series	218	10
4.	Socket Diamond Series	35	10
5.	Switch Gold Series	136	20
6.	Switch Daksh Series	166	20
7.	Switch Silver	176	20
8.	Indicator Silver	250	20
9.	Packaging Boxes	54	175
10.	Moulds	3 plates	NA
11.	Switches and Sockets	480 Kg.	NA
12.	Addl.Switches & Sockets	156 Kg.	NA
13.	Addl.Packaging boxes		10,000 Pc

11. These goods were seized and handed over on *superdari* to the defendant.

12. Learned counsel for the defendant however states that a nominal amount of Rs.3 lakhs may be awarded in favour of the plaintiff.

13. Learned counsel for the plaintiff states that keeping in account the fact that a large consignment was confiscated, the costs/damages to be recovered would be much more.

14. In the interest of justice, a decree is passed in favour of the plaintiff and against the defendant for a sum of Rs. 4 lakhs. The defendant shall also

hand over the goods which were seized by the Local Commissioner and handed over to the defendant on *superdari* within four weeks from today to the plaintiff. A decree of mandatory injunction to the above effect is also passed in favour of the plaintiff. The plaintiff shall also be entitled to costs.

15. In view of the fact, an element of settlement is involved in passing of the present order, under Section 16A of the Court Fees Act, 1870 the plaintiff shall be entitled to refund of 50% of the court fees.

16. At this stage, learned counsel for the defendant states that instead of delivering the goods to the plaintiff which are lying with the defendant on *superdari*, they may be permitted to erase the impugned trade mark from the goods by using an appropriate chemical.

17. A representative of the plaintiff may visit the premises of the defendant on 07.03.2019 at 11.00 a.m. In the presence of the representative of the plaintiff, the defendant will erase the impugned trade mark from the goods which are lying on *superdari* to the satisfaction of the representative of the plaintiff. In case the impugned trademarks are erased from the said goods to the satisfaction of the plaintiff the above decree of mandatory injunction shall stand duly complied with by the defendant with regard to the impugned goods. However, the decree of mandatory injunction shall continue to apply on packaging, stationary material, literature, moulds and dyes etc. that may have been sealed by the Local Commissioner and handed over on *superdari* to the defendant. It is ordered accordingly.

18. The suit and all pending applications stand disposed of.

JAYANT NATH, J

FEBRUARY 07, 2019/rb