

ODC-5

CS/202/2019
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

KITPLY INDUSTRIES LIMITED
VS
S. MANIKANDAN AND ORS.

BEFORE:

The Hon'ble JUSTICE RAVI KRISHAN KAPUR

Date : 7th November, 2022

Appearance:
Mr. Paritosh Sinha, Adv.
Mr. Sayan Roy Chowdhury, Adv.
Mr. K. K. Pandey, Adv.
Ms. Enakshi Saha, Adv.
...for petitioner.

The Court : This suit is filed for infringement of trademark.

The plaintiff is engaged in carrying on business of manufacturing and marketing diverse range of construction products including plywood, block boards, ply boards and other allied products.

The plaintiff is the registered proprietor and user of the trademarks 'KIT' and its variant 'KITPLY'. The trademarks 'KIT' and 'KITPLY' are coined and invented words and have been used uninterruptedly and continuously by the plaintiff. The term 'KIT' and 'KITPLY' were adopted by the plaintiff in the year 1982. The plaintiff is also the owner of various associated and formative trademarks which comprise of the leading and identifying element 'KIT' such as KITCOM, KIT 2000, KITBOARD, KITMICA, KITPLY ROYALE, KITPLY VISTA.

The plaintiff had a turnover of approximately Rs.94 crores for the financial year 2017-18. The plaintiff has also been recognized as a SUPERBRAND in India.

The plaintiff has also incurred huge sums on promotional and advertisement expenses.

The plaintiff contends that any brand having a suffix or prefix comprising of the mark 'KIT' should automatically be construed as a brand name of the plaintiff. The plaintiff is also the owner of *inter alia* the following registered trademarks, all in Class 19:

*“Kitply (label) under no. 389626 dated 05/05/1982
KITBOARD GOLD under no. 726395 dated 10/10/1996
KITPLY GOLD under no. 726396 dated 10/10/1996
KITMICA (label) under no. 757814 dated 31/07/1997
KITSTAR under no. 757694 dated 21/07/1997
KITMICA under no. 2312041 dated 09/04/2012
KITPLY under no. 3798550 dated 06/04/2018
KIT 2000 (label) under no. 3798556 dated 06/04/2018*

An application for “KIT” per se is pending under no. 3798549 in class 19 dated April 6, 2018 claiming use since May 5, 1982. The plaintiff is also the owner of copyright in labels comprising of ‘KITPLY’.”

In or about May 2019, the plaintiff came across an advertisement in the Official Trademark Journal by the defendant no. 1 wherein, the defendant no. 1 has sought to adopt a trademark substantially, identically and deceptively similar to the plaintiff using the names 'KIT' and KIT PLATINUM, KIT PRESTIGE and KIT DÉCOR. All three applications had been opposed by the plaintiff. The plaintiff also came across another trademark application in the name of the defendant no. 1 for KIT MARINE, which had been rejected by the Registry, *suo moto*. The defendants have also made use of the tag line of the plaintiff being “Only Plywood Company, protecting Environment with manmade forests”.

The plaintiff relies on the Certificates of Registration both in respect of the trade mark and copyright issued to the plaintiff. The plaintiff has also adduced copies of different certificates issued by the Trade Mark Registry identifying the plaintiff as the registered owner and user of all the trade marks featuring the trade mark 'KIT'. The plaintiff has also adduced copies of brochures, products, literature and stickers published and circulated by the plaintiff. These documents demonstrate the term 'KIT' and 'KITPLY' have uninterruptedly and continuously been used the plaintiff for years.

The plaintiff has also relied on the certificates issued by the Chartered Accountant evidencing the growth in the sales of the products of the plaintiff. The plaintiff has also relied on the pleadings and notifications pertaining to the filings by the defendants before the Trade Mark Registry.

I find that the plaintiff is the prior and registered user of the trade mark 'KIT' and its variants and has been continuously and uninterruptedly using the same. The products of the plaintiff have also acquired substantial reputation and goodwill. I also find that the impugned goods being sold by the defendants are in the same class and through the same channels. The purchasers of the goods are also the same. I also find that the impugned products being sold and distributed by the defendants are deceptively similar and confusing.

The essential function of a trade mark is to guarantee the identity of the origin of the marked product to the consumer or end user by enabling him, without any possibility of confusion, to distinguish the product or service from others which have another origin. It has been held in *Balsara Hygiene Products*

Limited vs. Arun Chowdhury & Anr. reported in (2005) 30 PTC 272 that a prefix or a suffix which is registered in the name of a party and has been used uninterruptedly and continuously over a substantial period of time, is certain to acquire goodwill in the market. The same prefix or suffix, if used by another party other than a registered user, in selling the same or similar goods and products, will surely give rise to confusion in the minds of the consumers of the product being that of the plaintiff.

From the documents placed on record, the plaintiff has been able to justify its exclusive right over the impugned trademark and all its stylized forms. It is also evident that the defendants have infringed on the trade mark exclusively belonging to the plaintiff. The impugned mark of the defendants is also visually and phonetically similar to that of the plaintiff and is being used to sell similar products and services which may undoubtedly raise confusion in the minds of the consumers. Thus, I find that as a registered and prior user of the trademark, the plaintiff is entitled to protection.

In view of the aforesaid, the plaintiffs are entitled to a decree in terms of prayers (a) to (d) of the plaint.

With the aforesaid directions, CS 202 of 2019 stands disposed of.

(RAVI KRISHAN KAPUR, J.)