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IN THE HIGH COURT OF DELHI AT NEW DELHI*Date of Decision: 20th April, 2022*

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CS (COMM) 59/2021 & I.A. 1600/2021**ASTRAL POLY TECHNIK LIMITED**

..... Plaintiff

Through: Mr. Sachin Gupta, Ms. Jasleen Kaur,
Mr. Pratyush Rao, Mr. Snehal Singh
and Ms. Swati Meena, Advocates.
(M:9811180270)

versus

MS DHARTI PIPE & ORS.

..... Defendants

Through: Mr. Ritesh Kumar, Adv. for D-1 & 2.
Mr. Amitesh Pandey, Adv. for D-3
with D-3 in person. (M:8130012478)
Mr. Sandeep Garg, Advocate for D-4
with Defendant No.4 in person.

CORAM:**JUSTICE PRATHIBA M. SINGH****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The present suit has been filed by the Plaintiff - Astral Poly Technik Limited seeking declaration and permanent injunction restraining the infringement of trade mark, passing off, unfair competition, damages, delivery up, etc. The case of the Plaintiff is that it has adopted the trade mark 'ASTRAL', both in word form and logo form in respect of pipes, parts and fittings thereof in Class 17, for use in plumbing, sewage and drainage, agriculture, surface drainage, industrial use, fire protection, cable protection, urban infrastructure, insulation, adhesives, and ancillary products such as clams, hangers, sanitizers, etc. The Plaintiff adopted the trade mark



‘  ’ (ASTRAL), both as part of its corporate name as



also its trade mark, in the year 1996. Since then, the Plaintiff has extensively used the said mark for high quality products of its manufacture and sale. The Plaintiff is also stated to have been awarded various awards and accolades for innovation in the field of plumbing and drainage systems, which are detailed in the plaint.

3. The trade mark 'ASTRAL', though a dictionary word, was adopted as an arbitrary mark in the year 1996, and its variants have been registered in Classes 17, 19, 11, amongst others. The trade mark 'ASTRAL' is also protected by the Plaintiff against misuser. The Plaintiff claims extensive goodwill owing to sales of more than Rs.2000 crores in the year 2019-20 and more than Rs.70 crores spent on promotion and advertisement. The Statement of Revenue and Sales Promotion Expenditure of the Plaintiff has been set out below:

STATEMENT OF REVENUE & SALES PROMOTION EXPENDITURE

Year	Revenue from Operations (₹ in Lacs)	Sales Promotion and Advertisement Expenditure (₹ in Lacs)
2010-11	43,676.34	556.79
2011-12	57,931.81	610.02
2012-13	82,108.79	1,644.66
2013-14	1,07,279.98	1,780.68
2014-15	1,25,210.79	2,783.65
2015-16	1,33,298.87	3,042.38
2016-17	1,47,476.76	4,424.07
2017-18	1,58,195.62	5,707.65
2018-19	1,91,570.59	6,397.34
2019-20	2,04,280.00	7,080.00

4. The website of the Plaintiff is www.astralpipes.com, which has been



registered by the Plaintiff for promoting and advertising its goods. According to the Plaintiff, the mark 'ASTRAL' is also a well-known mark in view of the extensive usage and registrations, which are held by it.

5. The Defendant No.1 - M/s. Dharti Pipe is a partnership concern of Shri Narendrabhai B. Umretiya and Defendant No.2 - Shri Maheshbhai G. Gajera, who are stated to be the partners of M/s. Dharti Pipe, which is using the mark 'ARSTAL' in respect of pipes and parts and fittings thereof. Defendant No.3 - M/s. Shree Vishnu Electric Paint & Hardware and Defendant No.4 - M/s. Aggarwal Sanitary Store, are the retail shops of Defendant Nos.1 & 2.

6. Mr. Gupta Id. Counsel submits that the Plaintiff is stated to have filed a suit being **Trademark Suit No.9/2019** before the District Court, Surat, Gujarat in August, 2019 seeking permanent injunction restraining the Defendant No.1 and 2 from passing off their goods under the deceptively similar mark 'ARSTAL'. In the said suit, as per Id counsel an *ex parte* interim injunction was granted against the Defendant Nos.1 & 2. Since the Defendants did not enter appearance despite service, the injunction was confirmed till the disposal of the suit. However, as per Id. Counsel, the Defendants continued to manufacture and sell their products under the impugned mark. Thereafter, it was realized by the Plaintiff that the Defendants were also selling their products under the identical trademark 'ASTRAL', which would, therefore, amount to counterfeiting. Hence, he submits that the present suit was filed by the Plaintiff.

7. In the present suit, vide order dated 2nd February, 2021, an *ex parte ad interim* injunction was granted in the following terms.

“6. Clearly, the mark ARSTAL being used by the



defendants is deceptively similar to the plaintiffs trade mark ASTRAL and is likely to create confusion. Further, it is stated that the defendants in any case are selling counterfeit products using the trade mark of the plaintiff ASTRAL.

7. The plaintiff has made out a prima facie case. An interim injunction is passed in favour of the plaintiff and against the defendants in terms of para 16 of the application.”

8. Local Commissioners were also appointed. A perusal of the reports filed by the Local Commissioners would show that various goods bearing the marks ‘ASTRAL’ / ‘ARSTAL’ were seized by them from the premises of the Defendants. The inventory of goods seized from the premises of the Defendants, is as under:

Defendant No.3:

S. NO.	PARTICULARS OF INFRINGING PRODUCTS	QUANTITY SEIZED
1.	<i>¾” CPVC SDR-11 pipes</i>	<i>100 pieces</i>
2.	<i>1” CPVC SDR-11 pipes</i>	<i>21 pieces</i>
3.	<i>¾” CPVC union - Arstal Brand</i>	<i>17 pieces</i>
4.	<i>¾” Brass FTA sockets</i>	<i>5 pieces</i>
5.	<i>¾” Brass MTA sockets (Arstal)</i>	<i>1 piece</i>
6.	<i>¾” Plain T CPVC (Arstal)</i>	<i>1 piece</i>



7.	$\frac{3}{4}$ " Tank nipple (Arstal)	6 packets (50 pieces each)
8.	1" Tank nipple (Arstal)	7 packets (30 pieces each)
9.	$\frac{3}{4}$ " x $\frac{1}{2}$ " FTA (Arstal)	5 packets (50 pieces each)
10.	$\frac{3}{4}$ " x $\frac{1}{2}$ " FT (Arstal)	3 packets (25 pieces each)
11.	1" T (Arstal)	7 packets (25 pieces each)
12.	1" socket (Arstal)	5 packets (50 pieces each)
13.	1" elbow (Arstal)	4 packets (50 pieces each)
14.	$\frac{3}{4}$ " x $\frac{1}{2}$ " female elbow (Arstal)	11 packets (50 pieces each)
15.	$\frac{3}{4}$ " x $\frac{1}{2}$ " MTA (Arstal)	22 packets (50 pieces each)
16.	$\frac{3}{4}$ " union (Arstal)	4 packets (50 pieces each)
17.	1" union (Arstal)	XX packets (25 pieces each)
18.	$\frac{3}{4}$ " socket - (Arstal)	1 packet (100 pieces each)
19.	LPCPV Ball Valve (1") (Arstal)	89 pieces

Defendant No.4:



INVENTORY LIST

1. Tank Nipple 1 inch-ARSTAL	274 Nos.
2. Tank Nipple 3/4 inch - ARSTAL	151 Nos.
3. TCPVC	75 Nos.
4. FTA Brass 1 x 3/4	91 Nos.
5. FTA Brass 3/4 x 1/2	57 Nos.
6. 3/4 Elbows	110 Nos.
7. 3/4 x 1/2 Brass Elbow	66 Nos.
8. 1 x 3/4 MTA Male Threaded Adapter	15 Nos.
9. Union 1 x 1/4	13 Nos.
10. 3/4 x 1/2 MTA	237 Nos.
11. 3/4 x 1/2 Brass TCPVC	127 Nos.
12. Elbow 3/4 Plastic	222 Nos.
13. 3/4 TCPVC Plastic	212 Nos.
14. MTA Brass 1 x 3/4	15 Nos.
15. 3/4 " ARSTAL PIPES	37 Nos.
16. 1.1/2 INCH ARSTAL PIPES	1 No.
17. 3/4 INCH ASTRAL PIPES	38 Nos.

9. The parties, thereafter, explored mediation. However, the same did not fructify into a settlement. On the last date of hearing i.e., 31st March, 2022, Id. Counsel for the Defendant Nos.1 & 2 submitted that they are willing to give up the trade mark 'ASTRAL' and 'ARSTAL' and would not use the same for the products of their manufacture or sale. Accordingly, this Court had directed the Defendants to be present in Court or join the proceedings virtually on the next date, so that a decree may be passed in this matter.

10. Mr. Ritesh Kumar, Id. Counsel appearing for the Defendant Nos.1 & 2, submits that the Defendants' undertaking may be recorded. He submits, under instructions, that the suit may be decreed against the Defendant Nos.1 & 2. Mr. Amitesh, Id. Counsel has appeared for the Defendant No.3 and takes the same stand. Insofar as the Defendant No.4 is concerned, Mr.



Aggarwal, the proprietor of Defendant No.4-M/s. Aggarwal Sanitary Store has joined the proceedings virtually. He is represented by his counsel, Mr. Sandeep Garg. Thus, all the Defendants have agreed to suffer an injunction, in terms of paragraphs 44(a), (b) & (d) of the Plaint.

11. In view of the fact that the mark 'ASTRAL' has been used for several years i.e., since the year 1996 and considering the extensive sales made by the Plaintiff, especially in respect of pipes, fittings, etc., this Court is convinced that the Plaintiff is entitled to permanent injunction for protecting the mark 'ASTRAL', from misuse, either by the use of the mark 'ASTRAL' or 'ARSTAL', or any other identical or deceptively similar mark. Accordingly, a permanent injunction is granted against the Defendant Nos.1 to 4, in terms of the reliefs sought in paragraphs 44(a) & (b) of the Plaint.

12. Insofar as the goods seized from the premises of the Defendants are concerned, the Plaintiff and the Defendants are agreeable that the marks 'ASTRAL'/'ARSTAL' appearing on the said goods can be effaced and the same can be put to use by the Defendants. The said effacing of the marks shall be done in the presence of the Plaintiff's representatives, who may visit the premises of Defendants, on or before 15th May, 2022, in order to ensure that the mark 'ASTRAL'/'ARSTAL' is removed from the Defendants' products. The remaining reliefs sought in the Plaint are not pressed by the Plaintiff.

13. Insofar as the declaration of the Plaintiff's mark as a well-known mark is concerned, since the Defendants are conceding to a decree, the said issue is left open to be asserted by the Plaintiff in an appropriate case.

14. Considering that the parties have resolved their disputes amicably and in view of the judgment in *Munish Kalra v. Kiran Madan [C.S. (OS)*



2940/2014 decided on 8th April, 2019], the entire court fee is directed to be refunded to the Plaintiff.

15. The present suit stands decreed in terms of paragraphs 44(a) & (b) of the Plaint. All pending applications are also disposed of. No further orders are called for.

16. Decree sheet be drawn accordingly.

**PRATHIBA M. SINGH
JUDGE**

APRIL 20, 2022/dk/ad

