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

Date of Decision: 1st September, 2023

+ **CS(COMM) 298/2022**

ASHOK KUMAR GUPTA & ANR. Plaintiffs
Through: Mr Umesh Mishra Adv. (M:
9868401295)
versus

VIKAS & ORS. Defendants
Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

JUDGMENT

1. This hearing has been done through hybrid mode.
2. The present suit has been filed by Plaintiff No.1 - Shri Ashok Kumar Gupta, as proprietor of Jai Durga Plaster Industries as also Petitioner No.2 - Sakarni Plaster (India) Pvt. Ltd. against Defendant No.1 - Mr. Vikas, trading as M/s. Siya Mines, Defendant No.2 - M/s. Vishal Traders & Defendant No.3 - Ram Sukh Traders.
3. The Plaintiffs' case is that the Plaintiff No.1 started manufacturing, marketing and selling Plaster of Paris (hereinafter, 'PoP') goods included in class 19 under the mark 'SAKARNI PLASTER' (LABEL) since 2004. The Plaintiffs' mark is as under:



4. The said mark is also registered in the name of the Plaintiffs bearing



no.762959 in class 19. The same was later expanded to manufacture and marketing of Door and windows, Flush Doors, Doors and Window Frames, Panel, Panelling and Panel Boards, Planks, Timber Veneers, Wall boards Wood Works for Building, Decorative Ply Board & other plywood products and building materials, natural and artificial stone, cement, lime, mortar, plaster and gravel; pipes of earthenware of cement, road making materials asphalt, pitch and bitumen, portable buildings, stone monuments, chimney pots.

5. The Plaintiff No.1 adopted the mark 'SAKRNI PLASTER' and 'SAKARNI PLASTER' in 2004, and the same was also applied for trade mark registration vide application bearing no.1461268. The Plaintiffs, thereafter, even obtained the label registration bearing no. 762959 dated 1st November, 2008. The Plaintiffs are also the owners of the mark 'SAKRNI' (label), which is also registered. The details of the registrations are set out below:



Trade mark	App no	Class	Status	Date of app	User detail
SAKARNI (LABEL)	1544290	1	Registered	28/03/2007	01/02/2004
SAKARNI	1544291	2	Registered	28/03/2007	01/02/2004
SAKARNI (LABEL)	1544292	19	Registered	28/03/2007	01/02/2004
SAKARNI PLASTER WITH DEVICE	1921754	19	Registered	12/02/2010	01/02/2004
SAMKARNI	2946444	19	Registered	21/04/2015	01/01/2015
SAKARNI CLASSIC	2946449	19	Registered	21/04/2015	01/01/2015
SAKARNI SUPER	2946450	19	Registered	21/04/2015	01/01/2015
SAKARNI GOLD	2946451	19	Registered	21/04/2015	01/01/2015
NEWSAKARNI	2946452	19	Registered	21/04/2015	01/01/2015
NUSAKARNI	2946453	19	Registered	21/04/2015	01/01/2015
SHAKARNI	2946458	19	Registered	21/04/2015	01/01/2015
SKARNI	2946462	19	Registered	21/04/2015	01/01/2015
SUKARNI	2946466	19	Registered	21/04/2015	01/01/2015
SAKARNI	2946467	19	Registered	21/04/2015	01/01/2015
SAKARNI	2946468	3	Registered	21/04/2015	01/01/2015
SAKARNI	2946469	8	Registered	21/04/2015	01/01/2015
SAKARNI	2946470	17	Registered	21/04/2015	01/01/2015

SAKARNI	2946471	21	Registered	21/04/2015	01/01/2015
SAKARNI	2946472	36	Registered	21/04/2015	01/01/2015
SAKARNI	2946473	39	Registered	21/04/2015	01/01/2015
SAKARNI	2946474	41	Registered	21/04/2015	01/01/2015
SAKARNI	2946475	43	Registered	21/04/2015	01/01/2015
SAKARNI	1992116	6	Registered	12/07/2010	Proposed to be used
SAKARNI	1992117	10	Registered	12/07/2010	Proposed to be used
SAKARNI	1992118	11	Registered	12/07/2010	Proposed to be used
SAKARNI DEVICE IN HINDI	1992119	16	Registered	12/07/2010	Proposed to be used
SAKARNI DEVICE IN HINDI	1992120	20	Registered	12/07/2010	Proposed to be used
SAKARNI DEVICE IN HINDI	1992121	32	Registered	12/07/2010	Proposed to be used
SAKARNI DEVICE IN HINDI	1992122	35	Registered	12/07/2010	Proposed to be used

6. The Plaintiffs also claim copyright registrations over the unique



colour combination layout and lettering style in relation to their goods since 2004. The Plaintiff No. 1 claims to be the registered proprietor of the original artistic work 'SAKRNI PLASTER/SAKARNI' & other artistic works under Copyrights Registration bearing no. A-79993/2007, L-31536/2008, L-31535/2008 & L-31537/2008. The copies of copyright registration certificates issued in favour of the Plaintiff no. 1 have also been produced in the plaint.

7. It has been averred that the Plaintiffs acquired knowledge of the Defendants' adoption the mark '*2.1 KARNEE*' in April 2022. It also came to the knowledge of the Plaintiffs that the Defendants have filed an application in class 19 on a proposed to be used basis for the mark '*2.1 KARNEE*'. According to the Plaintiffs, the mark '*KARNEE*' looks exactly like '*SAKARNI*', and upon enquiries it was revealed that the Defendants were using various '*SAKARNI*' mark/labels.

8. The comparative labels adopted by the Plaintiffs and the Defendants' are set out below:



9. According to the Plaintiffs, the use of the mark 'SAKRNI', 'SAKARNI' in Hindi or '2.1 KARNEE' results in confusion and deception as also the infringement of the Plaintiffs' right. The present suit was then filed by the Plaintiffs, wherein vide order dated 9th May, 2022, an *ad-interim* injunction was granted by the Court in the following terms.

"30. Accordingly, Defendants, their proprietor, partners, agents, assignees, representatives, heirs, servants, dealers, distributors, franchisees and/or anyone acting for and, on their behalf, are restrained from using the trademark/device

SAKARNI/सकरनी /2.1 KARNEE

or any other mark/device, which is identical or deceptively/confusingly similar to the plaintiffs' trademark/label

SAKRNI PLASTER/SAKARNI



for the goods i.e. Plaster of Paris (P.O.P) etc. included in Class-19 or other similar goods in any manner whatsoever, so as to result in infringement of the said registered trademark/label of the Plaintiffs or its passing off, till the next date of hearing.

31. Defendants, their proprietor, partners, agents, assignees, representatives, heirs, servants, dealers, distributors, franchisees and/or anyone acting for and on their behalf are restrained from using the artistic



work or any other artistic work, which is identical or deceptively/confusingly similar to the



plaintiffs' artistic work for the goods i.e. Plaster of Paris (P.O.P) included in Class- 19 or other similar goods in any manner whatsoever, so as to result in infringement of the said registered artistic work of the plaintiffs or its passing off, till the next date of hearing."

10. Vide the said order, the Court was also pleased to appoint Local Commissioners to make inventories and seize the infringing products. Three Local Commissioners were appointed by the Court to execute the local commissions at the various premises of the Defendants.

11. At the premises of Defendant No. 2-Vishal Traders, according to the



Report of the Local Commissioner dated 3rd June 2022, around 1800 bags bearing the infringing mark were found. Some images of the infringing products from the Local Commissioner's reports are set out below:



12. In the Report of the Local Commissioner dated 2nd June 2022 submitted by the Local Commissioner who had visited the premises of Defendant No. 1-Siya Mines, photographs were also taken and infringing



products were found at the said premises. The Local Commissioner also reports that other well-known brands were also being used by the said Defendants. The inventory, which was prepared, is as under:

INVENTORY LIST

1. *Two sacks of POP (25 kg) with a name written SAKARNI/2.1 KARNEE with Logo over it were found (Infringed Product)*
2. *Packaging material, pamphlets, banner, diary with a name written SAKARNI/2.1 with Logo printed everywhere on it were also found in the premises.*
3. *Ledger book of the year 2022-2023 (Two ledger books, one is for daily entry and another for entries which they do after few days)*
4. *Bills mentioning about the product SAKARNI/2.1 of the year 2022. (Total 10 bills)*
5. *One Notebook/register (green in colour, of CLASSMATE) elephant printed over it showing different entries.*

13. The third Local Commissioner visited the premises of Defendant No. 3- Ram Sukh Traders. Vide report of the Local Commissioner dated 26th May 2022 it is seen that '2.1 KARNEE' was being used by the Defendants and infringing products bearing the impugned mark were found at the said premises. In addition, the Local Commissioner also found various bill books, which showed the use of the mark '2.1 KARNEE' by the said Defendant.

14. Vide order dated 6th September 2022, after execution of the commission, the Defendants had put in appearance before the Court and the matter was referred to the mediation. Vide Report dated 18th January 2023, it was stated that mediation failed between the parties and now there is no appearance for the Defendants.



15. No written statement has also been filed by the Defendants. In terms of the provisions of Order XXVI Rule 8 and 10 CPC, the reports of the Local Commissioners can be read in evidence. This has been laid down by this Court in *M L Brother LLP v. Mahesh Kumar Bhruaalal Tanna* [CS(COMM) 126/2022, date of decision 12th May, 2022] where this Court held as under:

“13. In view of Order 26 Rule 10(2) CPC and the judgments discussed above, the settled legal position that emerges is that the report of the Local Commissioner can be treated as evidence in the suit where it is not challenged by any party. Accordingly, in the present case the report of the Local Commissioner and the contents therein can be relied upon by the Court as evidence as the same is unchallenged”.

Further, in *LT Foods Ltd v. Sarawati Trading* (2022/DHC/4806), the same position is reiterated, following *M L Brother LLP* (supra).

16. A perusal of the Local Commissioners’ reports as also pleadings, which have gone unrebutted, shows that the Defendants were clearly using three trademarks ‘SAKARNI’ in English, ‘SAKRNI’ in Hindi and ‘2.I KARNEE’. All these trademarks are identical/similar to the Plaintiffs’ registered marks. The products concerned are building material such as PoP etc., where safety is of utmost importance. Manufacture of counterfeit goods especially in this sector cannot be condoned in any manner. The Defendants having chosen to stay away from the proceedings in this case, cannot be allowed to enjoy a premium for their dishonesty.

17. This Court, recently in *‘Inter IKEA Systems BV. V. Harish Chaudhary’* [CS (Comm) 106/2020, Order dated 23rd August 2023]



following *M/s Inter Ikea Systems BV v. Imtiaz Ahamed & Anr [Judgment dated 9th September, 2016, CS (OS) 3295/2014]* observed as follows:

“13. Moreover, the Defendant having not appeared despite being served and having not filed any defence, in terms of the IPD rules as well, the Plaintiff is entitled to summary judgment as the right of the Defendants to file written statement already stands closed vide order dated 2nd August, 2023. 14. The registrations of the Plaintiffs which are placed on record are all unrebutted. Moreover, these are documents which cannot be disputed as they are public documents which show registrations in the name of the Plaintiff of the mark IKEA in several classes. The effect of the registration or the validity thereof is not in question.

...

17. Insofar as Plaintiffs prayer for damages is concerned, it is noticed by the Court that the mark ‘IKEA’ has been protected by several orders of this Court in respect both related and unrelated goods and services. In a similar matter where the Defendant chose to stay away from the court proceeding and not participate or raise any defence, the Court in CS(OS) 3295/2014 titled *M/s Inter Ikea Systems BV Anr. v. Imtiaz Ahamed & Anr. vide judgment dated 9th September, 2016* observed as under:

“21. The court is mindful of the fact that in such a situation where the defendant chooses to stay away from the court proceedings, he should not be permitted to enjoy the benefits of such an evasion. Any view to the contrary would result in a situation where a compliant defendant who appears in court pursuant to summons being issued, participates in the proceedings and submits his account books, etc., for assessment of damages, would end up on a worse footing, vis-a-vis a defendant



who chooses to conveniently stay away after being served with the summons in the suit.

That was certainly not the intention of the Statute. Section 135 (1) of the Trademarks Act, 1999 provides that relief that may be granted in any suit for infringement of or for passing off includes injunction and at the option of the plaintiff, either damages or an account of profits. The plaintiffs in the present case have opted for claiming damages and have established beyond doubt that they have suffered damages on account of the conduct of the defendants which are a result of infringement of their trademark and copyright. xxx 30. Accordingly, an ex-parte decree is passed in favour of the plaintiffs and against the defendants in terms of prayer 33(a),(b) and (c). In lieu of prayer of rendition of accounts as contained in the prayer clause 33(d) of the plaint, it is held that the plaintiffs are entitled to a decree for a sum of Rs.25 lacs, by way of punitive /exemplary damages against the defendants. The damages awarded shall be payable by the defendants jointly and severally, within a period of six month from the date of passing of the judgment failing which, the said amount shall carry interest @ 9% p.a. from the date of the decree, till realization. The plaintiffs are also entitled to costs of the suit. The suit stands decreed accordingly. Before the decree sheet is drawn, the balance court fee shall be paid by the plaintiffs.”

18. In the present suit, the Defendants are well aware of the Plaintiff's mark 'IKEA', use of the mark 'IKEA' without any explanation whatsoever that too of an invented mark is completely inexplicable. Even after the injunction was granted, from the documents filed



by the Plaintiff along with I.A. 6702/2022 it is apparent that the Defendant has continued to use the mark and earn profits on the basis of the mark and name 'IKEA'. Thus, the present is a fit case for grant of damages in favour of the Plaintiff."

18. The Plaintiffs have also incurred substantial expenses in this matter. The inventory filed by the Local Commissioners shows that substantive number of infringing goods that were seized by the Local Commissioners, bearing the mark 'SAKARNI' and '2.1 KARNEE'. For example, in the premises of Defendant No. 2-Vishal Traders, the inventory shows a large number of products more than 1800 in number. In the case of Defendant No. 1- Siya Mines, the inventory of the impugned products has also been extracted above. All the premises had displayed the use of the mark 'SAKARNI' prominently. Even pamphlets have been used. One such pamphlet is set out below:



19. Similar is the position with Defendant No. 3-M/s. Ram Sukh Traders



where the on-spot proceedings clearly revealed the use of the mark '*2.1 KARNEE*'.

20. After considering the present facts of this suit, the clear opinion of this Court is that the Defendants have blatantly infringed upon the Plaintiffs' rights in their mark '*SAKARNI*'. The Plaintiffs' marks are registered trademarks, and they also have copyright registrations in respect of the unique colour combination and lettering style as well.

21. Under such circumstances, there could be no justification for the use of the identical mark '*SAKARNI/SAKRNI/2.1 KARNEE*' and identical artistic work and packaging. The suit is itself liable to be decreed as the Defendants have not filed any written statement.

22. A decree is granted in favour of the Plaintiffs and against the Defendants in terms of paragraphs 32(a) and (b) of the prayer clause in the plaint.

23. Insofar as the prayer of delivery up is concerned, the Defendants shall hand over all the products, which are lying in *Superdari* with them to the Plaintiffs' representative. The Plaintiffs are thereafter free to deal with sealed products as they deem appropriate.

24. This is a case where the brand is identical, the goods are identical, customer base is identical, and the trade channel is identical. The Defendants' conduct is completely dishonest and *mala fide* in manufacturing and selling products, which are not just look-alikes, but also counterfeit. Bearing in mind the inventory seized by the three Local Commissioners, a decree for damages is also granted in favour of the Plaintiffs to the tune of Rs.10 lakhs against Defendant No. 2-M/s Vishal Traders and Rs.3 lakhs each against Defendant No. 1-Siya Mines and Defendant No. 3-Ram Sukh



Traders.

25. In addition, a decree of the actual costs is also passed in favour of the Plaintiffs and against the Defendants in terms of the judgment of the Supreme Court in *Uflex Ltd. v. Government of Tamil Nadu [Civil Appeal Nos.4862-4863 of 2021, decided on 17th September, 2021]*. The cost statement shall be filed by Id. Counsel for the Plaintiffs with the Registry.

26. Decree sheet be drawn up in the above terms. For the purpose of taking custody of the infringing goods, which have been inventoried by the Local Commissioners, the Plaintiffs' representative may visit all the Defendants' premises between 18th -25th September, 2023.

27. The suit, along with all pending applications, is disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

SEPTEMBER 1, 2023/dk/dn