



\$~16

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

**Date of Decision: 29<sup>th</sup> May, 2023**

+ **CS(COMM) 343/2020 & I.A. 7388/2020**

**RALSON (INDIA) LTD.** ..... Plaintiff

Through: Mr. Amit Jain, Ms. Sheril Bhatia and  
Ms. Ishita Suri, Advocates.

versus

**SH. RAJ CHAUHAN TRADING AS M/S RISHI UDYOG**

..... Defendant

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE SANJEEV NARULA**

**JUDGMENT**

**SANJEEV NARULA, J. (Oral):**

1. Ralson (India) Limited, hereinafter referred to as the Plaintiff, has instituted this lawsuit with the objective of safeguarding their registered trademark, 'RALSON', [hereinafter referred to as the "**Plaintiff's Mark**"], by preventing Defendant from utilizing the closely resembling mark 'RACSON' [hereinafter referred to as the "**Impugned Mark**"]. Plaintiff asserts that the disputed mark either mirrors or is deceptively similar to their registered trademark. Both these trademarks are connected with identical categories of goods, particularly, bicycles and their various components, including tyres and tubes.



### **PLAINTIFF'S CASE**

2. Plaintiff's predecessor, M/s Ralson Industries, registered the trademark 'RALSON', under Registration No. 209797 in Class 12 on 03<sup>rd</sup> July, 1962. This mark, utilized by Plaintiff for tyres, tubes, cycle parts, and accessories for rickshaws and auto vehicles since 1974 (and its predecessor since 1956), is incorporated in Plaintiff's corporate name, as also was in its predecessor's trading name. Plaintiff has obtained several registrations of the trademark 'RALSON' and its formative marks/variations across multiple classes, as detailed in paragraph 5 of the plaint. Additionally, Plaintiff holds copyright registrations of artistic works composed of the word 'RALSON', as outlined in paragraph 7 of the plaint.

3. The goods bearing Plaintiff's mark are widely marketed and sold in India and exported to various countries, as depicted in paragraph 14 of the plaint. These goods have also been showcased at international exhibitions in China, Italy, USA, and elsewhere around the world. The 'RALSON' mark, a coined term, has been used continuously and without interruption by Plaintiff for several years, accumulating significant goodwill and reputation. Sales figures and advertisement expenses associated with the mark over the years are disclosed in paragraphs 10 and 11 of the plaint, respectively. Plaintiff has also undertaken multiple legal actions to protect their trademark rights in the said mark, as detailed in paragraphs 20 to 25 of the plaint.

4. Defendant, trading under the name M/s Rishi Udyog, operates from Ludhiana, Punjab — the same city housing the Plaintiff's manufacturing facility. In February 2020, Plaintiff discovered the advertisement for Defendant's trademark application for registration of the term 'RACSON' under Application No. 3239598, in Class 12, dated 19<sup>th</sup> April, 2016. The



application pertained to "Bicycles and Parts thereof including Tyres and Tubes", with Defendant claiming usage of the mark since 01<sup>st</sup> April, 1994. Plaintiff lodged an opposition to this application, which is currently pending.

5. Defendant's usage of the Impugned Mark, which bears an identical or deceptively similar resemblance to Plaintiff's mark and is associated with the same category of goods, is likely to induce confusion and mislead consumers. It infringes upon Plaintiff's statutory and common law rights in their trademark, 'RALSON.'

#### **PROCEEDINGS TO DATE**

6. A prima facie case was identified in favour of Plaintiff, leading to an *ex-parte ad interim* injunction being granted on 27<sup>th</sup> August 2020, preventing Defendant from using the Impugned Mark. Despite the service of summons, Defendant failed to appear. Consequently, on 14<sup>th</sup> October 2020, the interim injunction was rendered absolute, and proceedings continued in Defendant's absence. Defendant has not filed written statement to the plaint and the time period to file the same, has now elapsed. There is, thus, no contest to the present suit.

7. Plaintiff produced oral evidence by recording the testimonies of Mr. Sanjeev Malhotra (PW1) and Mr. Hansraj Mehta (PW2), through affidavits and statements recorded on 16<sup>th</sup> December, 2022.

#### **ANALYSIS**

8. Defendant consciously chose not to appear before this Court and did not submit a defence in the form of a written statement within the statutory timeframe and as a result, his right to do so stood extinguished. Furthermore,



Defendant has not challenged Plaintiff's assertion of rights or presented evidence to the contrary. This amounts to deemed admission of Plaintiff's claims, in entirety, obviating the need for the Court to probe any other aspects. Nevertheless, the oral and documentary evidence brought before the Court has been examined.

9. Plaintiff's witnesses have substantiated the trademark registrations by proving the registration certificates (Exhibit PW1/6) and a receipt for the application of Legal Proceeding Certificates for said registrations (Exhibit PW1/8, collectively). Plaintiff also demonstrated their creation and adoption of artistic works including the 'RALSON' mark and its copyright registrations, by producing relevant extracts from the Register of Copyrights (Exhibit PW1/9, collectively). The use of the mark has been further corroborated by advertisements, bills, and clippings (Exhibit PW1/12, collectively).

10. On the basis of evidence presented, Plaintiff has proved that the Impugned Mark, 'RACSON' is structurally, phonetically and visually, deceptively similar to Plaintiff's Mark, 'RALSON'. The Impugned Mark is being applied to the same category of goods as the Plaintiff's. The Court is satisfied that Defendant's adoption of the Impugned Mark was motivated with the sole objective of coming close to Plaintiff's Mark, in order to ride upon Plaintiff's reputation and goodwill. Considering the overall resemblance between the two marks, the general public is likely to be misled into purchasing goods bearing the disputed mark under the belief that they originate from Plaintiff. This would not only damage Plaintiff's goodwill but also cause them commercial loss. Therefore, Plaintiff has successfully established the infringement of their trademark, entitling them to a permanent injunction.



11. As regards to their claim for damages, Plaintiff's witnesses have testified that the use of the Impugned Mark by Defendant has led to substantial losses. However, their statements lack specificity when it comes to quantifying these losses. They have neither submitted a definitive monetary figure to account for the damages incurred nor proposed a methodology that might be used to calculate such a figure. This lack of precision makes it challenging for this Court to evaluate the monetary compensation. Furthermore, Plaintiff has not produced any substantive evidence indicating that the Defendant has profited from the use of Impugned Mark. Specifically, there are no supporting documents to confirm that the Defendant had applied the Impugned Mark, commercially. Plaintiff's inability to provide such evidence weakens their claim to damages, as the financial impact of Defendant's actions, which is essential in determining compensation, remains unverified. Hence, without clear evidence of actual losses or Defendant's unlawful gain, the Court finds it difficult to validate Plaintiff's claim for damages.

### **RELIEFS**

12. The present suit is decreed in favour of Plaintiff and against Defendant in terms of prayers at paragraph 41(a), (b), (c) and (d) of the plaint.

13. As regards the prayer at paragraph 41(f) for damages, since Plaintiff has not been able to prove their damages, the Court is not inclined to grant the relief as prayed for. Nonetheless, Plaintiff would be entitled to costs of Rs. 5 lakhs, recoverable from Defendant, which shall include the court fees as also the counsel's fee. Plaintiff shall file a certificate of counsel's fee, within a period of four weeks from the date of release of this judgment.



14. Suit is decreed in above terms. Registry is directed to draw up the decree sheet.

15. Suit and pending applications are accordingly disposed of

**SANJEEV NARULA, J**

**MAY 29, 2023**

*d.negi*

*(corrected and released on 22<sup>nd</sup> June, 2023)*

