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

\+ CS(COMM) 70/2023 & I.A. 2515/2023

KEI INDUSTRIES LIMITED ..... Plaintiff

Through: Mr. Sachin Gupta, Mr. Pallavi Palit, Mr. Arnav Dasgupta, Mr. Prashansa Singh & Mr. Manan Mondal, Advocates.

versus

MR. BHARAT SINGH & ANR. ..... Defendants

Through: None.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

<u>O R D E R</u>

% **30.04.2024**

1. The Plaintiff, KEI Industries Limited, has filed the present suit alleging misrepresentation, fraud, passing off and infringement of the Plaintiff's registered trademarks "KEI", "", "" and "", on account of the Defendant's adoption and unauthorized use of identical/ deceptively similar trademark **"KIE CABBIL"** in respect of electric wires and cables and other electrical products.

2. The Plaintiff is into the business of manufacture and trading of wires and cables, and had applied for registration of the word mark "K E I" as early as the year 1988. The Plaintiff conceptualized, designed and adopted

the artistic logo “ ” in the year 2007 as a brand identity for their business, and have since been using the same extensively and continuously in relation to their entire range of the goods and services. The Plaintiff has also secured trademark registrations for their marks “KEI”, “ ”, “ ”, “ ” and various formative marks thereof. Details of the Plaintiff’s trademark applications have been delineated in Paragraph No. 15 of the plaint.

3. The Plaintiff’s grievance arises on account of the Defendants’ adoption of the deceptively similar marks “ ” and “ ”[1], which are alleged to be used by the Defendants in respect of electric wires.

4. Upon becoming aware of the Defendants’ Impugned Marks, the Plaintiff carried out an investigation and discovered that the Defendants had applied for registration of the Impugned Mark “ ” through Trademark Application No. 5260748 for electric wires and cables and other goods falling in Class 9. The said application was filed on a *‘Proposed to be Used’* basis. However, the said application, which had been opposed by the Plaintiff herein, has subsequently been abandoned and the Registrar of Trademarks passed an order dated 13th December, 2023, rejecting the application as withdrawn.

5. On being served with the summons in the suit, the Defendants

appeared before the Court. Parties were referred to mediation, through order dated 19th December, 2023, however, the mediation proceedings could not fructify in any amicable resolution. In the meantime, no written statement was filed and the overall time period for filing written statement also lapsed. As a result, on 28th March, 2024, the Defendants' right to file the written statement was closed. In such circumstances, Mr. Sachin Gupta, counsel for Plaintiff, presses for the suit to be decreed *ex parte*.

6. In view of the aforenoted circumstances and considering the lack of any defence on behalf of the Defendants, the Court has proceeded to adjudicate the present matter summarily under Order VIII Rule 10 read with Order XIII-A Rule 3 of the Code of Civil Procedure, 1908 (CPC) and Rule 27 of the Delhi High Court Intellectual Property Rights Division Rules, 2022.

7. Through the pleadings and documents produced on record, the Plaintiff has sufficiently established their rights over the trademarks "KEI", " ", " " and formative marks thereof. Further, while the Plaintiff had applied for registering the mark "K E I" as early as the year 1988, the Defendants' trademark application, which has since been abandoned, was filed on a *'Proposed to be Used'* basis on 24th December, 2021. Thus, the Plaintiff is evidently the prior user of the mark.

8. In view of the above position, the Court has examined the competing marks. For the sake of ready reference, a side-by-side comparison of the Plaintiff's registered marks with the Defendants' Impugned Marks is set out below:

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[1] "Impugned Marks"

Plaintiff's Registered Marks	*Defendants' Impugned Marks*
"KEI" KEI KEI Wires & Cables KEI Wires and Cables	KIE CABBIL KIE CABBIL

9. The Defendants' use of the mark "KIE", which is essentially identical to the Plaintiff's registered mark "KEI" with the letters "I" and "E" having been interchanged, is highly likely to create confusion in the market, especially as the Impugned Marks are used in respect of identical goods, i.e., electrical wires and cables. Furthermore, the mere addition of the word "CABBIL" would not be sufficient for the purposes of distinguishing the competing marks, as the same is descriptive of the goods for which the Impugned Mark is being utilised. The Impugned Mark "KIE CABBIL" is undoubtedly visually, structurally and conceptually similar to the Plaintiff's registered marks, even employing an identical blue colour scheme. While the mark "KIE CABBIL" does appear to be visually and structurally distinct from the Plaintiff's registered marks, yet the Defendatns are using the said mark on their products alongside the mark "KIE CABBIL", to create a false impression of association with the Plaintiff and their products. A comparison of the manner of use of the

Impugned Marks by the Defendants, against the Plaintiff's products, is depicted hereunder:

Plaintiff's Product	*Defendants' Product*
	

10. From the above, it is evident that the Defendants' use of the Impugned Marks is in a deceptively similar manner to the Plaintiff's registered trademarks. Given the Plaintiff's position as the prior user of the marks, in the opinion of the Court, the Defendants' subsequent adoption of the Impugned Marks is without cause and undertaken dishonestly, with the intention to ride upon the established goodwill and reputation of the Plaintiff's marks in the market, which has been demonstrated by their substantial revenues as well as their advertising and promotional activities, details whereof are delineated in the plaint.

11. Furthermore, despite being served with summons and provided ample opportunity to defend themselves, the Defendants have opted not to file a defence or present any evidence refuting the Plaintiff's claims. Their deliberate absence from the proceedings is indicative of a lack of interest in contesting the Plaintiff's claims and suggests an implicit acknowledgment of wrongdoing. Moreover, the Court recognizes that the Plaintiff had to incur

significant legal expenses to initiate and pursue this action, which could have been avoided had the Defendants ceased their infringing activities promptly. The Defendants' conduct, therefore, not only resulted in unnecessary litigation but also forced the Plaintiff to allocate resources toward protecting their intellectual property rights. Given these circumstances, considering the fact that the Defendants have chosen not to contest the present proceedings and their Impugned Marks have been found to be infringing on the Plaintiff's marks, the Court finds it just to impose award nominal damages to the Plaintiff as partial compensation for their legal expenditures.

12. In light of the aforesaid, the following directions are issued:

12.1. The suit is decreed in favour of the Plaintiff and against the Defendants in terms of reliefs sought in Prayer Clauses No. (a), (b), (c) and (d) of the plaint.

12.2. In view of the fact that the Defendants' trademark application No. 5260748 has been rejected as withdrawn *vide* order dated 13th December, 2023, relief sought in Prayer Clause No. (e) is rendered infructuous.

12.3. As regards Prayers Clause No. (g) is concerned, pursuant to this Court's orders, Local Commissioner had seized empty boxes bearing the Impugned Marks and labels, which were kept on *superdari* with the Defendants. Accordingly, the Defendants are directed to deliver up all the goods seized and inventorised by the Local Commissioner, as listed in his report dated 17th February, 2023.

12.4. As regards Prayer Clauses No. (f) and (h) are concerned, for the reasons discussed above, in opinion of the Court, it would be appropriate to award nominal damages of INR 3 lakhs against the Defendants.

12.5. Further, Plaintiff is entitled to legal cost of INR 7,17,500/-, inclusive of:

(a) Legal Professional Fee: INR 3,00,000/-

(b) Court Fees: INR 2,02,500/-

(c) Local Commissioner Fee: INR 1,50,000/-

(d) Expenses incurred in conducting LC in Davengere, Karnataka: INR 65,000/-

12.6. Prayer Clause No. (i) is not pressed, as Mr. Gupta states that the Plaintiff's trademarks have already been declared as 'well-known' by the Trademarks Registry.

13. With the above directions, the suit, along with pending application(s), is disposed of.

SANJEEV NARULA, J

APRIL 30, 2024/*da*