



\$~28

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

% ***Date of decision: 16th December, 2024***

+ **CS(COMM) 403/2021**

SHREE GHANTAKARAN PIPES PVT LTD AND

ANR

.....Plaintiffs

Through: Mr. Aryan Pandey with Ms. Prachi
Vats, Advocates.
(M): 9801574230
9794027944

versus

ROHIT GARG

.....Defendant

Through: None.

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

MINI PUSHKARNA, J (ORAL)

1. The present suit has been filed seeking permanent injunction for restraining trademark infringement of plaintiffs' registered trademark "MONICA GOLD" and *mala fide* use of deceptively similar trademark "APPI SMONIKA GOLD" in relation to deceptively similar goods by the defendant and passing off, unfair competition, dilution and tarnishment, damages, rendition of accounts, delivery up, etc.
2. It is the case of the plaintiffs that they have been continuously and uninterruptedly using the registered trademark "MONICA GOLD" since 1994 for the manufacture and sale of PVC & HDPE Pipes and fittings. Further, plaintiffs are the registered proprietor of the mark "MONICA



GOLD”, registered under Classes 17 and 19.

3. The plaintiffs obtained knowledge about the use of the mark “APPI SMONIKA GOLD” by the defendant in July, 2021, for which trademark registration of the impugned mark “APPI SMONIKA GOLD” for identical/deceptively similar goods, was also obtained, which as per the plaintiffs, infringes upon their registered trademark “MONICA GOLD”. Thus, the present suit has been filed.

4. This Court vide order dated 02nd September, 2021, passed an order of interim injunction in favour of the plaintiffs, and against the defendant in the following manner:

“xxx xxx xxx

8. *The plaintiffs have made out a prima facie case. The defendant, its agent, etc. are restrained by an ex parte injunction from adopting/using the impugned mark ‘APPI SMONIKA GOLD’ either as a trade mark, trading style/name of firm, or any other mark or name which is identical or deceptively similar to the Plaintiffs’ registered trademark ‘MONICA GOLD’ in relation goods identical/deceptively similar to PVC pipes, HDPE pipes, fittings or any cognate or allied goods.*

xxx xxx xxx”

5. Since despite service, none appeared for the defendant, vide order dated 23rd November, 2021, defendant was proceeded *ex-parte*. Thereafter, none has appeared for the defendant.

6. Further, the interim order dated 02nd September, 2021 was also made absolute during the pendency of the suit vide order dated 23rd November, 2021, in the following manner:

“xxx xxx xxx

1. *Per order dated 02.09.2021, the defendant was directed to be served through speed post and email returnable for today. The local commissioner was also appointed who visited the spot.*

2. *As per office report, the defendant has been duly served through*



speed post, but none has appeared.

3. *Defendant is proceeded ex-parte.*

4. *The interim order dated 02.09.2021 is made absolute during the pendency of the suit. I.A. No. 11008/2021 stands disposed of.*

5. *List before the Joint Registrar for ex-parte evidence on 02.02.2022.*

xxx xxx xxx”

7. Thereafter, the matter has been listed before the Joint Registrar for *ex-parte* evidence since then. However, no evidence has been led by the plaintiffs.

8. Today, learned counsel appearing for the plaintiffs submits that the plaintiffs give up their prayer for cost and damages and pray that the suit be decreed in favour of the plaintiffs, in view of the fact that no written statement has been filed on behalf of the defendant.

9. Having heard learned counsel appearing for the plaintiffs, this Court at the outset notes the two competing marks of the plaintiffs and the defendant, which are as follows:-

<u>Plaintiffs' registered marks</u>	<u>The impugned mark</u>
MONICA GOLD	APPI SMONIKA GOLD

 MONICA GOLD	
--	--



10. Considering the overall comparison of the plaintiffs' registered trademark "MONICA GOLD" and the impugned mark "APPI SMONIKA GOLD" as adopted by the defendant, there appears to be only negligible differences in spelling, where the defendant has merely added an additional word APPI and the letter 'S' as prefix and replaced 'C' with 'K' in the word 'MONIKA'.

11. Further, it is evident that there is phonetically or and structural similarity between the two marks. Therefore, this Court is of the view that there is likelihood of confusion and the association between the marks. With the deceptive similarity between the impugned marks "APPI SMONIKA GOLD" and the plaintiffs registered trademark "MONICA GOLD", an ordinary person or the general public would easily believe that the impugned mark "APPI SMONIKA GOLD" and the plaintiffs registered trademark "MONICA GOLD" are same by associating the impugned mark "APPI SMONIKA GOLD" with the plaintiffs' registered trademark. Thus, the Division Bench of this Court in the case of *M/s. South India Beverages Pvt. Ltd. v. General Mills Marketing Inc. & Anr.*, 2014 SCC OnLine Del 195, while discussing the likelihood of confusion that can occur with a layman, has held as follows:

"xxx xxx xxx

49. Since time immemorial the Supreme Court has consistently sounded a note of caution that the competing marks have to be compared keeping in mind an unwary purchaser of average intelligence and imperfect recollection. [AIR 1963 SC 449 Amritdhara Pharmacy v. Satyadeo Gupta]

50. Consumers of any product do not deliberately memorize marks. They only retain a general, indefinite, vague, or even hazy impression of a mark and so may be confused upon encountering a similar mark. Consumers may equate a new mark or experience with one that they have long experienced without making an effort



to ascertain whether or not they are the same marks. The consideration therefore is whether one mark may trigger a confused recollection of another mark. Thus, if the marks give the same general impression confusion is likely to occur.

51. With a view to further foster our understanding of the concept of similarity and likelihood of confusion arising in trademark jurisprudence, we may profitably take cue from the analogous principle of ‘observability’ which is applied in the context of copyright laws.

52. **The ‘ordinary observer’ test is applied to determine if two works are substantially similar. The Court will look to the response of an ‘average lay observer’ to ascertain whether a copyright holder’s original expression is identifiable in the allegedly infringing work** 274 F.2d 487 (2nd Cir. 1960) *Peter Pan Fabrics Inc. v. Martin Weiner Corp.* Since it is employed to determine qualitative and quantitative similarity in visual copyright work, the said test can also be usefully applied in the domain of trademark law as well.

53. **The Courts have reiterated that the test for substantial similarity involves viewing the product in question through the eyes of the layman. A layman is not expected to have the same ‘hair-splitting’ skills as an expert. A punctilious analysis is not necessary. A layman is presumed to have the cognition and experiences of a reasonable man. Therefore, if a reasonable observer is likely to get confused between the two products then a copyright violation is said to take place.**

54. Transposing the said principles in the context of trademark infringement, one may venture to assess similarity and likelihood of confusion between rival marks on the touchstone of the impression gathered by a reasonable observer, who is a layman as opposed to a connoisseur.

xxx xxx xxx”

(Emphasis Supplied)

12. This Court also notes the submission of the plaintiffs that the plaintiffs have been using the registered mark “MONICA GOLD” since the year 1994. Further, the plaintiffs having been using the same for their products covered under Classes 17 and 19, including PVC & HDPE Pipes and fittings etc.



13. This Court notes that despite service, none has appeared for the defendant. The defendant has accordingly been proceeded *ex-parte*.

14. In the absence of any written statement and on account of the defendant not appearing throughout the course of these proceedings, there is no plausible defence that can be put forward on behalf of the defendant. Thus, this Court deems it fit to exercise its powers under Order VIII Rule 10 of Code of Civil Procedure, 1908 ("CPC").

15. The documents and pleadings on record show the deceptive similarity between the plaintiffs and the defendant's marks.

16. Accordingly, this Court is of the view that the plaintiffs are entitled to decree in their favour.

17. Further, this Court notes the submission made on behalf of the plaintiffs that the plaintiffs give up their right for cost and damages.

18. This Court also notes the submission made by learned counsel appearing for the plaintiffs that the plaintiffs have filed a rectification application before the Trade Mark Registry in July, 2021, wherein, notice to the rectification proceedings filed by the plaintiffs herein were issued. However, the matter has not made any headway till now.

19. Accordingly, considering the submissions made before this Court, decree is passed in favour of the plaintiffs and against the defendant in terms of para 38(a) and (b).

20. Decree sheet be drawn up.

21. The present suit, accordingly, stands disposed of.

MINI PUSHKARNA, J

DECEMBER 16, 2024/ c