



2024:DHC:7078



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of decision: 10th September, 2024**+ **CS(COMM) 858/2022****KAIRA DISTRICT COOPERATIVE MILK PRODUCERS UNION
LTD & ANR.Plaintiffs****Through: Mr. Vishal Nagpal, Ms. Suhrita
Majumdar, Advocates
(M:9810228369)****versus****BIO LOGIC AND PSYCHOTROPICS INDIA PRIVATE LTD &
ANR.Defendants****Through: Mr. Pran Krishna Jana, Ms. Anjali
Kumari, Advocates, along with
Defendant in person (M:9811294972)****CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA****MINI PUSHKARNA, J (ORAL)**

1. The present suit has been filed seeking permanent injunction restraining the defendants from dealing in any product under the mark 'AMUL' or any other mark, which is identical/deceptively similar to the plaintiffs' registered trademark 'AMUL'. There is further prayer for mandatory injunction to withdraw the trademark application no. 5538667, delivery up of the goods bearing the infringing mark of the plaintiffs' and rendition of accounts of profits.

2. The case as canvassed by the plaintiffs', is as follows:-

i. The plaintiff no.1 is Cooperative Society, originally registered under the Bombay Cooperative Societies Act, 1925. The plaintiff no. 2 is also a



Cooperative Society, registered under Gujarat Cooperative Societies Act, 1961.

ii. The plaintiff no. 1 under a License Agreement dated 15th January, 2001, permitted plaintiff no. 2, to market products with the trademark 'AMUL' and its various variants. Under this agreement, plaintiff no. 2 is marketing the products of the plaintiff no. 1 throughout the country, including areas falling within the territorial jurisdiction of this Court.

iii. The word 'AMUL', irrespective of the goods it is applied upon, is the sole repository and identifier of the plaintiffs and its members. The word 'AMUL' symbolizes a movement among Indian rural community towards prosperity and the Indian public perceives the word 'AMUL' having association or connection with the plaintiffs alone and no other. The trade mark 'AMUL' has been recognized as a well-known trademark. The trademark 'AMUL' is listed as Item 66 in the List of Well-Known Marks, as maintained by the Registrar of Trademarks.

iv. The defendants have knowingly infringed the plaintiffs' trademark 'AMUL', which is a well-known and household trademark and the defendants' cannot plead ignorance of prior existence as well as the reputation of the plaintiffs' 'AMUL' trademark.

v. The present suit was filed on the ground that the defendants were found to be advertising and offering to sell/selling the impugned products under the mark 'AMUL'. The defendant no. 1 was found to be engaged in the business of dealing in pharmaceutical tablets, i.e., Pharmaceutical Preparation, which is seemingly used as an antipsychotic medication under the mark 'AMUL', being sold on various E-commerce websites such as www.1mg.com, www.company.pharmahopers.com, www.indiamart.com.



vi. Thus, the plaintiffs' served a legal notice dated 13th July, 2022, upon the defendants, calling upon them to cease and desist from using the plaintiffs' well-known mark 'AMUL'.

vii. However, in their reply dated 21st July, 2022, the defendants stated that they had conceived and invented the trade mark 'AMUL' in the year 2013.

viii. The defendants also filed a trademark application eight days after receiving the legal notice, bearing application no. 5538667 in Class 5 claiming to be using the said mark 'AMUL' for its pharmaceutical products since the year 2013. Thus, the present suit came to be filed.

3. This Court notes that vide order dated 09th December, 2022, the defendants were restrained from dealing in goods and services using the name/mark/logo 'AMUL' or any other mark name/mark/logo, which is deceptively similar, to the registered trademark of the plaintiffs.

4. Further, a Local Commissioner was also appointed on the said date. The Local Commissioner visited the premises of the defendant no.1 in Sirmaur, Himachal Pradesh. The relevant portion of the Report of the Local Commissioner, reads as under:

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*During inspection of the above said premises, Mr. Mohd. Amzad also informed that Biologic Inc was manufacturing the said infringing products under the name of Amul on order of Mr. Vipul Ghai in their factory. The undersigned asked Mr. Amzad since when Biologic Inc was manufacturing the said infringing product under the name of Amul. **In reply, he said that he has record of the infringing products from the year 2016 to 2021 in his computer/laptop i.e. HP 15-da0099TU. He also handed over the purchase order and invoices of infringing products under the name AMUL from the year 2016 to 2021. He also said that even prior to 2016, Biologic Inc was manufacturing the infringing products under the brand AMUL. The copy of the purchase order and invoices of the infringing products***



given by Mr. Mohd. Amzad under the name of AMUL are annexed herewith as ANNEXURE-A.

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However, on inspection we found several boxes of infringing products under the name of AMUL in the control sample room at the first floor of the factory. We found four boxes of AMUL -50 having strips 35.5 total 710 tablets. We also found six boxes of AMUL-100 tablets containing 48.6 strips, total 1460 tablets. The boxes of Amul 50 and Amul 100 and the strips contained therein bear the mark AMUL. The photographs of the boxes and the strips of the infringing products under the name of AMUL are annexed as ANNEXURE-C.

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(Emphasis Supplied)

5. Along with his report, the learned Local Commissioner has also filed various invoices showing the sale of the products by the defendants under the infringing mark ‘AMUL’, from the year 2016.
6. No written statement has been filed on behalf of the defendants. Rather, when the matter was listed for hearing on 26th April, 2023, learned counsel for the defendants submitted that the defendants were ready to suffer the decree of injunction.
7. Learned counsel for the defendants submits that the defendants have already stopped marketing or getting goods manufactured under the infringing mark ‘AMUL’, and the defendants do not have any pending stock with the infringing mark.
8. Learned counsel for the defendants submits that the defendants have already stopped the business operations completely.
9. Per contra, learned counsel appearing for the plaintiffs’, presses for Costs and Damages. He submits that the plaintiffs’ have incurred various costs, including, payment of court fees, as well as counsels’ fees, and payment to the Local Commissioner.



10. This Court notes that no plausible justification or explanation has been given by the defendants as to why the trademark 'AMUL' was adopted. No written statement has been filed on behalf of the defendants. The conduct of the defendants highlights their malafide and dishonesty in adopting the same mark, as that of the plaintiffs'. Thus, it is clear that the defendants have infringed the plaintiffs' registered trademark, which, has also been recognised as a well-known trademark. The defendants are not entitled to use the mark 'AMUL' or any other mark, which is deceptively similar to the plaintiff's trademark.

11. An ordinary consumer, having average intelligence and without minute examination on the background of the defendants, is likely to be confused that the defendants have some association or connection with the plaintiffs. Thus, use of the mark 'AMUL' by the defendants gives an unfair advantage to the defendants and is detrimental to the distinctive character or repute of the plaintiff's well-known registered trademark.

12. Accordingly, considering the aforesaid discussion and considering the statement of the defendants, as recorded in the order dated 26th April, 2023, expressing their readiness to suffer the decree of injunction, the plaintiffs are entitled to decree of permanent injunction in their favour, and against the defendants.

13. On the issue of Costs and Damages, this Court notes that the defendants' adoption of the infringing mark, cannot be considered to be bonafide or honest. The defendants knowingly infringed the plaintiffs' trademark and cannot plead ignorance of prior existence, as well as the reputation of the plaintiffs' 'AMUL' trademark. The defendants have no plausible justification for adopting the plaintiffs' trademark, other than to



ride upon the plaintiffs' immense reputation and goodwill.

14. This Court also takes note of the response of the defendants to the plaintiffs' Cease and Desist Notice, in which they claimed to have conceived and invented the trademark 'AMUL', and claimed to be the lawful owner and proprietor of the same. Further, defendant no. 2 claiming himself to be the proprietor of the 'AMUL' trademark, filed a trademark application, post receipt of the plaintiffs' Cease and Desist Notice.

15. The fact that the defendants have been using the mark in question since the year 2013 and continued the use, till the year 2022, is also a material factor. Considering the ensuing facts and circumstances of the present case, and taking into account the goods confiscated by the learned Local Commissioner, this Court holds that the plaintiffs are entitled to Costs and Damages.

16. At this stage, learned counsel for the defendants submits that the defendants have already withdrawn the trademark application, which had been filed earlier. He further submits that the defendants' are facing financial constraints and, therefore, only nominal Costs/Damages be imposed.

17. Considering the submissions made before this Court, the following directions are issued:

- I. A decree of permanent injunction is issued in favour of the plaintiffs and against the defendants restraining the defendants, their partners, proprietors, servants, agents, distributors, marketers, suppliers and all others in active concert or participation with them from manufacturing, selling, offering for sale, advertising, directly or indirectly, dealing in products and/or providing services that



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bear/use the name or mark or logo 'AMUL' or any other mark/name which is identical/deceptively similar to the plaintiffs' well-known trade mark 'AMUL' resulting in infringement/ passing off of plaintiffs' well-known trademark 'AMUL'.

II. The infringing goods/material, including the package material/labels/etc. which were confiscated by the Local Commissioner and returned on *Superdari* to the defendants, shall be destroyed by the defendants, in the presence of the representative of the plaintiffs.

III. The plaintiffs are entitled to Costs of ₹ 4,00,000/- and Damages of ₹ 1,00,000/-, totaling to ₹ 5,00,000/-. The aforesaid amount shall be paid by the defendants to the plaintiffs within a period of six months from today. In case the amount of ₹ 5,00,000/- is not paid within the aforesaid period, the same shall carry an interest @ 9% per annum.

18. Decree sheet be drawn up.

19. With the aforesaid directions, the present suit is disposed of.

MINI PUSHKARNA, J

SEPTEMBER 10, 2024

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