

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
(Intellectual Property Rights Division)

IP-COM/36/2024
IA NO: GA-COM/1/2024

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KAS Zanulabin and Co
VS
DHARAMRAJ DILABAHAR

IA No. GA-Com 1 of 2024
IP-Com 36 of 2024

KAS Zanulabin & Co.
Versus
Dharamraj Dilabahar

Before:

The Hon'ble Justice RAVI KRISHAN KAPUR

Date: 5th February 2025

Appearance:

Mr. Rudraman Bhattacharyya, Sr. Advocate

Mr. Suryaneel Das, Advocate

Mr. Aditya Mondal, Advocate

Mr. Satyaki Mukherjee, Advocate

Mr. Akash Munshi, Advocate

for the plaintiff

Mr. Sarwar Sawan, Advocate

Mr. Aditya Bikash Nahata, Advocate

Mr. Aritra Palit, Advocate

Mr. Debasish Das, Advocate

For the defendant

The Court: By consent of the parties, both the suit and the interlocutory application are taken up for hearing together.

This suit is filed for infringement and passing off.

In the usual course of business the plaintiff had devised a unique logo or trade dress with “786” in Arabic as an essential feature of the said mark.

The plaintiff has been using the said mark since 1958. The plaintiff has also applied and obtained for registration of the said mark. The said mark is in Arabic with a crescent moon and star which is sold under the brand name “CHAND”. This alongwith a golden border and the symbol z in a circle is an essential feature of the design of the plaintiff's product. The turnover of the

plaintiff is in crores and a substantial amount has also been spent in advertising. The plaintiff has also applied and obtained registration of the mark “LOCK BRAND” which is valid and subsisting.

In or about August 2024, the plaintiff came to learn of a slavish imitation of the product of the plaintiff which is sold in a deceptively similar manner with the number “786” in Arabic and the crescent moon and star selling similar goods under the mark “CHAND”. The impugned mark is in a deceptively similar colour combination and scheme as that being used by of the plaintiff. The plaintiff also alleges that the defendant is wrongfully and unauthorizedly using an identical “LOCK BRAND” with the same colour scheme and logo. The packaging adopted by the defendant is also identical and deceptively similar to that of the plaintiff.

The respective products of the parties are depicted hereinbelow;



By an interim order dated 3 October, 2024, an order of injunction had been granted restraining the defendant from manufacturing, marketing, processing, selling or advertising or dealing with lungi, vests, briefs or allied products by using the mark “786”, “CHAND MARK” and “LOCK BRAND” or

other identical or similar or deceptively similar trade mark as that of the plaintiff. The said order is still valid and subsisting.

Subsequently, the defendant had also filed an Affidavit of Undertaking dated 28 November, 2024 unequivocally and unconditionally accepting not to use the impugned product in question or any other deceptively similar product as that of the plaintiff. A copy of such undertaking has also been furnished to the plaintiff.

In view of the Undertaking filed in Court, all contentious issues in this suit have for all practical purposes become redundant.

There is a clear case of infringement and passing off which the plaintiff has been able to demonstrate and the defendant has for all practical purposes admitted the same.

In view of the above, there shall be a decree in terms of prayer (a) of the plaint.

Pursuant to the interim order, the respondent has also furnished full details of where the impugned products are being sourced from.

The Receiver appointed in terms of the earlier order of Court stands discharged.

By consent of the parties, the goods lying in the custody of the Receiver be distributed for charitable purposes at the discretion of the Receiver.

GA-COM/1/2024 stands disposed of. The interim order dated 3 October 2024 stands confirmed.

IP-COM/36/2024 also stands disposed of by granting a decree in terms of prayers (a) and (b) of the plaint.

(RAVI KRISHAN KAPUR, J.)