
(2005) 02 DEL CK 0028

In the Delhi High Court

Case No : CS (OS) No. 2208 of 2000 and is No. 10090 of 2000

Adidas Salomon AG and Others

APPELLANT

Vs

A. Dhawan

RESPONDENT

Date of Decision : 22-02-2005

Acts Referred:

Citation : (2005) 118 DLT 560

Hon'ble Judges : Ramesh Chandra Chopra, J

Bench : Single Bench

Advocate : Neel Mason and Sagar Chandra, for the Appellant; None, for the Respondent

Judgement

R.C. Chopra, J.—This suit for permanent injunction restraining infringement of trade mark and copyrights, passing off, damages, rendition of accounts and delivery up, etc., was filed by the plaintiffs alleging that they are the proprietors of the trade mark "adidas" which is being used since 1949 for the production and sale of shoes, track suits, T-shirts, shorts, polo shirts, socks, caps, wristbands, sun glasses, bags and various other accessories and equipment used in sports. This trade mark has acquired international trade reputation and goodwill and the goods manufactured and sold under this trade mark are distinctive and associated with plaintiffs" for the last so many years. The "adidas" logo and trefoil device having three thick lines, which create an imaginary triangle, are being used for the last over fifty years by the plaintiffs to distinguish the plaintiffs" products which have enormous sales all over world. The said trade marks are valid and subsisting in India also. The plaintiffs are proprietors of the trade mark, trefoil device and the logo. plaintiff No. 1 has approximately 100 subsidiaries worldwide including India for the manufacture and sale of its goods under the said trade mark and logo. The plaintiffs have given details of its sales as well as sums spent on advertisements for the trade mark as well as trefoil device and logo.

2. The plaintiffs allege that the defendant trading as Babla Fashions at Prem Gali,

Ashok Gali, Gandhi Nagar, Delhi, has unauthorisedly started manufacturing and selling his products under the plaintiffs' trade mark "adidas" and has also started using "adidas" logo and trefoil device in violation of the plaintiffs' trade mark and copyrights therein. According to the plaintiffs, the said act of defendant in using the identical trade mark, logo and the trefoil device is aimed at deceiving the purchasers and misleading them to believe that the goods sold by the defendant are manufactured by the plaintiffs and as such the defendant's act is capable of causing irreparable loss/damage to the plaintiffs' business goodwill as well as reputation.

3. In the aforesaid premises, it is prayed that by an Order of permanent injunction, the defendant, its officers, servants, agents, distributors, stockists, etc. may be restrained from manufacturing selling, directly or indirectly, any product/clothing apparel, T-Shirts, Jackets, track suits, etc. under the trade mark "adidas" or logo or the trefoil device as described in the plaint. A decree for delivery up of the finished and unfinished materials accessories, rendition of accounts and damages in the sum of Rs. 5,00,100/- is also prayed.

4. Vide Orders dated 5th December, 2001, the defendant was proceeded against ex parte. The plaintiffs filed evidence on affidavits in ex parte evidence. The plaintiffs constituted Attorney has filed his affidavit and has proved the documents Exs. P1 to P14.

5. After going through the averments made in the plaint, affidavit and the documents proved on record which have gone unrebutted and unchallenged, this Court has no hesitation in holding that the plaintiffs are the proprietors of the trade mark "adidas" and have copy rights in the logo as well as trefoil device used on the shoes, clothing apparel, etc., being manufactured and sold by the plaintiffs. It is also proved on record that the defendant, who is manufacturer and seller of clothing apparel has started using unauthorisedly and illegally the trade mark "adidas", "adidas" logo and the trefoil device on its products with a view to deceive the unsuspecting consumers. The plaintiffs, Therefore, are entitled to a decree of permanent injunction, delivery up, rendition of accounts as well as damages, as prayed.

6. Accordingly, an ex parte decree of permanent injunction is passed in favor of the plaintiffs restraining the defendant, its partners, if any, officers, servants, agents, distributors, stockists and representatives from manufacturing, selling or offering for sale directly or indirectly any clothing apparel including T-Shirts, Jackets, track suits, etc., bearing the trade mark "adidas" or the "adidas" logo or the trefoil device. A decree of delivery up is also passed against the defendant to hand over all finished and unfinished materials, accessories, packing materials, labels, dies, blocks, stationery, etc. bearing the plaintiffs' trade mark "adidas", logo or the trefoil device.

7. A decree of damages in the sum of Rs. 5,00,100/- is also passed in favor of the plaintiffs and against the defendant with costs. The plaintiffs are entitled to

pendente lite and future interest on this amounts @ 9% per annum from the date of filing of the suit till realization.

Decree sheet be prepared.

IA also stands disposed of.