

(1976) 09 MAD CK 0051

In the Madras High Court

Case No : Letter Patent Appeal No. 9 of 1973

A.V. Rajadurai Nadar

APPELLANT

Vs

P. Ayya Nadar and Another

RESPONDENT

Date of Decision : 10-09-1976

Acts Referred:

Trade and Merchandise Marks Act, 1958 — Section 2

Citation : AIR 1977 Mad 237 : (1977) 1 MLJ 194

Hon'ble Judges : Veeraswami, C.J.;Natarajan, J

Bench : Division Bench

Judgement

Veeraswami, C.J.—This is an appeal from an order of Maharajan, J., who allowed the first respondent's appeal from an order of the Registrar of Trade Marks. Both he and the appellant have been engaged in the manufacture of matches, the former from 1945 at Sivakasi and the latter from 1959 at Sattur. The trade mark of the first respondent, camel brand, was registered on April 4, 1945, and his annual sales for 1946-47 were stated to be in the order of more than five lakhs, which rose to somewhere about thirty lakhs in 1966-67, while the appellant's turnover was very much less, in the order of about six lakhs. When the appellant asked for registration of his trade mark, which consists of a ram as the permanent feature, it was objected to by the first respondent, but unsuccessfully. So the first respondent applied for rectification of the register in respect of the appellant's trade mark, which was not allowed. But Maharajan, J., on appeal by the first respondent, though that the appellant's trade mark was deceptively similar to that of the first respondent. On that view, he allowed the appeal, that is to say, he directed that the background and the foreground in the central panel of the trade label in which the ram was portrayed should be removed, that the general colour pattern of the label be changed so that it might be different from that of the appellant's camel brand trade label and that the appellant should be at liberty to retain all the words in his trade label as well as the figure of the ram.

2. On a comparison of the two labels, it seems impossible to agree with Maharajan, J., that they are deceptively similar. The first respondent's trade mark has at the top a red band in which the words "Camel Brand" are printed in white. The pattern is the same in the trade mark of the appellant except for the word "Ram". Below this red band, we have the yellow background in both the trade marks. The ground below the yellow background is more undulated and uneven in the mark of the first respondent. The vegetation on the ground is varying and distributed between the two marks. Instead of a tree in the first respondent's trade mark, there is in the appellant's mark something like a single growth of what looks like a cactus, which does not appear in the trade mark of the first respondent. In the first respondent's trade mark, we find on the left side of the ground palmyra trees, which are totally absent in the trade mark of the appellant. The price of the match is mentioned in small printed letters in both the trade marks on the ground on the left side, except that the print in the appellant's trade mark is more prominent and the price is different and it is lower than the other one. Below this ground, which is marked in red, we have again a small stretch of yellow band narrower in width in the first respondent's trade mark and a little broader in that of the appellant. We have at the bottom a black strap in which the words "Safety Matches" are printed in both the trade marks. In the yellow band in the first respondent's trade mark is found printed "The South Indian Match Works, Sivakasi". That is in small printed letters. Over the similar yellow band in the appellant's trade mark, we have printed "Sokkar Match Works, Sattur". The letters are much bolder and more prominent. Except for the general background, which is more or less similar, the animals which are shown on the ground in the yellow background are different. Camel is used by the first respondent and a ram is used by the appellant. Maharajan J., seems to think that the ground shown in the first respondent's trade mark is a desert and when the same scheme is adopted in the trade mark of the appellant, ram is out of place in a desert. He also thought that the face of the ram was more like that of a camel. We are unable to agree with this observation. Any causal observation would without doubt bring to the mind of the person who looks, the difference between the two animals. There is no similarity between the two animals in any detail whatever. The ram does look like a ram as we see and the camel has its likeness. Not only is there no similarity between the two animals, but there is also very little chance of any deception and so confusion between the two figures.

3. We may also observe that the labels on matches generally resemble each other and each trade mark is recognised by a prominent feature appearing in the middle, either in the form of an animal, or in the form of a bird or something else.

4. The expression "deceptively similar" as defined in S. 2(d) of the Trade and Merchandise marks Act, 1958, means that in order to be that, the similarity or resemblance must be such as it would be likely to deceive or cause confusion. Any conclusion reasonable and proper can be arrived at by a meticulous examination of each detail and then making a comparison. At the same time, what readily strikes the eye must also be conclusive. But, when one looks at it,

especially from the standpoint of a person who is most likely to use a particular brand of matches, if it appears that the difference is prominent and it cannot lead to any similarity or a deceptive similarity or confusion, then there could be no objection to the two different trade marks. As we said, in our opinion, even a casual observer can see the difference between the camel and the ram and there could be no mistake between the one and the other made by any one even if they are kept side by side, or kept apart. On that view, we allow the appeal with costs throughout.

5. Appeal allowed.