

(2021) 07 DEL CK 0148

In the Delhi High Court

Case No : Civil Suit (COMM) No. 384 Of 2020

Bhavik S. Popat

APPELLANT

Vs

Bright Sales Corporation & Ors

RESPONDENT

Date of Decision : 20-07-2021

Acts Referred:

Citation : (2021) 07 DEL CK 0148

Hon'ble Judges : Suresh Kumar Kait, J

Bench : Single Bench

Advocate : Sidharth Tyagi, Shayan Khurram, Shoumendu Mukherji, Siddharth, Rajat Sabu

Judgement

Suresh Kumar Kait, J

The hearing has been conducted through video conferencing.

1. Plaintiff has approached this Court for passing an order for permanent injunction restraining all the defendants, their successors, franchisees,

licensees, distributors, representatives, assignees, agents and any one acting for and/or on their behalf from using the PRIMA or

Â any other trade name/trademark/trading style/domain mark and name identical/deceptively similar to the plaintiff's Â trademark

as a trademark or part of trademark, trade name or part of trade name, corporate name or part of corporate name, domain name or part of domain

name or in any manner whatsoever in relation to their goods/services or in any manner whatsoever, which would cause confusion or deception

amounting to infringement of the registered trademarks of the petitioner. He also seeks direction for passing an order to take any and/or all steps

necessary to block the online websites that solicit the business of the defendants

and features which bear or incorporate; the PRIMA or
Â trademark or anything deceptively or confusingly similar thereto; and any other indicia whatsoever that shows any association of
the defendantsâ?? products and/or services PRIMA or trademark with the plaintiffâ??s products and/or services. He further seeks direction to
deliver to the plaintiff's attorneys or representatives for destruction all products, labels, signs, stationary, business cards, prints, packages, plates, dies, wrappers, receptacles, materials and advertisements in their possession or under their control, bearing the PRIMA or Â mark, or any
simulation, reproduction, copy or colorable imitation of the Plaintiff's Â mark. Further directing the defendants to immediately
withdraw application in class 21 and/or any other application(s) filed by the defendants for registration of the PRIMA or Â mark,
whether in word or stylized form, or any other application filed for registration of a mark deceptively similar to the Â mark; an order
directing the defendants to allow inspection of their accounts to assist in ascertaining the amount of profits made by them and/or damages suffered by
the plaintiff as a result of the defendants' use of the offending mark and a decree be passed in favour of the plaintiff and against the defendants for
the amount found due. The plaintiff be additionally granted exemplary and punitive damages at least to the tune of Rs.2,00,00,050/-. Also seeks
directions for declaration that the Â trademark is a well-known mark belonging to the Plaintiff and cost of the suit be awarded to the
plaintiff.

2. The case of the plaintiff is that plaintiff is running a business of manufacturing, importing and trading various kinds of personal protection wearables
for industrial, commercial and non-commercial uses and specialises in rubber gloves since 2010 either made in Malaysia or from pure Malaysian latex
with the house name of M/s Krishna International and has more than 5 brands. On the other hand, defendant nos.1 to 11 are engaged in the business
of manufacturing and selling, distributing to the wholesale and retail markets various kinds of rubber gloves. The word Â was adopted
and first used and registered as a trademark by the plaintiff in respect of gloves for household purposes. Plaintiff has the exclusive right to use the
above trademark in relation to the goods for which they are registered and take

action for infringement thereof in accordance with the provisions of law. The plaintiff has incurred expenditures on the promotion and advertisement of his products under trademark in India as well as all over the world.

The plaintiff has also maintained the website <http://www.krishnainternat.co.in> since 2015 and [https://www.indiamart.com/krishnainternational-](https://www.indiamart.com/krishnainternational-mumbai/profile.html)

[mumbai/profile.html](https://www.indiamart.com/krishnainternational-mumbai/profile.html) since 2017 and the product of the plaintiff is available on Amazon and Flipkart with the description "Prima 100% Pure Latex

Flock Lined Rubber Gloves I 2 Pairs I Suitable for Laundry Dishwashing Gardening Scrubbing Cleaning I Size: Medium by Prima".

3. It is also stated in the plaint that plaintiff's counsel in Mumbai in January 2020 informed him about a trademark application being published

wherein defendant no.9 wanted to get registered a trademark similar to that of the plaintiff. In the month of August 2020, it was found that defendant

nos.1 to 11 are selling products with packaging which are similarly deceptive to that of the plaintiff. Hence, the present petition.

4. On 16.02.2021, this Court had referred the matter to Delhi High Court Mediation and Conciliation Centre for plaintiff and defendants No.1,2,7,9 and

11 to explore possibility of settlement.

5. Since none had appeared on behalf of, defendant nos.4, 5, 6, 7, 8 and 10 despite service, therefore, vide order dated 24.03.2021 they were

proceeded exparte.

6. During the course of hearing today, learned counsel for plaintiffs submits that plaintiff and defendants No.1, 2, 9 and 11 have amicably resolved

their disputes before Delhi High Court Mediation and Conciliation Centre in terms of Settlement Agreement dated 05.07.2021 and suit can be decreed

in terms thereof against these defendants.

7. The aforesaid submission of learned counsel for the plaintiffs is affirmed by the counsel appearing for respective defendants.

8. This Court has gone through the contents of Settlement Agreement dated 05.07.2021 and find it to be valid and lawful.

9. Accordingly, the suit is partly decreed in terms of Settlement Agreement dated 05.07.2021 qua defendant nos.1, 2, 9 & 11. Decree sheet be

accordingly drawn. Settlement Agreement dated 05.07.2021 shall form part of the decree.

10. At this stage, learned counsel for the plaintiff submits that the suit against

the remaining defendants still survives, who have been proceeded
exparte and plaintiffs be permitted to file schedule of recording evidence.

11. Let the needful be done by the plaintiff within four weeks.

12. Renotify on 02.09.2021 for further proceedings.