
(2003) 05 DEL CK 0131
In the Delhi High Court
Case No : Suit No. 2174/97

British India Corporation Ltd. and Another	APPELLANT
Vs	
Khairati Ram and Others	RESPONDENT

Date of Decision : 29-05-2003

Acts Referred:

Copyright Act, 1957 — Section 2

Citation : (2003) 05 DEL CK 0131

Hon'ble Judges : H.R. Malhotra, J

Bench : Single Bench

Advocate : Manmohan Singh, for the Appellant; Ex-parte, for the Respondent

Judgement

H.R. Malhotra, J.—This is a suit filed by the plaintiff for permanent injunction restraining the defendants from infringing their trade mark and also their copyright besides restraining the defendants from passing off their goods as that of the plaintiff.

2. Brief facts as set out in the plaint are that the plaintiff is the registered proprietor of the trademark "DHARIWAL" with the device of lamb in respect of woollen goods, blankets, lohis, shawls etc. The plaintiff also got registered trade mark registered under Nos. 411895, 411896 and 411897 dated 6th January, 1950 as a composite trade mark Jumping Ram, Dhariwal. The said trade marks were duly registered in the name of the plaintiff but the position of the aforesaid three trade marks is not readily available with the Trade Marks Registry, Bombay nor with the plaintiff at present. The plaintiff is one of the World's famous woollen manufacturer under the said trade mark DHARIWAL as well as under the emblem and device of lamb over the word DHARIWAL. The plaintiff has been carrying on its business for the last more than 7 decades and has a huge marketing network all over India and abroad. During the course of business of the plaintiff the plaintiff has also slightly modified the composite label with the emblem/device of lamb and applied for registration of the said trade mark. A specimen of the said composite mark used by the plaintiff is annexed herewith.

3. It is stated in the plaint that the plaintiff's application for registration of the trade mark of the composite label with the emblem/device of lamb and the mark DHARIWAL is pending for registration under No. 343683. The plaint further speaks that the plaintiff is carrying on its business under the trade mark DHARIWAL Along with the device of lamb which is very well recognised by the members in the trade and the public. The plaintiff adopted the trade mark DHARIWAL Along with the said device in the year 1920 and has been using the same ever since the plaintiff has been using the trade mark DHARIWAL as well as device of lamb in a particular characteristic style which is a distinctive logo script in respect of the trade mark DHARIWAL as well as device of lamb. The trade mark DHARIWAL and the device of lamb constitutes an original artistic work within the meaning of Section 2(c) of the Copyright Act, 1957 and the plaintiff is the owner of the said copyright and has the exclusive right to use or reproduce the same. That the trade mark DHARIWAL and device of lamb have over the years acquired a tremendous reputation amongst the general public and has been extensively used and advertised for a long time and its goods bearing the above said trade mark and device are sold in every nook and corner of India. As a result of the extensive advertising and publicity the plaintiff has earned an excellent reputation.

4. As regards sale promotion of the plaintiff's trade mark it is further stated in the plaint that huge expenses have been incurred in the sale promotion and advertisement in relation to the said products as well as device of lamb in respect of the above-mentioned goods. The statement of sale figures and expenses incurred on advertisement and sales promotional are submitted herewith. The plaint further speaks that visual impact left by the mark as well as the device of lamb represents in the aforesaid artistic script is a significant one and the purchasing public of the trade, Therefore, identifies the plaintiffs goods not only by the trade mark DHARIWAL but also by peculiar style of writing of the word DHARIWAL as well as device of lamb by which the composite mark is represented. The plaint further speaks that on account of the superiority of the goods, long, extensive and continuous user and wide advertisement the plaintiff's trade mark DHARIWAL and device of lamb has become very popular with the trade and the members of the public who associate the trade mark DHARIWAL written in a peculiar style as well as the device of lamb with the goods of the plaintiff and no one else. The trade mark DHARIWAL in respect of the above-mentioned goods denotes and connotes the goods manufactured by the plaintiff alone.

5. The plaintiff came to know that the defendants are using the trade mark DHARIWAL in the same logo script as well as device of Lamb which is a reproduction of the plaintiffs device in material form. The said user of the defendants are without any permission, license and consent of the plaintiff whatsoever. The defendants are fraudulently and dishonestly using the identical trade mark in respect of the same goods. That the adoption of the logo script which is also a reproduction of the mark DHARIWAL and logo script of lamb of

the plaintiff the defendants" conduct shows that it is clearly a violation of the plaintiff's property rights and the defendants have got no justification to use the same.

6. Summons of the suit were sent to the defendants. Although defendants appeared in the Court initially and were directed to file written statement and despite various opportunities granted to them they failed to file written statement nor they appeared in the matter and Therefore they were proceeded ex parte on 2nd December, 1999.

7. plaintiff was called upon to prove its case by way of filing affidavit to which Sh. O.P. Soni, Company Secretary of the plaintiff company filed the affidavit in the form of evidence reasserting what was stated by the plaintiff company in the plaint. This witness testified that the plaintiff is the proprietor of the trade mark DHARIWAL Along with the device of lamb in respect of woollen goods, blankets, lohis shawls etc. and also of the trade mark Jumping Ram, DHARIWAL vide registration Nos. 411895, 411896 and 411897 dated 6th January, 1950. The plaintiff proved the certificate of registration as Ex. P-1. This witness further proved that the trade mark DHARIWAL and the device of lamb had required as tremendous reputation amongst the general public has been extensively used and advertised for a long time as a result of which the plaintiff has earned reputation in respect of their goods with the word DHARIWAL with the device of lamb. This witness further testified that having come to know about the activities of the defendants for counterfeiting the trademark and label of the plaintiff, they initiated criminal action against them where defendant No. 1 given an undertaking to the Court that they will not sell their goods under the trade mark DHARIWAL with the device lamb.

8. I have heard learned counsel for the plaintiff and have also perused the affidavit filed as evidence coupled with the documents filed and proved on record in support of the claim.

9. There is no assail to the claim of the plaintiff, defendants being ex parte

10. The plaintiff has been able to establish his case fully on the strength of the affidavit as also the evidence filed in support thereof.

11. The trade mark and the device of lamb are exactly similar and ordinary person with ordinary prudence is bound to be confused by the offending trade mark DHARIWAL and with the device of lamb.

12. It is fully established by the plaintiff that the said user of the defendants is without any permission and consent of the plaintiff and Therefore defendants are dishonestly using the identical trade mark in respect of the same goods and that the projection of trade mark DHARIWAL and logo of lamb by the defendants is clearly a violation of the plaintiff's proprietary rights to which the defendants have got no justification to use the same.

13. This being so the plaintiff has become entitled to the decree for permanent

injunction as claimed in para 20(a), (b) and (c). Accordingly a decree for permanent injunction is passed in favor of the plaintiff and against the defendants restraining the defendants themselves, their servants, agents or any other person on their behalf from manufacturing, selling and offering for sale directly or indirectly dealing in Blankets, Shawls, Lohis and other woollen piece made goods under the trade mark DHARIWAL and device of Lamb as well as the mark DHARIWAL as part of their trading style which is an infringement of the plaintiff's trade mark.

14. Defendants themselves, their servants, agents or any other person on their behalf are further restrained from manufacturing, selling and offering for sale directly or indirectly dealing in Blankets, Shawls, Lohis and other woollen piece goods, from passing off and causing or enabling any assisting others to pass off their goods as the goods of the plaintiff or any other trade mark/mark DHARIWAL and device of Lamb which is deceptively similar to the plaintiff's trade mark.

15. Defendants themselves, their servants, agents or any other person on their behalf are also restrained from using the logo script of DHARIWAL as well as device of Lamb i.e. identical or deceptively similar to or the obvious or fraudulent imitation or substantial reproduction of the plaintiff's logo script of DHARIWAL used in a characteristic manner and the device of Lamb logo script which is an imitation and reproducing of plaintiff's highly reputed and well known trade mark and logo amounting to infringement of plaintiff's copyright therein.

16. Decree for rendition of accounts is not being passed in favor of the plaintiff as learned counsel for the plaintiff while arguing the matter abandon this claim.