

(2002) 08 DEL CK 0142

In the Delhi High Court

Case No : Suit No. 1303 of 2000 and is 6155 of 2000

British India Corporation Ltd. and Another

APPELLANT

Vs

Khariti Ram and Others

RESPONDENT

Date of Decision : 26-08-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Trade and Merchandise Marks Act, 1958 — Section 29, 58

Citation : (2003) 26 PTC 590

Hon'ble Judges : C.K. Mahajan, J

Bench : Single Bench

Advocate : Manmohan Singh, for the Appellant;

Judgement

C.K. Mahajan, J.—By way of present suit, the plaintiff prays for permanent injunction in favor of plaintiff and against the defendants restraining them 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 KASHGARI, trade mark Nos. 70, 100, 170, 111, Kailashgari, Vaishali, Alaknanda and Neelgiri and device of a Lamb as well as the mark KASHGIRI as part of their trading style and from any other mark or device which is deceptively similar to that of the plaintiff's trade mark and device.

2. The plaintiff is a Government company dealing in manufacturing of woollen goods i.e. Kashgari Lohies, Shawls, Lohies, Blankets, Suiting etc. The plaintiff claims to be the user of marks being No. 70 Lohis, No. 100 Lohis, No. 170 Lohis, No. 111 Lohis, Kailashgiri (No. 3542), Alaknanda Lohis, Neelgiri Lohis and Vishali Lohis since 19.11.1974 to 25.5.1985. The plaintiff is the registered proprietor of Trade Marks KASHGARI Lohi with the device of Lamb registered under No. 81888 as of 23rd June, 1943 in Class 24 in respect of Lohies (Shawls) made of wool and DHARIWAL registered under No. 17000 dated 2nd June, 1943 in Class 24 in respect of woollen and worsted piece goods, tissues and textile fabrics of all types included under class 24 and not included in other classes, blankets

included in Class 24. The marks used by the plaintiff are old marks and are protectable u/s 32 of the Trade and Merchandise Marks Act. 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. The trade marks Along with device of Lamb constitute an original artistic work within the meaning of Section 2(c) of the Copyright Act. The plaintiff is the first person to adopt and use the same.

3. The defendant No. 1 is an ex-employee of the plaintiff and was earlier trying to counterfeit the trade marks of the plaintiff from time to time. The plaintiff had taken action against defendant No. 1 and on 13th March, 1992, he gave an undertaking to the effect that no duplicate lohies would be sold by them and they will not give any chance of complaint about the spurious material as that of the plaintiff. The defendants did not stop the said activities to infringe the trade mark of the plaintiff. The defendants were fully aware about the name, goodwill and reputation and the trade marks of the plaintiff from the very beginning. Defendant Nos. 2 to 5 are the relatives of defendant No. 1 and defendants 6 to 8 are distributors/dealers/shop-keepers of defendants 1 to 5, who are selling the infringing goods. On 1st August, 1994, the defendants applied for registration of trade mark DWM-DHARIWAL under application No. 526317 in Class 24 in respect of Blankets, Shawls, Lohies and other woollen piece goods in Class 24. The plaintiff opposed the application. The said application was decided in favor of the defendants. The plaintiff filed an appeal in this Court. The appeal was allowed. It was held that use of trade mark by the defendants would tantamount to confusion and deception in the market and the user was totally tainted and dishonest on the part of the defendants. plaintiff's suit No. 2174/97 against defendants 1 to 5 is also pending in which the plaintiff is seeking certain reliefs. The defendants gave a legal notice dated 4th January, 1999 to the plaintiff asking them to desist forthwith from using the trade mark KASHGIRI and/or any other trade mark, which is identical with or deceptively similar to the trade mark of defendants' mark etc. The plaintiff replied to the said legal notice on 6th March, 1999. On 19th January, 2000 the defendants 1 to 5 gave a warning notice in Punjab Kesari pertaining to trade marks No. 70 Dhariwal-DWM, No. 100 VAISHALI, No. 170 NEPOLI, No. 111 ALAKNANDA, KASHGIRI, NEELGIRI, KAILASHGARI VIP with the device of a Lamb. The conduct of defendants is to grab the trade marks of the plaintiff in spite of the order passed by this Court. The defendants are counterfeiting the trade marks of the plaintiff in all respect in spite of undertaking dated 12th March, 1992 and the judgment passed by this Court. Hence the present suit.

4. Summons were issued to the defendants by order dated 21st June, 2000. An interim order was also passed in favor of the plaintiff and against the defendants. The defendants were served. Despite service, the defendants did not enter appearance nor file any written statement.

5. By order dated 25th July, 2001, the defendants were proceeded ex parte. The plaintiff was allowed to lead ex parte evidence by way of affidavit. The plaintiff

has filed affidavit by way of evidence. The evidence is duly supported by the original documents. The documents are exhibited as Ex. P-2 being caution notice issued by defendants, D-1 being notice dated 4.1.1999 issued by the defendants to the plaintiff, P-7A being reply by the plaintiff to the notice dated 4th January, 1999, P-8 to P-14 being samples of plaintiff's products, D-2 being caution noticed issued by the defendants, D-3 to D-6 being samples of the defendants' products.

6. I have heard learned counsel for the plaintiff, perused the plaint and considered the documents on record. I have also gone through the evidence led by the plaintiff and the documents exhibited.

7. During the hearing, the plaintiff gives up its claim for rendition of accounts.

8. The defendants failed to enter appearance despite a valid service. They also failed to file written statement in rebuttal of the allegations made in the plaint. The allegations in the plaint are deemed to be admitted.

9. Accordingly, a degree for permanent injunction is passed in favor of the plaintiff and against the defendants restraining them 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 KASHGARI, trade mark Nos. 70, 100, 170, 111, Kailashgari, Vaishali, Alaknanda and Neelgiri and device of a Lamb as well as the mark KASHGIRI as part of their trading style and from any other mark or device which is deceptively similar to that of the plaintiff's trade mark and device.

10. The suit and application stands disposed of.