
(2005) 09 DEL CK 0125

In the Delhi High Court

Case No : CS (OS) No. 1666 of 2003 and is 8998 of 2003

Castrol Limited and Another

APPELLANT

Vs

Rajan Sales Corporation and Another

RESPONDENT

Date of Decision : 15-09-2005

Acts Referred:

Citation : (2005) 09 DEL CK 0125

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : Manmohan Singh, for the Appellant;

Final Decision : Disposed Off

Judgement

Swatanter Kumar, J.—The present suit has been filed by the plaintiff praying for decree for permanent injunction restraining the defendants from manufacturing, selling and offering for sale, advertising directly or indirectly dealing in Automotive Filter by passing off their goods as the goods of the plaintiff by using the trademark gTS, Castrol logo and similar colour scheme, get up and lay out thereof and/or from using any other trademark, which is deceptively similar with the trademark of the plaintiff. It is further prayed that a decree for injunction restraining the said defendants from using cartons like Annexure "X" to the plaint having the same colour scheme, get up, layout as well as from using Castrol logo. The plaintiff further prays for passing of a decree for rendition of accounts and for delivery of infringing material.

2. The suit is based upon registered trademark, Copyright and the legal rights available to the plaintiff in common law.

3. plaintiff No. 1 is a limited company incorporated under the laws of England and having its registered office at Burmah House, Pipers Way, Swidon, Wiltshire SN3 1RE, U.K. plaintiff No. 2 again is a company duly incorporated under the provisions of Indian Companies Act, 1956 and having its registered office at New Delhi. Mr. Murlidhar Balasubramaniam is the constituted attorney of the plaintiffs

and is duly authorised to sign and verify the plaint and to institute present proceedings on behalf of the plaintiffs.

4. The plaintiff No. 1 is an international company renowned in the world and having operations in several countries including India and had commenced its business in India in the year 1919. plaintiff No. 2 was set up on 31st May, 1979. The company is involved and carrying on business of processing and marketing high grade Automotive and industrial lubricants and speciality products. plaintiff Nos. 1 and 2 claim to be registered trademark holders and claim definite user for a considerable time. According to the plaintiff they have the following trademarks:-

(a) Trade Mark CASTROL registered under No. 373774 as of 23rd March, 1981 registered in class 9 in respect of Apparatus for testing lubricants, hydraulic oils, hydraulic fluids, heat-transfer fluids and anti-freeze preparations, fire extinguishing apparatus for use in motor land vehicles, radio receiving apparatus, measuring instruments, protective helmets for motor cyclists, all being goods includes in Class 9 excluding electrodes for electric welding and tools and apparatus for welding and soldering included in Class 9.

(b) Trade mark GTX is also registered under No. 251571 in Class 4 in respect of industrial oil and greases, other than edible oil and fats, essential oils, lubricants and fuels.

(c) The Trade Mark CASTROL is registered under No. 260626 dated 17th November, 1969 in respect of industrial oil and greases (other than edible oils, fats and essential oils), hydraulic fluids being oil, lubricants, fuels, illuminants as a distinctive logo comprising a solid coloured circle across which is an irregular shaped white portion into about one half of the total area of the mark.

The word CASTROL appears in an oblique script across the horizontal member of the said white portion.

(d) The Trade Mark CASTROL is also registered in Class 7 under trade mark No. 373762 as of 27th March 1981 in respect of machines, machine tools, transportable machines for dispensing oil and greases, pumps included in class 7.

5. The plaintiff No. 2 is the permitted user of the above-mentioned trade marks and the trade marks are duly renewed from time to time and are still subsisting on the Register of Trade Marks.

6. The plaintiffs have been using the trade mark GTX with or without the trade mark CASTROL which is a distinctive trade mark and is also exclusively associated with the plaintiffs and no one else. The said trade mark GTX has been exclusively associated and identified with the goods of the plaintiffs alone and no one else. The said trade marks GTX with or without the trade mark CASTROL has been used by the plaintiff for the first time in India and under the law no other person except the plaintiffs have got any right to use the same.

7. plaintiff No. 1 has shown its turn over in business in paragraphs 12 and 13 of the plaint and for the year 1999-2000 it was stated to be 2943700,000 pounds sterling while that of plaintiff No. 2 in India for the same year was shown to be Rs. 11,95,00,00,000. They claim to have incurred heavy expenditure on advertisements, sale promotions and publicity of their products in India.

8. During the end of June, 2003, the plaintiffs came to know that defendants are violating the plaintiffs' registered trademarks and copyright with ulterior motives. They are producing spurious goods and are selling the same under the logo, lay out, colour scheme and in the packages similar to that of the plaintiff. They are also using the trademark in a manner, which is deceptively similar to the trademark of the plaintiff. The packages used by the defendants have been filed on record to show the patent copying and intent to mislead the customers, which compelled the plaintiff to file the present suit while claiming above reliefs.

9. Summons in the suit were issued to the defendants but they could not be served in ordinary manner and as such vide order dated 6th November, 2004 it was ordered that the defendants be served by publication in the newspaper "Statesman" and by way of display on the Court notice Board. As such the defendants were served by publication. Nobody appeared on their behalf and vide order dated 6th December, 2004, ex parte proceedings were ordered to be taken against defendant No. 2. Liberty was granted to the plaintiff to file evidence by way of affidavits. Defendant No. 1 had already proceeded against ex parte vide order dated 19th March, 2004. The plaintiffs filed affidavit by way of evidence which was taken on record and the documents annexed to the said affidavit were also exhibited before the joint Registrar.

10. In the affidavit filed by Mr. Murlidhar Balasubramaniam, which is exhibited as Exh. PW1/A all the averments made in the plaint have been reiterated and in addition thereto the plaintiff has also filed the power of attorney in his favor, which is exhibited as Exh. P-I. Documents having bearing on the matter in issue of the present case are exhibited as Exh. PI to P-9. Exhibits P-2 to P-5 are the renewals of different registered trademarks of the plaintiff in regard to goods in question.

11. The plaintiff has also filed on record Exh. P-8, which is an extract from the Register of Copy Right, Government of India, showing that the CASTROL GTX EXTRA is the duly registered copyright of the plaintiff. The detailed brochures and advertisement material have been placed on record by the plaintiff to show the colour scheme, contents and utility of the goods manufactured by the plaintiff. The packaging of the CASTROL GTX in a particular lay out colour scheme has been placed on record while the infringing carton packaging are exhibited as Exh. P-9 on record. At page 55 of the documents, a comparative display of the goods of the plaintiff and that of the offending goods by the defendants has been placed on record. The plaintiff has also placed on record the judgments of this Court as well as the interim orders in support of their claim. Reliance is also placed on the judgment of this Court in the case of Castrol Ltd. and Anr. v. Auto

Link Sales Corporation and Anr. 2003 (26) PTC 151 (Del).

12. According to the plaintiff, it has come to know about the manufacture and sale of offending articles in the year 2003 and without any delay. The plaintiff had filed the present suit in that very year. The evidence on record clearly shows that defendants are infringing the trademark of the plaintiff and also violating the protection available to the plaintiff under the Copyright Act as both the trademark and copyright of the plaintiff in the trademark, lay out colour scheme and design are duly registered in accordance with law.

13. During the course of hearing, learned Counsel for the plaintiff made a statement that the plaintiff does not press for relief of rendition of accounts and recovery of money on that account.

14. In view of the statement made the suit of the plaintiff in that regard is dismissed as not pressed.

15. In view of the above discussion, the suit of the plaintiff is decreed against the defendants and a decree for permanent injunction restraining the defendants, their associates, agents, shopkeepers, dealers, distributors and all other persons acting on their behalf from manufacturing, selling and offering for sale, advertising directly or indirectly dealing in Automotive Filter by passing off their goods as the goods of the plaintiff by using the trademark gTS, Castrol logo and similar colour scheme, get up and lay out thereof and/or from using any other trademark, which is deceptively similar with the trademark of the plaintiff. A further decree for injunction is passed in favor of the plaintiff and against the defendants restraining them from using cartons like Annexure "X" to the plaintiff having the same colour scheme, get up, layout as well as from using Castrol logo. The plaintiff shall be entitled to the costs in the suit.

16. The suit stands disposed of. is 8998/2003 is also disposed of.