
(2008) 10 DEL CK 0010
In the Delhi High Court
Case No : CS (OS) 1939 of 2002

Cico Technologies Ltd. and Another	APPELLANT
Vs	
Network Marketing and Exports Inc. and Others	RESPONDENT

Date of Decision : 23-10-2008

Acts Referred:

Citation : (2008) 10 DEL CK 0010

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Ashok Chhabra, for the Appellant; Ex parte, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The plaintiffs have instituted the present suit, inter alia, for restraining the infringement and passing off of the trade mark CICO in respect of Polymer Modified Cementitious Material. It is, inter alia, the case in the plaint that M/s Structural Waterproofing Company Pvt. Ltd. is the registered owner of the said mark; that the said company belonged to the family of one Shri S.R. Gupta; that upon the demise of Shri S.R. Gupta, as per the settlement between his family members, the said mark fell to the share of Shri Amit Gupta s/o Shri S.R. Gupta; that accordingly M/s Structural Water Proofing Company Pvt. Ltd. assigned the said mark in favour of the plaintiff No. 2 M/s Bengal Ceramics Pvt. Ltd. which, in turn, assigned the said mark in favour of the plaintiff No. 1 - both plaintiffs 1 and 2 being under the management and control of the said Shri Amit Gupta; that the defendants 1, 2 and 3 were the distributors of the goods under the trademark CICO and have attempted to sell the same goods under the trademark SEIKO which is phonetically same and identical to the plaintiffs' mark CICO. The plaintiffs, besides the relief of permanent injunction, also sought the relief of investigation against the defendants 2 and 3, the relief of rendition of accounts and for delivery of goods bearing the infringing mark and also sought a direction against the Registrar of Trademarks, impleaded as the defendant No. 4, to cancel the registration of the trademark SEIKO in the name of the defendant No. 1.

2. The defendants 1, 2 and 3 appeared on the date the suit was listed first, perhaps noticing the same in the cause list. The defendants 1, 2 and 3, however, failed to file any written statement and vide order dated 23rd November, 2004 the right of the defendants to file the written statement was closed. The plaintiffs were thereafter directed to file affidavits by way of their evidence. A perusal of the record shows that the defendants appeared before the Joint Registrar on one of the dates but again stopped appearing and did not cross examine the witnesses of the plaintiff.

3. The plaintiffs filed affidavits by way of evidence of Shri Amit Gupta aforesaid and Shri D Bhattacharya, Deputy General Manager, Finance and Commercial of the plaintiff No. 1 company. The plaintiffs have, in their ex parte evidence, besides the oral statements of the witnesses of the plaintiffs to the effect that M/s Structural Waterproofing Company Pvt. Ltd. was the registered owner of the trademark and had assigned the same in favour of the plaintiff No. 2 who, in turn, has assigned the same in favour of the plaintiff No. 1, also proved as Exhibit PW1/7A the receipt on account of Form TM-23 under the Trademark Rules of lodging of registration of assignment of the trademark from the name of the plaintiff No. 2 to the name of the plaintiff No. 1 and as exhibit PW1/7B the receipt of Form TM-24 with respect to registration of assignment of the trademark from M/s M/s Structural Waterproofing Company Pvt. Ltd. to the plaintiff No. 2 M/s Bengal Ceramics Pvt. Ltd. The plaintiffs have also proved as Exhibit PW1/12 the photographs of the product of the defendants bearing the mark SEIKO. Exhibits PW1/5 and PW1/6 are the extracts of the resolution of the Board of Directors of M/s Structural Waterproofing Company Pvt. Ltd. with respect to the assignment of the trademark in favour of M/s Bengal Ceramics Pvt. Ltd. and Exhibit PW1/8 is the deed of assignment by the M/s Structural Waterproofing Company Pvt. Ltd. in favour of the plaintiff No. 2 M/s Bengal Ceramics Pvt. Ltd. Exhibit PW1/9 is the settlement deed between the family members of Shri S.R. Gupta aforesaid. The said evidence remains unrebutted by the defendants.

4. Even though the witnesses of the plaintiffs have not deposed of the plaintiffs having been registered as the owners of the trademark but in view of the judgments of this Court in M/s. Modi Threads Limited Vs. M/s. Som Soot Gola Factory and another, Grandlay Electricals (India) Ltd. v. Vidya Batra 1998 PTC (18) Delhi and Astrazeneca U.K. Ltd. and Anr. v. Orchid Chemicals and Pharmaceuticals Ltd. (2006) PTC 733 Delhi that rights in the trademark accrue on the basis of assignment deeds and such rights cannot be denied on the ground that in the records of the Registrar of Trademark, the mark is still shown in the name of the assignor and that the assignee is entitled to protect the violation of the trademark at the hands of unscrupulous persons.

5. The mark adopted by the defendants is found to be infringing the registered trademark of the plaintiff. Accordingly I find the plaintiffs entitled to the relief of permanent injunction. However, the plaintiffs have not led any evidence with

respect to the entitlement to any accounts from the defendants. It was not even averred that notwithstanding the non grant of any interim order against the defendants, the defendants have continued to sell the goods under the trademark SEIKO.

6. Accordingly, a decree for permanent injunction is passed in favour of the plaintiffs and against the defendants 1, 2 and 3 restraining them, their servants, agents, nominees from manufacturing, selling, offering for sale, advertising or dealing in Polymer Modified Cementitious Materials under the trademark SEIKO or any other trademark which is deceptively similar to the trademark CICO of the plaintiffs. The plaintiffs shall also be entitled to costs of the suit against the defendants 1, 2 and 3.

Decree sheet be drawn up accordingly.