

(2000) 07 DEL CK 0157
In the Delhi High Court
Case No : Suit No. 1433 of 1996

Dharam Chand Gambhir

APPELLANT

Vs

Milan Confectionary and Another

RESPONDENT

Date of Decision : 17-07-2000

Acts Referred:

Citation : (2000) 56 DRJ 561

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

Bench : Single Bench

Advocate : S.K. Bansal, for the Appellant;

Judgement

C.K. Mahajan, J.—The plaintiff has claimed to be proprietor of the trade mark "GP" logo/label since 1988 for their goods, i.e. confectionery (non-medicated), sweetmeats and chewing gum balls. The application of the plaintiff for registration of the trade mark "GP" is pending in the office of Trade Marks Registry, New Delhi since April, 1996. Therefore, the plaintiff claims to be the copyright holder of the trade mark GP, logo or label on account of its long, continuous, extensive and exclusive user. It has built up a valuable trade under the said trade mark and spent a sizable amount on the publicity of the sale trade mark which has become distinctive in the trade. The goods of the plaintiff are being recognised by the public by the trade mark "GP".

2. The defendant is also a manufacturer of confectionery goods, sweetmeats and chewing gum bails under the trade mark "CP" which is identical with or deceptively similar to that of the plaintiff in its getup, makeup and manner of writing. By way of this suit the plaintiff prays for a decree of permanent injunction restraining the defendant, his servants, agents, representatives, distributors and all others acting for and on behalf of the defendants from manufacturing, marketing and selling, offer for sale, advertising or displaying directly or indirectly or dealing in confectionery (non-medicated) & Sweetmeats and chewing gum bubbles and other alied goods under the impugned trade mark CP or any other trade mark, logo or label identical with or deceptively similar to

that of the plaintiffs. The defendants failed to file any written statement despite service and were proceeded against ex parte by order dated 6th February, 1997. The plaintiff has filed affidavit by way of evidence.

3. I have perused the affidavit, plaintiffs trade mark "GP" Ex.P-7, and defendants' trade mark "CP" Annexure B. The defendants' trade mark "CP" logo is identical to and deceptively similar to that of the plaintiff in its get up, makeup, manner of writing and colour combination. The purchaser of the confectionery goods, sweetmeats and chewing gum balls are mostly children and school students. They can be deceived and there is every likelihood of passing off the goods of the defendants as that of the plaintiff. The plaintiff is suffering huge losses in its business and goodwill since both the plaintiff and the defendant are in the same business. The act of the defendants amounts to infringement of plaintiff's copyright and passing off of copyright.

4. In the circumstances the defendant, its servants, agents, representatives, distributors and all others acting for and on behalf of the defendant are restrained from manufacturing, marketing and selling, offering for sale, passing off, advertising or displaying directly or indirectly or dealing in confectionery (non-medicated) & Sweetmeats and chewing gum bubbles and other allied goods, under the impugned trade mark CP or any other trade mark, logo or label in identical with or deceptively similar to that of the plaintiffs. All the finished and unfinished goods bearing the trade mark "CP", logo or label including cartons, packing material, blocks, dyes, display boards and sign boards etc. be delivered to the plaintiff for the purpose of destruction.

5. The suit is decreed accordingly. Parties to bear their own costs.