
(2022) 03 DEL CK 0207

In the Delhi High Court

Case No : Civil Suit (COMM) No. 696 Of 2021

Exxon Mobil Corporation

APPELLANT

Vs

Mobol Armour Corporation LLP

RESPONDENT

Date of Decision : 24-03-2022

Acts Referred:

Citation : ???

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Anuradha Salhotra, Sumit Wadhwa, Kaveri Jain, Rahul Vidhani?

Final Decision : Disposed Of

Judgement

Prathiba M. Singh, J

1. This hearing has been done through hybrid mode.
2. The present suit has been filed by the Plaintiff - Exxon Mobil Corporation, seeking protection of its trademark 'MOBIL' which is being used for lubricants internationally since 1882. The Plaintiff is engaged in the manufacturing and sale of petroleum and related products in more than 160 jurisdictions in the world. The earliest trademark registration for the trademark 'MOBIL' dates back to 9th September, 1942 and thereafter several registrations have been granted in 1947, 1972, 1996, 2004. The mark 'MOBIL' is stated to be a globally renowned mark. In 1999-2003, sales of 'MOBIL' brand lubricants is stated to have been almost US\$402 billion, throughout the Asia Pacific region. The Plaintiff has received various recognitions and awards for its lubricants and greases.
3. The present suit has been filed against the Defendants which adopted and started using the mark 'MOBOL' in respect of similar products, i.e., lubricants, motor oils, additives, grease, vehicle care products, etc. The Defendant has incorporated an LLP by the name 'MOBOL ARMOUR CORPORATION LLP'. The Defendant also applied for a trademark registration of the mark 'MOBOL' on 23rd

January, 2019, which appears to have escaped the attention of the Plaintiff. The Defendant obtained the trade mark registration in July 2019, which is in the name of one of the spouses of the partners of the LLP and started using the said mark for lubricants. The Defendant is also stated to be using the domain name: <http://www.mobol.in/>.

4. Ms. Salhotra, Id. Counsel for the Plaintiff, submits that the mark has been protected against infringement by various orders in respect of various 'MOBIL' formative marks. Mr. Rahul Vidhani, Id. Counsel for the Defendant, submits that the Defendant started using the mark only after the registration was granted and after the filing of the suit, the Defendant has stopped the using the mark 'MOBOL', since 1st April, 2021 onwards. He further submits that the Defendant has suffered loses and is in fact willing to suffer an injunction and has no intention to continue the use of the mark 'MOBOL'. Reliance is placed upon a Chartered Accountants' certificate dated 22nd January, 2022, placed on record, to submit that the Defendant has in fact been running into losses of around 2 lakhs and around 23 lakhs, over the past few financial years.

5. Id. Counsel for the Plaintiff has refuted the Chartered Accountant's certificate given by the Defendant on record, and argues that as per the publicly available records of the LLP, the Defendant had revenue of Rs.24,46,063/- in the year ending on 31st March, 2020, and of Rs.48,05,395/- in the year ending on 31st March, 2021 and hence the sales of the infringing products were substantial. The documents handed over with the financial statements of the Defendant are taken on record.

6. The Court has perused the record and the documents placed, as also heard the submissions made by the parties. Insofar as the use of the mark 'MOBOL' is concerned, there is no doubt in the mind of this Court that the same is almost identical to the Plaintiffs' renowned trade mark 'MOBIL'. The Defendant's adoption is clearly dishonest and mala fide inasmuch as 'MOBIL' is a mark which is more than 150 years old in the same field of industrial oils, greases, lubricants, etc. The Defendant cannot be unaware of the mark 'MOBIL' and its reputation. The various orders placed on record show that the mark 'MOBIL' has been protected repeatedly. Details of the same are stated to be as under:

S.

No.

Case Particulars

Date of Injunction

Impugned Mark/Name

Goods/Services

1.

ExxonMobil Corporation v. Mobil Refinery Ltd. & Anr.

[CS(OS) 568/2012]

March 05,

2012

Trading style "MOBIL

Refineries Ltd. and MOBIL Securities Ltd."

Lubricants

2.

ExxonMobil Corporation v. Mandanlal Khandelwal and Anr.

[CS(COMM) 1394/2016]

October 06,

2016

MOBOLENE/

Lubricants

3.

ExxonMobil Corporation v. Rajiv Kohli and Anr.

[CS(COMM) 161/2019]

March 28,

2019

MOBOLENE/

Lubricants

4.

ExxonMobil Corporation v. Gaurav Goel

[CS(COMM) 219/2019]

April 29,

2019

GOLDEN MOBIL

Lubricants

5.

ExxonMobil Corporation v. Bharadwaj Oil & Ors.

[CS(COMM) 322/2019]

June 21,

2019

MOBIL and

Pegasus device, i.e.,

for counterfeit products

Lubricants

6.

ExxonMobil Corporation v. Alinaki Gulamali Meghani & Ors.

[CS(COMM) 505/2019]

September 16, 2019

MOBILO/

Lubricants

7.

ExxonMobil Corporation v. Dharmendra Parekh and Anr.

[CS(COMM) 624/2019]

November 14, 2019

MOBILLEX/

Lubricants

8.

ExxonMobil Corporation v. M/s. Mobil House Through its proprietor

Mr. Naresh Agarwal

[CS(COMM) 145/2020]

December 14, 2020

Trade name MOBIL HOUSE

Lubricants

9.

ExxonMobil Corporation v. Mobil Fuels Private Limited

[CS(COMM) 608/2021]

November 29, 2021

MOBIL FUELS/

Used as a trade mark, trade name, trading style and domain name in respect of door to door delivery

of fuels

10.

ExxonMobil Corporation v. Ms. Bike Zone Siddhivinayak Autoline

[CS(COMM) 606/2021]

November 26, 2021

MOBIL SUPER MOTO/

for counterfeit products

Lubricants

7. Moreover, in the opinion of this Court, the mere showing of losses also ought not to deter this Court from awarding costs/damages, so long as illegal and unlawful use of an identical/deceptively similar trade mark is admitted or proved on record. Accordingly,

(i) The Defendant, its promoters, their family members and any other party acting for or on its behalf, are restrained by an order of permanent injunction, from using the mark or name 'MOBOL' or any other mark or name identical or deceptively similar to the Plaintiff's mark 'MOBIL' in respect of any products or for its manufacture and sale, including for industrial oil, greases, lubricants, etc.

(ii) The Defendant is also restrained from using the word 'MOBOL' as part of its incorporated name for the LLP. Accordingly, the Defendant shall apply for either a name change of the LLP or closure of the LLP within a period of one month from today.

(iii) Insofar as the trademark registration is concerned, the trademark application no.4064869 granted in favour of Mr. Rajesh Sethi, who is the spouse of one of the partners of the Defendant, i.e., Ms. Preeti Sethi, shall be cancelled as the same is identical and deceptively similar to the registered trademark 'MOBIL' of the Plaintiff. The orders of cancellation shall be passed by the Trademark Registry, within two months upon receiving the communication of this order.

(iv) The domain name www.mobol.in which has been registered by the Defendant shall be transferred in favour of the Plaintiff.

(v) If the Defendant has registered any domain name or any other entity bearing the mark 'MOBIL', the said domain name shall also be surrendered and the said trade name/trading style shall also be given up and shall not be used.

8. It is made clear that the present order shall bind the Defendant, its partners,

their family members and all others acting for and on their behalf.

9. Since the Defendant has already agreed to give up the use of the mark 'MOBOL', no further order of damages or delivery up are being passed. However, in the facts and circumstances of this case, this Court deems it fit to direct the Defendant to pay a sum of Rs.1 lakh towards costs. Ld. Counsel for the Plaintiff submits she has no objection if the same is deposited with the DHCBA Pandemic Relief Fund [A/c No.15530110152195, IFSC Code- UCBA0001553, UCO Bank, Delhi High Court] within four weeks. The said amount shall be utilised only for the purposes of distribution to lawyers and their families who have deceased/suffered, during the pandemic. Hony. Secretary, Delhi High Court Bar Association to confirm receipt of the said amount, on the next date. The proof of costs deposited, shall be filed by the Defendant before the Registry, with confirmation to the Plaintiff as well.

10. The Registry to put up a note after two months as to the confirmation of payment of costs. If the same is not deposited, then the Plaintiff has liberty to move an application seeking restoration of the suit and trial in the said suit shall continue, insofar as relief of rendition of accounts and damages is concerned.

11. Since the matter has not proceeded to trial, the Plaintiff is granted a refund of 50% of the Court fees. The plaintiff being a US corporation, the said refund shall be issued to the Plaintiff, through its Counsel.

12. Accordingly, the present suit is decreed in the above terms. All pending applications are disposed of in the above terms.

13. Copy of today's order be supplied to the Trademark Registry (Address: Trademarks Registry, New Delhi, Boudhik Sampada Bhawan, Plot No. 32, Sector 14, Dwarka, New Delhi-110078; Email: cgoffice-mh@nic.in, hodel.tmr@nic.in).

14. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as the certified copy of the order for the purpose of ensuring compliance. No physical copy of orders shall be insisted by any authority/entity or litigant.