

(2018) 10 DEL CK 0286

In the Delhi High Court

Case No : Civil Suit (COMM) 213 OF 2018

Giorgio Armani S P A & Ors

APPELLANT

Vs

Yogesh Mordani & Ors

RESPONDENT

Date of Decision : 03-10-2018

Acts Referred:

Trade Marks Act, 1999 — Section 29, 30, 30(3)

Citation : (2018) 10 DEL CK 0286

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

Prathiba M. Singh, J

1. Plaintiff No.1- Giorgio Armani S. P. A. is an Italian company and Plaintiff No.2 is its Swiss subsidiary. The Plaintiff Nos.1 & 2 are known for high

end fashion products. They together own the "ARMANI" marks, which are Giorgio Armani, Armani Collezioni, Emporio Armani, AJ | Armani

Jeans, AX / Armani Exchange, Armani Junior, and Armani/Casa (hereinafter "ARMANI" marks).

2. In India, the Plaintiff Nos.1 & 2 market and sell their products under the "ARMANI" marks through Plaintiff No.3 "Genesis La Mode

Pvt. Ltd.

3. The name "ARMANI" is coined from the founder of the Plaintiff Company, namely Giorgio Armani. The ARMANI menswear label was

launched in the early 70s. The reputation of the brand/founder grew by leaps and bounds in the 1980s, when Armani became the first

fashion designer since the 1940s to feature on the cover of the Time magazine.

The ARMANI label for products/garments expanded internationally into numerous jurisdictions, including Europe, USA, the Americas and the Asia Pacific. The Plaintiffs advertise and publicize their products through the website www.armani.com. It is pleaded in the plaint that the Plaintiff's ARMANI products enjoy great reputation even in India. Since 2008, the products under the ARMANI marks have been sold in India and it is pleaded that even prior to the year 2008, the marks had enjoyed transborder reputation. Worldwide sales and advertisement figures have been set out in the plaint. The ARMANI marks are registered in several countries of the world, including India. The details of the same have been set out in the documents.

4. The present suit was instituted against the Defendants, who are in the business of organizing various events/exhibitions of high-end designer products. The Defendant No.1 is the partner of Defendant Nos.2 and 3. The said firms are M/s. Solo Mio and M/s. Luxury Solo respectively. The Defendants together organize various exhibitions of high-end luxury brands. The Plaintiffs claim that in April, 2014 they came across exhibitions held by the Defendants in various five-star hotels, wherein the luxury products bearing the ARMANI marks were being sold. Advertisements for these exhibitions were carried in leading newspapers such as Hindustan Times, Times of India etc. However, the Defendants were offering huge discounts on these products. The Plaintiffs have relied upon an advertisement dated 28 th September, 2013 (Ex.PW-1/7) wherein the Defendants have also claimed that the products sold by the Defendants are under warranty. The photographs of the exhibitions have been placed on record. The Plaintiffs got purchase effected of some products bearing the ARMANI marks from the exhibition of the Defendants. The said products were being sold by the Defendants on the basis that they are genuine and are covered by warranty. However, the Plaintiffs' case is that the products have been sold without authenticity cards or any price tags and hence the Defendants' activities are likely to cause huge damage to the Plaintiffs' mark and business. It is also pleaded that since the products did not bear price tags, which cannot be the case in case the products are original, they can be easily inferred as being counterfeit.

5. The suit was first listed on 22nd August, 2014, on which date, this Court had

granted an interim injunction restraining the Defendants from selling any goods under the 'ARMANI' marks. The operative portion of the said order is set out hereinbelow:

'Accordingly, till the next date of hearing, defendants are restrained from selling any goods under all the brand names 'Giorgio Armani Group of companies including the mark ARMANI', without informing the customers that the goods which are being sold are not subject to warranty or exchange by the plaintiffs company. A statement shall also be made in the advertisement, if any, to be issued by them to the effect that the goods using the plaintiffs' trade mark, which are being sold, are not subject to warranty or exchange by the plaintiffs company.'

6. The Defendants had entered appearance and were directed to file their written statement. However, no written statement has been filed till date.

The Plaintiffs thereafter, filed ex-parte evidence by way of an affidavit of Sh. Rahul Sethi, who was the constituted attorney.

7. The evidence of the Plaintiffs has closed subsequently. The Defendants and Plaintiffs were attempting settlement, which did not come through in mediation proceedings. Thereafter, the Defendants stopped appearing in the matter.

8. This Court has considered the averments on record as also the evidence filed by the Plaintiffs. It is clear that the Defendants do not have any right to use the various brands of 'GIORGIO ARMANI' without the permission of the Plaintiffs.

9. The fact that the Defendants are offering for sale products under the various ARMANI marks and holding exhibitions in respect thereof shows that they are well aware of the value of the said marks. The advertisements placed on record show that the Defendants are offering huge discounts in the sale of these designer products. The Plaintiffs have also placed on record the 'General Condition of Sale' of Plaintiffs' products. The Plaintiffs, being owners of the trademark GIORGIO ARMANI and other trademarks, are entitled to protection in law. It is a fact of which judicial notice can be taken, that the Defendants have been enjoined in the past in respect of brands such as Jimmy Choo, Burberry etc. Copies of the said orders have been filed on record. A perusal of the photographs of the Defendants' products clearly shows that the Defendants are using the said

marks.

10. The legal position is quite clear. Under Sections 29 & 30 of the Trade Marks Act, 1999, causing impairment to a product would also constitute

infringement. While the Defendants cannot be stopped from selling genuine products of the Plaintiff, in accordance with the law, causing any

impairment or change in the condition of the products would be violative of Section 30(3). Moreover, even genuine products have to be lawfully

acquired as per the said provision. The Defendants having not filed written statement in this matter, despite having been served and having not taken

the position that the products are genuine, therefore, cannot be given any benefit of doubt. The Defendants have neither argued nor pleaded that the

products are genuine. The fact that the original price tags of the Plaintiffs were also missing and the products were being sold without price tags adds

credence to the argument that the products are counterfeit.

11. The use of a trademark without permission, consent or license of the registered trademark owner, per se, results in the infringement of the mark.

12. The suit is therefore liable to be decreed for permanent injunction in terms of para 41(a) and (b) of the plaint.

13. None appears for the Plaintiffs or presses for the decree of damages or delivery up. Accordingly, prayers (c) and (d) are rejected. Decree sheet

be drawn accordingly.

14. The suit is disposed of in the above terms.