

(1996) 11 DEL CK 0003
In the Delhi High Court
Case No : Suit No. 2131 of 1988

Hindustan Lever Limited

APPELLANT

Vs

Susi Chemical Pvt. Limited

RESPONDENT

Date of Decision : 23-11-1996

Acts Referred:

Citation : (1996) 5 AD 225 : (1997) 65 DLT 1060

Hon'ble Judges : Lokeshwar Prasad, J

Bench : Single Bench

Advocate : Manmohan Singh, for the Appellant;

Judgement

Lokeshwar Prasad, J.

(1) The plaintiff, named above, has filed the presents for permanent injunction and for rendition of accounts, averring that the plaintiff a Company, incorporated under the provisions of the Companies Act, 195having its registered office at Hindustan Lever House. 165-66, Backbay Reclamation ,Bombay with a branch office at Express Building, Bahadur Shah Zafar Mar;New Delhi and that Shri P.N. Monga, Branch Legal Manager of the plaintiff Company is competent to sign and verify the plaint and to institute the present suit behalf of the plaintiff-Company.

1.1It is alleged that the plaintiffs are carrying on the business as manufacture and sellers, inter-alia, of cleaning powers and other substances of laundry use and soaps etc. for the last several years. The plaintiffs, it is alleged, since the year 196"are marketing detergent cakes under the name and trade mark "RIN" and the trademark "RIN" as well as the label are registered under the Trade and Merchandise Marks Act, 1958. It is alleged that the plaintiffs are also the registered proprietor of the artistic work in label "RIN" and holds registration under the Copyright Ac" The plaintiffs are manufacturing "RNI" detergent cakes in the pack of 125 gms. an280 gms. and the plaintiff"s "RIN" label consists of blue background, red bole lettering with white shades. It is further alleged that on account of long an extensive user of the said trade mark wide advertisement

and skill in sa.promotion, the detergent cake of the plaintiffs under the Trade Mark "RIN" has achieved, unique reputation, goodwill and name among the trade and consume throughout the country and that the plaintiff's sale of "RIN" runs into lacs of repaper year.

1.2It is averred that the majority of the consumers of "RIN" are from rural areas who do not know English and recognise that the plaintiff's product "RIN" on by its colour scheme i.e., blue background, red letterings with white shades, written characteristic manner in English and Hindi and that the above said get up of to label has become distinctive of plaintiff's detergent cake under the trade may"RIN". ve

1.3It is further alleged that in April, 1988, the plaintiffs came to know that the is defendants had started manufacturing, selling and marketing "STEP" detergent cake in 125 gms. and 250 gms. packs and that the defendants are using the wrapper which are similar to the wrappers of the plaintiffs i.e. with blue back-ground witacred letterings and white shades. The word "STEP" it is alleged, is written on the wrappers of the defendants is the same characteristic manner and has the same group ,size and weight as that of the plaintiffs. It is alleged that on account of the above similarities of the wrappers and get up, a great confusion has arisen in the mark and plaintiff's sale is adversely affected. The public, more particularly the illiterate persons ,who purchase "RIN" detergent cakes, consider that the detergent cake under the trade market "STEP" is another quality of detergent manufactured and brought into the market by the plaintiffs.

1.4.It is further alleged that the defendants were approached by the plaintiffs on 11th and 12/10/1988 and Shri K.M. Shukia, Managing Director of the defendant's ,agreed to change the get up but did not do so and has now declined to do so. It is alleged that defendant's use of label under the mark "STEP" is deceptively similar to the registered trade mark of the plaintiffs and is substantially copies from the plaintiff's Copyright and thus amounts to infringement of plaintiff's trade mark and Copyright.

1.5It is further averred that the defendant's goods under the mark and label" STEP "which are low priced, inferior in quality have caused grave and irreparable injury to plaintiff's reputation, name, right and goodwill and have resulted in passing off the above said goods of the defendants as that of the plaintiffs.

1.6It is alleged that the plaintiffs would suffer further injury in their business, name and reputation unless the defendants are restrained by an order and decree of this Court from using the offending mark and label. It is also alleged that by using the offending label-mark "STEP" in respect of detergent cakes, in the manner stated above ,the defendants have made wrongful gain from the reputation, goodwill, name and long standing of the plaintiffs and Therefore the defendants are also liable to render accounts into the profits made by the defendants since the adoption of the offending mark "STEP". It has been prayed by the plaintiff-Company that a decree for permanent injunction be passed in

favor of the plaintiffs-Company and against the defendants restraining the defendants, their servants, agents, stockists and all other persons acting on behalf of the defendants from infringing plaintiff's registered trade marks 214094 and 262994 and plaintiff's Copyright No. A-44935/85 and from passing off defendant's goods/cakes/detergent as that of plaintiffs. It has also been prayed that the defendants be directed to deliver upon affidavit to the plaintiffs all offending stationery wrappers, cartons and other material bearing the offending trade mark "STEP" for purposes of destruction and/or obliteration. The plaintiffs have also prayed for rendition of accounts and for awarding the costs of the proceedings.

(2) The claim of the plaintiffs has been resisted by who have filed a written statement taking certain preliminary objections with regard to jurisdiction and maintainability of the suit. On merits, it has been contended in the written statement that the colour combination scheme of blue, white and red colours, used in the wrappers by the plaintiff-Company for marketing the detergent cakes, has become quite common to the trade for the last so many years and a large number of manufacturers of detergent cakes are using the said colour scheme openly for the last so many years in respect of their wrappers for sale of their products of detergent cakes. It is further stated in the written statement that the size and weight of the detergent cakes of all the manufacturers are also the same as governed by the Weight and Measurement Rules. It is contended that the wrappers used by the defendants cannot at all cause any confusion or deception in the market and trade and that the mark "STEP" is depicted on the label of the defendants so prominently and boldly that it seems reckless to say that even an illiterate person can be confused or deceived by the defendant's detergent cake "STEP" when he actually wants to buy plaintiff's detergent "RIN". It is stated in the written statement that the present suit filed by the plaintiffs merits dismissal being false, frivolous and vexatious. It is prayed that the same be dismissed with costs.

(3) The plaintiffs have filed a replication, controverting the contentions raised in written statement and reiterating the averments made in the plaint.

(4) On the pleadings of the parties, the learned Predecessor of this Court vide order dated 3/03/1989 framed the following issues :

1. Whether this Court has territorial jurisdiction to try this suit? 2. Whether the defendant has infringed the trade mark and copyright of the plaintiff? 3. Whether the goods of the defendant under label "Step" are being passed off and/or are likely to pass off as the detergent cake of the plaintiff's manufacture? 4. Whether the copyright in the label of the plaintiff, get up, size and weight have become common to this trade ? If so, its effect. ? 5. Whether the plaintiff has no right to raise objection to the user of the label in dispute as alleged in para 4 of the preliminary objections of the written statement ? 6. Whether the suit for rendition of account is not maintainable ? 7. Whether there was delay and laches on the part of the plaintiff in filing this suit ? If so, its effect ? 8. "Whether the suit is not

properly valued for the purposes of Court fee and jurisdiction ?9. Relief.

(5) Since the defendants did not care to appear without any reasonable cause, the learned Predecessor of this Court vide order dated 11/07/1994 directed that the defendants be proceeded ex-parte in the present proceedings.

(6) The plaintiffs have adduced ex-parte evidence in support of its case by means of affidavit and has filed the affidavit of Shri Prem Prakash Anand, Law Officer of the plaintiff Company by way of evidence. Shri Prem Prakash Anand, Law Officer of the plaintiff Company, in his affidavit dated the 1/07/1994, has fully supported the case of the plaintiff Company. On the basis of facts, as stated by said Shri Prem Prakash Anand, in his affidavit dated the 1/07/1994, which has gone on record unrebutted and unchallenged which I see no reason to disbelieve and other material on record, it is established that the plaintiff-Company is marketing detergent cakes under the name and trade mark "RIN" and the trademark "RIN" as well as the label are registered under the Trade and Merchandise Marks Act, 1958 and Copyright Act. It is also established that the plaintiffs are manufacturing "RIN" cakes of 125 gms and 250 gms. and that the plaintiffs "RIN" label consists of blue background, red bold lettering with white shades and that on account of long and extensive user of the said mark/trade mark, wide advertisement and skill in sale promotion the detergent cake "RIN" of the plaintiffs has achieved unique reputation, goodwill and name among the trade and consumers through out the Country and that the sale figures of the plaintiffs run into lacs of rupees per annum. It is also established that the majority of the consumers of "RIN" are from rural areas who do not know English and recognise plaintiff's product "RIN" only by its colour scheme i.e., blue background, red letterings with white shades, written in characteristic manner in English and in Hindi and that the above said get up of the label has become distinctive of the plaintiff's detergents cake under the mark "RIN".

(7) It is also established that the defendants are also carrying on similar business and selling and marketing detergent cakes under the mark "STEP" and for selling and marketing their products the defendants are also using wrappers which are similar like that of the plaintiff's wrappers with blue background with red letterings and white shadows. The mark "STEP" is written on the wrapper in the same characteristic manner and same get up. The detergent cakes under the mark "STEP" are of the same size and same weight and the colour of the detergent cakes and style is also similar as that of the plaintiffs. It is also established that on account of similarity of the wrappers and get up thereof, a great confusion and deception has arisen in the market and if the defendants continue to use the mark "STEP" in the manner stated above the business and reputation of the plaintiffs is likely to suffer immensely.

(8) The learned Counsel for the plaintiffs, during the course of arguments on 12/08/1996, has submitted that he gives up the relief for rendition of accounts contained in Clause (e) of para 23 of the plaint and the same may be treated as deleted. The above prayer, so made by the learned Counsel for the plaintiffs, for

the deletion of the above said relief, was allowed by this Court vide order dated 12/08/1996.

(9) In view of the above discussion, die suit of the plaintiffs is decreed and anexparte decree for permanent injunction restraining the defendants, their servants, agents ,stockists and all other persons acting for and on their behalf from infringing the plaintiffs registered trade marks 214094 and 262994 and Copyright No. 44935/84 and also restraining them from passing of the goods/ cakes/detergents of the defendants as that of the plaintiffs, is passed in favor of the plaintiffs and against the defendants with costs. The defendants are further directed to deliver upon affidavit to the plaintiffs all the offending stationery wrappers, cartons and other material bearing the offending trade mark "STEP" within eight weeks from the date of this order for the purpose of destruction and/ or obliteration thereof. Decree sheet be drawn up accordingly and thereafter the file be consigned to record room.