
(2006) 01 DEL CK 0037
In the Delhi High Court
Case No : CS (OS) No. 296 of 2004

Hindustan Pencil Ltd.

APPELLANT

Vs

Mr. A.K. Chawla and Others

RESPONDENT

Date of Decision : 25-01-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 10

Citation : (2006) 01 DEL CK 0037

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : M M Singh, for the Appellant; Puneet Bajaj, for the Respondent

Judgement

Sanjay Kishan Kaul, J.

CS (OS) No.296/2004

1. The plaintiff filed a suit for permanent injunction, infringement of copyright and trademark, passing off, delivery up and rendition of accounts, etc. against the defendants.

2. The plaintiff states that it is the proprietor of various well known trademarks such NATRAJ, APSARA, SPEED BIRD, etc. The plaintiff has registered the mark SPEED BIRD and the carton of the plaintiff has been annexed as Annexure "A" to the plaint. The carton is stated to have distinctive features including the colour scheme, get-up, arrangement and lay out and is thus an original artistic work. The carton is in yellow and blue colour with the matter written in white and black ink. The background of the carton is yellow with thin white strips and on the front side of the carton, a picture of a bird is depicted in black colour. On the back side of the carton is the trade mark SPEED BIRD written. The side panels of the carton are in blue colour with words "smooth and speedy". On the left hand side of the panel of the carton, the pricing is mentioned as also the name and address of the manufacturer along with the logo of a "writing baby".

3. The plaintiff claims that it has a large turn over and that the purchasing public identifies the product of the plaintiff both with the trademark and the packaging annexure "A".

4. The grievance of the plaintiff is that in March, 2005 it came across the defendants' carton annexure "X" which is deceptively similar and a slavish copy of the carton of the plaintiff annexure "A". The defendants are selling under the trade mark "BABA". The defendants have been granted various opportunities to file the written statement, but they have failed to file the written statement. On 01.09.2005, once again a request was made stating that the matter is being settled. It was clearly stated that if any settlement is arrived at, an application can be filed, but the written statement should be filed within 30 days. The matter was listed before the Joint Registrar for admission/denial of documents on 06.12.2005 and for framing of issues before the court today. Written statement has not been filed and admission/denial has not been completed.

5. Learned counsel for the defendants once again makes a request for further time to file the written statement. Request is declined. 6. In my considered view, it is a fit case where provisions of Order 8 Rule 10 of the CPC be resorted to for passing a decree against the defendants and in favor of the plaintiff. The carton of the plaintiff is exhibited as Ex P1 and of the defendants as Ex P2.

7. A comparison of the cartons shows that the distinctive features referred to in the packaging are almost identical. This is clearly an attempt on the part of the defendants to copy the packaging of the plaintiff and the fact that the defendants are selling under a different trade name would not make any difference since the grievance is not in respect of the trade mark, but in respect of packaging. Pencil is such an item which is purchased by even young children. There would normally be a trend to identify the product not only with the trademark but with the nature of packaging. The defendants have sought to copy the packaging of the plaintiff by using not only the same colour scheme, but the same background.

8. In view of the aforesaid, a decree is passed in favor of the plaintiff and against the defendants restraining the defendants from printing, publishing, using, manufacturing or selling products in the offending packaging annexure Ex P2 or any other packaging deceptively similar to the packaging of the plaintiff ExP 1. The plaintiff shall also be entitled to costs. Learned counsel for the plaintiff gives up other reliefs. Decree sheet shall be drawn up accordingly.

9. A perusal of the plaint shows that the plaint has been deficiently stamped for the purposes of court fee in view of the judgment of this Court in CS (OS) No.1165/2001 titled "Pfizer Products, Inc. v. B.L. and Co. and Ors." and Connected Matters decided on 03.10.2005. Learned counsel for the plaintiff undertakes to make up the deficiency of court fee within 15 days and the decree-sheet shall be drawn up only thereafter.