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(2006) 02 DEL CK 0053

In the Delhi High Court

Case No : CS (OS) No. 161 of 2005

Hindustan Pencils Limited — APPELLANT

Vs

Sh. L. Sri Hari Khoday and Another — RESPONDENT

Date of Decision : 20-02-2006

Acts Referred:

Citation : (2006) 02 DEL CK 0053

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : M.M. Singh, for the Appellant; None, for the Respondent

Judgement

Badar Durrez Ahmed, J.—The plaintiff instituted this suit for permanent injunction, passing off, unfair trade practice, rendition of accounts and delivery up, etc. The defendants were served with the summons. However, despite service they did not appear. By an order dated 28.09.2005, this court had directed the defendants to be proceeded with ex parte. The plaintiff was permitted to lead its ex parte evidence by means of affidavits. Thereafter, the plaintiff filed its evidence affidavit of one Mr P.N. Thanawala. Along with the affidavit, three documents have been filed and they are exhibited as Exhibits-P-1 to P-3. Exhibit-P-1 is the General Power of Attorney in favor of Mr P.N. Thanawala executed by the plaintiff, Exhibit P-2 is the sample of the carton of the plaintiff''s ''PLASTO'' Eraser and Exhibit P-3 is the sample carton of the defendant''s product under the trademark ''PLASTO''.

2. On going through the affidavit by way of evidence, it becomes clear that the plaintiff is the registered proprietor of various trade marks, including ''NATARAJ'' and ''APSARA''. It is stated in the said affidavit that the trademark ''PLASTO'' is also being used by the plaintiff since August, 1989 in respect of erasers manufactured by it. It is further stated that the said mark is being used / displayed in the packing material in a prominent manner Along with another registered trade mark ''APSARA / NATARAJ''. It is also stated that an application for registration of the trademark ''PLASTO'' has been made by the plaintiff and

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the same is under process. It is further stated that the trademark ''PLASTO'' is being used in respect of the erasers manufactured and sold by the plaintiff and the same has become exclusively associated with the goods of the plaintiff to the exclusion of everybody else. The trademark ''PLASTO'' has also been advertised through various media since its adoption by the plaintiff and the plaintiff issued cash memos for the said trademark ''PLASTO'' and the customers call for these goods by the name ''PLASTO'' whenever orders for erasers are placed by them on the plaintiff. The plaintiff has also filed a statement of the sales of the goods under the trademark ''PLASTO'' sold by the plaintiff since 1995 and the figures clearly indicate that the sales under this mark have been substantial, for example, in the year 2003-2004, the sales under the mark ''PLASTO'' were more than Rs. 18 crores in the domestic market and the export proceeds were to the tune of Rs. 14 lakhs. The affidavit further states that in the month of June, 2004, it came to the notice of the plaintiff that the defendants, who are also in the stationary business and who are also manufacturing and marketing erasers, have been using the mark ''PLASTO'' in respect of their erasers under the mark ''KHODAYS''. Exhibit-P-3 is the sample of the defendants'' carton.

3. After examining the evidence led by the plaintiff as well as the averments made in the plaint and also the fact that these statements have gone uncontroverted, I find that the plaintiff has been able to establish and prove that it is the proprietor of the mark ''PLASTO'' and has been using the same since 1989 and that the defendants have started using the same much later, i.e., some time in June, 2004 Therefore, there is every likelihood that the defendants by using the trademark ''PLASTO'' would be passing off their products as those of the plaintiff and, Therefore, I feel that the plaintiff has been able to establish its case for an order of injunction against the defendants from using the trademark ''PLASTO'' in respect of erasers manufactured and sold by it.

4. The suit is accordingly decreed in terms of prayer ''a'' contained in paragraph 26 of the plaint. The plaintiff is also entitled to costs. The decree sheet be prepared accordingly. This suit stands disposed of.

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