
(2019) 01 CAL CK 0050
In the Calcutta High Court

Case No : General Application No. 3437 Of 2018, Civil Suit No. 261 Of 2018

ITC Limited

APPELLANT

Vs

Whole Leaf Tobacco Venture Pvt. Ltd. & Ors.

RESPONDENT

Date of Decision : 14-01-2019

Acts Referred:

Citation : (2019) 01 CAL CK 0050

Hon'ble Judges : Soumen Sen, J

Bench : Single Bench

Advocate : Pratap Chatterjee, Phiroje Edulji, Rudraman Bhattacharjee, Sayan Roy Chowdhury, Mrinalini Mazumdar, S. Dasgupta, Ratnanko Banerji, Pratik Ghose, Mayukh Mukherjee, Sristi Roy, Kuldeep Mallick, Arijit Basu, Amrin Khatoon, Rabi Prosad Mookherjee, Piyali Sengupta, Meghnad Dutta, Nilanjana Auddy, Pallavi Gogoi, Prasanta Naskar

Judgement

The Special Officers have filed their reports. The said reports are taken on record. From the reports it appears that the Calcutta office of the defendant no.1 was found to be closed. Mr. Mallick, the learned Counsel appearing on behalf of the defendant nos.7, 8, 10, 11 and 12, submits that the godown of Ranjit Prasad which has been wrongly transcribed as Ranjit Jaiswal as defendant no.12 has been sealed by the special officer. It is submitted that Ranjit Prasad is carrying on business in the name and style of S.K. & Co. and not S.K. Enterprise and a direction may be passed upon the Special Officer to open the said godown and allow the said respondent to carry on business after segregating the infringing goods. Mr. Mallick further submits that the respondent nos.10 and 12 have also been wrongly described. The respondent no.10 is Ronit Nandi and not Ronik Nandi. Similarly respondent no.11 should be Bappa Biswas instead of Bikram Karmakar. The plaintiff shall make the necessary correction in the cause title of the petition and take steps for correction of the plaint by filing an appropriate application.

Mr. Ratnanko Banerji learned Senior Counsel representing the respondent

submits that the cigarette box and/or boxes of the respondent conformed to the statutory requirements inasmuch as the plaintiff has no proprietary right over the word "Flake". The word "Flane" used by the respondent has a definite dictionary meaning which means an arrow. There is a price difference between the two products. The customers who would prefer Wills Flake of ITC would certainly not prefer the Gold Flane or Flane of the respondent because of the price differences. The category of customers for the two products are different. Mr. Banerji has also produced cigarette packets manufactured by Golden Gold Flake and submits that there are numerous manufactures of tobacco who are manufacturing and selling their cigarettes under the name 'Gold Flake'. Mr. Banerji further submits that the application for registration of the mark 'Flake' is being opposed by Godfrey Phillips before the Registrar of trademark Chennai and having regard to the extensive use of the mark 'Gold Flake' by other manufacturers the plaintiff cannot claim an exclusive proprietary right over the said word mark 'Flake' in respect of its tobacco products. Mr. Banerji has produced few other cigarette packets manufactured by the plaintiff as well as by the defendant no.1 to show that the colour scheme and trade dress are different. However, significant part would be similar having regard to the fact that both the manufacturers are required to conform to the statutory regulations where 'TOBACCO CAUSES CANCER' and 'QUIT TODAY' call 1800-11-2356' are to be prominently displayed and which in fact occupy almost 85% of the total get up and trade dress. In respect of the other products, Mr. Banerji submits that his client is not manufacturing tobacco products and/or cigarettes in other brand names of which the plaintiff has alleged infringement and the defendants have no desire to infringe the products of the plaintiff in relation to such other cigarette brands.

Under such circumstances, the respondent nos. 1 to 3 shall file an affidavit justifying their claim to use the word 'Flane' and/or 'Gold Flane' in relation to its tobacco products on or before 18th January, 2019.

The matter stands adjourned till 21st January, 2019. In the affidavit, the respondents shall disclose the address of its registered office and the factory or the place where its products are manufactured.

This order shall not be used by the plaintiff to make any trade disparagement. The learned Counsel representing the plaintiff has submitted that apart from circulating the news no disparagement has been made in relation to the business of the defendants.

Mr. Prosanta Kr. Naskar, one of the Special Officers who had sealed the godown of the respondent no.12, shall on Saturday revisit the place and after making an inventory of the products in presence of the parties shall segregate the infringing materials, if any, from the other materials and the infringing materials shall be kept separately under the custody of the Special Officer until further orders. No further notice shall be served upon the parties. The Special Officer shall be entitled to a further remuneration of 2000 GMs. to be paid by the plaintiff. All expenses on account of the Special Officer's travel, accommodation and the like

shall be borne by the petitioner.

The petitioner shall serve copies of the report to the advocate on record of the defendant no.1.