
(2011) 05 DEL CK 0338
In the Delhi High Court
Case No : C.S. (OS) No. 32 of 2006

Metro Tyres Limited

APPELLANT

Vs

A.S. Traders and Others

RESPONDENT

Date of Decision : 04-05-2011

Acts Referred:

Delhi High Court Act, 1966 — Section 5(2)

Citation : (2011) 05 DEL CK 0338

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Praveen Anand, for the Appellant; Nemo, for the Respondent

Judgement

Manmohan Singh, J.—By this order, I shall dispose of the present suit filed by the Plaintiff for permanent injunction, passing off, restraining infringement of copyright, rendition of accounts of profit, delivery up etc.

2. The Plaintiff is a company incorporated under the provisions of the Companies Act, 1956 having its registered office at B-27, Focal Point, Dhandari Kalan, Ludhiana and Corporate office at 134/4 & 134/5, Zamrudpur, Near Ajit Arcade, Kalish Colony, New Delhi.

3. It is stated in the plaint that in the year 1961, the predecessors of the Plaintiff adopted the trade mark VELO represented in a special and artistic manner, in title and interest in respect of bicycle parts and chains and has been using it continuously since then in the course of trade. In the year 1988, the Plaintiff acquired the trademark VELO along with goodwill of the mark and the business in which the said mark was being used and started manufacturing and selling cycle/rikshaw tyres under the trade mark VELO. In the year 1993, the Plaintiff started manufacturing and selling cycle/rikshaw tubes and used trade mark VELO.

4. It is averred in the plaint, that the trade mark VELO has gained reputation in the minds of the purchasing public and is identified and recognized only with the goods of the Plaintiff. The Plaintiff, is the registered proprietor of trade mark

VELO under the Trademark Registration No. 431433 with respect to cycle parts and chains and such class 12 goods. The Plaintiff is also the registered proprietor of the trade mark VELO TOOFANI TAKAT under Trademark Registration No. 579200 in class 12.

5. The Defendant No. 2, M/s Velo Rubber Industries is engaged in manufacture and sale of tyres and tubes for cycle/ rikshaw. The Defendant Nos. 1&3 are engaged in the sale of the goods manufactured by Defendant No. 2.

6. Further, it is averred in the plaint that, in the month of June in 1998, the Plaintiff came to know that the Defendant No. 2 has adopted a mark which is identical to the Plaintiffs' trademark VELO as represented in a special and artistic manner, in respect of manufacture and sale of their tyres and tubes for cycle/ rikshaw.

7. On 03.09.1998, when this matter was listed for the first time, a local commissioner was appointed by this Court to visit the premises of the Defendants and prepare the inventory to preserve the evidence of the activities of the Defendants.

8. The local commissioner, Mr. Abhay Prakash Sahay, in his report dated 16.09.1998, has stated that 09.09.1998 he visited the factory of the Defendants in Shamli, Muzaffarnagar, U.P., and besides other items, the following goods were found:

(i) Bags of tubes of Vellow Toofani Takat.

(ii) Lose tubes.

(iii) Small poly bags of Velo Bheem.

Velo Fauladi

(i) 3000 in loose form.

(ii) Hero JET 5 bags x 100 tubes.

(iii) 70 tyres of National Tiger

(iv) One wooden almirah containing Brand name Screen Printer of following description:

(i) Velo Tehalka

(ii) Velo Toofani Taquat

(iii) Velo Dhamaka

(iv) Velo Maharathi

(v) Road Master

(vi) Bengal Tiger

(vii) Velo Toofani Tiger

(viii) Rikshaw.

(ix) Cycle.

(v) Plastic container bags of Velo Fauladi, Velo T.T. and Velo Bheem.

9. The written statement is filed only by Defendant No. 2 wherein the Defendant No. 2 has admitted that the Defendant No. 2 has been manufacturing cycle/rickshaw tyres and tubes since the year 1995 and using the trade mark "VELO" on its products and the Defendant No. 2 is the prior user of the said trademark. It appears from the record that later on the Defendant No. 2 stopped appearing in the Court.

10. Originally, the suit was filed in this Court in the year 1998, being CS (OS) No. 1866 of 1998. The same was ordered to be transferred to District Court in terms of Section 5(2) of the Delhi High Court Act, 1966, as amended vide office order No. 37/DHC/ORGL dated 22.08.2003, because for the purpose of court fees and jurisdiction it was valued at less than Rs. 20 lakhs. Formal order in this regard was passed on 28.01.2004. But, in January, 2006 it was again transferred to this High Court after amendment in the plaint valuation for more than Rs. 20 lakhs.

11. The Plaintiff produced the evidence by way of affidavit of Sh. M.K. Goel, General Manager (Commercial) of the Plaintiff company. In the evidence, it is stated that the trade mark "VELO" was used and represented in a special and artistic manner since 1961. The sample of the same is proved as Ex.PW-1/1. The publicity material released by the Plaintiff is also proved as Ex.PW-1/2. The certificate for use in legal proceedings for registration of the trade mark "VELO TOOFANI TAKAT and the trade mark "VELO" have been proved as Ex.PW-1/3 and Ex.PW-1/4 respectively. The detail of the packaging is proved as Ex.PW-1/5 (Colly.). The sale figures from 1987 to 1997 and sample invoices have been proved as Ex.PW-1/6 (Colly.).

12. The case of the Plaintiff in the plaint is that Defendant No. 2 is the person who is manufacturing cycle/rickshaw tyres under the trade mark "VELO" and the Defendants 1 and 3 have been selling the goods manufactured by the Defendant No. 2. The specimen of the Defendant's product has been proved as Ex.PW-1/7. The original resolution was proved as Ex.PW1/B-1. Therefore, the evidence produced by the Plaintiff has gone un-rebutted.

13. When the matter was taken up for final disposal, no one appeared on behalf of the Defendants. Here is a case where the trade mark, goods as well as the mark used by the Plaintiff on its products and by Defendant on its products are the same. It appears that the Defendant No. 2 has intentionally and deliberately used the trade mark "VELO" in relation to same goods. The Defendant No. 2 has also admitted the said fact in the written statement. It is a case of triple identity. There is hardly any difference available to the Defendant. From the material placed by the Plaintiff, it is clear that the Plaintiff is prior user of the trade mark

and the trade mark of the Plaintiff is also registered. Therefore, a decree in terms of para 29(i), (ii), (iii) & (iv) is passed. The Plaintiff is also entitled for the cost. The Plaintiff is granted punitive damages to the tune of Rs. 2 lacs. Decree be drawn accordingly.