

(2011) 10 DEL CK 0220
In the Delhi High Court
Case No : C.S. (OS) No. 668 of 2008

M/S Shree Rajmoti Industries	Vs	APPELLANT
M/S Giriraj Sugandh Industries and Another		RESPONDENT

Date of Decision : 31-10-2011

Acts Referred:

Trade Marks Act, 1999 — Section 134, 135, 62

Citation : (2011) 184 DLT 302 : (2012) 49 PTC 102

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : S.K.Bansal, with Mr. Vikas Khera and Mr. Akshay Srivastava, for the Appellant;

Final Decision : Disposed Off

Judgement

Manmohan Singh, J.—The plaintiff has filed the above-mentioned suit under Sections 134 & 135 of the Trade Marks Act, 1999 seeking relief of permanent injunction to restrain infringement, passing off and delivery up etc.

2. The case of the plaintiff is that it is engaged in the business of manufacture and sale of edible oils including groundnut oil and cotton seed oil. In the year 1962, the plaintiff honestly, bonafidely and in the course of trade, adopted, coined and conceived the word/mark "RAJMOTI" (word per se and in artistic manner), the artistic label bearing the word/mark "RAJMOTI" and its firm name M/s Shree Rajmoti Industries of which the word "RAJMOTI" is an essential key material and distinguishing part.

3. The copyright in the said label is duly registered in favour of the plaintiff under the Copyright Act under Copyright Registration No.A-61228/2002, and the said trade mark "RAJMOTI" forms a part of this label viz. copyright registration.

4. The plaintiff's said trade mark "RAJMOTI" in an artistic manner is duly registered in favour of the plaintiff under the Trade Marks Act, 1999 under trade mark registration No.289101 in relation to groundnut oil (edible) falling in

Class-29 for sale in the State of Gujarat. The said trade mark is registered as from 02.07.1973 vide trade mark application No.791444 in Class-29 in relation to all kinds of edible oil including groundnut oil and cotton seed oil as of 16.02.1998 which is registered in favour of the plaintiff. The plaintiff has also got registration of its trade mark RAJMOTI LOGO, RAJMOTI LABEL and RAJMOTI (word mark) for different goods in Classes-29, 31, 32, 35 & 42 under Nos.1318742, 1345896, 1380312, 1380308 & 1380304. The plaintiff also filed some applications for registration of trade mark RAJMOTI for wider specification of goods which are pending registration.

5. The allegations against the defendants are that they have adopted and commercially started using the impugned trade mark/label RAJ which is identical or deceptively similar to the plaintiff's trade mark "RAJMOTI".

6. The plaintiff came to know about the defendants' impugned adoption and use, first time from the publication of the defendants' application for registration of the trade mark RAJ under application No.1448976 in Class-29 in the Trade Mark Journal No.1376, Regular, 16.09.2007 at page 3515. The said Journal was made available to the public on 16.11.2007.

7. As per the plaintiff, the cause of action has arisen in its favour on 16.11.2007 when the plaintiff learnt about the defendants and their impugned adoption and application for registration from the aforesaid Trade Mark Journal in which their application was advertised. Further, the cause of action again arose on 19.01.2008. The defendants have sought registration for the impugned trade mark and have all the intentions of using it for the impugned goods or goods covered thereby if not already used.

8. As regards the territorial jurisdiction, the plaintiff submits that this Court has the territorial jurisdiction to try and adjudicate upon the present suit. The defendants are committing the impugned acts within the jurisdiction of this Court by conduction, soliciting, selling and marketing their impugned goods and business under the impugned mark in Delhi clandestinely without issuing formal bills/invoices beside other parts of the country. The defendants as such have all the intentions of extending their impugned trade into Delhi, if not already existing in Delhi. The plaintiff is also carrying out its trade and business and selling its goods and business bearing the said trade mark in Delhi through its distributors/dealers/ agents M/s Pure Agro Chem Corporation, 212, Syndicate House, No.3 Old Market Road, Inderlok, Delhi and M/s Bishan Dass Khainati Lal, 2742, Naya Bazar, Delhi besides other parts of the country. This Court, as such, has the jurisdiction to try and adjudicate upon the present suit by virtue of Section 134 of the Trade Marks Act, 1999 and Section 62 of the Copyright Act, 1957.

9. The defendants were served by way of publication in the newspaper "The Times of India" dated 04.09.2010, but no one appeared on their behalf. The defendants were proceeded ex parte vide order dated 07.02.2011.

10. The plaintiff was given time to file the affidavit(s) in terms of the ex parte evidence. The plaintiff in its ex parte evidence examined PW-1 Shri Samir Ishwar Lal Gandhi who has filed his affidavit Ex.PW1/A and proved the following documents:-

Ex.PW1/1 Artistic label bearing the word/mark RAJMOTI

Ex.PW1/2 Artistic label adopted by the plaintiff in the year 1995

Ex.PW1/3 Representation of the defendants' trade mark/label

Ex.PW1/4 Copy of publication of the defendants' application for registration of the trade mark RAJ

Ex.PW1/5 Copy of notice of opposition filed by the plaintiff before the Trade Marks Registry against the impugned trade mark

Ex.PW1/6 Certified copy of newspaper SAROVAR BHUMI dated 21.12.1999 placed on record of CS(OS) No.942/2005 vide list of original documents dated 17.04.2006.

Ex.PW1/7(1) Certified copies of Bills towards the advertisements of to 1/7(71) the plaintiff's mark placed on record of CS(OS) No.942/2005 vide list of original documents dated 17.04.2006

Ex.PW1/8 Copy of Power of Attorney issued by the plaintiff-firm in his favour

11. I have heard the learned counsel for the plaintiff and have also gone through the affidavit in ex parte evidence as well as the documents placed on the record.

12. As far as the case of the plaintiff for infringement of the copyright is concerned, it appears that the two artistic works of the parties are not similar. Therefore, the claim of the plaintiff for infringement of the copyright is rejected.

13. As regards the case of the plaintiff for infringement of the trade mark and passing off, it is to be examined, as to whether the two marks RAJMOTI and RAJ are deceptively similar or not. The learned counsel for the plaintiff, in support of his submissions, has referred the following judgments:-

(i) Devi Pesticides Private Ltd. Vs. Shiv Agro Chemicals Industries, .

(ii) Shaw Wallace and Company Ltd. and Another Vs. Mohan Rocky Spring Water Breweries Ltd., .

(iii) Izuk Chemical Works Vs. Babu Ram Dharam Prakash,

(iv) B.K. Engineering Co. Vs. Ubhi Enterprises (Registered) and Another, .

14. I have gone through the aforesaid judgments. Besides above, it appears from the facts and circumstances of the present case that the plaintiff's evidence has gone un rebutted, as the defendants did not file any written statement, nor they contested the matter. Therefore, the plaintiff is entitled for the decree of

permanent injunction in its favour and against the defendants. Accordingly, the defendants are hereby restrained permanently from using the trade mark RAJ in respect of castor oil, edible oil and food grains etc. The plaintiff is also entitled for the cost of the suit. Decree be drawn accordingly. The suit and the pending applications are disposed of.