

(2017) 08 DEL CK 0082

In the Delhi High Court

Case No : 992 of 2016

PUMA SE & ANR

APPELLANT

Vs

NIKHIL THERMOPLAST LTD & ORS.

RESPONDENT

Date of Decision : 22-08-2017

Acts Referred:

[Trademarks Act, 1999](#), Section 25

Citation : (2017) 08 DEL CK 0082

Hon'ble Judges : Manmohan

Bench : SINGLE BENCH

Advocate : Astha Joshi

Judgement

1. Present suit has been filed for permanent injunction restraining infringement of trademark, passing off, unfair trade competition, delivery up, damages etc. The prayers in the plaint are reproduced hereinbelow: "a) A decree for permanent injunction restraining the Defendant, its servants, agents, stockiest from manufacturing, trading, selling, marketing, offering for sale or dealing in any other way, any goods including clothing, T-shirts, pants, track pants, shorts, footwear, headwear and/or any other goods under the Form Strip mark and logo either together or in isolation to each other and the mark Form Strip using the mark as their trademark or any other mark/logo which is deceptively similar to the Plaintiffs mark PUMA and Form Strip log which may amount to infringement of the Plaintiffs registered trademarks as mentioned in this suit.

b) A decree for permanent injunction restraining the Defendant, its servants, agents, stockiest from manufacturing, trading, selling, marketing, offering for sale or dealing in any other way, any goods including clothing, T-shirts, pants, track pants, shorts, footwear, headwear and/or any other goods under the mark Form Strip logo mark, PUMA, and logo either together or in isolation to each other and the mark and form using the mark Form Device as their trademark or any other mark/logo which is deceptively similar to the Plaintiffs mark PUMA and Form Strip logo which may amount to passing off the Defendant's goods as the

goods of the Plaintiffs.

c) An order for delivery up of all the goods, dies, blocks, labels and any other printed matter bearing the impugned mark/name to the authorised representative of the Plaintiffs for the purpose of destruction/erasure;

d) A decree of damages against the Defendant and in favor of the Plaintiffs, this relief is valued at Rs. 20 Lac on account of their illegal activities.

e) An order for costs of the proceedings.

f) Any other orders as this Hon?ble Court may deem fit and proper in the facts and circumstances of the present case."

2. At the outset, learned counsel for the plaintiff states that the plaintiff confines it?s prayer to prayers (a), (b) and (e) of the prayer clause. Learned counsel for the plaintiffs gives up the prayers for delivery up and damages.

3. Vide order dated 19th October, 2015; this Court restrained the defendants by way of an ex parte interim injunction from using the Form Strip Logo . The relevant portion of the order dated 19th October,2015 is reproduced hereinbelow:- "I have heard the learned counsel for the plaintiffs and have also gone through the averments made in the plaint and has also examined the products of the plaintiffs as also that of the defendants, produced in the course of arguments. I am of the view that the plaintiffs have been able to make out a strong prima-facie case for the grant of an ex-parte ad interim injunction in their favour. Accordingly, till the next date of hearing, the defendants, their Directors, servants, agents and stockists, etc. are restrained from manufacturing, selling, marketing, or offering for sale or dealing in any other way, any goods including clothing, T-shirts, pants, track pants, shorts, footwear, headwear and/or any other goods under the Form Strip Logo and mark PUMA that is identical/deceptively similar to the plaintiffs? registered Form Strip Logo, that may amount to infringing of their trademark.

Compliance of Order XXXIX Rule 3 CPC be made within two weeks."

4. Despite entering appearance on 3rd December, 2015 and 23rd February, 2016, the defendants did not appear thereafter and did not file their written statement. Accordingly, the defendants were proceeded ex-parte vide order dated 4th March, 2016.

5. In the plaint, it has been averred that plaintiffs? brand PUMA is one of the world?s leading sport brands, designing, development, selling or marketing footwear, apparels and accessories. The plaintiffs? and its variants are registered in several classes under the Trademarks Act, 1999.

6. It has been further averred that the plaintiffs created and adopted a distinctive Form Strip logo in 1956. The said Form Strip logo appears in a unique style on both sides of the shoes manufactured by the plaintiffs. The said Form Strip logo appears on the shoe manufactured/marketed and sold by the plaintiffs globally

including in India. It has been also averred that the Form Strip logo is registered in Class 25 under the Trademarks Act, 1999.

7. Ms. Astha Joshi, learned counsel for the plaintiffs states that in August 2015 the plaintiffs came across the defendants' products, i.e., footwear under the mark ROCK-STEP using a device / logo identical to plaintiffs' Form Strip logo. She further states that upon investigation it was found that defendants were supplying their shoes with a logo deceptively similar to that of the plaintiffs logo through ecommerce portals such as www.shopping.Indiatimes.com.

8. Ms. Joshi further states that the very adoption of Form Strip logo in respect of inferior quality goods by the defendants amounts to infringement of the plaintiffs registered trademarks. She also states that the use of impugned logo by the defendants in respect of identical goods of the plaintiffs amounts to dilution of the plaintiffs' well known trademark.

9. The plaintiffs have filed their evidence by way of an affidavit of PW-1 Mr. Rahul Sethi.

10. The plaintiffs witness has proved the copies of trademark registration certificates in favour of the plaintiffs as Ex.PW1/5 (collectively). The witness has further proved the invoices of infringed goods purchased by the plaintiffs as Ex. PW-1/10 and Ex. PW1/12.

11. Having heard learned counsel for plaintiffs as well as having perused the papers, this Court is of the view that due to extensive use over a substantial period of time, the plaintiffs' PUMA mark along with the Form Strip Logo has acquired reputation and goodwill.

12. Further, as the plaintiffs' evidence has gone un rebutted, said evidence is accepted as true and correct. Consequently, the allegation that the trademark Form Strip Logo used by defendants on their goods sold under e-commerce portal www.shopping.Indiatimes.com amounts to infringement of plaintiffs' mark Form Strip Logo is accepted. The use of impugned mark by the defendants is bound to cause incalculable loss of reputation and loss of sales to the plaintiffs.

13. Keeping in view the aforesaid facts, the suit is decreed in terms of prayers (a) and (b) of the prayer clause as well as actual cost incurred by the plaintiff. The cost shall amongst others include the lawyers' fees, local commissioner's fee as well as the amounts spent on purchasing the court fees.

14. Registry is directed to prepare a decree sheet accordingly.