
(2007) 10 DEL CK 0176
In the Delhi High Court
Case No : CS (OS) 1797 of 2006

Ranbaxy Laboratories Ltd.

APPELLANT

Vs

PE-MM SP. ZO.O and Another

RESPONDENT

Date of Decision : 09-10-2007

Acts Referred:

Citation : (2007) 35 PTC 865

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : Rajiv Nayar and H.P. Singh, for the Appellant; Ex parte, for the Respondent

Final Decision : Disposed Off

Judgement

Badar Durrez Ahmed, J.—This suit has been filed against two defendants. Insofar as defendant No. 2 is concerned, the plaintiff has dropped the same from the array of the parties as it is not seeking any relief in respect of defendant No. 2 as indicated in the order dated 20.09.2007. The suit, Therefore, is limited to reliefs claimed against defendant No. 1. By an order dated 06.02.2007, defendant No. 1 was directed to be proceeded against ex parte. And, by the order dated 20.09.2007 this Court directed the plaintiff to file its affidavit by way of ex parte evidence and also the documents which were required to be exhibited. The plaintiff has filed the affidavit of Mr. Rajbeer S Sachdeva, who is the Director (Legal) of the plaintiff company. Documents have also been exhibited and have been marked as Ext. PW1/1 to Ext. PW1/6.

2. As per the averments made in the plaint, which have been substantially supported by the affidavit of Mr Rajbeer S Sachdeva, the plaintiff is a public limited company incorporated under the Companies Act, 1956. The said Mr Rajbeer S Sachdeva is its duly constituted attorney in terms of Power of Attorney (Ext. PW1/1). As stated in the affidavit, the plaintiff company is one of the largest pharmaceutical companies and has a global presence. The global turnover for the year 2005 was Rs 5,103.61 crores and for the first six months of 2006 it

was Rs 2,697 crores. The plaintiff operates a number of subsidiaries and offices around the world, including Europe, which in turn, includes Poland, which is the country of residence of defendant No. 1.

3. The present suit is with regard to the plaintiff's statutory and common-law proprietary rights in respect of its trademark "RANBAXY". The trademark "RANBAXY" has been registered in the name of the plaintiff under registration No. 543180 in Class 5 (Ext. PW1/3). The same was registered in 1991. The defendant No. 1 has registered the domain name "www.ranbaxy.eu" in its name. According to the plaintiff, though the domain name stands registered in the name of the defendant No. 1, the website as such is non-functional and is merely a link to another website. The case of the plaintiff is that the defendant No. 1 has no right over the name "RANBAXY", which is the registered trademark of the plaintiff. It is also the contention of the plaintiff that the defendant No. 1 does not manufacture or trade in any product under the name "RANBAXY". The defendant No. 1, however, has managed to get the domain name "www.ranbaxy.eu" registered in its name in Poland. It is stated in paragraph 13 of the plaint that the defendant No. 1 has registered the domain name "www.ranbaxy.eu" in its name and the same is identical or deceptively similar to the well known and internationally famous registered domain name "www.ranbaxy.com" of the plaintiff. It is further stated that the defendant No. 1 has adopted the said trademark in bad faith and dishonestly and in order to derive an unfair advantage.

4. It is contended by the learned Counsel for the plaintiff that the domain name registration in the name of the defendant No. 1 is unauthorized as the plaintiff has not franchised, licensed or authorized the defendant No. 1 to use the trademark "RANBAXY". A domain name is an easy-to-remember name for a numeric IP address which identifies and locates a website on the world wide web. The prefix "www" stands for the world wide web and is common for all websites in the world wide web. The suffix "eu" is what is known as a CCLTD or country code Top-Level Domain and, in this case, it refers to the European union. Hence, the main and key component of the domain name is the easy-to-remember but, unique word. In this case, "RANBAXY". This word is the registered trademark of the plaintiff and is distinctive of the plaintiff. Clearly, apart from the generic prefix (www) and suffix (eu), the domain name captured by the defendant No. 1 is a straight copy of the registered trademark "RANBAXY".

5. The learned Counsel for the plaintiff referred to a decision of this Court in the case of Pfizer Products Inc. v. Altamash Khan and Anr. 2006 (1) R.A.J. 217 (Delhi). Although that was a decision on an interim injunction application, the principles are well laid out. In particular he referred to paragraph 12 and 13 of the said decision, which read as under:

12. Firstly, the admitted position is that the product "viagra" belongs to the plaintiff. The plaintiff has registered the trade mark VIAGRA in 147 countries. Its application for registration of the trade mark in India is pending. There is also no

doubt that the plaintiff has spent a lot of time, money and effort in developing the product and the trade mark VIAGRA not just in a few countries but worldwide. It can be said with a great degree of certainty that the plaintiff as registered owner of the trade mark VIAGRA in 147 countries and as registered owner of the com domain name www.viagra.com and as an applicant for registration of the said trade mark in India does have a legitimate interest in protecting its brand.

13. Secondly, the defendant No. 1 does not have any interest in the domain name "viagra.in" apart from putting it up for sale. Neither the defendant No. 1 nor its so-called customer have any right to the product VIAGRA. Nor do they make any such claim. It is apparent that the sole object of the defendant No. 1 for applying for the domain name "viagra.in" was its sale to an "interested party". If the sale in such a situation was to be for valuable consideration in excess of the registrant's documented out-of-pocket costs directly related to the domain name, it would be evidence of the registration being in bad faith as envisaged in paragraph 6 of the INDRP. If not, in any event, the domain name "viagra.in" is, if not identical, confusingly similar to the trade mark VIAGRA and the domain name "viagra.com" of which the plaintiff is the proprietor. And, to make matters worse for the defendant No. 1, it has no right or legitimate interest in respect of the domain name "viagra.in".

6. After hearing the counsel for the plaintiff and examining the ex parte evidence of the plaintiff I am of the view that the plaintiff is entitled to a decree of injunction in terms of prayer (i) as contained in paragraph 27 of the plaint. The case of the plaintiff is not very much different from the case in Pfizer Products (supra). The plaintiff is the proprietor of the registered trademark "RANBAXY". The same is registered in 62 countries including India and Poland. There is also no doubt that the plaintiff has spent a lot of time, money and effort in developing and marketing its products under the mark "RANBAXY". It is also the registered owner of the domain name "www.ranbaxy.com". Therefore, the plaintiff has a legitimate interest in protecting its brand name "RANBAXY". On the other hand, the defendant No. 1 does not have any interest in the name "RANBAXY". In fact, the defendant No. 1 cannot have any interest because it is not the registered proprietor of the same. In these circumstances, the suit is decreed in terms of prayers (i) and (iii) of paragraph 27 of the plaint. The plaintiff gives up prayers indicated in paragraph (ii) and (iv) of paragraph 27 of the plaint. The suit is accordingly decreed in the terms indicated above with costs. The formal decree be drawn up.

7. This suit and the pending application (IA 10464/2006) stand disposed of.