

(2018) 04 DEL CK 0050
In the Delhi High Court
Case No : CS COMM--574 of 2017

SAMSUNG ELECTRONICS COMPANY LIMITED & ANR	APPELLANT
Vs	
A SHAJAHANTRADING AS S S ENTERPRISES AND ORS	RESPONDENT

Date of Decision : 10-04-2018

Acts Referred:

Copyright Act, 1957 — Section 2 ©, 41

Citation : (2018) 04 DEL CK 0050

Hon'ble Judges : MANMOHAN

Bench : Single Bench

Advocate : Karan Bajaj, Kangan Roda, Dhruv Nayar,

Final Decision : Disposed Of

Judgement

MANMOHAN, J (Oral)

1. Present suit has been filed against the defendants for permanent injunction for infringement of trademarks and copyright, passing off, unfair

competition, dilution, rendition of accounts, delivery up and recovery of damages etc. The prayer clause in the present suit is reproduced

hereinbelow:-

â??A. A decree of permanent injunction be passed restraining the Defendants, their partners, agents, distributors, franchisees, representatives

and assigns from:

i.Manufacturing, importing, marketing, offering for sale, selling, exporting and/or using the Plaintiffsâ?? well-known and registered trade marks

â??SAMSUNGâ??, â??SAMSUNG

device/ â??, â??SAMSUNG GALAXY TABâ??,

â??SAMSUNG GALAXY Sâ? and/or any other trade mark, device, logo, name or

any derivative which is identical and/or deceptively and

confusingly similar to Plaintiffs' registered trade marks either as a trade mark, trading name, domain name etc. or a part thereof, or as a

part of the packaging, artwork, get-up, layout, design or in any other manner whatsoever so as to infringe the registered

trade marks of the Plaintiffs;

ii. Manufacturing, importing, marketing, offering for sale, selling, exporting and/or using the Plaintiffs' well-known and trade marks

'SAMSUNG', 'SAMSUNG oval device/

'SAMSUNG GALAXY/GALAXY', 'SAMSUNG GALAXY TAB/GALAXY TAB', SAMSUNG

GALAXY S series namely SAMSUNG GALAXY S, SAMSUNG GALAXY S II, SAMSUNG GALAXY S III, SAMSUNG GALAXY S4,

SAMSUNG GALAXY S5, SAMSUNG GALAXY NOTE series namely SAMSUNG GALAXY NOTE 1, SAMSUNG GALAXY NOTE 2,

SAMSUNG GALAXY NOTE 3, SAMSUNG GALAXY

NOTE 4 and/or any other trade mark, device, logo, name or any derivative which is identical and/or deceptively and confusingly similar to

Plaintiffs' trade marks either as a trade mark, trading name, domain name etc. or a part thereof, or as a part of the packaging, artwork, get-

up, layout, design or in any other manner whatsoever so as to pass off their products as that of the Plaintiffs;

iii. Manufacturing, importing, marketing, offering for sale, selling, exporting and/or using the impugned products bearing the the

marks SAMTEL, SMTEL, CALAYX,

SAMOSANG or any other trade mark, device, logo, name or any derivative which is identical and/or deceptively and confusingly similar to

Plaintiffs' trade marks

'SAMSUNG', 'SAMSUNG oval device', 'SAMSUNG GALAXY/GALAXY', 'SAMSUNG GALAXY TAB/GALAXY

TAB', 'SAMSUNG GALAXY S series namely SAMSUNG GALAXY S, SAMSUNG GALAXY S II, SAMSUNG GALAXY S III,

SAMSUNG GALAXY S4, SAMSUNG GALAXY S5, 'SAMSUNG GALAXY NOTE series namely SAMSUNG GALAXY NOTE 1,

SAMSUNG GALAXY NOTE 2, SAMSUNG GALAXY NOTE 3,

SAMSUNG GALAXY NOTE 4 either as a trade mark, trading name, domain name etc. or a part thereof, or as a part of the packaging,

artwork, get-up, layout, design or in any other manner whatsoever so as to infringe the registered trade marks of the Plaintiffs or pass off their

products as that of the Plaintiffs;Â

iv. Copying, reproducing, adopting and/or using the Plaintiffs' artistic oval device/logo and/or any other artistic work, which slavishly

imitates the Plaintiffs's said artistic device/logo, in entirety or part thereof, as a part of the packaging, artwork, get-up, layout, design or in any

other manner whatsoever so as to infringe upon the Plaintiffs' copyright;

B.A decree of a mandatory injunction be passed thereby directing that the Defendants, their partners, employees, agents, distributors,

franchisees, representatives and assigns to:

i. Deliver to the Plaintiffs's attorneys or nominated representatives for destruction all finished and/or unfinished products, labels, signs,

stickers, prints, packaging, boxes, wrappers and any other advertisement/
packaging material in their possession or under their control, bearing

the Plaintiffs's trade marks or any other mark similar to the Plaintiffs's trade marks.

ii. Recall all the finished and/or unfinished products, marketing, promotional and/or advertising materials etc.

that bear or incorporate the Plaintiffs's trade marks including "SAMSUNG", "SAMSUNG oval device"/

Â â?, Â Â Â Â Â Â â??SAMSUNG Â Â GALAXY/GALAXYâ?, â??SAMSUNG GALAXY
TAB/GALAXY TABâ?, â??SAMSUNG

GALAXY S series namely SAMSUNG GALAXY S, SAMSUNG GALAXY S II, SAMSUNG GALAXY S III,

SAMSUNG GALAXY S4, SAMSUNG GALAXY S5â??,

â??SAMSUNG GALAXY NOTE series namely SAMSUNG"" GALAXY NOTE 1, SAMSUNG GALAXY NOTE 2, SAMSUNG GALAXY

NOTE 3, SAMSUNG GALAXY

NOTE 4â? or any other mark similar to the Plaintiffsâ?? said trade marks, which has been manufactured, distributed, sold and/or exported by

the Defendants and their own costs.

iii. Disclose on oath the exact constitution and details of all such manufacturers / importers / wholesalers / retailers involved in the

manufacturing/distribution/marketing etc. of counterfeit and impugned products manufactured or sold under the marks "SAMSUNG",

"SAMSUNG oval device", "SAMSUNG GALAXY/GALAXY", "SAMSUNG GALAXY TAB/GALAXY TAB",

"SAMSUNG GALAXY S series namely SAMSUNG GALAXY S,

SAMSUNG GALAXY S II, SAMSUNG GALAXY S III,

SAMSUNG GALAXY S4, SAMSUNG GALAXY S5 etc.",

"SAMSUNG GALAXY NOTE series namely SAMSUNG GALAXY NOTE 1, SAMSUNG GALAXY NOTE 2, SAMSUNG GALAXY

NOTE 3, SAMSUNG GALAXY

NOTE 4", or any other mark similar to the Plaintiffs' marks, as the case may be;

C.The Defendants be required to render an account of all transactions concerning the offending activities set out in the plaint and the Plaintiffs

be then given the option of choosing either award of damages (including penal damages) or accounts for profits for the amount found due.

D.Costs of the suit be awarded to the Plaintiff; and

E.Any other relief which the Hon'ble Court deems and proper in the facts and circumstances of the case be allowed in favour of the

Plaintiffs and against the Defendants.

2.On 27th March 2015, this Court granted an ex parte ad interim injunction in favour of the plaintiffs and against the defendants. The relevant

portion of the said order is reproduced hereinbelow:-

"In the circumstances, till the next date of hearing, the defendants and their partners, agents, distributors, franchisees, representatives and

assigns and all other acting for and on behalf of the defendants, are restrained from:-

i.Manufacturing, importing, marketing, offering for sale, selling, exporting and/or using the Plaintiffs' well-known and registered trade marks

"SAMSUNG", "SAMSUNG

device/ ", " GALAXY " TAB",

â??SAMSUNG GALAXY Sâ? and/or any other trade mark, device, logo, name or any derivative which is identical and/or deceptively and

confusingly similarÂ to Plaintiffsâ?? registered trade marks either as a trade mark, trading name, domain name etc. or a part thereof, or as a

part of the packaging, artwork, get-up, layout, design or in any other manner whatsoever so as to infringe the registered trade marks of the

Plaintiffs;

ii.Manufacturing, importing, marketing, offering for sale, selling, exporting and/or using the Plaintiffsâ?? well-known and trade marks

â??SAMSUNGâ??, â??SAMSUNG oval device/

Â â??, Â Â Â Â Â Â â??SAMSUNG Â Â GALAXY/GALAXYâ??,

â??SAMSUNG GALAXY TAB/GALAXY TABâ?, â??SAMSUNG GALAXY S series namely SAMSUNG GALAXY S, SAMSUNG

GALAXY S II, SAMSUNG GALAXY S III, SAMSUNG GALAXY S4, SAMSUNG GALAXY S5â?, â??SAMSUNG GALAXY NOTE

series namely SAMSUNG"" GALAXY NOTE 1, SAMSUNG GALAXY NOTE 2, SAMSUNG GALAXY NOTE

3, SAMSUNG GALAXY NOTE 4â? and/or any other trade mark, device, logo, name or any derivative which is identical and/or deceptively

and confusingly similarÂ to Plaintiffsâ?? trade marks either as a trade mark, trading name domain name etc. or a part thereof, or as a part of

the packaging, artwork, get-up, layout, design or in any other manner whatsoever so as to pass off their products as that of the Plaintiffs;

iii.Manufacturing, importing, marketing, offering for sale, selling, exporting and/or using the impugned products bearing the marks SAMTEL and

SMTEL CALAYX, or any other trade mark, device, logo, name or any derivative which is identical and/or deceptively and confusingly similarÂ

to Plaintiffsâ?? trade marks â??SAMSUNGâ??, â??SAMSUNG oval

device/Â â?, â??SAMSUNG GALAXY/GALAXYâ?, â??SAMSUNG GALAXY TAB/GALAXY TABâ?, â??SAMSUNG GALAXY S

series namely SAMSUNG GALAXY S, SAMSUNG GALAXY S II, SAMSUNG GALAXY S III, SAMSUNG GALAXY S4, SAMSUNG

GALAXY S5â?, â??SAMSUNG GALAXY NOTE series namely SAMSUNG"" GALAXY NOTE 1, SAMSUNG GALAXY NOTE 2,

SAMSUNG GALAXY NOTE 3, SAMSUNG GALAXY NOTE 4â? either as a trade mark,

trading name, domain name etc. or a part thereof,

or as a part of the packaging, artwork, get-up, layout, design or in any other manner whatsoever so as to infringe the registered trade marks of

the Plaintiffs or pass off their products as that of the Plaintiffs;Â

iv. Copying, reproducing, adopting and/or using the Plaintiffsâ?? artistic oval device/logoÂ and/or any other artistic work, which slavishly

imitates the Plaintiffsâ?? said artistic device/logo, in entirety or part thereof, as a part of the packaging, artwork, get-up, layout, design or in any

other manner whatsoever so as to infringe upon the Plaintiffsâ?? copyright;

The plaintiffs shall comply with the provisions of Order XXXIX, rule 3 of the CPC within four (4) weeks.Â??

3. Vide orders dated 12th October, 2017 and 16th March, 2018, the right of the defendant no. 16 and the defendant nos. 3 to 5, 10, 12, 13, 17 to 28,

to file written statements was closed respectively. Additionally, vide the same order dated 16th March, 2018, defendant nos. 1, 2, 6 to 9, 11, 14

and 15 stood served, despite service, the aforementioned defendants have neither appeared nor filed written statements.

4. Today, none appears for the defendants. Consequently, they are proceeded ex-parte.Â Â

5. Learned counsel for the plaintiffs states that he has instructions only to press for the prayers (A) and (D) of the prayer clause of the plaint.Â

The statement made by learned counsel for the plaintiffs is accepted by this Court and the plaintiffs are held bound by the same.

6. Learned counsel for the plaintiffs states that in view of the judgment of this Court in Satya Infrastructure Ltd. & Ors. Vs. Satya Infra &

Estates Pvt. Ltd., the present suit should be decreed qua the reliefs in prayers (A) and (D) of the prayer clause of the plaint. The relevant

portion of the judgment in Satya Infrastructure Ltd. & Ors. (Supra) relied upon by learned counsel for the plaintiffs is reproduced hereinbelow:-

â??I am of the opinion that no purpose will be served in such cases by directing the plaintiffs to lead ex parte evidence in the form of affidavit

by way of examination-in-chief and which invariably is a repetition of the contents of the plaint. The plaint otherwise, as per the amended CPC,

besides being verified, is also supported by affidavits of the plaintiffs.Â I fail to fathom any reason for according any additional sanctity to the

affidavit by way of examination-in-chief than to the affidavit in support of the plaint or to any exhibit marks being put on the documents which

have been filed by the plaintiffs and are already on record. I have therefore heard the counsel for the plaintiffs on merits qua the relief of

injunction.

7.The contentions and submissions advanced by the learned counsel for the plaintiffs are as under:-

(i)The Plaintiff no.1, Samsung Electronic Company Limited, is a corporation organized and existing under the laws of the Republic of Korea and

the plaintiff no. 2, Samsung India Electronics Private Limited, is a wholly owned subsidiary of the plaintiff no. 1 and incorporated under the

Companies Act, 1956, and is a leading manufacturer and provider of high-tech consumer electronics and telecommunications products in India.

(ii)The Plaintiffs are a part of the Samsung group of companies engaged in the business of manufacturing and trading in telecommunication

devices, such as mobile phones, tablets, hand-held devices, smart phones, GSM and CDMA mobile phones, TVs, DVD players TVs, DVD

players, home theater systems, etc. The plaintiffs' global market share in mobile phones is stated to be almost 25% and their market share in

the telecom products market in India is 31.5%. The plaintiffs claim to have more than 285 worldwide operations in 67 countries and are

employing 425,000 employees worldwide.

(iii)The plaintiff no. 1 is the registered proprietor of the well known trademarks, "SAMSUNG", "SAMSUNG

SAMSUNG

DEVICE/ "SAMSUNG GALAXY" and

SAMSUNG GALAXY TAB".

(iv)Plaintiff no. 1 is also the owner of copyright in the original artistic work of the oval device/logo . The said oval device is protected as an

original artistic work under Section 2(c) of the Copyright Act, 1957. The said artistic work is protected in India by virtue of Section 41 of the

Copyright Act, 1957.

(v)The net sales figure of the plaintiff no. 2 in the financial year 2012-13 was Rs. 11,328 crores.

