

(2013) 03 DEL CK 0066
In the Delhi High Court
Case No : CS (OS) 551 of 2010

Societe Des Produits Nestle S.A. and Another	APPELLANT
Vs	
N.D. Sharma and Another	RESPONDENT

Date of Decision : 08-03-2013

Acts Referred:

Trade Marks Act, 1999 — Section 29(2), 29(4)

Citation : (2013) 56 PTC 338

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : Hemant Singh with Ms. Mamta Jha and Mr. Manish Mishra, for the Appellant;

Judgement

Manmohan, J.—Present suit has been filed for permanent injunction restraining infringement and dilution of trade mark, passing off, unfair competition, rendition of accounts of profits, damages and delivery up. In the plaint it is stated that the plaintiff no. 1 is the proprietor of the trade mark/trade name/house mark NESTLE which was adopted by Henry Nestle in 1866 and is today one of world's leading nutrition, health and wellness Company. It is further stated that NESTLE also forms a key and essential feature of all group companies as well as domain names used by the plaintiffs' group companies.

2. In the plaint it is stated that the plaintiffs received a customer query dated 14th March, 2010 asking whether it manufactures NESTLE RO Water Purifier system which the enquirer had come across. Plaintiffs' investigation revealed that defendants had a website by the name www.nestlemineralro.com.

3. Upon the present suit being filed, this Court on 26th March, 2010 restrained the defendants from manufacturing, selling, offering for sale, directly or indirectly dealing in water purifiers, R.O. water purifier or bottled water under the trade mark NESTLE or NESTLE Water Wave logo or any other trade mark/logo(s).

4. Since the defendants refused to accept summons issued by this Court, they

were proceeded ex parte vide order dated 19th October, 2011.

5. Ms. Venita Gabriel, PW-1 in her evidence has proved that plaintiff no. 1 is the owner of registered trade mark NESTLE in 130 countries and the trade mark NESTLE is registered for mineral water in India vide trade mark registration nos. 440511 dated 19th July, 1985. Other registrations of NESTLE Water Wave logo registered for mineral water amongst other beverages have been placed on record as being registration nos. 824056, 827403 and 422252.

6. PW-1 has deposed that the trade mark NESTLE has been used by the plaintiffs in relation to the bottled water as of 1969 internationally and in India since 2001.

7. PW-1 further deposed that the global sale of NESTLE products in 2008 was Swiss Franc 109.9 billion and sale of NESTLE in India for the year 2008 was over Rs. 4471 crores and the promotional expenses was over Rs. 94 crores. She also deposed that NESTLE has been conferred number of awards by NDTV Profit Business, Outlook Money, NDTV Profit, Coffee Board of India and Business Standard and that NESTLE has been rated as top three most valued Swiss brands by internationally acclaimed brand rating company, namely, Interbrands. She deposed that the trade mark NESTLE has been branded as one of the top most 100 brands in the world by Interbrands with the value of US\$ 6319 million.

8. Having heard learned counsel for the plaintiffs and perused the ex parte evidence as well as documents placed on record, this Court is of the opinion that plaintiffs have in fact proved the facts stated in the plaint and have also exhibited the relevant documents in support of their case. Since the plaintiffs' evidence has gone unrebutted, said evidence is accepted as true and correct.

9. This Court is of the opinion that use of trade mark NESTLE by the defendants constitutes infringement of plaintiffs' registered trade mark u/s 29(2) of the Trade Marks Act, 1999 (for short "the Act") since purified packaged water and water purifier systems are goods which are similar in nature, purpose of use and are cognate and allied goods. Consequently, such goods having trade connection and similarity of nature and purpose of use are "similar goods" for purposes of Section 29(2) of the Act and the use of the trade mark NESTLE by the defendant constitutes infringement.

10. From the evidence on record it is apparent that the trade marks NESTLE and NestleWaters (Logo) are registered in 130 countries and mark NESTLE has more than 80 domain names registered worldwide such as nestle-water-direct.com, nestle-water.com, nestle-purelife.com, nestle-watersplus.com etc. In view of aforesaid, this Court is of the opinion that there is enough material on record to show that the trade mark NESTLE is a "well known" trade mark globally, including India. Consequently, NESTLE being a "well known" trade mark is entitled to protection across all classes.

11. Accordingly, the use of the mark NESTLE in relation to water purifier system being without any due cause by the defendant is detrimental to the goodwill and

reputation as well as distinctive character of the said trade mark. It also amounts to dilution of the mark NESTLE. Consequently, defendants are also liable for infringement u/s 29(4) of the Act as well as act of passing off.

12. In India courts are sensitive to the growing menace of infringement and have started granting punitive damages even in cases where due to absence of the defendants exact figures of sales by the defendants under the infringing copyright and/or trademark exact damages are not available. In fact, punitive damages have the effect of deterring not only the defendant from repeating the offence, but also deterring others from committing the same, preserving peace, inducing private law enforcement; compensating victims for otherwise uncompensable loss and payment of the plaintiff's counsel fees. In *Time Incorporated Vs. Lokesh Srivastava and Another*, this Court has observed that "time has come when the Courts dealing in actions for infringement of trademarks, copy rights, patents etc., should not only grant compensatory damages but also award punitive damages with a view to discourage and dishearten law breakers who indulge in violation with impunity out of lust for money, so that they realise that in case they are caught, they would be liable not only to reimburse the aggrieved party but would be liable to pay punitive damages also, which may spell financial disaster for them." In the said case the court held that the defendants' magazine which used the Hindi translation of the word "Time" with the distinctive red border, was a slavish imitation of the plaintiff's trademark and held the defendants are liable for infringement.

13. Consequently, present suit is decreed in terms of para 33(a) and (b) of the plaint as well as damages to the tune of Rs. 2,00,000/-. Plaintiffs are also held entitled to the costs of the suit. Registry is directed to prepare a decree sheet accordingly. An authorised representative of the plaintiffs is permitted to visit the sites where goods seized by the Local Commissioners are stated to have been stored and to destroy the same. With the aforesaid observations, present suit stands disposed of.