
(2023) 04 DEL CK 0137

In the Delhi High Court

Case No : Civil Suit (COMM) No.509 Of 2022, I.A. No. 11699 Of 2022

Walmart Apollo LLC

APPELLANT

Vs

Abdul Majid Gagroo

RESPONDENT

Date of Decision : 10-04-2023

Acts Referred:

Trade Marks Act, 1999 — Section 2(1)(zg)

Citation : ?????

Hon'ble Judges : C.Hari Shankar, J

Bench : Single Bench

Advocate : Anuradha Salhotra, Zeeshan Khan, Sharika Vijh

Judgement

C.Hari Shankar, J

1. The plaintiff is a wholly owned Indian subsidiary of Walmart Inc., an American Corporation founded in 1962. The name "WAL-MART" is stated to have been coined as a portmanteau of the first half of the surname of the founder of the company Mr. Sam Walton and "MART" as an abbreviation for "market".

2. WALMART Inc. is stated to have assigned the Walmart mark to the plaintiff in 2018. The plaintiff has the following registrations of Walmart, as a word mark, in Classes 16, 35 and 42:

S.

No

Trade mark

Registration

no.

Class

Date of

registration

Renewed

upto

1.

WAL-MART

928856

16

31-05-2000

31/05/20

30

Goods: stationery, paper and plastic bags, printed paper signs, printed forms, advertising supplements to newspapers for general

circulation, privately circulated newspapers, packaging, price tags, included in class 16

2.

WALMART

1818308

35

14-05-2009

14/05/20

29

Services: primarily retail and wholesale services; and generally, advertising; business management; business administration; office

functions

3.

WAL-

MART

1254210

42

09-12-2003

09/12/20

Services: the bringing together for the benefit of others, of a variety of goods, enabling, customers to conveniently view and purchase those goods in a supermarket, a retail pharmacy, a general

merchandise internet web site, and in a retail department store

3. The plaintiff expostulates at considerable length regarding the worldwide reputation enjoyed by the plaintiff. It is stated that the plaintiff operates more than 10500 stores under 46 banners in 24 countries under the corporate name and trading style Wal-Mart/Walmart. It is stated that the plaintiff employs about 2.3 million associates worldwide. The plaintiff has consistently figured near the top of the Fortune 500 list of companies, which enlists the largest US corporations and, consistently from 2013 to 2021, is at the top of the list. The Forbes magazine is also stated to have rated the plaintiff as one of the worlds top companies. The plaintiff claims to have registrations of the Walmart/Wal-Mart in at least 90 jurisdictions including India and, among others, Andorra, Anguilla, Antigua and Barbuda, Argentina, Aruba, Australia, Austria, Barbados, Belarus, Belize, Benelux, Bermuda, Bolivia, Brazil, Brunei, Cambodia, Canada, Cayman Islands, Chile, China, Colombia, Costa Rica, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Estonia, European Community, Finland, France, Germany, Greece, Haiti, Hong Kong, Hungary, Iceland, Indonesia, Ireland, Jersey, Malaysia, O.A.P.I., Paraguay, Poland, Portugal, Russian Federation, Spain, Sri Lanka, Switzerland, Taiwan, Thailand, Trinidad & Tobago, Turkey, United Kingdom, United States of America and Virgin Islands (British).

4. The WALMART brand is also rated as one of the leading global brands. Consequent to approval of foreign direct investment (FDI) in multi-brand retail in India, the plaintiff claims to have become a 51% stakeholder in M/s Bharti Walmart Pvt. Ltd. in 2012, whereupon the name of the company was changed to Walmart India Pvt. Ltd. The plaintiff also claims to have acquired a majority stake in the Flipkart group of companies in 2018, whereafter, in July 2020, the Flipkart group acquired Walmart India Pvt. Ltd. On the e-commerce website of the Flipkart group www.flipkart.com, the plaintiff's products are sold under various trade names, in each case identifying the brand as "Walmart". Indian operations of the plaintiff are stated to have garnered revenue to the extent of Rs. 247,928,270,173 during the period 2007 to 2018.

5. As such, it is submitted that there is substantial spill over of the plaintiff's global reputation into India.

6. The plaintiff alleges that the defendant is using the marks WAL MART/WALMART/THE WAL MART//, which infringe the registered Walmart marks of the plaintiff. The marks are also prominently physically displaced outside the shops run by the defendant, as well as on Justdial and Findglocal and other such websites. Given the reputation of the plaintiff, the plaintiff alleges that the defendant is not only infringing the plaintiff's registered trade mark but is also

passing off its goods and services as those of the plaintiff.

7. This, it is submitted, has also resulted in dilution of the plaintiff's global reputation.

8. At the time of issuing summons in the suit on 27th July 2022, this Court, noting the fact that a prima facie case of infringement and passing off was made out against the defendant and in favour of the plaintiff, granted an ex-parte interlocutory ad interim injunction restraining the defendants, as well as all others acting on its behalf, from using the mark and name WAL-MART/WALMART at any physical or virtual locations well as e-commerce platform, online directory or trade website. That interlocutory order continues to hold the field till date.

9. Though two orders passed by this Court in the present proceedings state that the written statement filed by the defendant was under objections, no such written statement is forthcoming on the record.

10. In view of the continued non-appearance on the part of the defendant, this Court proceeded against the defendant ex-parte on 7th February 2023 and also confirmed the ad interim order date 27th July 2022 pending disposal of the suit.

11. Today, too, there is no appearance on behalf of the defendant. No pleadings, from the side of the defendant, are forthcoming. The assertions in the plaint have, therefore, gone un rebutted.

12. There does not appear to be any disputed issue of fact in the present case. The material on record clearly indicates that the defendant is using the mark WAL-MART/WALMART in respect of services similar to those rendered by the plaintiff under its registered word marks. Given the reputation of the plaintiff, there is also substance in the plaintiff's contention that the defendant is seeking to misrepresent itself as associated with the plaintiff and is also, thereby, guilty of passing off its services as those rendered by the plaintiff.

13. The suit, therefore, deserves to be decreed in terms of the prayers contained therein.

14. The prayer clause in the suit reads thus:

"44. In light of the above facts and circumstances, the Plaintiff humbly prays that this Hon'ble Court may be pleased to grant the following reliefs:

i. A decree of permanent injunction against the Defendant, his successors, franchisees, licensees, distributors, representatives, assignees, agents, and anyone acting for and/ or on his behalf from using the Impugned Marks i.e., WAL MART/ WALMART/THE WAL MART// and/or any other mark identical/ deceptively similar to the Plaintiff's WALMART Mark either by itself or in conjunction with any other word, as a trade mark or as part of trade mark, trade name or part of a trade name, corporate name or part of a corporate name, as a domain name or part of a domain name, as an email address or part of an email address or in any manner whatsoever in relation to its goods/services;

ii. A direction to the Defendant to remove the impugned listings bearing the Impugned Marks from JustDial, Google Business Site, FindGLocal and Nicelocal at the following links JustDial- https://www.justdial.com/Srinagar/Wal-Mart-Residency-Road/9999PX194-X194-131119162558-T3U5_BZDET ;

Google - <https://the-wal-mart.business.site/>; Nicelocal - https://nicelocal.in/srinagar/shops/wal_mart/;

FindGLocal

<https://www.findglocal.com/IN/Srinagar/1672037723050251/Unofficiali%3A-walmart>.

iii. An order directing the Defendant to deliver to the Plaintiff's attorneys or its representatives for destruction, any and/or all products, labels, stickers, molds, signs, stationary, business cards, prints, packages, plates, dyes, wrappers, receptacles, materials, and advertisements in his possession or under his control, bearing the Impugned Marks and/or any mark identical/confusingly similar to the WALMART Mark;

iv. An order directing the Defendant to allow inspection of its accounts to assist in ascertaining the amount of profit made by him as a result of his use of the Impugned Marks and a decree be passed in favor of the Plaintiff and against the Defendant for the amount found due after accounts have been rendered. The Plaintiff also asks for additionally granting exemplary and punitive damages;

v. A declaration that the WALMART Mark of the Plaintiff is a well-known mark within the meaning of section 2(1)(zg) of the Trade Marks Act, 1999;

vi. The decree be binding on the Defendant's successors, franchisees, licensees, distributors, representatives, assignees, agents and anyone acting for and/or on his behalf;

vii. Costs of the suit; and

viii. Any other relief which this Hon'ble Court thinks fit and proper in the circumstances of the case be allowed in favor of the Plaintiff and against the Defendant."

15. The suit is accordingly decreed in terms of prayers (i), (ii) and (iii).

16. As the defendant has remained unrepresented, the court is awarding token costs and damages against the defendant of Rs. 1 lakh to be deposited with the Registrar General of this Court by way of a crossed cheque/demand draft in favour of Kailash Satyarthi Children's Foundation, L-6 III Floor Kalkaji, New Delhi, 110019, within four weeks from today.

17. The suit stands decreed in the aforesaid terms.

18. Let a decree-sheet be drawn up by the Registry accordingly.