



Case Studies on Intellectual Property Rights Infringement: Indian Perspective

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ABSTRACT

Having regards to intangible property, every citizen of India has freedom to express their ideas in the form of books, novels, plays, articles, etc. They also have right of protection of their ideas which is new, non-obvious and useful to the public at large. This paper is an attempt to discuss about the concept of passing off, piracy and infringement of intellectual property rights. It further elaborate on compelling some cases describing the above concept. Law of life is not a logic it is an experience. In my opinion case study is an area where sections of the statutes are interpreted, reproduced and applied. Therefore it is important to study case laws as well as substantive laws.

KEYWORDS

patents, trademarks, designs, copyrights, original work, plagiarism, passing off, ideas, etc.

A. *M/S. LION DATES IMPEX PRIVATE LTD. V. M/S. MURUGAN & CO.*

1. FACTS OF THE CASE:

The Plaintiff and the defendant have been dealing in the process of packing and marketing identical goods, Dates, Dates Syrup, Honey, Jam, Oats, Tamarind, Vermicelli, Salt, Olive oil and other food products under the Trade Mark 'Lion' along with the device of 'Lion' and 'Annai' along with the device of 'Mother' and 'Child' respectively.

According to the plaintiff, he obtained the registration of the design for the color scheme of its packaging in pouches for dates in design application and the registration certificate is issued. It is the further case of the plaintiff that the plaintiffs dates are sold in pouches called pouch packages, which is a distinct trade dress in the shape and size as well as method of sealing and finishing of the pouch package. The new pouch package has been adopted and being used by the plaintiff and attained familiarity and popularity, resulting in increase in sales turn over and business goodwill and reputation of the plaintiff. Whereas, the defendant also launched identical products dates and the same are sold with identical trade dress, pouch packages in the same colour scheme, shape, size, method of sealing and finishing and such adoption is, with dishonest intention to make gain on the reputation and goodwill of the plaintiffs distinct design of the trade dress and there is every likelihood of confusion to the unwary customers consisting of uneducated, illiterates, villagers and inadequately educated.

2. LEGAL ISSUES

Whether such act of the defendant amounts to infringement of the plaintiffs registered design and color scheme and;

Whether the act of the defendant in passing off its identical products as that of the plaintiff amounts to misrepresentation, leading to confusion and deception about the origin of the products or about the trade connection between the two companies?

3. REASONS FOR DECISIONS

The reliefs are seriously opposed by the defendant on the following grounds (i) the trademarks of the plaintiff and the defendant LION and ANNAI are neither phonetically nor visually similar (ii) the registration of preprinted aluminum foil pouch under the head packing under class 07-02 is wrongly obtained under wrong class and (iii) the novelty, in respect of which registration of design is obtained is only with respect to sealing lines of the wrapper and not for the colour scheme. Even

otherwise, the plaintiff has been admittedly selling dates in aluminum foil pouches in the same trade dress shape and colour scheme much prior to the date of application for registration. The plaintiff's pouch packing and sealing in pre-printed aluminum foil wrapper is very common in the food industry and no proprietary right can be claimed by any one in respect of such method of packing, sealing and finishing.

The fact that both the plaintiff and the defendant carrying on business in identical food products viz. dates under different trade name 'LION' and 'ANNAI', 'LION' along with device 'LION', and 'ANNAI' along with the device of 'Mother' and 'Child' are not in dispute.

"For appreciating the relief against passing off action, it is but relevant to consider the definition of 'Mark'. The design of the label would include not only the trademark, but also the colour scheme and get up of the wrapper or container as well. The articles would invariably be guided by the physical appearance of the labels, as the customers have the intuitive instinct to select the goods by the design, trade dress, colour and get up and the trade name of the goods."

"The colour combination, get up, lay-out and size of container is some sort of trade dress which enhances the overall image of the product features. There is a wide protection against imitation or deceptive similarities of trade dress as trade dress is the soul for identification of the goods as to its source and origin. There are no diligent or literate conscious customers, who always remain conscious to the quality of the goods when they have been purchasing, which determines an offence of passing off. They are the unwary, illiterate and gullible persons, who do not arrive at a conclusion whether goods are infringed by confusingly similar in colour combination, get up, lay-out printed over the container or packing. If it is not so, then the offence of passing off will cease to have its existence once the guilty party chooses a different trade name, as held in the judgment reported in Colgate Palmolive Company v. Anchor Health and Beauty Care Pvt. Ltd."

4. JUDICIAL DECISION

In the result, an order of interim injunction restraining the respondent, its directors/partners (as applicable) all its principal officers, staff, men, agents, servants, successors, assigns in business, representatives or any other person claiming any right through or under the respondent from in any manner using, manufacturing, packing, marketing, distributing or selling or offering for sale, advertising, displaying or indirectly using a trade dress of shape, size, method of sealing and finishing on any of the defendant's products in particular the

packages of dates, which is identical/deceptively similar to the trade dress of the plaintiff in the shape, size, method of sealing and finishing of the plaintiff's packages of dates, is granted.

B. KAPIL CHOPRA VS. MR. KUNAL DESHMUKH & ORS

1. FACTS OF THE CASE:

The plaintiff has filed Suit and also filed Notice of Motion for injunction against the release of the film "Jannat-2" directed by Defendant No.1 and produced by Defendant No.2. It is the case of the plaintiff that the plaintiff had registered his script "Zero" with the Film Writers Association on 12 November, 2007 and that the film 'Jannat-2' was in clear infringement of plaintiff's script. It is the case of the plaintiff that the plaintiff had discussed the story with Defendant No.1 and had personally met Defendant No.1 several times discussing the story. Reference is made to the text messages exchanged between the plaintiff and Defendant No.1 and also to the email messages. There is no dispute about the fact that the plaintiff had given recitation of the story in December 2009 and thereafter by August 2010 the plaintiff had given full script of the story to Defendant No.1 and in January 2011 the plaintiff had given script flow to Defendant No.1. When the plaintiff came to learn from promos of the film that the Defendant Nos.1 and 2 have made a film on the story about the police and informer, the plaintiff had approached Defendant No.1 and inquired whether the film is based on the same story and the Defendant No.1 denied the same and informed the plaintiff that it was based on some other story of film "infernal affairs".

2. LEGAL ISSUES / CONTENTION:

Whether there is breach of confidence between plaintiff and defendant and;

Whether there is infringement of the copy right?

3. REASONS FOR DECISION:

It is submitted that the plaintiff's story was registered with the Film Writers Association in November 2007 and thereafter the plaintiff had given the said story to Defendant No.1, who had in turn had shown a considerable interest in the story and thereafter several meetings were held where the said story was discussed between them. It is further submitted by learned counsel that in view of the striking similarities between two stories, clear case of infringement of plaintiff's copy right is made out. Plaintiff has also invoked the doctrine of breach of confidentiality and relied upon the decision of the Division Bench of this Court in Zee Telefilms Ltd. and Another Vs. Sundial Communication Pvt. Ltd. & Others. It is contented that since the plaintiff's story was admittedly received by defendant No.1 and it was acquired by Defendant No.1, under such circumstances it would be breach of good faith to make use of the said story by making the film on that basis. Learned counsel submits thus the Defendants have committed breach of confidentiality.

4. JUDICIAL DECISION

"We may also place on record that by an order passed earlier; we had directed that any party wishing to broadcast the film on satellite television can do so after deposit of Rs.10 lakhs. During the hearing before us we suggested to the Defendants that the same order may be continued with the modification that the plaintiff be permitted to withdraw the amount deposited after furnishing the security to the satisfaction of the

Registry, subject to the final outcome of the suit. This request was opposed by the Defendants that the plaintiff should be allowed to withdraw the amount only after furnishing the bank guarantee. Learned counsel for plaintiff after taking instructions, submitted that the plaintiff being a young professional, is not in a position to furnish a bank guarantee. The attempt of Defendant Nos. 1 and 2 was thus to deprive the plaintiff of any monetary compensation for his literary work. As we have noted in the beginning itself, the greed and deceit which often form plot of a Bollywood film, are manifest in the real life conduct of the Defendant Nos.1 and 2 themselves. We do not wish to say anything more. Injunction is liable to grant in favor of plaintiff."

WORDS AND PHRASES USED

Lord Denning explained the words 'to deceive' and the phrase 'to cause confusion' in Parker Knoll Ltd. v. Knoll International Ltd., 1962 RPC 265 in the following manner—

"Secondly, 'to deceive' is one thing. To 'cause confusion' is another. The difference is this: When you deceive a man, you tell him a lie. You make a false representation to him and thereby cause him to believe a thing to be true which is false. You may not do it knowingly, or intentionally, but still you do it, and so you deceive him. But you may cause confusion without telling him a lie at all, and without making any false representation to him. You may indeed tell him the truth, the whole truth and nothing but the truth, but still you may cause confusion in his mind, not by any fault of yours, but because he has not the knowledge or ability to distinguish it from the other pieces of truth known to him or because he may not even take the trouble to do so."

The decision in Roche's case) is an authority for the proposition that the true test to be applied for judging an infringement is whether the offending trade mark is such that it is likely to cause deception or confusion or mistake in the minds of persons, accustomed to the existing registered trade mark.

It has submitted that the respondents with a deliberate and systematic intent to make wrongful gain by adopting the suit mark even before getting it registered are encashing goodwill and reputation earned by it during a considerable period. He is further of the view that as both the products, having a predominant similarity of 'DEXOLA' deal with human life, the paramount consideration in exercise of discretion is the public interest. According to him, the probability cannot be ruled out that the confusion arising from the marks which are deceptively similar may result in appreciable harm to infants or invalids.

LEARNING FROM CASE LETS:

As we know that the use of case study on business point of view is very useful and meaningful. People can learn more effectively when actively involved in the business process. The said article incorporates some cases which are relevant to the Intellectual Property Rights. The owner of the Intellectual Property can use, sale, gift, transfer, assign, etc. its right to the other person by means of legal process.

CONCLUSION

In the business community it is found that the patent of one person is used by another person to make profit from that patent. It is unjust, unfair and unreasonable. To avoid all these illegal activities remedies are available under the law. Whenever the monopoly rights of the persons are violated, their rights are secured again by the Act through judicial activism. For example the patentee has to institute a suit for infringement of rights. The reliefs which may be awarded in such a suit are—(a) interlocutory/ interim injunction, (b) damages or accounts of profits and (c) permanent injunctions.

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