

TM 03/2022

M/s Goldmedal Electricals Pvt. Ltd.

.....Plaintiff

Versus

Dalpatsingh, Trading as M/s Mamta Electricals

.....Defendant

27.01.2022

Matter taken up today through Cisco WebEx platform vide Order No. 896/RG/DHC/2021 dated 30.12.2021 and No. 1/RG/DHC/2022 dated 12.01.2022 passed by Hon'ble High Court of Delhi.

Fresh suit u/s 134,135, 29 & 27 of Trademarks Act, 1999 and section 55 of Copyright Act, 1957 for permanent injunction restraining infringement, passing off, delivery up rendition of accounts etc. received by way of assignment. It be checked and registered as per rules.

ORDER

Present: Sh. SK Bansal along with Sh. Kamal Naresh, Ld. Counsels for the plaintiff.

Perusal of the plaint shows that it is a suit for infringement, copyright, passing off, rendition of accounts etc. against the defendant for usage of trademark “**GOLD LABEL**” which is strikingly similar to the plaintiff’s trademark “**GOLD LABEL.**”

Issue summons of the suit on filing of PF/RC and authorized courier as well as email to the defendants and notice of application under Order 39 Rules 1 and 2 R/w Section 151 CPC.

Ld. Counsel for the plaintiff has been prayed for ad-interim ex-parte injunction.
Submissions heard. File perused.

The case of the plaintiff is that plaintiff is engaged in the business of manufacturing and marketing of wide range of electrical goods including wires, cables,

switches, household or kitchen utensils, music systems, Blinds, Bluetooth player, speaker, door bell, emergency lights, fan regulator, FM radio player, and various other products and that the plaintiff, through its predecessors, M/s Bright Electricals, 11-31-27, Park Road, Vijayawada-520001, Andhra Pradesh, has been engaged in the business of processing, marketing wide range of electrical goods since the year 1979-80. In the year 1979-80, through its predecessor, plaintiff adopted the Trade Mark/Label “**GOLD MEDAL**” (word per se and in an artistic manner), hereinafter referred to as the said trademark/label which functions as the House mark of the plaintiff, and plaintiff has been using the same along with its formative marks since then continuously and uninterruptedly. The plaintiff over a period of time has been using its said trademark in various stylized/artistic format/labels which have been created and are being created over a period of time. The plaintiff has also provided details of its trademarks including class. It is averred that plaintiff also holds copyright in the art work involved in the plaintiff’s trademarks/labels. The plaintiff is also promoting the said trademark through different means and modes including through their advertisement and publicity in leading newspapers, trade literature, trade hoardings and boards.

According to the plaintiff, the said trademark has acquired secondary significance with the goods and business of the plaintiff and in view of the unique goodwill and reputation it has earned, it has become well-known trademark within the meaning of Section 2(1) (zg) of the Trade Marks Act, 1999.

The plaintiff has been using the said trademarks honestly, bonafidely, extensively, exclusively, continuously, commercially and in course of trade. The plaintiff’s goods under the said trademark are freely and commercially available in India. The details of the application for registration of trademarks in respect of various classes of goods have also been provided in the plaint.

It is alleged that the defendant too is engaged in the business of manufacture and trade of identical goods as that of the plaintiff, viz. electrical goods, wires and cables, switches, pipes, insulating material and related/cognate/allied goods. The defendant is stated to have adopted and started using the trademark of the plaintiff “**GOLD MEDAL**” whereas the defendant is not the proprietor of the impugned trademark “**GOLD MEDAL**” and has

adopted and started using, selling, soliciting and networking for the same in relation to the impugned goods and business and is otherwise dealing with it in the course of trade without the leave and license of the plaintiff.

It is identical with and deceptively similar to the plaintiff's said trademark in each and every respect including phonetically, visually, structurally, in its basic idea and in its essential features. The defendant is allegedly using all kinds of false description on its impugned goods to wrongly link the impugned goods with the plaintiff and to wrongly convey to the public and customers that the impugned goods are coming from the source and origin of the plaintiff. The impugned goods and business thereunder are also of the same/similar/allied/cognate to that of the plaintiff's goods. The defendant by the use of impugned Trade Mark, is violating the plaintiff's right in the said trademark and thereby passing off and enabling others to pass off its impugned goods and business as that of the plaintiff as well as diluting the plaintiff's proprietary rights therein. The defendant is fully aware of the plaintiff's rights, goodwill, reputation, benefits and users etc. in the plaintiff's trademark at the time of its impugned adoption and use of the impugned Trade Mark and the resemblance between the rival trademarks is so close that it can hardly occur except by deliberate imitation. The defendant is not only making retail sales, but is also supplying the impugned goods bearing the impugned trademark/label to various dealers/shopkeepers/retailers in New Delhi area who are making clandestine and surreptitious sales thereof in Connaught Place, Sarojini Nagar, Naraina, South Extension, Khan Market etc. The plaintiff also came across solicitation for and offer of impugned goods under the impugned trademark by defendant on online interactive business portals like www.indiamart.com and www.justdial.com where the defendant has fraudulently displayed the impugned goods for sale. The resemblance between the rival trademarks are so close that it can hardly occur except by deliberate imitation. Such activities of the defendant have resulted in huge losses both in business and reputation of the plaintiff and it cannot be compensated in terms of money.

The photographs of the specimen of the products have been filed on record by the plaintiff.

The plaintiff has relied upon following judgments for seeking ad-interim injunction.

- **Midas Hygiene Industries P. Ltd. & Anr. Vs. Sudhir Bhatia & Ors., 2004 (73) DRJ 647 (SC).**

“The Law on the subject is well settled. In cases of infringement either of Trade Mark or of Copyright normally an injunction must follow. Mere delay in bringing action is not sufficient to defeat grant of injunction in such cases. The grant of injunction also becomes necessary if it prima facie appears that the adoption of the Mark was itself dishonest.”

- **American Home Products Corporation Vs. Mac Laboratories Pvt. Ltd., AIR 1986 (SC) 137.**

“When a person gets his trade mark registered, he acquires valuable rights by reason of such registration. Registration of his trade mark gives him the exclusive right to the use of the trade mark in connection with the goods in respect of which it is registered and if there is any invasion of this right by any other person using a mark which is the same or deceptively similar to his trade mark, he can protect his trade mark by an action for infringement in which he can obtain injunction, damages or an account of profits made by other person.”

The plaintiff has been using their trademark label honestly and bonafidely, continuously, openly, exclusively and to the exclusion of other uninterruptedly and have in the course of trade built up a valuable goodwill and reputation for their trademark since 1979-80.

In view of the above submissions, the plaintiff has established a prima facie case in their favor and balance of convenience also lies in their favor. Plaintiff has shown prima facie that in case defendant is not restrained, it shall cause irreparable injury to the business and goodwill of the plaintiff which cannot be compensated in terms of money.

Hence, the defendants, their agents, assignees, representatives, successors, distributors, stockist and all other acting for and on their behalf are hereby restrained till further orders from manufacturing, marketing, distributing, purveying, supplying, using, selling, soliciting, exporting, importing, displaying, advertising or by any other mode using

the impugned trade marks/labels “**GOLD MEDAL**” or any other word/mark/Label which may be identical with and/or deceptively similar to the plaintiff’s said trademark/label “**GOLD MEDAL**” in relation to electrical goods, electrical appliances, electrical accessories and fittings, wires and cables, switches, pipes, insulating material and other related/cognate/allied goods and from doing any other acts or deeds amounting to or likely to infringement/passing off plaintiff’s trademarks and passing off.

Compliance of Order 39 Rule 3 CPC be made within reasonable time.

As already ordered, issue summons of this suit and notice of the applications to the defendants on filing of PF/RC/AD and authorized courier.

Steps be filed within two weeks for **16.03.2022**.

Copy of this order be given to the plaintiff dasti as prayed.

(Manish Khurana)
Additional District Judge-03
Patiala House Courts, New Delhi
27.01.2022