

Vikas Gupta & Anr vs Amit Jain on 17 May, 2021

Author: J.R. Midha

Bench: J.R. Midha

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(COMM) 363/2019 & I.A. Nos. 429/2021, 4520/2021, 4521/9771/2019

VIKAS GUPTA & ANR.

Through:

.....
Mr.Sachin Gupta and Ms.
Mahajan, Advocates

versus

AMIT JAIN

Through:

.....
Mr.Shravan Kumar Bansal
Mr.Pankaj Kumar, Advoca

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

ORDER

% 17.05.2021

1. The plaintiffs have filed this suit for permanent injunction for restraining the defendant from using the trademarks 'SNEHA/NEHAL' or any other mark which is identical/deceptively similar to plaintiffs' trademark 'NEHA' .

2. On 17th February, 2021, this Court directed both the parties to remain present before this Court on 18th February, 2021.

3. On 18th February, 2021, the defendant appeared before this Court and he was examined by this Court. The defendant stated before this Court that he is using two other brands namely "Dr. Plus" and „Blueberry" other than the trademarks in question. He further stated that he never used other brand names. He further stated that two-three cases of infringement were filed against him which have been settled.

4. After recording the statement of defendant, this Court directed the defendant to disclose all the cases which were filed against him or which filed by him on affidavit within ten days. This Court further directed the defendant to file the final orders passed in these matters along with the affidavit. The details of the pending cases and the effective order(s) passed in those cases were also placed on record along with the affidavit. Paras 2 and 3 of the order dated 18th February, 2021 are

reproduced hereunder:

"2. Mr. Amit Jain, defendant is present in Court in terms of the order dated 17th February, 2021 and he submits that he is using two other brands namely Dr. Plus and Blueberry. He further submits that he never used any other brand names. He further submits that 2-3 cases of infringement were filed against him which were settled. The defendant is directed to disclose all the cases which were filed against him or which were filed by him on affidavit within ten days.

3. The final orders passed in the disposed of cases be filed along with the affidavit. The details of the pending cases and the effective order(s) passed in those cases be also placed on record along with the affidavit."

5. The defendant filed the affidavit dated 08th March, 2021 in terms of order dated 18th February, 2021.

6. Learned counsel for the plaintiffs submits that the defendant made false statement before this Court on 18th February, 2021. The plaintiffs have filed the affidavit in response to the defendant's affidavit. Relevant portion of the plaintiffs' affidavit dated 22nd March, 2021 is reproduced hereunder: -

"iii. I say that the affidavit filed by the Defendant shows that infringement of trade marks/trade dress is Defendant's modus operandi. He dishonestly adopts trade marks/trade dresses for his products which are deceptively similar to well-known trade marks/trade dresses of a reputed companies like Dabur, Marico and Hindustan Unilever etc.; continues to make illegal profits by using such marks and riding on their goodwill and reputation and gives up the mark/changes the get up when the company takes an action against him and then settles the matter. LITIGATION:

iv. Pursuant to the specific directions of this Hon'ble court, the Defendant on 18.02.2021 appeared before the Hon'ble Court. On specific enquiry by this Hon'ble court regarding the number of infringement cases that were filed against the Defendant, the Defendant falsely stated that only 2-3 cases have ever been filed against him. In the affidavit under reply, the Defendant has disclosed 9 cases filed against him, among which 3 are filed by Dabur India Ltd. and one each by Marico, Hindustan Unilever etc. It is evident that the Defendant is guilty of perjury and has concealed material facts from this Hon'ble Court. v. The details of the cases between the Defendant & Third Parties is tabulated below:

No. 3rd Party Defendant Case no./Status

1. Dabur Hair Plush Counterfeiting & Infringement of label Oil Jasmine Hair and design of the oil bottle Oil Bottle Amla Hair Dabur India v. Amit Jain; CS(OS) & Lesure Tushar Amla Inj. passed against the Def. on 9.12.05;

Hair Bottle Matter settled - Def. suffered a decree and paid cost of Rs. 22,000/-

2. Dabur Hair Plush Infringement of bottle design and label Oil Jasmine Hair Oil Bottle CS (OS) no. 314/2007 Amla Hair New No. CS (COMM) 1004/2016 Dabur oil (label) India v Amit Jain Tushar Amla Hair Bottle Injunction passed against the Def. on 20.02.2007;

Inj. was vacated against which an appeal was filed and was allowed. Suit pending.

3. Dabur Amla Kingson Infringement of label/get up/trade dress Hair Oil Amla Hair Oil Dabur India Ltd. v. M/s Siddhi Cosmetics CS (COMM) 637/2017 Injunction order passed on 22.09.2017; the Hon ble Court, in its order dtd. 13.02.2018 had observed that the Def is a „repeat offender .

Matter settled- the Def. changed its packaging and withdrew his trade mark appl.

4. FAIR & SNEHA & Trade mark infringement LOVELY LOVELY Hindustan Unilever Ltd. v. Amit Jain CS (OS) 479/2010 On 17.03.2010, the Defendant submitted that packaging does not belong to them nor have they ever used such packaging. On 17.04.2013 the counsel for the defendants stated the they have already destroyed the unused remaining stock and have handed over a status of the stock of the goods in the Court.

From the orders it is difficult to make out the trade marks involved in the matter.

5. BLUE BLUE VERY Infringement of Trade Mark, Copyright, VALLEY label, packaging Rajesh Jain v. Amit Jain CS (COMM)838/2016 Inj. was granted to the Plaintiff (Rajesh Jain) on 16.05.2014, which was primarily vacated on the ground that there was concealment on part of the Plaintiff therein; suit currently pending.

6. NIMSON KINGSON Deceptively similar font, logo, getup, style, label, etc. Mrs. Sonia Chadha vs. Amit Jain &Ors.

Inj. granted to the Pl on 27.05.2014; matter settled on 03.10.2018.

7. KINGSON NIMSON Counter Blast Amit Jain v. Ayurveda Herbal &Ors. CS As a counter blast to CS (OS) No. 1628/2014, Def filed this suit, obtained ex parteinj which was vacated as the Pl. (present Def) had failed to disclose that a suit inter se parties is pending.

Matter settled: Def withdrew the suit & modified his „Kingson packaging.

8. Parachute Kingson Infringement of trade dress, packaging Advanced Coconut and bottle shape Jasmine Hair Jasmine Oil Marico Ltd. v. Vinayak Industries &Ors.

CS (COMM) 584/2018 Inj order passed on; matter was settled; the Def was made to pay INR 3,00,000 as litigation expenses.

9. Roop Mantra Roop Ultra Trade Mark infringement Sanjeev Juneja v. M/s Vinayak Industries CS (COMM) 69/2016 Injunction was passed; suit was decreed as per the settlement in favour of the Pl and the Def was restrained from using the trade mark/label/packaging/wrapper/trade dress „Roop Ultra. vi. I say that apart from this, the Defendant has also made false statements regarding the number of trade marks used by him. Upon inquiry by this Hon ble Court on 18.02.2021, the Defendant had stated that except the impugned marks, he has only ever used 2 other trade marks i.e. DR. PLUS and BLUEBERRY.

vii. The Defendant did not disclose before this Hon ble Court that he is using 28 of marks, which is reflected from the invoices and court orders:

Sr. no. Defendant s Mark

3. VALUELINE

4. APARNA

5. BOROVI

6. ZOHAR

7. TUSHAR

8. LESURE viii. In fact, in the cases of infringement filed against the Defendant that have been placed on record by the affidavit under reply, which indicates that the Defendant was also using the below trade marks at some point of time:

Litigation wrt the below marks rd Sr. no. 3 Party s Mark Defendant s Mark

9. ROOP MANTRA ROOP ULTRA

10. NIMSON KINGSON

11. BLUE VALLEY BLUE VERY It may be noted that the Defendant has acquired manufacturing licenses for several other trade marks, some of which are copy of some well-known trade marks, reproduced below Sr. Defendant s Well no. Mark Known Mark

12. Pushpanjali Patanjali

13. Brueline Boroline

14. Multitouch -

15. Fairness Fine -

16. Men's Action -

17. Skin Gloss -

18. Plush & Lovely -

19. Plush -

20. Fairness Beauty -

21. Fairness & -

Sweet

22. Fine Glow -

23. Popie Lovely -

24. Pofie Lovely -

25. FuorFuor -

26. Fuor Glow -

27. Fuor Klick -

28. Face Lovely -

FALSE USE CLAIMED IN TM APPLICATIONS ix. I say that on 17.02.2021, a categorical statement was made by the Defendant's counsel that the Defendant has not used the impugned mark NEHAL yet. However, in the Written Statement filed by the Defendant, it has been stated that the use of the impugned mark NEHAL was discontinued by the Defendant. It is pertinent to note that the date of use claimed by the Defendant in its Applications for trade mark registration of the mark NEHAL which is demonstrated below:

Trade Mark Applicat Goods /Class Status Use ion No. 3 Claimed & date NEHAL
1595404 All types of Abandon 24.08.2003 dt cosmetics ed 27.08.20 NEHAL 1652187
Cosmetics Abandon 12.07.1989 AND dt.11.02. goods like ed LOVELY 2008 face,
creams, creams, mehendi etc. 2762717 Cosmetics Opposed 15.03.2001 dt hair oil,
26.06.20 cosmetics 14 goods nail polish, nail polish remover, tooth paste etc. x. I say
that with respect to the impugned mark SNEHA, the Defendant has stated in its
Written Statement that it started using the mark in the year 1989 when his father was

carrying out the business under the impugned marks. However, no manufacturing license or other requisite license has been placed on record to evidence the same even though such permissions are mandatory under the Drugs & Cosmetics Act.

The earliest manufacturing license that is placed on record by the Defendant is of the year 1999. As such, the Defendant has claimed false dates of use in its trade mark applications for the mark SNEHA as given below:

Trade Mark Applicat Goods /Class Status Use ion No. 3 Claimed & date SNEHA
1512150 Hair oil, Abandon 11.12.2006 dt. fairness ed 11.12.20 cream, body 06 lotion,
face wash, shampoo, cosmetics, soaps, perfumery, essential oils.

1670132 Cosmetics Rectifica 12.07.1990 dt. goods like tion 28.03.20 mehendi, pending 08 face
creams, colour dies, hair oil etc. 2762718 Cosmetics Opposed 15.03.2001 dt. hair oil, 26.06.20
cosmetics 14 goods nail polish, nail polish remover, tooth paste, washing powder, lipstick etc.
2982232 Cosmetics Opposed 12.07.1990 dt. goods like 11.06.20 mehendi, 15 face creams, colour
dies, hair oil, SNEHA talcum Lovely Multi powder etc. Touch 2982229 Bleaching Opposed
17.03.2003 dt. preparations 11.06.20 and other 15 substances for laundry SNEHA`S use;

Neem Tulsi	cleaning, polishing etc.		
2982231	Cosmetics	Opposed	17.03.20
dt.	goods like		
11.06.20	bleaching		
15	preparations and other substances for laundry use; cleaning etc.		
SNEHA`S Neem & Line			

xi. I say that in his affidavit, the Defendant has not disclosed all the products of the Plaintiff that were found in Sadar Bazar. Neha colour crème, fast colour, mehndi cone and handwash, which were also purchased from Sadar Bazar on 17.02.2021 in the presence of the representatives of both the parties, are not mentioned in the affidavit for reasons best known to the Defendant himself. Moreover, even though the affidavit states that the photograph of products is filed along with the invoice, there is no invoice attached. The invoice is attached herewith as Document 1.

xii. I say that the Defendant is a repeat offender and shall continue to make false statements and dishonestly adopt well-known trade marks to mislead the public at large if order with respect to Section 209 of IPC for making false claims before the Court is not passed against him. The public interest is at stake as the quality of Defendant s products cannot be controlled."

(Emphasis Supplied)

7. The affidavit of the defendant reflects that the defendant made false statements before this Court on 18th February, 2021 and therefore, notice is hereby issued to the defendant to show cause as to why proceedings for contempt be not initiated against him.

8. Learned counsel for the defendant accepts notice.

9. Mr. A. S. Chandhiok, Senior Advocate, is appointed as Amicus Curiae to assist this Court in this matter.

10. The Court Master shall furnish digitalised copy of the entire record to the learned Amicus Curiae during the course of the day.

11. Learned Amicus Curiae shall also make submissions with respect to guidelines necessary in IPR matters.

12. List for further hearing on 18th May, 2021 at 03:00 PM.

J.R. MIDHA, J.

MAY 17, 2021 ds