

Delhi High Court

Filex Systems vs Rotomac Pens on 28 September, 2005

Equivalent citations: 2005 (31) PTC 662 Del

Author: O Dwivedi

Bench: O Dwivedi

JUDGMENT O.P. Dwivedi, J.

1. Plaintiff company was incorporated under the provisions of the Companies Act. Plaintiff is manufacturing and selling variety of stationery products including presentation holders and envelopes, presentation clear books, clip files, ring binders, report files and covers, business card holders, expansion cases, document cases, CD Rom Holders and zipper wallets, conference holder which includes writing pads and pens, office stationery, adhesives, packaging, paper and paper products etc. In September, 1996, plaintiff adopted the trade mark SOLO in respect of stationery items of its manufacture and sale and has continuously and extensively used the same in the course of trade since March, 1997. It is pleaded that the goods manufactured and marketed by the plaintiff are of high quality and are identified and recognized as quality products originating from the plaintiff's source of manufacture and none else. The said trade mark SOLO is being identified and recognized by the purchasing public and the members of the trade with the products of the plaintiff. On account of priority in adoption, long, continuous and extensive use of the trade mark SOLO, the plaintiff claims to have acquired an exclusive right to the use of the said mark as a proprietor thereof in respect of the stationery goods referred to above. Besides the statutory rights of the plaintiff, on account of prior, long, continuous and extensive user, the plaintiff also filed an application for registration of the trade mark SOLO before the Registrar of Trade Marks, Mumbai on 23rd September, 1996 and the same is still pending. It is alleged that defendant company is also engaged in manufacturing and marketing the stationery products including pens. The defendant has dishonestly and malafidely adopted an identical mark SOLO in respect of stationery goods like pens, ball point pens/jotter pens with a sole purpose to cause confusion and deception in the minds of unwary class of purchasers and to earn illegal profits by passing off its inferior quality goods as those of the plaintiff. The said mark SOLO adopted by the defendant is identical to the plaintiff's well established and reputed trade mark SOLO and is bound to cause confusion and deception in the normal course of trade. Plaintiff came to know about the defendant's adoption of trade mark SOLO for the first time in third week of April, 2003 and hence this suit. Plaintiff has sought the following reliefs :

(i) For a decree of permanent injunction restraining the defendant, its directors, servants, agents, representatives, dealers and all other acting for and on their behalf from manufacturing, selling and/or offering for sale, directly or indirectly dealing in stationery products including pens/ball pens/jotter pens or pens of any nature or any other stationery items/goods as may be cognate or allied to the plaintiff's goods or the goods of the same description and/or goods having similar trade channels and/or goods as are dealt with by similar class of traders and purchasers under the mark SOLO and/ or any other mark which may be identical and/or deceptively similar to the plaintiff's trade mark SOLO and/or from doing any other act as is likely to cause confusion and/or deception amounting to passing off of defendant's goods and/or business as the goods and/or business of the plaintiff.

(ii) For an order of delivery of all the infringing materials containing the impugned mark, catalogues, cartons, stencils, dies, blocks, films, plates and publicity material etc. for the purpose of destruction/erasers.

(iii) For an order of rendition of accounts earned by the defendant by use of the impugned mark and decree of the amount so found due.

(iv) For the order of costs of the proceedings.

2. After service of summons upon the defendant, defendant had appeared. Defendant has contested the plaintiff's application being IA No. 7986/ 2003 under Order 39 Rules 1&2, CPC for grant of ad interim injunction. The said application was disposed of by this Court's detailed order dated 11th December, 2003 whereby application was allowed and the injunction as prayed by the plaintiff was granted. Thereafter, the defendant stopped appearing in the case. Ultimately defendant was proceeded ex parte vide order dated 14th December, 2004.

3. In proof of its case, plaintiff has filed affidavit of Mr. Amit Gupta who is the Managing Director and Principal Officer of Filex Systems Pvt. Limited and is duly authorized and competent to sign and verify legal pleadings and to institute the present suit. In the said affidavit, Mr. Gupta has substantiated the averments contained in the plaint on Oath and also proved various documents namely copy of Resolution marked as Ex. P-1 A, copy of Memorandum and Articles of Association containing the Certificate of Incorporation is marked as Ex. P-2 A, catalogues/advertisements/magazines of the plaintiff's products are marked as Ex.P-1 to P-24, Ex.P 47 to Ex.P-48, Ex.P-49 to Ex P-258 (colly.), Ex P-270 to Ex P-289 (colly.), Ex P-290 to Ex.P-444 (colly.), Ex.P-445 to Ex.P-467 (colly), Ex.P-470 to Ex.P-472 (colly) Plaintiff has also placed on record the defendant's carton as well as the sample of defendant's product/pen describing as SOLO JOTTER PEN marked as Ex.P-468 and Ex.P-469 (colly).

4. A perusal of the documents show that trade name SOLO adopted by the defendant is identical to the plaintiff's trade mark, therefore, case for grant of relief in the plaint as prayed by the plaintiff is made out. Moreover, in the absence of any version or evidence to the contrary, there appears no reason to disbelieve the plaintiff's version which has been substantiated by affidavit sworn by Sh. Amit Gupta, Managing Director of plaintiff and documents referred to above. Therefore, the suit deserves to be decreed ex parte.

5. Learned Counsel for the plaintiff has referred to a decision in the case of Hindustan Machines v. Royal Electrical Appliances, wherein the facts were that the plaintiff was manufacturing and selling the house-hold articles, kitchenware, domestic appliances and electric and electrical goods bearing the trade mark MAHARAJA since 1978. Plaintiff came to know that defendant had adopted the trade mark Royal MAHARAJA in respect of Mixer-grinder machine. This Court passed the decree for permanent injunction in favor of the plaintiff and also awarded an amount of Rs. 3,00,000/- in lieu of rendition of accounts.

6. In view of the decision in the case of Hindustan Machines (supra), this suit in terms of prayer Clause 27 (i) (ii) of the plaint is decreed ex parte with costs. As regards the relief No. (iii) of prayer Clause 27, I think, interest of justice would be served if a decree for the recovery of Rs. 5 lakh is passed in lieu of rendition of accounts. Ordered accordingly. Let the decree be drawn accordingly.

Suit & all pending applications stand disposed of.