

## **Camlin Pvt. Ltd. vs National Pencil Industries on 7 November, 1985**

**Equivalent citations: AIR1986DELHI444, 1986(1)ARBLR86(DELHI), AIR 1986 DELHI 444, (1986) 1 ARBI L.R. 86**

### **JUDGMENT**

Mahinder Narain, J.

(1) What arises-for consideration in this case is the nature and extent of rights of the plaintiff in printed pencil boxes/cartons in which the pencils are being sold by the plaintiff.

(2) In this suit as well as in this application it is contended that the plaintiff is the registered owner of trademark bearing registration No. 324515-B dated 13th April, 1977. It is asserted that the said trade mark is valid, subsisting full legal force. Thattrade'rmark is in reject of fountain pens, pencils, ball pens and refills therefore, 'the registered trade mark in terms of the certificate, of registration in two words Camlin FLORA.

(3) It is also asserted in the application, as also in the suit that the plaintiff is the owner of copyright in the floral design that appear on its printed cartons/boxes and that the design. thereon, in "original artistic work". It is also asserted that the respondents are passing off their goods as goods, of the plaintiff.

(4) It is asserted that the plaintiff is one of the largest manufacturer of art and stationery materials in India and have been exclusively marketing the goods of its manufacture for the past 40 years; that since the year 1977, the plaintiff has been manufacturing and selling their Camlin Flora Pencils in distinctive and artistic cartons.

(5) That distinctiveness, which is claimed, is that the pencil in question has got colour combination of white, pink and green,. that there are .two' strips of while and green next to each other at the rear portion of the pencil, that here is a floral design on the skin of the pencil, which is unique. The unique design comprises of array of pink flowers with a green leaf on the white background. It is also asserted that the same repetitive floral pattern, appears on the cartons. .

(6) The cartons, which .have been annexed Along with the plaint, as stated above, is a printed carton made of some kind of paper board.

(7) It .is also asserted that on account. of extensive, use of the words Camlin Flora on the pencil and the. carton /box vast reputation has been acquired, which denote .a high quality product originating exclusively from the applicant/plaintiff.

(8) It is asserted that the defendants are using deceptively similarly decorated pencil and carton,, which are deceptively similar to .the pencil-decorated with the flowers, and the-cartons which are, and have been in use, ofthe applicant/plaintiffs.

(9) It is asserted that the applicant had got a copyright in the artistic logo script of trade mark Flora as original artistic work.

(10) It is also asserted the application that that Camlin 's the house mark 'of the applicant, regarding Camlin being the house mark of the petitioner there have 'been no arguments urged during the course of hearing, and this question does not need consideration in this application. It may however be mentioned that Trade and Merchandise Marks Act does riot define the word 'House Mark'. The concept of House Mark is not to be found anywhere except in an administrative orders of Comptroller General Marks in 47RPC, 37, 43 L. 34 which cannot be given any recognition in India, in view of absence of such a concept in the statutory provisions. If is possible that at a future date when the industrialisation of India has resulted in Mega Corporations conglomerates that House Mark may need statutory/legal recognition by Courts. .

(11) The defendants contended that the application is not maintainable on account of unreasonable delay and laches on the part of the applicant/plaintiff and that the defendants' cartons bearing the word Captain Elora with numbers 1180 in connection with their pencil have been in use since 1-4-1981, and that the suit filed in 1985 is without any explanation of the delay Of four years. It is also asserted by the defendants that they are the registered owners of the carton "entitled" Captain Elora which is (registered at No. A-36907/82 under the Copyright Act, 1957 and that registration is still valid. It is asserted that- Elora and Flora are distinctive words. The word Flora indicates flowers. The word Elora refers to the famous caves.

(12) It is also asserted that the cartons used by the defendants and the plaintiff are absolutely distinct and different and there is no similarity between the two. .

(13) It is asserted that the defendants hold. registration of the .cartoons under-the Copyright Act but the plaintiff do not hold any such copyright.

(14) It is also asserted that the suit. which has been Sled, 58 false, frivolous and vexatious and is an attempt on the part of the plaintiff to put the defendants out of business and the market.

(15) What is required to be determined in this case is whether any copyright can exist in 'the subject-matter in which the same. is claimed. That is to say whether there is any copyright in the printed cartons in which the pencils of the plaintiff and defendants are sold (16) In order to determine whether copyright exists in the cartons, it is necessary to keep in view the legally .accepted meaning of 'copyright'. In essence. in law, copyright means the exclusive right to make copies of any copyrightable subject- matter in any tangible material form. Section 13 of the Copyright Act, 1957 which deals with subject-matter of copyright reads as under :

"1. Works in which copyright subsists: (1) Subject to the provisions of this section and the other, provisions of this Act, copyright shall subsist throughout India in the following classes, of work, that is to say (a) original literary, dramatic, musical and artistic works; (b) cinematograph films; and (c) records. (2) Copyright shall not subsist in any work specified in sub-section (1), other than work to which the provisions of section 40 or Section 41 apply, unless (i) in the case of a published work, the work is first published in India, or where the work is first published outside India, the author is at the date of such publication or in a case where the author was dead at that date, was at the time of his death, a citizen of India; (ii) in the case of an unpublished work other than an architectural work of art, the author is at the date of the making of the work a citizen of India or domiciled in India; and (iii) in the case of an architectural work of art, the work is located in India. Explanation. In the case of a work of joint authorship, the conditions conferring copyright specified in this sub-section shall be satisfied by all the authors of the work.

(3) Copyright shall not subsist:- (a) in any cinematograph film a substantial part of the film is an infringement of the copyright in any other work; (b) in any record made in respect of a literary dramatic or musical work, if in making the record, copyright in such work has been infringed. (4) The copyright in a cinematograph film or a record, shall not affect the separate copyright in any work in respect of which or a substantial part of which, the film, or as the case may be, the record is made. (5) In the case of an architectural work of art, copyright shall subsist only in the artistic character and design and shall not extend to processes or methods of construction.

(17) In this case, it is contended that the machine printed carton which are in question in which pencils are sold is covered by Section 13 of the Copyright Act, inasmuch as the carton is an "original artistic work"; it is further contended that being a original artistic work copyright subsists, therein, and the plaintiff is entitled to sue for infringement of the copyright in the cartons. .

(18) An examination of the carton would show that it is made out of some cardboard like material which has got printed matter thereon, the printed matter is printed on the carton in different colours. The colours which are visible on the carton are green, white, red and black. Besides the printed colours on the cartons, what is also visible to the eye, is some printed words which have been impressed upon the carton. The printing of the carton has been done by utilising any of the various printing processes by which multicolor impression can be applied to cardboard like paper.

(19) A look at the plaintiff's cartons also indicates that it contains the following words: - "FROM The Makers Of Camel Art Materials Contents of this box marked with price. Camlin Flora 72HV Hexagonal Unbreakable Pencils Product NO. 1130"

It is also written on the carton that the Mark (an illustration) referred to indicate a perfect bond of lead and wood to give an unbreakable point in normal use.

(20) A look at the carton of the defendant shows that in addition to the various colours printed thereon there are the following words printed on it: "NATIONALELORA Hb Hexagonal Deluxe Pencils Product No. 1180"

(21) It is clear that both the cartons are printed products, produced by a printing machine. My view that the carton is product of some kind of printing machine is strengthened by the fact that even in the plaint, it is asserted, the goods which are manufactured by the plaintiff are produced in very large quantities and the statement of sales of Camlin Flora Pencil indicate that pencil worth Rs. 1,24,65,552.00 were sold in the year 1982. Since each carton contains a small number of pencils it would not be possible to accept that any process other than a printing process involving skilful use of hands, alone has been utilised in the making up of these multicolored cartons in which the pencils are being sold.

(22) In any case, it is clear to me that the cartons/boxes filed along with the plaint could not have been made by an artist utilising his skills with a paint and brush, (in addition to calligraphic skill). What is, therefore, to be determined is whether sufficient skill and labor has been expended upon the cartons/ boxes to enable it to be covered by Section 13 of the Copyright Act.

(23) I had conveyed it to counsels, during the course of arguments, that the cardboard appeared to be mechanically reproduced article, and that in order to qualify for being covered under the Copyright Act, the carton had to be 'original artistic work, that is to say, the carton must originate from an author who must have expended his skill and labor upon it. This was put to the counsel for the plaintiff, in view of the judgment in 1964 Volume I All England Law Reports, 465 (equal to 1964 (1) Weekly Law Reports, 273) (1). In that case the House of Lords, relying upon the observations in an earlier judgment, said that in Copyright law, 'original' means that which originates from the author. The observations relied upon by the House of Lords contained in (1894) AC 335 which reads as under:--- "THE word 'original' does not in this connexion mean that the work must be the expression of original or inventive thought, Copyright Acts are not concerned with the originality of ideas, but with the expression of thought, and in the case of literary work, with its print or writing. The originality which the expression of thought in print or writing. The originality is required relates to the expression of the thought. But the Act does not require that expression must be in an original or novel form but that the work must not be copied from another work that it should originate from the author.

(24) In order, therefore, to be covered by the Copyright Law, any work in which copyright is claimed must originate from the author. It also necessarily means, as indicated in the aforesaid passage, that the work in which, copyright is claimed must be something which has not been copied by the author from any one else. It is only when the work has not been copied, that it can be said that it has 'originated' from the author.

(25) As I have observed above, the cartons/boxes in question which have been filed along with the plaint, appear to be mechanically reproduced ones. Because it is mechanically reproduced, I am of the view that it cannot be said that any skill or "labor has been expended upon the allegedly artistic carton which has been filed in Court, as the same has been produced by mechanical actions of a printing machine, and not by skill and labor having been expended upon them by any natural person. It is only natural persons who are, because of expenditure of their personal skill and labor upon any work, entitled to protection under the Copyright Law. [1924 Privy Council 75; 1960 (13 Madras Law Journal 53(2)).

(26) Because of the provisions of Order 7 Rule 14 (1) of the Civil Procedure Code, it is essential that the documents sued upon be filed with the plaint, in Court; and 'document' in this case is printed boxes/cartons, filed in Court. In view of Order 7 Rule 14, necessarily, the document sued upon is the machine printed carton which is filed in Court by plaintiff. Inasmuch as the only document which has been filed is the machine printed carton, it must be taken, that the document produced in Court is the original, and, it, has to be determined whether copyright can subsist therein under the Copyright Act.

(27) The counsel for the plaintiff relied upon a number of judgments wherein it was held that labels are copyrightable. It was urged on a parity of reasoning, that mechanically printed boxes/cartons are copyrightable. He has referred to 1971 R.P.C. 57 (3): Charles Walker & Co. Ltd. v. The British 'Picker Co. Ltd., wherein it was said that there was a copyright in a label. In that case, it was contended by counsel for the plaintiff company that "the Walker label is an artistic work within the meaning of Section 3 of the Copyright Act". Justice Pennycuik, who, decided the case, said that the label was an artistic work. He found "that label is admittedly an engraving, the design and layout of the label seems to me to be sufficiently distinctive to merit the description "original" within the meaning of Section 3". The learned Judge relied upon a judgment reported as 1959 R.P.C. 83 (4): Tavenor Rutledge Ltd. v. Spectors Ltd. It appears to me that there was an admission in 1961 R.P.C. 57 (5) that the label in question in that suit was an "engraving". By virtue of the provisions of Section 2(1) of the Indian Copyright Act, 1957, engraving is an artistic work. The label in that case, if it was an "engraving" would also be covered by the protection available to "engraving" under the Indian Copyright Act. According to Chambers Dictionary to engrave is "to cut with a graver on wood, steel etc.; to cut into, to impress deeply to form or represent by engraving". The boxes/cartons in question in this suit are not an "engraving". It was stated by counsel for the plaintiff that carton in the instant suit was printed by "Silk spinning process" and look and feel of the carton shows that nothing has been "engraved" thereon. A product of silk printing process cannot be an engraving or a print from engraving. In my view, any print obtained from either an offset printing process or by a letter press or in combination of the various printing processes including silk printing process cannot amount to an engraving. In any case, the printed product like the one in question in the instant suit is not the result of any

engraved material within the meaning of the word 'engraving as contained in Section 2 of the Copyright Act. The prints which are contemplated in that Section are the prints from an engraving, like artistic works like lithography, wood-cuts etc. (28) For the reason that in 1961 R.P.C. 57 supra the label was admitted to be an engraving, whereas the carton in question admittedly is not admitted to be an engraving, that case does not help the petitioner as it does not apply to a printed carton reproduced by a mechanical process, which is the subject matter of this case.

(29) Counsel for the. plaintiff next referred to 1959 Rpc 83 (supra) *Tavener Rutledge Ltd. v. Sectors Ltd.* In that case, what was in question was a "sweet tin". The "sweet tins" were printed tins on which was reproduced the original, design made up by some artist What had happened was that Sectors had copied the printed design/representation which was to be found on the tins of Tavener in which they had sold sweets. The Court found, at page 87, that the plaintiff's design (which must refer to the original artistic work, and not what was reproduced on the tins was an "artistic work" within the meaning of Copyright Act. The Court found that the plaintiff's artistic work had been copied by the defendant's artist that the differences between the two were small differences, which did not create any substantial difference when examined as a whole. The Court came to the conclusion that "two designs in question were almost exactly similar. The arrangement is almost precisely the same, and the colours though in some cases perhaps slightly darker in the Defendants' design, are exactly similar otherwise, to the plaintiff's, and the series in which they appear in different colours is completely in accordance with the plaintiffs own arrangement. It became obvious to me, and it is now .accepted, that an artist. who was employed by Lloyd's to produce a design to the defendants' whether goaded by the defendants or not, did in fact copy the plaintiff's design. It is quite incredible that the result should have been reached in any other way, and, therefore, the defendants' design is a copy of the plaintiff's design, with merely trifling additions in addition to the different background, done, it would appear, with the idea of trying to give the effect that it, was somebody else's effort'.

(30) It is not clear from the reported judgment whether original sketch/painting done by the plaintiffs' artist was produced in Court or not. It, however, appears from the observations, which have been made, by Justice Danckwerts, (reproduced above) that the original painting/sketch/drawing made by the plaintiff's artist was produced in Court. No support can be derived by the counsel from this case. Inasmuch as 1959 Rpc 83 (supra.) appears to have proceeded on the basis-.of an original artistic work, which comprised of copyrightable subject matter, was relied upon by the plaintiff and filed in Court.

(31) The counsel next relied upon 1961 Rpc 387 (6); *The Coca-Cola Company v. A. G. Barr & Co. Ltd.* In that. case, what was in question was the shape of 'Coca Cola' bottles, and the action was a passing off action. A penis' of the case- indicates that the said 'passing off' case was decided on the basis of concession made before the Court.

A case decided on concession can not be of any assistance to the plaintiffs herein, in any case, that matter related to, What was a design of bottle. and not an artistic work.

(32) The counsel then relied upon 1984 Fsr 210 (7): Schweppes LTD. and others v, Wellingtons LTD. The question in that case was labels on bottles. The label in quotation was the label of a soft mineral water drink, known as SCHWEPPEES. What was allege to be an imitation of it, was. a label of Schweppes Mineral water. In that case it was conceded is apparent from what is stated at page 211, that copyright subsisted in the schweppes labels, and that the plaintiff had the copyright in those labels. There is no such concession in the instant case. In any event, a case based on the concession is of no binding authority and of no help to the plaintiff. In Schweppes case there was no consideration of the question whether a mechanically reproduced label is by itself, a good subject matter of copyright or not. It appears to have been assumed in that case, that there was in existence an original copyrighted design executed by an artist; where's, in this case, we have to proceed on the basis that the printed carton placed before the Court is the only "original". .

(33) It is significant that the printed cartons en their face, contain no notice of existence of any copyright therein. Further even on the pencils there is no indication of claim to copyright whether with respect to the pattern on its 'skin' or otherwise.

(34) The counsel next relied on 1970 R.P.C.259; which related to the shape of the bottle of Haig's Dimple Scotch Whisky Bottle. This case can be of no help to the plaintiff for the reason that the Dimple Scotch Haig Whisky bottle is a three dimensional object having, peculiar features of shape and configuration. and may have had protection under the Design Laws. The reason for grant of injunction therein was, because the bottle, used by the plaintiff was of a shape which was copied by the defendants, and the defendant's bottle led to confusion between the defendants' bottles and the plaintiffs' bottlts.

(35) Counsel for the plaintiff also referred to 1977 R.P.C. 255(8), Karo Step Trade Mark. That case was a "rectification" proceeding for the purposes of removal of a trade mark from the register. The trade mark, which was sought to be removed, was a four pointed star device. In that case. the four pointed star device was designed by a commercial artist who had assigned the copyright to Werbegemeinschaft. The question was, whether it was an artistic work within Section 3 of the English Copyright Act. The Court held : "It (the mark) is a drawing, and Section 3(i)(a) expressly classifies drawings on proper subject matter of artistic copyright, irrespective of artistic quality. No doubt a drawing may be so simple 'that it cannot be said to be "a work"'. For example, a. straight line or a circle for the word "work" itself carries with it t^e idea of the exercise of some degree of skill and labor, but I am unable to accept the submission of counsel for Mrs. Bishop that the artistic part of this device is go simple a nature that no copyright can reside in it."

(36) If it is clear from , part of the judgment reproduced above, that the Court had before it the original drawing, and the deed assigning copyright in the Drawing, and the Court had come to the conclusion that some degree of skill and labor required in producing the design/drawing of the four pointed star composed in a circle within the circle. It is clear from the report that the two words 'Karo Step' were not even suggested to have become subject matter of a literary copyright. This case reiterates that the skill and labor expended upon a work is the sine qua non for existence of copyright in any work. 'This test has. been applied by Courts for long. See :- 1925, Privy Council 75 (9), and 1960(1) Madras Law Journal 53 (.10).

(37) This case, therefore, does not help the-counsel for the plaintiff as in the instant: case, what is before the Court is a mechanically reproduced article and not the original article on which skill and labor of an artist, has been 'expended. As slated above, the carton relied upon by the counsel does not say upon its face, by. any of tiles recognised symbol/words., that the subject matter of the carton is copyrighted and that copyright thereof vest in the plaintiff.

(38) The counsel also referred to Copinger and Skone James on Copyright, 1980 84 and Modern Law of Copyright by Laddie & Ors; .107. Both of these are commentaries and the comment is based upon the judgments which have been already referred to above, which judgments are. found not to, give any support to the contention which has been raised in this... case that a mechanically printed carton is good subject matter of copyright. In fact, none of the above cases -has even consider. the matter from this angle.

(39) The counsel for the plaintiff referred to 1978 Delhi 250 at 252(11) and particularly the passage at page 252, in support of the proposition that a person who is the first user of the mark is entitled to a right therein. The Mark in question there was 'Raja Rani' and the prior use thereof was held to confer a right to restrain others from using it. In the instant case, the question is not of the first user or the prior user, but whether a right covered by the' law of copyright subsists in the mechanically printed carton. For this proposition 1978 Delhi 250, 252 (Supra) does not have anything to say. It does not give any support to the plaintiff. It cannot even be suggested in the instant. case, that the words "CAMLIN FLORA" which are found in the carton are used by the defendants. The words used by the defendants are inter-alia 'NATIONAL ELORA'. There is dear distinction between 'CAMLIN FLORA' and 'NATIONAL ELORA'. The. two sets of word combinations only have to be written to make it evident. It cannot possibly be said that 'CAMLIN FLORA' is same as, or-similar to 'NATIONAL ELORA'.

(40) Another case cited by the counsel is 19.60 R.P.C.page 150 (12). In this case, what was in question was the artistic design impressed upon the plastic container of blankets. In that. case the Court assumed that the plastic container bearing a representation .of the head and shoulders of a woman was an artistic work within the meaning of Copyright Act and it was so conceded (page 151 line 42). That case, based upon a concession, does not help the plaintiff, as there is no such concession. in the instant case, (41) The counsel cited 1977 Delhi page 41 (13) for the proposition that the certification from the copyright register bearing seal of the copyright office a prima facie evidence of existence of copyright. There is no force in this contention as the judgment does not say so. What the judgment says is that the certificates under the Copyright Act only prima facie, show



that the particulars mentioned in the certificate are entered, in the copyright register I am of the view that the mere fact that something is entered in the Copyright Register, does not as a matter of law establish that what is registered is in fact and in law copyrightable subject matter. This is so because, the sine qua non to the existence of copyright, is the expenditure of skill and labor on any work which originated from its author and unless the original work, on which skill and labor has been expended by its author is produced in Court to prima facie show that the work has originated from an author, it cannot be said that there is copyright in any work. The existence of artistic merit in any original artistic work is not a matter which determines the existence of copyright therein. The copyrightable matter is that which has originated from the author who has expended skill and labor upon them. In 1977 Delhi 41 (Supra) there was no finding of fact, that the matter on the containers was a copyrightable artistic work and the case seems to have proceeded upon the copyright certificate only, and if that judgment can be said to say that what is printed on tins by a printing process, (Printing process essentially not involving any skill or labor of a natural person) then I respectfully disagree from that judgment. It is too well settled in copyright law that without expenditure of skill and labor on a work which has originated from the author, no copyright can come into existence. [1924 Privy Council 75 and 1960(1) Madras Law Journal 53](Supra). It is also to be kept in view that the judgment in 1977 Delhi 41 (Supra) is on an interim application and not a final judgment after trial.

(42) The counsel has referred to 1975 Delhi 130 (14). That case related to Trade and Merchandise Marks Act and the questions which were considered in that case related to assignment of copyright and vesting of copyright and the duration of copyrights. The question decided in that case was not whether a mechanically reproduced printed paper carton can be said to be copyrightable. This case also does not help the petitioner. I am of the view that a mechanically printed card board carton is not copyrightable, there is no skill and labor involved in its production, and no copyright subsists in it. No suit can be maintained on the basis of any alleged copyright in a printed card board carton.

(43) It was next contended by the counsel for the plaintiff that the words 'FLORA' and 'ELORA' to be found on the respective cartons of the plaintiff and the defendants should be seen and on an examination it would be seen that the attempt has been made to write the word 'ELORA' in the same calligraphic style. That the alphabet 'E' in the word 'ELORA', and the alphabet 'F' in the word 'FLORA' have been in the same calligraphic style. It is also asserted that the alphabet 'R' found in both Flora & ELORA, are in the same calligraphic style.

(44) There is no doubt that the alphabet 'F' and alphabet 'E' in the plaintiff's Flora as appearing on the carton of the plaintiff, has been written in the same calligraphic style as the alphabet 'E' and 'R' in 'ELORA' on the defendants' carton. With respect to this contention, I am of the view that the maxim : *Demonstrans Non Curat Lex* applies with full force.

(45) This is too minute a comparison. The alphabets F & R in the plaintiff's carton and the alphabet 'E' and 'R' in the defendants' carton are a very small part of the entire carton and in my view, this similarity in the two alphabets is not sufficient to establish an attempt to pass off of the defendants' carton as the plaintiff's carton, for the reason that the alphabets occupied only a small area of the carton. Another reason why I am of the view that there is no passing off of the defendants' cartons,

is that on the defendants carton very prominently printed is a famous sculpture of India "Woman writing a letter". The suggestion . given by the defendants' carton is that this sculpture is from the, Elora Caves. This suggestion may be a misleading one. The sculpture exists at Khujuraho. But the word 'ELORA' Coupled with the figure of 'woman writing a letter', indicates that the defendants' carton has no relationship to flowers, but to a place famous for its painting and sculpture the Elora caves.

(46) The word Flora is used in Botany to mean flowers in general, as a class. The counsel for the plaintiff stated that the phonetics of Elora and Flora are similar and, therefore, relying upon 1970 Supreme Court 1649; (15) (Rustom-Ruston) and 1970 Supreme- Court 146 at 148; (16) (Ambal-Andal). it should be held that there is an attempt to pass off the goods.

(47) In my view, flowers do not necessarily represent something which is relatable to art or artists whereas Elora brings clearly to the mind of all Indians something connected with art or artists. Pencils are what are used by artists, and in this case mere phonetics similarity are not so obvious so as to pass nil one for the other. The defendants seek to identify their pencils with artists, and the plaintiff with botanists.

(48) It is also asserted by counsel that some colour combinations are used on the cartons. I am of the view that the two cartons have different colour combinations, and there are differences in the colour. There are differences in the composition on the printed matter and, therefore, carton of the defendant cannot, on the basis of similarity of colour combination, be said to an attempt to pass off the defendants' carton as cartons of the plaintiff. The counsel for the plaintiff relied upon 1972 Delhi. 41 M/s. Anglo-Dutch Paint, Colour and Varnish Works Pvt. Ltd. v. M/s India Trading House, for the proposition that normally people have imperfects and fading memory. No doubt it is so but this principle does not apply in this case as the difference in the cartons sufficiently distinguish the two cartons.

(49) Mr. Aggarwal did not make any submission at all regarding the copy-right ability of printed cartons as defendants themselves claim copyright in 'such mechanically printed cartons.

(50) His only submission related to passing off only. .Mr. Aggarwal contended that there is no similarli.y at all. whether phonetic or visual between the two words Camlin Flora the registered mark of the plaintiff, and National Elora which is used on the cartons of the defendants. In view of the fact that the device of a 'woman writing a letter is to be found on the carton of the defendants, I agree with Mr. Aggarwal that on the visual examination of whole of the cartons of the plaintiff, and whole of the carton of the defendant, there is no like hood of confusion.

(51) Mr. Aggarwal also asserts that the beginning of the words, which are alleged to cause confusion are important, and that the words have to be viewed as a whole and not merely some of its alphabets. Only the alphabets which go to make up the words are not to be taken into account .in isolation and he refers J970 Supreme Court 2062: (17) F. Heffimann-La Reche and Co. Ltd. V. Geoffrey Manners and Co. Private Ltd. That case clearly holds that it is the entire word which has' to be seen; that ail the alphabets have to be pronounced when phonetics are to be taken into account,

and no alphabets used in a word can be slurred over.

(52) The other judgments referred to by Mr. Aggarwal are 1974, Vol. II Delhi 151, (18) Mis. Delhi' Cloth and General Mills Co. Ltd. v. M/s. Prag Vanaspati Products, and 1969 (19) Punjab 290, M/s. J. and P. Coats Ltd. Scotland v. M/s. Gurcharan Singh & Brothers, Amritsar and Another. In the formal case, it was held that the words are label of "Panghat Ghee" was distinct and different from the word and label "Gopi". In the latter case, the words in question were Elephant and 'Jagjit Hathi', which were found to be distinct.

(53) Mr. Anand in reply said that: the misspelling of the word Ellora as Elora by the defendant and copying of the call-graphical style of writing the alphabet 'E' and alphabet 'R' show an intention to deceive and to pass off.

(54) I am of the view that there is no precedent binding on me to hold that a mechanically reproduced printed carton is capable of being subject matter of copyright. In the instant case, what has been produced in Court is only a mechanically reproduced printed card board carton and I find that copyright does not subsist therein. In my view, copyright does not subsist therein for the reason that it is impossible to determine who is the "author" of the mechanically reproduced printed carton. Copyright is conferred only upon "authors" or those who are natural person from whom the work; has originated or the authors may be legal persons to whom copyright has been assigned in accordance with law, by the authors from whom the work had originated (55) In the circumstances, I hold that plaintiff can not claim any copyright in any carton that has been mechanically reproduced by a printing process as the work cannot be said to have 'originated from the author. I am of the view that a machine cannot be "author" of an artistic work, nor can it have copyright therein.

(56) As regards the contention of the plaintiff that defendants have attempted to pass off their cartons as cartons of the plaintiff, I hold that taking into account the entirety of the carton, its colour scheme, the subject matter printed thereon, and keeping view the similarities in the calligraphic style of the alphabets, E, F and R, and the apparent differences, it can not be said that there is any likelihood of confusion between the cartons of the defendants and the cartons of the plaintiff as the differences, mentioned earlier, outweigh the similarities.

(57) In view of what is stated herein above, and in view of my finding that there is non-copyrightable subject matter in mechanically produced printed cartons the only right being claimed in the suit being on the basis that the mechanically reproduced printed carton has copyrightable subject matter in it, the instant suit for infringement of copyright is not maintainable.

(58) As regards the infringement of the plaintiff's trade mark Camlin Flora, I am of the view that the words National Elora in no view of the matter can be said to infringe the trade mark Camlin Flora, nor can the words National Elora be passed off as the words Camlin FLORA.

(59) In my view the suit for infringement of alleged copyright or the alleged infringement of the trade mark of for the alleged passing off can not be maintained. I am further of the view that the use of the word National Elora on the cartons of the defendants do not give any cause of action to the

plaintiffs' as they do not infringe the alleged trade mark. Camlin FLORA. In view of my findings, not only the plaintiffs are not entitled to the injunction which they have prayed for but they are not entitled to maintain the suit as brought and framed. The suit as filed, and the documents filed along with the plaint do not disclose a cause of action against the defendants and the plaint is liable to be rejected. The injunction prayed for is refused and the plaint is rejected under provisions of order 7 Rule 11 of the Code of Civil Procedure, as the same discloses no cause of action. I.A. 2209/85 and Suit No. 662/85 are disposed off.