

Hsil Limited vs.kripton Ceramic Pvt. Ltd. & Ors.

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SooperKanoon Citation : sooperkanoon.com/1205496

Court : Delhi

Decided On : Apr-21-2017

Appellant : Hsil Limited

Respondent : Kripton Ceramic Pvt. Ltd. & Ors.

Judgement :

* % CS(OS) 2736/2014 IN THE HIGH COURT OF DELHI AT NEW DELHI
Judgment Reserved on :18.04.2017 Judgment Delivered on:21.04.2017 HSIL
LIMITED Through: Mr.Manav Gupta and Ms.Prabhsahay Plaintiff Kaur, Advocates.
Versus KRIPTON CERAMIC PVT. LTD. & ORS. CORAM: HON'BLE MS.
JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

Through: None. Defendants 1 The present suit has been filed by the plaintiff against the defendants for permanent injunction restraining infringement of trademarks, delivery up, rendition of accounts of profits as also damages. 2 The plaintiff HSIL Limited, formerly known as Hindustan Twyfords Ltd. is a company established in 1960, incorporated under the provisions of the Companies Act, 1956, and is a leading manufacturer and seller of sanitary ware products, kitchen appliances, tiles etc. under CS(OS) 2736/2014 Page 1 of 6 the trademark HINDWARE, which is a registered trademark of the plaintiff since the year 1993, as well other supplementary marks/logos/labels such as H-VITREOUS HINDWARE, HINDWARE ITALIAN COLLECTION, HSIL etc. The history of HINDWARE has been detailed in the plaint establishing its business reputation and goodwill not only in any single class of goods but across various classes due

to wide range of products. The plaintiff also owns the domain name www.hindwarehomes.com which provides information about the company and also offers its entire range of products. 3 Defendant No.1 is the manufacturer of tiles under the trademark TLINDWARE which is registered as a label mark. Defendant No.2 is the director of Defendant No.1, Defendant No.3 has designed the infringing trademark and gotten it registered in his own name on behalf of Defendant No.1 and Defendant No.4 is the shop from which the infringing products are sold. 4 In June, 2014 the plaintiff received information that the defendants were manufacturing and selling tiles prominently displaying the plaintiffs trademark HINDWARE. Upon investigating further, the plaintiff discovered that the defendants were not only using a mark CS(OS) 2736/2014 Page 2 of 6 deceptively similar to the plaintiffs registered trademark HINDWARE but were also copying the font and writing style. Plaintiff had requested Defendant No.3 to visit the office of the Plaintiff in Gujarat where he disclosed that though the defendants sell under the mark TLINDWARE, the manner in which the alphabets T and L are written, present a visual impression that the two alphabets combined form the alphabet H (for HINDWARE) so as to cause confusion in the minds of the customers without being liable in any manner, and also assured the plaintiff that he would dispose of the infringing cartons, printing plates and give up the registration for TLINDWARE. Despite the assurances the defendants continued with the infringement and chose to ignore the reminder emails sent to them by the plaintiff. 5 Present suit has accordingly been filed praying for a relief of permanent injunction and seeking a restraint on the infringement of the trademark of the plaintiff. Restraint on passing off, delivery up of goods and damages to the tune of Rs.21,00,000/- have also been prayed for. 6 In the course of proceedings of the suit, on 09.09.2014 an ex parte interim injunction was granted in favour of the plaintiff and against the CS(OS) 2736/2014 Page 3 of 6 defendants restraining them from using the trademark HINDWARE or any other mark which is identical to or similar to the plaintiffs mark. The ex-parte interim injunction was then made absolute on 27.01.2017. 7 Summons of the suit were issued to the defendants who in spite of the service did not appear. They were proceeded ex parte on 16.01.2015. 8 Ex parte evidence by way of affidavit of PW-1 (Vice President-IR & Legal of the plaintiff) and PW-2 (senior officer-IT of the plaintiff) has been filed.

PW-1 has reiterated all the averments made in the plaint and has proved various documents delineated as Ex.PW to Ex.PW-1/25 (except Ex.PW1/19). PW-2 has also reiterated the averments made in plaint. 9 The plaintiff has established that the mark HINDWARE is a well known mark. He has proved his case. In view of the testimony of the witnesses of the plaintiff i.e. both PW-1 and PW-2 as also documentary evidence adduced and proved in the court, the plaintiff is entitled to a decree of permanent injunction. It is clear that the defendants have copied the trademark and logo of the plaintiffs in all respects. This adoption of the trademark of the plaintiff is fraudulent and is done with a malafide intention and has caused huge losses to the plaintiff not only CS(OS) 2736/2014 Page 4 of 6 in monetary terms but even in terms of loss to its reputation and goodwill. Accordingly, the suit of the plaintiff is decreed and by way of the permanent injunction, the defendants, directors, officers, servants and agents and all others acting for and on their behalf are restrained from using the plaintiffs trademark HINDWARE or any other trademark of the plaintiff, on its products or in any manner which is deceptively similar with the plaintiffs trademarks amounting to infringement/passing off the plaintiffs registered trademarks as also from misrepresenting or holding out to be connected or related to the plaintiff in any manner whatsoever. 10 The defendants are also directed to destroy all the printed and electronic material, invoices, letter heads, visiting cards, products, product packaging, carton, cardboard boxes, printing plates or any other material bearing the plaintiffs trademark HINDWARE. 11 The plaintiff has also claimed damages. In the affidavit by way of evidence it has been reiterated that the use of the infringing trademark by the defendants has caused huge losses to the plaintiff not only in monetary terms, but also to the goodwill and reputation of the plaintiff. The plaintiff has also made out a case for entitlement of damages and is CS(OS) 2736/2014 Page 5 of 6 awarded damages quantified at Rs.21,00,000/-. Cost of the suit also be granted in favour of the plaintiff. Decree sheet be drawn. File be consigned to record room. APRIL, 21, 2017 NdnINDERMEET KAUR, J CS(OS) 2736/2014 Page 6 of 6