

Maya Sharma vs.unique Law Publication House & Ors

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Court : Delhi

Decided On : Apr-02-2018

Appellant : Maya Sharma

Respondent : Unique Law Publication House & Ors

Advocate for Pet/Ap. : Mr. Pavit Singh Katoch

Judgement :

F-52 \$~ * + IN THE HIGH COURT OF DELHI AT NEW DELHI CS(COMM) 551/2018 MAYA SHARMA Plaintiff Through: Mr. Pavit Singh Katoch and versus Mr. Rajat Jain, Advocates. UNIQUE LAW PUBLICATION HOUSE & ORS Through: None. Defendants % Date of Decision:

02. d April, 2018 CORAM: HON'BLE MR. JUSTICE MANMOHAN

JUDGMENT

MANMOHAN, J: (Oral) 1. Present suit has been filed for permanent injunction restraining passing off, dilution, unfair trade competition and rendition of accounts. The prayers made in the plaint are reproduced hereinbelow:-

"distributors, "(a) A decree of permanent injunction restraining the Defendants, their promoters, partners, family members, dealers, representatives, franchisees, agents, servants, successor in title or anyone acting for and on their behalf from passing off the books published and sold by them by using the trademark "Unique" or "Unique 20" or trade dress of the Plaintiff retailers, CS(COMM) 551/2018 Page

1 of 8 or any trademark comprising the word "Unique" or as a part of their trade name/business identity including "Unique Law Publication House" or in any other similar or deceptively similar manner with respect to any of their businesses, products or services, and further from diluting the goodwill of the Plaintiff or indulging in any unfair Trade practices; (b) Pass an order directing the defendants to deliver and hand over all infringing material including Books, boxes, labels, packing material, publicity material, stationery, bill books, blocks and plates or any other printed material etc., bearing the Trade Mark/trade dress/ word "Unique" or "Unique 20" or comprising the Trade mark/trade dress/Word "Unique" as a part of any trademark, trade name or business identity, to the Plaintiff or any other person as may be appointed by this Hon'ble Court for the purpose of destruction; the (c) Defendants to render true and faithful accounts of the business carried on and profits generated by them by passing off, adopting unfair trade practices and diluting the goodwill of the Plaintiff by using the trademark "Unique" in similar or deceptively similar manner as a part of their trademark, trade name, and further on rendition of accounts, determine the quantum of profits earned by them, and consequently on such determination pass a final decree in favour of the plaintiff for the amount of profit illegally earned by the Defendants; (d) Cost of suit may please be allowed in favour of plaintiff and against the defendants; (e) Any other or further orders/directions may be passed in favour of the plaintiff and against the defendants that this Hon'ble Court may deem fit and Pass a preliminary Decree directing CS(COMM) 551/2018 Page 2 of 8 2. proper in the facts and circumstances of the instant case."

At the outset, learned counsel for plaintiff gives up prayers (b) and (c) of the plaint. The statement made by learned counsel for plaintiff is accepted by this Court and plaintiff is held bound by the same.

3. It is pertinent to mention that on 12th January, 2015, this Court granted an ex-parte ad interim injunction in favour of the plaintiff and against the defendants. The relevant portion of the said order is reproduced hereinbelow:-

""In my view the plaintiff has made out a prima facie case in its favour. Balance of convenience is also in favour of the plaintiff and against the defendants. The

defendants are restrained by an ex parte ad interim injunction from publishing, selling or dealing in any manner whatsoever with books, material etc using the trademark Unique or Unique 20 or any other trademark deceptively similar to the trademark of the plaintiff. CPC within three days from today."

The plaintiff shall comply with order 39 Rule 3 4. On 4th February, 2015, the defendant nos. 1, 2, and 3 entered appearance and the matter was referred for mediation to Delhi High Court Mediation and Conciliation Centre. However, the mediation proved to be a non starter. Defendant no.1 filed its written statement on 31st January, 2015 and defendant nos. 2 and 3 filed their written statements on 3rd March, 2015. The aforesaid injunction order was confirmed on 05th April, 2016. CS(COMM) 551/2018 Page 3 of 8 5. Since defendants last appeared on 26th April, 2017, before the Joint Registrar, they were proceeded ex parte vide order dated 01st March, 2018.

6. It is the plaintiff's case that the plaintiff as sole proprietor of Nitin Prakashan carries on business of publication of books, particularly guide books, model papers with answers, question and answer series, particularly for law students since the year 1984.

7. It is stated in the plaint that the plaintiff has been publishing its books under the trademarks UNIQUE, UNIQUE20 UNIQUE30 UNIQUE Law Series and ULS since 1984 in Hindi and English. It is further stated that the plaintiff has a distinct layout, art work, trade dress for its trademark UNIQUE wherein the trademark UNIQUE is mentioned at a number of places to give a distinctive appearance to the books of the plaintiff. It is further stated that the trademark UNIQUE20of the plaintiff refers to twenty important questions from the syllabus for each subject.

8. It is stated that due to long, continuous, open, uninterrupted and extensive use, the plaintiff's trademark UNIQUE has acquired huge reputation in relation to books, which is evident from the increasing sales figures of the plaintiff in relation to its books under the trademark UNIQUE as given below:-

"YEAR20062007 2007-2008 GROSS SALES (Rs.) 15,92,685.21 18,96,851.09
CS(COMM) 551/2018 Page 4 of 8 2008-2009 2009-2010 2010-2011 2011-2012

2012-2013 2013-2014 19,33,271.00 23,49,198.00 28,87,457.00 38,79,430.00
35,63,059.00 46,62,628.39 9. It is also averred that the plaintiff has spent considerable amount of money for advertisement of its products.

10. Learned counsel for the plaintiff states that on 25th December, 2014 it came to the notice of the plaintiff that the defendant No.1 had started publishing law books under the trademark UNIQUE / UNIQUE20 and that the defendant nos.2, 3 and 4 are the dealers/distributors/agents of the defendant no.1 and involved in the sale and distribution of books published by the defendant no.1. The defendant no.1 in his written statement has admitted that the defendant has started using the trademark from 2012, which in any case is after the use by plaintiff.

11. A pictorial representation of the plaintiff's and the defendant's trademarks relied upon by learned counsel for the plaintiff is reproduced hereinbelow:-

"CS(COMM) 551/2018 Page 5 of 8 12. Vide order dated 5th April, 2016, the following issues were framed:-

"(i) Whether the plaintiff is the prior adopter and user of the trade mark UNIQUE?. OPP (ii) Whether the trademarks/ words UNIQUE and UNIQUE20 used by the defendants are similar to the trademarks of the plaintiff?. OPP (iii) Whether the trade dress containing the trademarks/ words UNIQUE and UNIQUE20 used by the defendants is similar to the trade dress of the plaintiff?. OPP CS(COMM) 551/2018 Page 6 of 8 the the use of (iv) Whether trademarks/ words UNIQUE and UNIQUE20 by the defendants has resulted in passing off of the goods of the defendants as those of the plaintiff?. OPP (v) Whether the use of the trade mark UNIQUE by the defendants would cause deception and confusion in the market and among the public?. OPP (vi) Whether the writing style or artwork of the trade marks UNIQUE and UNIQUE20 used by the defendants, has infringed the copyright of the plaintiff in the writing style or artwork of her trademarks, i.e. UNIQUE and UNIQUE20?. OPP 13. The plaintiff has filed its evidence by way of two affidavits of PW-1 Mr. Nitin Tyagi and PW-2 Prof. Hari Dutt Tyagi.

14. PW-1 has proved use of the trademark and sale of books from the year 1990 by exhibiting cover page and back page of the books as Exhibit PW-

to PW-1/72. PW-1 has also proved bills/invoices of the plaintiff's books as Exhibit PW-1/73 to PW-1/81. PW-1 has proved similarity of trade dress by exhibiting documents Exhibit PW-1/91 to PW-1/101.

15. Having heard learned counsel for the plaintiff and having perused the ex parte evidence as well as documents placed on record, this Court is of the opinion that the plaintiff has proved the facts stated in the plaint and has also exhibited the relevant documents in support of its case. It is pertinent to mention that the defendant no.1 has so blatantly copied the trademarks and the trade dress of the plaintiff that the defendant is using trademark UNIQUE for the book containing CS(COMM) 551/2018 Page 7 of 8 30 questions, which is a wrong description of the content of the books.

16. In the opinion of this Court, the triple identity test is satisfied as the defendants have made use of a deceptively similar mark i.e. UNIQUE in relation to identical goods (law books) having identical trade channels (products sold via same trade channels).

17. Since the plaintiffs evidence has gone un rebutted, said evidence is accepted as true and correct. In the opinion of this Court, the defendant has deliberately stayed away from this Courts proceeding with a view to frustrate the plaintiffs claim. The said act is unjustified.

18. Consequently, present suit is decreed in accordance with prayer (a) and (d) of the plaint. The costs shall amongst others include the lawyers fees as well as the amount spent on Court-fees. Registry is directed to prepare a decree sheet accordingly. APRIL02 2018 sp MANMOHAN, J CS(COMM) 551/2018 Page 8 of 8