

Weston Electronics Ltd. Vs. Weston Industries and Another

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Court : Delhi

Decided On : Jul-27-1992

Reported in : AIR1992Delhi340; 1992(23)DRJ443

Judge : S.C. Jain, J.

Acts : [Specific Relief Act, 1963](#) - Sections 38; [Code of Civil Procedure \(CPC\), 1908](#) - Order 39, Rule 2

Appeal No. : Suit No. 933 of 1982

Appellant : Weston Electronics Ltd.

Respondent : Weston Industries and Another

Advocate for Pet/Ap. : Shri. Parveen Anand

Judgement :

ORDER

1. This is a suit filed by Weston Electronics Limited, hereinafter called the plaintiff for permanent injunction and rendition of account on the ground that in 1986 the plaintiff adopted the trade mark WESTON in respect of goods of its manufacture and sale. The trademark Weston also forms an essential and key portion of the trading style of the plaintiff company. The trademark Weston is in continuous, regular and extensive use since the year 1966. The sale of the plaintiff in respect of its goods under the trademark Weston during the past has exceeded Rs. 70

crores. The trademark Weston has been widely advertised through various media including insertions in newspapers, magazines, jingles on television, screening of commercial films, distribution of free gifts etc. The plaintiff has spent Rs. 3 crores on popularising the trademark Weston. By virtue of long, established and continuous user of the trade mark Weston by the plaintiffs, coupled with vast publicity, the said trade mark Weston has acquired a unique reputation in the mind of the purchasing public and the trade so much so that the people have come about to identify, recognise and associate the said trade mark with the goods of the plaintiff. The trademark Weston was adopted by the plaintiff in 1966 and was initially used for electronic goods. However, with the passage of time the plaintiff diversified its business activities by manufacture and sale of a large variety of consumers including bicycle and bicycle parts etc. The plaintiff further states that the defendant has dishonestly and mala fide adopted an identical trade mark WESTON in respect of cycles of their manufacture and sale with a view to trade upon the reputation acquired by the plaintiffs. The adoption and use of the mark WESTON by the defendant is likely to cause confusion and deception in the mind of the purchasing public and the trade. The defendant has no justification in imitating the well-known trademark WESTON of the plaintiff company. The plaintiff is suffering injury and will continue to suffer injury and loss in the business in case the defendant is not restrained by way of permanent injunction from using the impugned trademark WESTON or any other mark, which may be deceptively similar to that of the plaintiff.

2. Written statement was filed by the defendant pleading inter alia that the suit of the plaintiff is not maintainable in view of the fact that the goods manufactured by the defendant being cycle parts and accessories are absolutely different and distinct from the goods of the plaintiff being radios, television, etc. It is denied that the plaintiff is also manufacturing bicycle and bicycle parts as alleged.

3. The plaintiff is aware of the trade of the defendant since 1976 and this suit has been filed only after the lapse of six years and delay has not been explained. As such the suit is liable to be dismissed on account of this delay. The plaintiff has made false statement that they are manufacturing cycle parts under the trade name Weston. The plaintiff has never manufactured cycle or cycle parts under the

trade name of Weston

4. On the pleadings of the parties the following issues were framed: --

- 1) Whether the suit is bad for misguide of parties and its effect?
- 2) Whether this court has got jurisdiction o entertain and try this suit in relation to defendant No 1?
- 3) Whether the suit suffers from laches, delay and acquiescence and its effect?
- 4) Whether the defendants are passing off their goods as those of the plaintiffs?
- 5) Whether the defendant is likely to pass of its goods as those of the plaintiff by the use of the word WESTON as its trademark and as a part of its trading style?
- 6) Whether the plaintiff company is dealing in respect of goods as stated in para 2 of the plaint, if so since when and its effect?
- 7) Whether the plaintiff is the proprietor of the trademark WESTON in relation to cycle and cycle parts?
- 8) Whether the trade marks WESTON is distinctive in respect of all goods as stated in Para 2 of the suit.
- 9) Whether the defendant is using the said trademark WESTON in relation to cycle parts?
- 10) Whether the defendant is liable to render account of profit?
- 11) Relief.

5. When the case was fixed for trial, i .e. for recording evidence of the parties, none appeared for the defendant and as such the defendants were proceeded ex parte. The plaintiff examined Surinder Singh an officer of the company as PW 1. Vinay Kumar, Accounts Officer of the plaintiff company as PW 2, Jaswant Singh a dealer of the goods of the plaintiff company as PW3 and closed his evidence on 20-7-89. Even thereafter the case was adjourned from time to time but nobody

appeared on behalf of the defendant nor any application was moved for setting aside the ex parte order.

6. Shri Parveen Anand, counsel for the plaintiff, argued the case on behalf of the plaintiff. He pressed the claim under para 19(a) of the prayer clause and gave up the balance claims contained in the prayer clause. He drew my attention towards the ex parte evidence led by the plaintiff, which is on record.

7. Surinder Singh, PW I stated that he had authority to institute the suit and to sign the pleadings. Trademark Weston was adopted in 1966. The plaintiff is manufacturing various goods in the name of Weston ' like transistors, radios, TVs tape recorders, two-in-ones, calculators etc. The plaintiff company is also dealing in cycle and cycle parts. These cycle and cycle parts are only being exported and not sold in India. They are also sold under the trade mark Weston. In the year 1976 the plaintiff came to know that the defendant had applied for registration of the trade mark Weston for cycle and cycle parts which was published in the trade mark journal. In 1982 the plaintiff came to know of the use of trade mark Weston by the defendant for cycle parts. He proved catalogues issued by the plaintiff company in respect of cycle parts, cycles and electronic goods Ex PW I / I and PW 11/ 2. The company had given a great deal of advertisements in various newspapers regarding their product under the trade mark Weston. He proved photocopies of those advertisements as Ex PW I/3 to PW I /11. He also proved the statement regarding exports made by the plaintiff company including cycles and cycles parts for the period 1973 to 1983 as Ex PW I /12. He also proved various indents and invoices, in respect of various items manufactured by the plaintiff including cycle and cycle parts and exported to various countries as Exs. PW 1/ 13 to PW 1/33. He further stated that the goods of the defendant under the mark Weston are likely to be associated with the plaintiff by the public at large.

8. PW 2 Vinay Kumar accounts officer of the plaintiff proved the statement Ex PW 2111 showing the amount spent by the company on advertisement and publicity of its products under the mark Weston during the period 1967 to 1979. PW 3 Jaswant Singh is a dealer of the plaintiff's goods under the trade mark WESTON. He stated that the plaintiff has a great deal of good-will and reputation in the

market. He further stated that if cycles etc. are marketed under the trade mark WESTON, public will consider the same to have been manufactured by the plaintiff.

9. My attention has also been drawn by the counsel for the plaintiff to various orders passed by the Deputy Registrar Trade Marks in support of his contention that the word WESTON has been recognized as that belonging to the plaintiff with respect to various items which the plaintiff is manufacturing.

10. There is no evidence in rebuttal, nor there is any defense on behalf of the defendants. 'Therefore, I hereby pass an ex parte decree of injunction in favor of the plaintiff and against the defendants restraining the defendant, their servants, agents, etc. from manufacturing, selling, offering for sale and, or otherwise directly or indirectly dealing in cycle and cycle parts under the mark WESTON or any other mark which may be deceptively similar to the trade mark of the plaintiff and/or from using the mark WESTON as part of its trading style amounting to passing off. No order as to costs.

11. Order accordingly.