

Exite Laboratories Vs. A.A. Products (India) and ors.

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Court : Delhi

Decided On : Jan-19-1989

Reported in : ILR1989Delhi679

Judge : P.K. Bahri, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 34

Appeal No. : Interim Application No. 9280 of 1988 and Suit No. 3173 of 1988

Appellant : Exite Laboratories

Respondent : A.A. Products (India) and ors.

Advocate for Pet/Ap. : V.P. Ghiraya,; Sanjay Jain and; Kirti Uppal, Advs

Judgement :

P.K. Bahri, J.

(1) The plaintiff has instituted this suit seeking permanent injunction restraining the defendants from manufacturing, selling, offering for sale, printing of tin boxes, chitons, labels, stickers, advertising, directly or indirectly dealing in brake fluid, oil saver, 2 T oil, motor and gear oils and hydraulic (BF) or cognate and allied products under the trade mark 'EXIDE' or any other trade mark which may be identical with and/or deceptively similar to the plaintiff's trade mark 'EXITE' and the consequential relief of rendering of accounts and delivering of the offending

material to the plaintiff. Along with the plaint, the plaintiff has filed the present application seeking interim injunction to the same effect till the disposal of the suit.

(2) The case set up by the plaintiff, in brief, is that the plaintiff is engaged in the business of processors, manufacturers and merchants of brake fluid, oil saver etc., as aforesaid, since 1986 and has been using the trade name 'EXITE LABORATORIES' and also has adopted the trade mark 'EXITE' with the key portion of their trading style so as to indicate its connection in the course of trade with such goods. It is pleaded that in the trade circles the said trade mark has been identified and recognised as exclusively belonging to the plaintiff and the plaintiff has also moved a petition before the Registrar of Trade Marks for getting the said trade mark registered. The plaintiff has also given the figures of the preceding three years showing that the plaintiff transacted business in the said goods under the said trademark to the tune of Rs. 23,348/84P in the year 1986-87. Rs. 1,63,283/74p in the year 1987-88 and in the current year up to December 1988, the figure given is Rs. 1,07,359/29P. It is pleaded that the plaintiff had given a lot of publicity to its trade mark and has acquired a goodwill in the aforesaid trade mark vis-a-vis the goods in question. It is pleaded that the defendants have come into the business for dealing in the same goods only recently and with a view to take undue advantage of the reputation of the plaintiff's goods and to deceive the consumers and confuse the market has started passing off their own goods as that of the plaintiff and the unwary purchaser are bound to be deceived in purchasing the goods of the defendants under the impression that they are marketed by the plaintiff inasmuch as the defendants, have adopted phonetically sounding similar trade mark 'EXIDE' of their products. It is pleaded that the plaintiff came to know about the said wrongful trade activities of the defendants in November 1988 and the plaintiff had served a notice on the defendants requiring them to cease and desist from using the trade mark 'EXIDE' in respect of the aforesaid goods. It is pleaded that no response was received from the defendants although defendants 2 & 3 had received the notice while defendant No. 1 intentionally avoided to receive the notice.

(3) Defendants 1 & 2 have contested this application controverting the pleas of the plaintiff that the plaintiff has acquired any ownership in the trade mark 'EXITE' vis-

a-vis its predacts. On merits, it was pleaded that the defendants have been also using their trade mark 'EXIDE' since long and have acquired ownership in the said trade mark and it was controverted that their trade mark 'EXIDE' is likely to cause any confusion to the consumers of the said goods who are not members of the general public but are in special trade. The defendants have not placed on record any documents to show as in since when they have been using the trade mark 'EXIDE'.

(4) A Local Commissioner was appointed to go to the premises of the defendants and make a report as to the goods of the defendants. He has, filed the report and has also taken into possession certain tin boxes which have the trade mark 'EXIDF' printed on them. Both the parties are in the same trade, Prime facie, it is proved that the plaintiff has been using the trade mark 'EXITE' vis-a-vis its goods since 1986 and the plaintiff has acquired lot of business in the said goods and thus is on titled to have exclusive user of the said trade mark vis-a-vis its goods. Defendant No. 1 is the manufacturer of similar goods who has come into the field recently and is surviving the goods to defendant No. 2 while defendant No. 3 is stated to be manufacturing boxes with the printed trade mark 'EXIDE' on it for and on behalf of defendant No. 1. If we compare the two trade marks, they appear to be similar phonetically and also by look. The boxes filed in the case make it clear that the customers, who are to purchase the said goods are likely to be misled and deceived while making the purchases of the said goods. As it is not possible for any customer even dealing specially in such goods to make any distinction between the trade mark 'EXITE' and trade mark 'EXIDE', defendants, prima facie, appear to have used this particular trade mark Exide with a view to cause confusion amongst the customers and to take benefit of the reputation built up by the plaintiff with respect to its own goods being sold under the trade mark 'EXITE'. The balance of convenience is in favor of the plaintiff who has been using this trade mark much prior in time than the defendants and the plaintiff is liable to suffer irreparable loss if the defendants are allowed to use the infringed trade mark 'EXIDE'.

(5) A contention was raised by counsel for the defendants that as the trade mark of the plaintiff is not registered, so the plaintiff cannot get any relief. It has been

held in Century Traders v. Roshan Lal Duggar & Co and others, : AIR1978 Delhi250 , that in respect of passing off action registration of trade mark is irrelevant.

(6) Counsel for the defendants cited M/s. Bawa Masala Company, Delhi v. M/s. Gulzari Lal Lajpat Rai, Delhi, : 11(1975)DLT270 (2). In support of his contention that the plaintiff must prove at first that some customers have been deceived by the similarity of the trade mark. For getting a temporary injunction, only, prima facie, case is to be made out. A bare perusal of the two trade marks makes it clear that the defendants are indulging in infringement of the trade mark of the plaintiff. So, no other proof is required to be placed on the record by the plaintiff for obtaining the temporary injunction. I hence, allow the application and grant temporary injunction restraining the defendants respondents through its partners, propriety's, servants, agents, dealers, representatives and all others acting for and on their behalf from processing manufacturing, selling, offering for sale, printing of tin box, cartons, lables, stickers, advertising, directly or indirectly dealing in brake fluid, oil saver, 2T oil and motor and gear oil and hydraulic (BE) or cognate and allied products under the trade mark 'EXIDE' or any other trade mark which may be identical with and/or deceptively similar with the applicant's trade murk 'EXTDE' and from committing any such act which is likely to cause confusion and deception amounting to passing off. till the disposal of the suit.