

Carter Wallace Inc. Vs. Mod Laboratories Pvt. Ltd. and ors.

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SooperKanoon Citation : sooperkanoon.com/699683

Court : Delhi

Decided On : Dec-05-1996

Reported in : 1997IAD(Delhi)149; 1997(1)ARBLR192(Delhi); 65(1997)DLT858

Judge : A.K. Srivastava, J.

Acts : [Trade and Merchandise Marks Act, 1958](#)

Appeal No. : Suit No. 66 of 1993

Appellant : Carter Wallace Inc.

Respondent : Mod Laboratories Pvt. Ltd. and ors.

Advocate for Pet/Ap. : Mukul Rohatagi,; Seema Sapra and; Manmohan Singh, Advs

Judgement :

A.K. Srivastava, J.

(1) This is a suit for perpetual injunction, restraining infringement of trade mark, copyright, passing off and rendition of account seeking following reliefs :

'(A)that the Defendants by themselves their servants, agents, distributors and stockists be restrained by a perpetual order and injunction of this Hon'ble Court from in any manner infringing the plaintiff's trade mark 'NEAR or Nair or from using

any other trade mark deceptively similar thereto in relation to goods covered by Classes 3 and 5 of the said Act and Rules intruding inter alias Hair removers so as to infringe the plaintiff's registered trade mark 'NEAR'; (b) that the Defendant by themselves, their servants, agents, distributors and stockists be restrained by a perpetual order and injunction of this Hon'ble Court from manufacturing, selling, exporting or offering for sale, advertising and/or in any manner dealing with whether in India or any other foreign country product bearing the plaintiff's trade mark 'NEAR and/or Nair or any trade mark deceptively similar to the plaintiff said trade marks 'NEAR and /or Nair or plaintiff's get up and colour scheme so as to pass off and/or enable others to pass off the defendants' products as those of the plaintiff in any manner whatsoever; (c) that the defendants be ordered and directed to deliver to the plaintiff for destruction all cartons, containers labels, literatures, dyes publicity and other literatures pertaining to and/or any other thing bearing the plaintiff's trade mark NAIR; and (d) in the alternative to prayer (c) above, the Defendant be ordered and decreed to render true and faithful accounts of all profits earned by the Defendant by wrongful use of the Trade Mark Nair and the Defendant be ordered and decreed to pay to the plaintiff the amount found due any payable on the taking of such account; (e) That the Defendant be ordered and directed to deliver to the plaintiff for destruction all cartons, containers labels, literatures, dyes publicity and other literatures pertaining to and/or any other thing bearing the plaintiff's trade mark NAIR; (f) for costs of the suit including attorney's fees.'

(2) The case of the plaintiff is that it is a company organized and incorporated and existing under the laws in force in the State of Delaware, U.S.A. having its registered office at 1345, Avenue of Americans, New York, Ny 10105, U.S.A., Mr. B.H. Antia is the constituted attorney of the plaintiff and is conversant with the facts of the case and is able to depose the same.

(3) It is alleged in the plaint that the plaintiff is a registered proprietor of trade marks "NEAR' (registered in India) and 'NAIR' having obtained under the laws applicable in U.S.A.; that the plaintiff has also inter alias obtained registration of the trade mark 'NAIR' under the relevant laws applicable for registration of trade marks all over the world. Annexure 'A' is a statement showing the registration of

the plaintiff's trade mark 'NAIR' throughout the world; that the plaintiff had also applied for and obtained registration of its trade mark 'NEAR' in India under the provisions of the [Trade and Merchandise Marks Act, 1958](#) as per the following particulars :

Trade Mark Regn. No. Date Class Goods 'NEAR 246,636 17.2.69 3 Non-Medicated toilet preparation and cosmetics.

That the registration of the said Trade Mark 'NEAR' is valid and subsisting.. Annexure 'B' is a copy of the certificate issued by the Registrar of Trade Marks pertaining to the plaintiff's said Trade Mark 'NEAR'; that Annexures 'C' to 'G' are the statements of sale figures of the plaintiff's goods bearing the Trade Mark 'NAIR' for the last five years; Annexure 'H' is a statement showing the worldwide expenditure incurred by the plaintiff on sales, promotion, advertisement and publicity of their products manufactured and sold under the Trade Mark 'NAIR'; that in or about October, 1991 the plaintiff came to know that the defendant was manufacturing and selling hair removes under the plaintiff's trade mark 'NAIR' in India and also exporting and selling the same in various foreign countries such as Oman and United Arab Emirates; that the latering and/or script in which the said trade mark 'NAIR' used by the defendants is written as identical to the script/ lettering used by the plaintiff; that the get up and colour scheme used by the defendants for its hair removers is identical to the get up and colour scheme used by the plaintiff in its products sold under the trade mark 'NAIR', Exhibit 'I' is a copy of the plaintiff's cartoon and /or label bearing the Trade Mark 'NAIR', Exhibit 'J' is a copy of the defendants' carton and/or label bearing the Trade Mark 'NAIR'; that the defendants selling his products under the trade mark 'NAIR' with letter 'R' within a circle; that the plaintiff's application for registration of their trade mark 'NAIR' was pending registration in India, the plaintiff has caused a search to be undertaken with the Trade Mark Registry at Bombay in order to ascertain whether the defendants had in fact obtained registration of the Trade Mark 'NAIR' in class 3 are/or class 5; that the search undertaken by the plaintiff revealed that the defendants has not registered the said trade mark 'NAIR' nor has the defendants even applied for registration of the trade mark 'NAIR' in class 3 and/or class 5; that the plaintiff has relied on the search reports obtained from the Trade Mark Registry

in respect of the Trade Mark 'NAIR' in class 3 and class 5; that the defendants are not the registered proprietors of the trade mark 'NAIR' and are, thus, guilty of violating Sections 77, 78, 79 and 81 of the Act as also having caused confusion and deception among members of the public and trade, hence the suit.

(4) After service the defendants were represented through Counsel. However, vide order dated 20.10.94, they were proceeded ex parte. The plaintiff has filed affidavit by way of evidence. The plaintiff has filed documents and articles which are exhibited as Exs. P.1 to P.12, P.12A, P.13, P.14, P.14A, P.15 & P.15A as mentioned by the Joint Registrar in his order dated 18.7.96. I have gone through the contents of the plaint, affidavit and the exhibited documents on the record. The case of the plaintiff, in my opinion, is proved and the suit can be decreed partly. Learned Counsel for the plaintiff has given up his prayers (c) and (d). In view of this, prayers (c) and (d) are rejected as given up. The suit is partly decreed to the effect that -

(1) The Defendants by themselves, their servants, agents, distributors and stockists are restrained by a perpetual order and injunction of this Court from in any manner infringing the plaintiff's trade mark 'NEAR' or 'NAIR' or from using any other trade mark deceptively similar thereto in relation to goods covered by class 3 and 5 of the said Act and Rules including inter alia hair removers so as to infringe the plaintiff's registered trade mark 'NEAR'. (2) The Defendants by themselves, their servants, agents, distributors and stockists are restrained by a perpetual order and injunction of this Court from manufacturing, selling, exporting or offering for sale advertising and/or in any manner dealing with whether in India or any other foreign country product bearing the plaintiff's trademark 'NEAR' and/or 'NAIR' or any trade mark deceptively similar to the plaintiff's said trade marks 'NEAR' and /or 'NAIR' or plaintiff's get up and colour scheme so as to pass off and/or enable others to pass off the defendants' products as those of the plaintiff in any manner whatsoever. (3) The defendants are ordered to deliver to the plaintiff for destruction all cartons, containers labels, literatures, dyes publicity and other literatures pertaining to and/or any other thing bearing the plaintiff's trade mark 'NAIR'; and. Rest of the prayers are not allowed. The plaintiff shall be entitled to the proportionate costs ex parte. I.A. 201 /93 has become infructuous and is disposed of as such.

(5) Suit decreed.

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