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Jay Bharat Industries Vs. R.T. Engineering and Electronics Co., Junagadh

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Court : Gujarat

Decided On : Jul-29-1977

Reported in : AIR1978Guj60; (1978)0GLR345

Judge : N.H. Bhatt, J.

Acts : [Trade and Merchandise Marks Act, 1958](#) - Sections 77

Appeal No. : First Appeal No. 443 of 1973

Appellant : Jay Bharat Industries

Respondent : R.T. Engineering and Electronics Co., Junagadh

Advocate for Def. : H.M. Mehta, Adv.

Advocate for Pet/Ap. : V.B. Patel, Adv. for; S.M. Shah, Adv.

Judgement :

1to 10. xx xx xx

11.The above authorities therefore show that Essentially it is a question of fact whether the allegedly offending mark Is such as would cause confusion or deception or. not and the court has to call its legal and general acumen to bear on the question after circumspecting the relevant facts of the case.

12. As said above, the defendant has chosen not to lead any evidence in this case. The plaintiff's partner Mohanlal Ex. 48 has shown that since 1959, they had started manufacturing diesel engines and spare parts with the trade mark 'Mas6tee', which had come to be-registered in the year ;1967. He also showed that the sales of their machines were worth 12 to 15 lac Per, year and that they had expended considerably after advertising and marketing their good& Then he made the following further clear statements, which I would like to quote verbatim from Para 2 of his deposition.

'Our engines are useful for agricultural purposes of drawing water from the well. Our purchasers are agriculturists from villages. They are usually illiterate. They ask for our engines by the trade name ~master

Then lie stated as follows in para 4 of his deposition:-

Like the defendant other manufacturers also started engines using the name 'Master' along with some other word, like 'Road Master' 'Kishan Master' and others. I had so filed suits against them in this court being civil suits Nos. 4, 5, 7 8, 11, 13, 14 and 16 of 1%9. Except the present case all the cases are decided either by compromise or by judgment. All of them have stopped using the word 'Master.' Due to the use of the word 'Master' by the defendant and others our sales went down by 50 % Then in Para 6 he stated as follows "Field 'Master' Trade -mark is used by one manufacturer. It is Registered. We have started Proceedinas to met that trade mark cancelled, before the Trade mark Registry at Bombay. They are pending, The defendant sells his engines throughout Saurashtra including Rajkot.'

The plaintiffs two other witnesses Girdharlal and Omprakash also support the say of Mohanlal. Girdharlal, who is .a dealer from the very Saurashtra Region, also stated as follows:

'The machines were purchased from do by agriculturi' They, were usually illiterate. Those who wanted to Purchase the machines of the plaintiff, they merely asked for 'Master' machines. I had the dealership for these engines for Gondal Area. All the engines including the 'Master' engines are similar in shape having been manufactured on the type design of Lister Machine . If the agriculturist is given any

other machine in place of 'Master' they would not be able to distinguish.' (The sentence is underlined by me).

Apart from the evidence of Mohanlal and this above mentioned witness Girdharlal, the fact of illiteracy of agriculturists. Can well be judicially noticed also. Erstwhile region of Saurashtra consisted of several petty States and it is a matter of common knowledge that standard of literacy in that region was comparatively far low. It is in this context and also in the context of the say of Girdharlal -that all diesel oil engines are otherwise identical in appearance, that we have to look to the probability of passing-off other engines including the defendant's engines as the engines manufactured by the plaintiff. The question that is before us is whether the marks 'Master' and 'Reec Master' are phonetically similar or not. As said above, visual resemblance is almost unchallenged. - Girdharlal has stated so and that statement is not controverted. As in the case of Ruston & Hornby; Ltd. (AIR 1970 SC,1649) (supra)-,the suffix of the word, 'India' to the word 'Ruston' did not make any appreciable difference to the eyes of an unwary customer. It was also a case of Diesel engines purchased by agriculturists and others. In our case, we have got a categorical evidence that the engines manufactured by the plaintiff and the defendant are useful to the agriculturists, who are proved to be illiterate. A villager, who goes to purchase an engine popularly known as 'Master' will very well be given an engine 'Reec Master' and he would be all throughout under the impression that what he has purchased is the 'Master' engine which has earned a good name in the market. The only dis

tinguishing feature between the plaintiff's mark and the defendant's mark is 'Reec,' which is prefixed to the main word 'Master.' By itself it would not make any appreciable difference to the eyes & ears of an unwary customer. Except to a very discerning eye and to-discerning ears.

R.B. Patel v. M.M. Patel there would be absolutely no difference between the two.

13. Appeal allowed