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MANU/CP/0007/2009

Equivalent/Neutral Citation: 2009(39)PTC710(CB)

BEFORE THE COPYRIGHT BOARD AT NEW DELHI

F. Nos. 1-48/2007-CRB(NZ)

Decided On: 31.03.2009

Preeti Supari **Vs.** Anil Tulsani

Hon'ble Judges/Coram:
Dr. Raghbir Singh, Chairman, M.S. Sullar, Member, Rajendra Kumar Mishra, Member and R. Ragupathi, Member

Counsels:
For Appellant/Petitioner/Plaintiff: S.K. Bansal and Saurabh Kapoor

For Respondents/Defendant: Sushant Singh and Tejinder Singh

ORDER

1. This is an application under section 50 of the Copyright Act, 1957 for expunction of restoration numbers A-79437/2007, A-79440/2()07, A-79443/2007, A-79446/2007. A-79450/2007 and A79422/2007. Matter was heard on 28th January, 2009 at New Delhi. Petitioner claims to have filed C.S. (O.S.) 644/2007 in Delhi High Court against the respondents seeking relief of permanent injunction restraining the respondents from using the impugned trade marks/labels, namely, MIRCH MASALA, BALLE BALLE, MI FRUITS BALLS, NAGPURI SANTRA, CHATAK MATAK, AAM MODAK, LOVE LINE MAI and GARAM MASALA. Petitioner also prayed for interim injunction restraining the defendants therein from using the impugned trade marks/labels till the disposal of the suit. After considering the averments made in the plaint as well as in the interim-injunction application, the Hon'ble High Court vide ex-parte interim orders dated 4th April, 2007 restrained the defendants therein from using the impugned trade marks/labels till the next date of hearing. Petitioner claims to have written eight separate letters to the Registrar of Copyrights dated 23.4.2007 requesting not to entertain any request by the respondents for registration of Copyright in the impugned trade marks/labels without prior notice to the petitioner. Petitioner has produced copies of all eight letters duly acknowledged in person by the office of the Registrar of Copyrights on 24.4.2007. Petitioner claims to have sent the copies of all eight letters to the Assistant Registrar of Trade Marks for his information. Assistant Registrar of Trade Marks, on receipt of the petitioner's letters, issued show cause notices to both respondents through their counsel asking them as to why the No Objection Certificates granted under section 45 of the Copyright Act, 1957 be not cancelled. Petitioner has submitted copies of those notices. In the first week of July, 2007, respondent No. 1 herein supplied a list of documents to the counsel of the petitioner which have been filed in the aforesaid suit No. 644 of 2007. This list was accompanied by copies of copyright registration certificates hearing numbers A-79437/2007, A-79440/2007, A-79443/2007, A-79446/2007, A-79450/2007 and A-79422/2007. All registrations are in favour of respondent No. 1 except A-79446/2007 which is in favour of respondent No. 2 who is also shown as the proprietor of the same M/s. A.D. Food Products. Petitioner has submitted that two persons cannot be the proprietor of the same concern at the same time. Petitioner filed a writ in Delhi High Court which was ultimately dismissed as

withdrawn with the specific direction to the Copyright Board that the proceedings pending before it would be expeditiously considered. Petitioner has taken the grounds of lackness of originality and violations of statutory rights relating to No Objection Certificate under section 45 of the Copyright Act, 1957 and rule 16 of the Copyright Rules, 1958.

2. Respondent, Shri Anil Tulsani, in the written statement, in his preliminary objections has objected to filing of a joint application for rectification of six artistic works. According to him, there should have been separate applications for all registrations. Respondent has submitted that he filed an FIR bearing number 78/2007 on 31.3.2007 against the petitioner. Petitioner concealed the fact while obtaining ex parte injunction for Delhi High Court in CS(OS) No. 644/2007. On entering into appearance in the said suit by the respondent, the Hon'ble High Court was pleased to vacate the injunction and dismissed the injunction application of the petitioner and restrained the petitioner herein from manufacturing, marketing and selling the confectionery items/sugar candies under eight works. Respondent has referred to certain trade mark applications filed by him. In all six impugned registrations, date of publication has been mentioned as 2001 whereas, according to the admitted case of the petitioner, he came into business in 2004. Respondent has submitted a copy of the affidavit of Shri Alakraj, the printer of his labels purported to have been filed in Delhi High Court in C.S.(OS) No. 644 of 2007, submitting that he had been printing the art work of various titles. Copy of affidavit, though mentions type print year 2007, does not bear date and month of signature of verification. So is the position with the copies of affidavits of various dealers as Annexure I filed in support of sale of the respondent. In parawise comments, the respondent has generally controverted the averments of the petitioner. In reply to the grounds taken by the petitioner, respondent has submitted that the impugned artistic works have been conceived and adopted by the respondent much prior to the petitioner for which he has submitted the affidavits of the artists who had created these labels.

3. Learned counsel for the petitioner, at the outset, took us to the copies of impugned registration certificates. He submitted that, in relation to all six registrations, applications dated 14.4.2007 were submitted in the Copyright registry on 16.4.2007. Registrations were granted and certificates issued in all cases on 23.5.2007. He took us to the copy of the suit C.S. (O.S.) No. 644/2007 filed in Delhi High Court on 3.4.2007. In para 4 of the plaint for the suit, the petitioner herein has claimed adoption of eight labels, namely, MIRCH MASALA, BALLE BALLE, MIX FRUIT BALLS, NAGPURI SANT CHATAK MATAK, AAM MODAK, LOVE LINE MANGO AND GARAM MASALA. Delhi H Court, in its ad interim order dated 4.4.2007 restrained respondent herein from selling, marketing, advertising or using the impugned eight trade marks/labels. Learned counsel took us to the copies of eight notices all dated 23.4.2007 served upon the Registrar of Copyrights and acknowledged in his office on 24.4.2007 whereby the petitioner submitted for his interest in eight labels and requested not to proceed for registration in any of the applications relatable to the subject matter of his trade marks/labels. He sent the copies of these notices to the Registrar of Trade Marks for similar action in relation to No Objection Certificates requested for, if any, under section 45 of the Copyright Act, 1957. He took us to the copies of eight letters of the Registrar of Trade Mark office all dated 3.5.2007 addressed to the counsel for the respondent herein to send his comments within 21 days to the objections of the petitioner herein. In conclusion, learned counsel requested for expunction of the registration in view of statutory violation on the part of the respondent in matter of sub-rule (3) of rule 16 of the Copyright Rules, 1958 and non-compliance of sub-rule (5) of that rule by the Registrar of Copyrights. In this matter, he relied upon Lal Babu Priyadarsh and another v. Badshah Industries and others, MANU/BH/0068/2001 : 2002 (25) PTC 173 (Patna)

(DB).

4. Learned counsel for the respondent claimed for the prior right of the respondent to the label, 2001 having been mentioned as the first year of publication in all applications relating the impugned registrations. He submitted that the respondent was first to file a criminal complaint against the petitioner. In this regard, he took us to para 3 of the written statement. The said FIR was filed on 31.3.2007. He took us to paras 8 and 14, being part of the order of Hon'ble High Court of Delhi dated 17.12.2007, whereby ad interim injunction granted earlier against the respondent herein was vacated and instead ad interim injunction was issued against the petitioner herein. He took us to the copy of an affidavit (bearing no date of verification except for the type print of 2007 as year) by Shri Jairam Das Lakhiana purported to have been submitted before the High Court of Delhi in C.S.(OS) No. 644 of 2007 and placed at page 104 of the paper book of the respondent whereunder Shri Lakhiani has sworn as the dealer of nine products of the respondent since 2001. He took us to page 34 of his paper book where copy of a receipt from the Trade Mark Registry, Ahmedabad in evidence of his application number 1163346 dated 1.1.2003 in relation to label Chatak Matak is placed. He took us to eight objections dated 23.4.2007 filed with the Registrar of Copyrights and eight objections of even date filed with the Registrar of Trade Marks by the petitioner and submitted that, before taking cognizance of those objections, nature of the objections should be taken into account. Respondent is established prior user of the labels. Hence, there is no cause for grievance on the part of the petitioner.

5. Respondent has taken objection to a combined application for rectification of six artistic works. He has submitted that for each work there should have been a separate application. Copyright Board is a quasi-judicial organ created under the Copyright Act, 1957. It has been conferred with in specific areas for limited purposes powers of a civil court under sections 12(7) and 74. In other regards, it has to function free from rigorous technalities of Code of Civil Procedure, 1908, etc. and follow the principles of natural justice. Dispute in question in relation to six works is between the same parties on the same subject matter. In view of this, there is nothing wrong if the impugned works are put to question through a common petition. Rather it helps and promotes larger question of reducing litigation and costs thereof.

6. It is now well settled that mechanism envisaged under rule 16, read with Form IV, of the Copyright Rules, 1958 as further strengthened through amendment in 1992 envisage a protection of infrastructure which is in substitution of publication of application and right to opposition provided under the Trade Marks law since ages. Courts have repeatedly held that in matter of disputes relating to labels, marks, etc., it is not that issues relating to the rights of the private persons are only involved. Public at large has a stake in these issues. For that reason, maintenance of the purity of register is emphasized time and again [see Ciba Ltd. Basle Switzerland v. M. Ramalingam, MANU/MH/0021/1958 : AIR 1958 Bom. 56 as quoted in Khoday Distilleries Limited v. Scotch Whisky Association, MANU/SC/2361/2008 : 2008 (37) PTC 413 (SC) : AIR 2008 SC 2737]. Scope of rule 16(3) is not restricted in relation to label/mark/artistic work specific in graphics. It is in relation to subject-matter thereof which is of much wider gamut. While comparing the impugned works with the rival works, we have not to restrict our enquiry to literal composition or phraseology or graphics thereof. All conceivable areas covered under the subject-matter become part of enquiry and hence, where there is a notice therefor, opportunity to such quarters should be afforded to place their case before the Registrar. According to the submission of the respondent, he filed an FIR against the petitioner in relation to the subject-matters of the impugned registrations on 31.3.2007. Respondent filed all six impugned applications on 16.4.2007

and the notice for ad interim injunction relatable to impugned artistic works was issued by the Hon'ble High Court on 4.4.2007. A duty in terms of rule 16(3) of the Copyright Rules, 1958 was cast upon the respondent to put the petitioner herein to notice about his proposed applications. Thus the respondent is in violation of those statutory provisions. Accordingly we order that the Registrar shall expunge entries relating to all six registrations. No order as to costs.

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