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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 9th April, 2024

\+ **CS(COMM) 611/2022 & I.A. 22839/2023**

JK LAKSHMI CEMENT LIMITED ..... Plaintiff

Through: Mr. Nishchal Anand & Mr. Tanvi Jain, Advocates.

versus

RAM BYASH YADAV, PROPRIETOR OF VIKAS HARDWARE & ANR. ..... Defendant

Through: None.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral)

1. The present suit is filed seeking, *inter alia*, permanent injunction restraining infringement of trademark and copyright, passing off, and dilution of trademarks, trade name and trade dress and selling of counterfeit products of the Plaintiff.

2. Mr. Nischal Anand, counsel for the Plaintiff, submits the following facts and contentions:

2.1. Plaintiff (M/s JK Lakshmi Cement Limited) is a company manufacturing infrastructural materials such as cement and allied products. Plaintiff is part of the renowned 'JK Organization', an Indian conglomerate which was founded in the year 1888, and is the proprietor of the trademark/

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emblem “ 

”. The entities which form a part of the JK Organisation use the mark “  ” to indicate their association with the same, and are granted the right to use the trademark “JK” on their products.

2.2. The instant suit is filed pertaining to the Plaintiff’s registered trademarks and logos – “JK”, “JK Lakshmi”, “JKLC”, “

” and “ 

”[1].

2.3. Plaintiff has been using the trademarks “JK Lakshmi”, “JKLC” and other trademarks with the prefix “JK” continuously and uninterruptedly since the year 1982. Plaintiff has launched a variety of products under their JK Trademarks, and has invested a substantial sum of money in promoting and advertising its products and services under the same. Further, Plaintiff also operates a website on its registered domain name https://www.jklakshmicement.com/ and various social media accounts for the same. Consequently, Plaintiff has garnered significant goodwill and reputation in its products bearing their JK Trademarks, which have become a source identifier for the Plaintiff’s goods and services. The details of the sales figures of Plaintiff’s products under their JK Trademarks are

[1] “JK Trademarks”.

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delineated as under:

Year	Revenues (in crores)
2015-16	2939.35
2016-17	3260.12
2017-18	3514.19
2018-19	3882.34
2019-20	4043.50
2020-21	4384.71
2021-22	5040.78

2.4. Plaintiff has also conceived and designed the trade dress of Gypsum Plaster bags "

", consisting of the words 'JK LAKSHMIPLAST' written in red colour with the words 'GYPSUM PLASTER' written below in black colour, as well as the logo 'JK' and a picture of hand holding a hammer on top, on an overall white background with green borders on two sides. The above trade dress, which has been used

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since the year 2005, helps to distinguish the Plaintiff's products from its competitors.

2.5. Moreover, the above logo and trade dress are artistic creations of the Plaintiff, and therefore are capable of being protected under the Copyright Act, 1957 from any unauthorized use amounting to infringement and passing off. Further, Plaintiff has sought registration of the packaging/ trade dress as a label mark *vide* Application No. 5589170 before the Trademarks Registry, which is currently pending on account of certain objections being raised by the Registry.

2.6. Plaintiff is aggrieved by the Defendants' dishonest adoption of the mark "JK GYPSUM LAKSHMI" and trade dress "

"[2], which are deceptively similar and identical to the Plaintiff's registered JK Trademarks and trade dress. In July 2022, the Plaintiff first received information of Defendant No. 1 (a retail supplier of construction and allied materials), allegedly promoting, marketing, offering for sale and selling products under the Impugned Mark/ Trade Dress with respect to identical products as the Plaintiff's, i.e., gypsum plaster, despite not having been authorized to use the Plaintiff's JK Trademarks.

[2] Impugned Mark/ Trade Dress

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2.7. On being alerted, the Plaintiff conducted an investigation through its representatives and purchased a sample of the Defendant No.1's product "

" from the premises of Defendant No. 1 on 3rd August 2022. On comparison, it was found that the Defendant No. 1's product clearly infringes upon the Plaintiff's registered JK Trademarks and trade dress. Accordingly, the Plaintiff approached this Court by way of the instant suit.

3. In view of the aforenoted factual backdrop, on 5th September 2022, upon finding a *prima facie* case in favour of the Plaintiff, an *ex-parte ad-interim* injunction was issued restraining the Defendants from dealing in any products using the Impugned Marks. A Local Commissioner was appointed to visit the premises of Defendant No. 1 and seize any products bearing the infringing marks. Furthermore, the Court issued summons to the Defendants, directing them to file their written statements within a period of 30 days from the date of service.

4. Thereafter, the Plaintiff filed a compliance affidavit under Order XXXIX Rule 3 of Code of Civil Procedure, 1908 ('CPC') dated 13th September 2022.

5. During execution of the commission on 11th September, 2022, the Local Commissioner found tax invoices that *prima facie* confirmed that Defendant No. 1 had bought products bearing the infringing marks "JK

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GYPSUM LAXMI 25KG" from Defendant No. 2. These invoices were sealed and seized and released on *'superdarinama'* to Mr. Jitendra Yadev, the brother of Defendant No. 1. Further, on a phone call with the Local Commissioner, Defendant No. 1 admitted to recently buying the infringing products from Defendant No. 2 and clarified that he bought them only once and not thereafter.

6. As regards the service of summons to the Defendants, the Plaintiff filed an affidavit of service dated 27th September 2022 and an additional affidavit of service on 27th September 2022. From the above, it is evident that both the Defendants were duly served electronically, over WhatsApp and *via* E-mail. Pertinently, Defendants No. 1 and 2 were also served through speed post on 1st October, 2022 and 30th September, 2022 respectively.

7. Mr. Sudhir Naagar, Advocate who represented Defendant No. 1 did not appear before the Joint Registrar when the matter was listed for completion of pleadings. Moreover, since the Defendants failed to file written statements within the overall condonable time limit prescribed for commercial suits, their right to file the same was closed by the Joint Registrar *vide* order dated 17th March 2023.

8. Subsequently, on 1st May 2023, the counsel for Defendant No. 1, stated on instructions from their client, that they are willing to comply with the *ad-interim* injunction granted on 5th September 2022, and accordingly, the same was made absolute during the pendency of the present suit. Further, counsel for the Defendants No. 1 and 2 stated that they are willing to suffer a decree of injunction subject to the Plaintiff giving up its claim for

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damages. For this purpose, they proposed to meet with the counsel for Plaintiff to explore the possibility of an amicable settlement.

9. As regards to Defendant No. 2, a settlement was executed between the parties. To this effect, the parties jointly filed an application under Order XXIII Rule 3 of CPC on 16th November 2023. In the said application, Defendant No. 2 acknowledged that they had infringed the Plaintiff's registered JK Trademarks and admitted to manufacturing and selling products bearing the Impugned Mark/ Trade Dress pursuant to orders placed by Defendant No. 1. As per the settlement terms, Defendant No. 2 undertook not to use any mark identical and/or similar to the Plaintiff's JK Trademarks, and also agreed to pay a sum of INR 5,00,000/- to the Plaintiff as damages. Accordingly, since the dispute between Defendant No. 2 and Plaintiff stood resolved, the suit was decreed against Defendant No. 2 *vide* Order dated 1st December 2023.

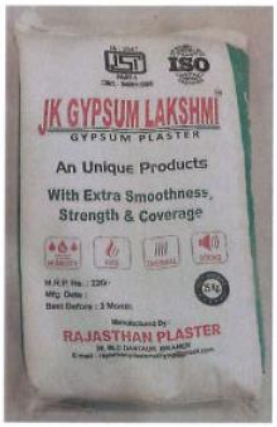
10. The settlement negotiations between Defendant No. 1 and the Plaintiff failed, and subsequently, counsel for the Defendant No. 1 stopped appearing. As a result, Defendant No. 1 was proceeded *ex parte* by way of order dated 31st October 2023. It is pertinent to observe that although Mr. Naagar's appearance has been marked in the order dated 31st October 2023, that seems to be an inadvertent error. The said order declared that the proceedings will go on *ex parte* against Defendant No. 1, yet no attempt was made to set aside the same. Be that as it may, there has been no representation thereafter on behalf of Defendant No. 1 in the proceedings before this Court.

11. In the aforesaid circumstances, the Court has proceeded to adjudicate

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the present matter summarily against Defendant No. 1 under Order VIII Rule 10 and Order XIII-A Rule 3 of the CPC as applicable to commercial disputes read with Rule 27 of the Delhi High Court Intellectual Property Division Rules, 2022. The Local Commissioner's report is also read in evidence in terms of Order XXVI Rule 10(2) of CPC[3] and no *ex-parte* oral evidence is required to be led[4]. It is also clear to this Court that the Defendants have no real prospect of successfully defending the claim, owing to the fact that there is no written statement on their behalf and Defendant No.1 has already been proceeded *ex-parte*. There is no compelling reason for keeping the suit pending in this matter.

12. The Court has evaluated the contentions, and perused the documents placed on record by the Plaintiff. For the sake of ready reference, a comparison of the competing products is represented as follows:

Plaintiff's Product	Defendant's Product
	

[3] ***ML Brother LLP v. Maheshkumar Bhuralal Tanna***, 2022 SCC OnLine Del 1452
[4] ***Disney Enterprises Inc. and Anr. v. Balraj Muttneja and Ors.,*** 2014 SCC OnLine Del 781 and ***Cross Fit LLC v. RTB Gym and Fitness Centre,*** 2022 SCC OnLine Del 2788.

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13. From the above, it is observed that both marks use the words "JK" and "LAKSHMI" which are depicted in red block letters and the words "GYPSUM PLASTER" below in smaller black coloured font, albeit in the same block letter style. In terms of the trade dress, both products use the same colour scheme of a white background with green sides and red bold font on the front. The overall similarity of the mark "JK LAKSHMIPLAST GYPSUM PLASTER" and "JK GYPSUM LAKSHMI" as well as the trade dress, which are used with respect to the same goods – Gypsum plaster is highly likely to cause confusion on the part of the general public, who may not be able to differentiate between the two products, and may mistake Defendant No.1's product for the Plaintiff's.

14. It is established that the Plaintiff has ownership over the JK Trademarks "JK", "JK LAKSHMI", "JKLC" and "JK Lakshmiplast Gypsum Plaster". On the other hand, Defendant No. 1 does not have registration for the 'JK GYPSUM LAKSHMI' mark or the trade dress of their product. Further, Plaintiff has also made significant revenue and marketing expenditures on the promotion of its products bearing the registered JK Trademarks, as noted above, which has also garnered the Plaintiff's substantial goodwill and reputation in the market. In fact, during the pendency of the present suit, "JK Lakshmi Cement" has been notified as a 'well-known trademark' by the Trademarks Registry on 19th February, 2024 through publication in Journal No. 2144. In view of the above, the Court is of the opinion that the Defendant No. 1's adoption of the Impugned Mark/ Trade Dress is *mala fide* and undertaken with the intention to take unfair advantage of the Plaintiff's established goodwill and reputation in their JK Trademarks.

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15. It is pertinent to note that Defendant No. 1 has a history of infringing the Plaintiff's registered trademark and before the present proceedings had been initiated, Defendant No. 1 had issued a '*mafinama'* (apology) dated 7th May 2022, wherein it acknowledged ordering duplicate goods of Plaintiff and assured the Plaintiff that they would not do so in the future.

16. In the opinion of this Court, the Impugned Mark/ Trade Dress used by Defendant No. 1 is deceptively similar to the Plaintiff's registered trademark, and has a high likelihood of causing genuine confusion amongst the public. Accordingly, the use thereof by Defendant No. 1 amounts to infringement and passing off of Plaintiff's JK Trademarks.

17. The Plaintiff asserts that Defendant No. 1's unauthorized actions have not only damaged their goodwill and reputation but also unjustly enriched Defendant No. 1 and prays for imposition of damages. Indeed, given the deliberate nature of the infringement and Defendant No. 1's conscious decision to evade the present proceedings, it is clear that this is not a case of innocent adoption. However, due to Defendant No. 1's absence from the process, accurately quantifying the exact damage or loss suffered by the Plaintiff poses a significant challenge. Nonetheless, damages should be decisively imposed on Defendant No.1. The rationale for this approach is rooted in principles of equity and judicial efficiency. Allowing defendants who ignore court summons to escape liability for damages undermines the fairness of the legal system. It creates a disparity where defendants who respect the legal process and appear in court might be penalized with damages, while those who disregard the process benefit from their absence. This not only encourages non-compliance, but also places an undue burden

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on those who engage with the system as required.

18. The Court has considered the evidence on record. Pertinently, on 11th September, 2022 on inspection of Defendant No. 1's premises, the Local Commissioner sealed and seized invoices *prima facie* indicating that Defendant No. 1 purchased products bearing the Impugned Marks/Trade dress worth approximately Rs. 3,17,875 (Rupees three lakhs seventeen thousand eight hundred and seventy-five) from Defendant No. 2. Moreover, Defendant No. 2 has admitted on record, that they have sold such products to Defendant No. 1.

19. The Co-ordinate Benches of this Court in ***M/s General Electric Company v. Mr. Altamas Khan and Ors***.[5], and ***Microsoft Corporation v. Yogesh Papat & Anr.***[6] have granted compensatory damages based on certain assumptions of sales. Given the facts presented, the legal principles discussed, and the nature of the counterfeiting engaged in by Defendant No. 1, this Court finds that the Plaintiff is entitled to damages. Therefore, based on a reasonable assessment of the available evidence and the extent of the infringement, damages are set at Rs. 3,00,000/- against Defendant No.1

20. The present suit is accordingly decreed in favour of the Plaintiff and against Defendant No. 1 in terms of the relief of permanent injunction as sought in prayers (a), (b) and (c) of the plaint. Further the suit is also decreed for damages amounting to Rs. 3,00,000/- in favour of Plaintiff which shall be payable by Defendant No.1. The Plaintiff shall also be entitled to cost of Rs.5,50,000/- from Defendant No.1

[5] 2008 SCC OnLine Del 1794, ¶¶ 13 and 14.
[6] 2005 SCC OnLine Del 216, ¶¶ 21.

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21. Suit is decreed in above terms. Registry is directed to draw up the decree sheet.

22. Suit and all pending applications are disposed of.

SANJEEV NARULA, J

APRIL 9, 2024/*da*

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