

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

+ **CS(OS) No.135/2004**

%18.12.2008

**Date of decision: 18.12.2008**

**I.T.C. LIMITED**

....Plaintiff

Through: Mr Sushant Singh, Advocate

**Versus**

**M/S DEEPAK GARMENTS & OTHERS**

.... Defendants

Through: Ex parte.

***CORAM :-***

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

1. Whether reporters of Local papers may be allowed to see the judgment? NO
2. To be referred to the reporter or not? NO
3. Whether the judgment should be reported in the Digest? NO

**RAJIV SAHAI ENDLAW, J.**

1. The plaintiff engaged inter-alia in the business of branded apparel under the trademark WILLS SPORT & JOHN PLAYERS instituted this suit for permanent injunction against four defendants for restraining them from dealing in garments bearing the trademark WILLS SPORT & JOHN PLAYERS & ITC, in combination or individually and for the ancillary reliefs of accounts, damages, delivery etc. Vide ex-parte order dated 17<sup>th</sup> February, 2004, the defendants were restrained from selling, marketing or distributing the wearing apparel with the plaintiff's trademarks and logos WILLS SPORT, JOHN PLAYERS & ITC or any other trademark or logo deceptively similar to that of the

plaintiff's. The said order was made absolute during the pendency of the suit, vide order dated 17<sup>th</sup> January, 2007. The defendants No. 1,2&4 on being served with the summons of the suit separately filed their written statements. The defendant No.3, however, failed to appear in spite of service and was vide order dated 29<sup>th</sup> March, 2006 proceeded against ex-parte. The plaintiff, at the time of institution of the suit, had applied for registration of trademark WILLS SPORT & JOHN PLAYERS and JOHN PLAYER and during the pendency of the suit the said registration was granted. The plaintiff applied for amendment of the plaint to incorporate the said fact in the plaint and the application of the plaintiff for amendment was allowed on 29<sup>th</sup> March, 2006. The defendants 1,2&4 did not file any written statement to the amended plaint and adopted the written statements earlier filed by them, to the amended plaint also.

2. On the pleadings of the plaintiff and the defendants No.1,2,&4, on 17<sup>th</sup> January, 2007, the following issues were framed:-

- “1. Whether the plaintiff is the proprietor of the trademark and copyright in respect of WILLS SPORT, WILL SPORT LOGO, JOHN PLAYERS in respect of readymade garments, shirts, jeans, trousers, etc.?
2. Whether the defendants are passing off their goods as that of the plaintiff?
3. Whether the defendants are infringing the trademark and WILL SPORT and JOHN PLAYERS of the plaintiff?
4. Whether the defendants are infringing the logo in respect of WILL SPORT amounting to infringement of copyright of the plaintiff?
5. Relief.”

3. The defendants No.1,2&4 however also failed to appear thereafter and were vide order dated 15<sup>th</sup> November, 2007also proceeded against ex-parte.

4. The plaintiff led ex-parte evidence by filing the affidavit by way of examination in chief of its constituted attorney Mr. Rajiv Ohri. The defendants remain ex-parte. The counsel for the plaintiff has also filed synopsis for submissions.

5. Though issues as aforesaid were framed when the defendants No.1,2&4 were contesting the suit but they also having been proceeded against ex-parte, the issues need not be dealt with separately.

6. The witness of the plaintiff has proved as Exhibit P1, the registration certificates showing the plaintiff as the registered proprietor of the device WILLS SPORT with 'W', however, without any right to the exclusive use of letter 'W' or the word SPORT, in relation to clothing, footwear, headgear for sale in India and for export and also in relation to leather goods, accessories, animal skins etc. of the word JOHN PLAYER for bleaching preparations and other substances for laundry use etc. of the device WILLS SPORT, with 'W' for sporting equipment, games play things, supporting articles, decorations etc. as well as for clothing, footwear, headgear for sale in India and for export of the device JOHN PLAYER for sporting equipment, games, gymnastics, without any right to the exclusive use of the PLAYERS. It, thus, stands established that the plaintiff is the registered proprietor of WILLS SPORT, WILLS SPORTS LOGO & JOHN PLAYERS.

7. The plaintiff had approached this court on learning of the sale of counterfeit WILLS SPORT & JOHN PLAYERS shirt, jeans, trousers and other clothing at the premises owned by the defendants. Though, it was the case in the plaint that the plaintiff through a notary public had purchased the goods bearing infringing trademark from the defendants but the said public notary was not examined by the plaintiff. It was further the case of the plaintiff that the inquiries of the plaintiff had revealed that the defendant No.1 M/s Deepak Garments functioning from 90 & 157, Sarojini Nagar Market, New Delhi was the manufacturer and the fabricator of the infringing goods, the said goods were being sold through the defendant No.2 M/s Guru Nanak Trading Co. at shop No. 82, Sarojini Nagar Market, New Delhi, and the defendant No.3 M/s Mini Fashion Street at 199 Sarojini Nagar Market and the defendant No.4 M/s Shanker Garments at Shop No. 77-A, Sarojini Nagar Market, New Delhi. It was also the case of the plaintiff that the defendant No.1 was also selling the infringing goods from its shop in the market. It was on these pleas that the four defendants were joined in this suit. That the defendant No.1 in its written statement filed by Mr. Vinod Kumar Gupta, S/o Mr. Abdh Bihari Gupta r/o 74/2, New Law Shashtri Nagar, Delhi (affidavit is attached to written statement of defendant No.2) inter-alia stated that there was no firm by the name of M/s Deepak Garments at shop No.90 and averred that he was carrying on business of Dry Cleaning in the name and style of M/s Blue Bird Dry Cleaners at shop No.90, Sarojini Nagar Market, New Delhi. He denied the rest of the contents of the plaint. The defendant No.2 M/s Guru Nanak Trading Co. in its written statement filed through Mr. Iqbal Singh S/o Mr. Mohinder Singh, R/o Flat No.148, Sarojini Nagar Market, New Delhi as sole proprietor (affidavit attached to written

statement of defendant No.1) stated that no firm by the name of Guru Nanak Trading Co. exists at shop No.82, Sarojini Nagar Market, New Delhi and stated that in fact a tent house in the name and style of M/s Guru Nanak Tent House under the proprietorship of Mr. Iqbal Singh aforesaid was being run from shop No.82. He further pleaded that he had given a part of the said shop No.82 on rent to one Mr. Ajay Kumar S/o Late Mr. Kishori Lal R/o G-82/101A, Paschim Vihar, New Delhi who was conducting his business of selling garments from the said shop. The said Mr. Iqbal Singh also denied the rest of the contents of the plaint. The defendant No.4 M/s Shankar Garments in its written statement filed through Mr. Dharmender Kumar S/o Mr. Sumar Mal R/o 11/15, 3<sup>rd</sup> Floor, West Patel Nagar, Delhi as sole proprietor denied the contents of the plaint and denied having dealt with the trademark/device aforesaid of the plaintiff.

8. The sole witness of the plaintiff in his deposition reiterated the contents of the plaint with respect to the defendants and proved nothing further. It is, however, significant that the plaintiff had along with the suit filed an application for appointment of two local commissioners to visit the premises of defendant No.1 M/s Deepak Garments at 90 & 157, Sarojini Nagar Market and the premises of the defendant No.2 M/s Guru Nanak Trading Co. at shop No.82, Sarojini Nagar Market. This court vide ex-parte order dated 17<sup>th</sup> February, 2004 appointed the local commissioners to visit the aforesaid premises and to make an inventory of the goods carrying the infringing trademarks and logo.

9. The local commissioner appointed to visit the premises of the defendant No.1 M/s Deepak Garments at 90&157, Sarojini Nagar, New Delhi filed a report stating the infringing goods were found only in shop No.90 but not in shop No.157. The local commissioner also mentioned having met one Mr. Ajay Kumar, an employee in the said shop No.90 and an employee Mr. Kamal at shop No.157.

10. The local commissioner appointed to visit the premises of the defendant No.2 M/s Guru Nanak Trading Co. at shop No.82 reported that on reaching the shop, one Mr. Ajay who introduced himself as an employee was met in the shop; the said Mr. Ajay had called Mr. Iqbal Singh described as the owner of the business; the said Mr. Iqbal Singh co-operated and the local commissioner found infringing goods which were left in the superdari of the said Mr. Iqbal Singh only.

11. Though no objections to the aforesaid reports of the local commissioner have been filed but the defendant No.2 M/s Guru Nanak Trading Co. in its written statement stated that he had described himself to the local commission as the owner of the building and not as the owner of the business and the local commissioner had forced him to sign the superdarinama. The defendant No.1 in its written statement, however, did not deal with the visit of the local commissioner.

12. From the aforesaid reports of the local commissioner, which there is no reason to doubt, especially in the face of the defendants

having neither filed any objections thereto nor contested the same, show that at least the aforesaid Sh. Iqbal Singh carrying on business at 82, Sarojini Nagar Market, New Delhi and M/s Deepak Garments carrying on business at 90, Sarojini Nagar Market were indulging in the activities complained by the plaintiff and with respect to which the suit for injunction has been filed. The presence of the same person Mr. Ajay at the time of visit by the local commissioners to both the premises also establish the common connection at least between the defendants No.1&2. The plaintiff has thus become entitled to the decree for injunction against the defendants No.1&2.

13. As far as the defendants No.3&4 also are concerned, in view of the unrebutted statement of the witness of the plaintiff, the plaintiff has become entitled to injunction against them also. I may record that the witness of the plaintiff has proved as Exhibit P-2, the photographs of the plaintiff's products with the trademark and device aforesaid of the plaintiff and as Exhibit P-4 the photographs of the infringing products. From the perusal thereof it is evident that the trademark, logo, trade dress of the plaintiff is being counterfeited by the defendants. The witness of the plaintiff has also purported to prove as Exhibit P-3 the affidavit of one Mr. Rakesh Chhabra of having purchased the infringing goods from the defendant No.3 at 199, Sarojini Nagar Market, New Delhi but the deponent of the affidavit having not been examined, I do not consider the said document to have been proved in accordance with law.

14. As far as the relief of damages is concerned, for no explicable reason the plaintiff while applying for appointment of local

commissioner did not apply for commissioner to be appointed with respect to the premises of the defendants No.3&4. As aforesaid, the witness of the plaintiff has also save to his bare statement not led any evidence to show the constitution of the defendants No.3&4 nor expanded the case as set out in the plaint or in any further. I, therefore, do not consider the plaintiff to have made out any case for recovery of any damages from the defendants No.3&4. However, as far as the defendant No.2 is concerned, though he has in his written statement purported to explain the infringing goods found in his shop by the local commission by pleading that the business therein was being carried out by his tenant, neither has the said stand been proved nor is it believable. The plaintiff has thus become entitled to the relief of the damages against said Mr. Iqbal Singh, proprietor of defendant No.2. Similarly the local commissioner visiting the premises No.90, Sarojini Nagar Market, New Delhi also found the infringing goods. The plaintiff had not disclosed the constitution of M/s Deepak Garments. However, Mr. Vinod Kumar Gupta, who has filed the written statement on behalf of the defendant No.1 and who has claimed to be carrying on business at 90, Sarojini Nagar Market, New Delhi is found to have indulged in infringing goods, even though he has denied carrying on business in the name and style of Deepak Garments and has claimed to be carrying on business in the name of Blue Bird Dry Cleaners in the said premises.

15. The counsel for the plaintiff has relied upon **Microsoft Corporation Vs. Yogesh Papat** 2005 (30) PTC 245 (Del) where this court has held that the plaintiff would be entitled to damages for the reason that it would be futile to direct the defendants to

render accounts for the reason of the defendants carrying on business surreptitiously. Similarly, in **Time Incorporated Vs. Lokesh Srivastava** 2005 (30) PTC 3 (Del) also it was held that wherein infringement is found, punitive damages should follow to discourage such law breakers.

16. As aforesaid, the goods seized by the local commissioner, were as directed given on Superdari to Mr. Iqbal Singh & Mr. Ajay Kumar. The plaintiff is permitted to take the requisite steps for taking the said goods from the superdar and for destruction of the same.

17. Considering the nature of the goods, in the present case namely garments which normally in the markets such as the Sarojini Nagar are sold in the region Rs.300 to 500/-, and further since the infringement is stated to have continued for a short period, I deem it appropriate to award plaintiff punitive damages against the aforesaid Mr. Iqbal Singh and Mr. Vinod Kumar Gupta respectively in the sums of Rs.1 lac each.

18. The suit of the plaintiff is thus decreed for permanent injunction in terms of para 46 (i) to (iii) of the plaint. A decree for recovery of damages in the sum of Rs.1 lac each is also passed against the aforesaid Mr. Iqbal Singh believed to be carrying on business in name and style of defendant No.2 and Mr Vinod Kumar Gupta believed to be carrying on business in the name and style of

defendant No.1. The plaintiff shall also be entitled to proportionate costs from the defendants. Decree sheet be prepared.

**RAJIV SAHAI ENDLAW  
(JUDGE)**

**December 18, 2008  
PP**