

Sh. SURINDER S. RATH
ADJ-03/PHC/NDD
NEW DELHI

T.M No.-366/16

Extramarks Eduaction India Pvt Ltd

.....plaintiffs

Vs.

Bindals Papers Mills Ltd

.....Defendant

Order- 31.03.2016

Present: Ld. Counsels Sh. Sachin Gupta and Sh. Arnol Sinha for plaintiffs.

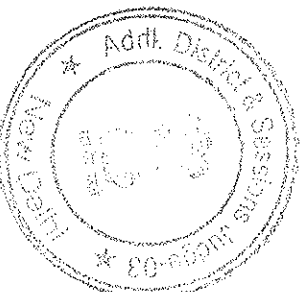
Perusal of plaint shows that it is a suit U/s 134 of Trade Mark Act, 1999 seeking permanent injunction against defendant from usage of registered trademark “EXTRAMARKS/EXTRAMARKS.COM” apart from other reliefs.

Issue summons of the suit on filing of PF/RC and through authorised courier to the defendant and notice of applications under Order 39 Rules 1 and 2 R/w 151 CPC.

Ld. Counsel for plaintiffs have prayed for ad-interim ex-parte injunction U/s. 135 of Trade Mark Act.

Submissions heard. File perused.

The case of the plaintiffs is that that they are the owner of registered Trademark “EXTRAMARKS/EXTRAMARKS.COM” for



education and has filed various other applications for various classes is pending before the registrar of trade marks internationally as well as in India. The registration in India is under class 41 from 20.08.2007 onwards for EXTRAMARKS.COM. The plaintiffs are in the business of providing new age digital education solution under trademark name/corporate name “EXTRAMARKS/EXTRAMARKS.COM.”

The plaintiffs has business of providing educational services under the mark namely “EXTRAMARKS/EXTRAMARKS.COM” The plaintiffs have been using the said trade marks honestly, bonafidely, extensively, exclusively, continuously, commercially and in course of trade since 2007 for educational services under its said trademark/tradename and sells them directly to the public.

The plaintiffs' services under the said trademarks are freely and commercially available in India as well as overseas. Plaintiffs have 20 offices in India apart from offices at Singapore, South Africa and UAE and is employing 1500 employees directly. It is products are being used in around 7000 schools and around 80 lakhs students world over. The details of the plaintiffs' registration in India and abroad have also been provided in the plaint. The



plaintiffs have been regularly and continuously promoting its distinctive trademark through extensive advertisements, publicities promotions and marketing research and has been spending enormous amounts of money, efforts, skills and time thereon.

It is alleged that the defendant is a company engaged in the business of manufacturing, marketing notebooks, paper and articles made of paper under trade name BINDALS. It is alleged that the defendant has now adopted the trademark BINDALS' EXTRAMARKS for notebooks and has been selling these notebooks under the impugned mark intermittently.

The defendant has as such infringed plaintiffs' trade marks. The defendant is also passing off their impugned goods and business as that of the plaintiffs. He is using all kinds of false descriptions on its impugned goods to wrongly link the impugned goods with those of the plaintiffs and mislead common people and customers.

Further more upon electronic search of the official website of trademark registry www.ipindia.nic.in came to know that on 25.11.2013 defendant applied for registration of impugned trademark BINDALS' EXTRAMARKS. This application has been objected to by Registrar of

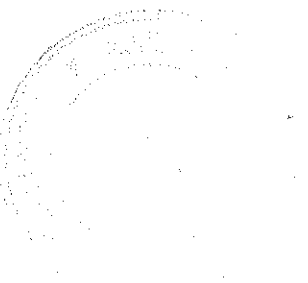


Trademark and is as such no published in the trademark journal as of yet.

The plaintiffs has relied upon following judgments for seeking ad-interim injunction.

- > **Midas Hygiene Industries P. Ltd. & Anr. Vs. Sudhir Bhatia & Ors., 2004 973) DRJ 647 (SC),**
- > **Jawahar Engineering Co. and Ors S Jawahar Engineering Private Ltd., AIR1984 Delhi166,**
- > **Larsen and Toubro Limited Vs Lachmi Narain Trades and Ors., 149 (2008) DLT 46,**
- > **Daimler Benz Aktiegesellschaft and another VS Hybo Hindustan., AIR 1994 Delhi 239,**
- > **Shri Pankaj Goel Vs Dabur India Ltd ., 2008 (38) PTC49 (Delhi).**

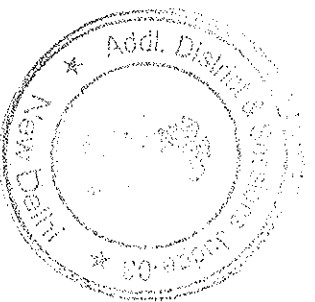
It is alleged that the defendant's impugned mark is deceptively identical and similar to the plaintiffs' trademark/labels in each and every respect including phonetically, visually, structurally, in its basic idea and in its essential features and that the defendant has been using the same in the course of trade without the leave and license of the plaintiffs.



The defendant are also passing off their impugned goods and business as that of the plaintiffs. They are using all kinds of false descriptions on its impugned goods to wrongly link the impugned goods with those of the plaintiffs and mislead common people and customers.

It is alleged that the defendant has adopted and started using the impugned trade mark dishonestly, fraudulently and out of positive greed with a view to take advantage and to trade upon the established good will, reputation and proprietary rights of the plaintiffs in the plaintiffs' said trade mark/label/trade name. Because of such activities of the defendant, the plaintiffs are suffering huge losses both in business and in reputation which cannot be compensated in terms of money. Print out of web page of www.snapdeal.com showing the picture of defendant's impugned products with trade name BINDALS' EXTRAMARK is filed along with plaint at page 262 of the paper book.

Such has been the conduct of the defendant that even though plaintiffs served him with the legal notice requesting him for desisting from using plaintiffs' registered trade name/marks EXTRAMARKS, in a detailed reply dated 09.07.15 they accepted that they are using BINDALS'



EXTRAMARKS on their products and that they would continue to do so.

In view of the above submissions, the plaintiffs have established that the trade mark EXTRAMARKS has acquired status of a well known trademarks and therefore a prima facie case in its favour and balance of convenience also lies in its favour. Plaintiffs have shown prime facie that in case defendant is not restrained, it shall cause irreparable injury to the business and goodwill of the plaintiffs which can not be compensated in terms of money.

Hence, the defendant, their agents, assignees, representatives, successors, distributors, stockist and all other acting for and on their behalf are hereby restrained till further orders from manufacturing, marketing, distributing, purveying, supplying, using, selling, soliciting, exporting, importing, displaying, advertising or by any other mode or manner dealing in or using the impugned trade marks/labels “EXTRAMARKS” or any other word/mark/Label which may be identical with and/or deceptively similar to the plaintiffs' said trade mark/label **EXTRAMARKS** in relation to exercise books, note books, registers, practical note books, drawing notebooks, paper and paper converted articles and any other product and allied products and business of manufacturing and related to allied cognate products and from doing any other acts or deeds



amounting to or likely to infringe plaintiffs' registered trademarks.

At this stage, Id. Counsel for the plaintiffs also presses his application **U/o 26 Rule 9 read with Section 151 CPC** for appointment of Local Commissioner for preserving and protecting infringing evidence as per Section 135 of the Trade Mark Act, 1999. Accordingly, I appoint:-

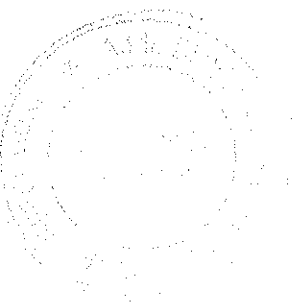
Sh. Tanveer Zaki, Id. Advocate, Chamber No. 102, New Lawyers Chamber Block-2, Delhi High Court, New Delhi-110003, Mobile No. 9711833730 visit the premises of defendant's dealer at:-

My BooksShelf, Shop No. #27, Khasra No. 540S, Sugamau, Lucknow, Uttar Pradesh- 226001.

The fee of the Local Commissioners is fixed at Rs.1,00,000/- exclusive of travel, pocket expenses or TDS to be paid in advance.

The commission shall be carried out preferably within 4 weeks from today, after giving notice of the commission to the defendant at the spot. Id. LC to submits its report within two weeks of the execution of the commission. The complete paper book provided to Id. LC by the plaintiffs along with copy of this order.

The Local Commissioner shall seize all impugned products specifically exercise books, note books, registers, practical note books, drawing



notebooks, paper and paper converted articles and any other product and allied products including other incriminating materials like stationery, packing material, pouches, cartons, blocks, containers, display boards, sign boards, advertising material, dies or blocks, simi-finished, unfinished packed, unpacked impugned goods or any other documents, wrapper etc. bearing the impugned trade marks “**EXTRAMARKS**” or bearing any other trademark identical with or deceptively similar to the plaintiffs' trade mark found at the aforementioned place of the defendant. After inventorising the stock, the same be released to the defendant's dealer on supardari. The Local Commissioner shall sign the account books, if any, of the said defendant including ledgers, cash register, stock register, invoices, books etc.

The Local Commissioners would be entitled to break open the locks in execution of the commission. On the request made by Id. LC the concerned SHO or the Deputy Superintendent of Police shall immediately provide police aid. The Local SHO/DSP/SSP are also directed to provide all possible help to Id. LC in smooth carrying out of Commission. One copy of this order be supplied to Local SHO through plaintiffs. All the Police Official shall maintain absolute secrecy for effecting execution of communication.



The plaintiffs may also arrange for photography, videography etc, if required. The representatives of the plaintiffs alongwith the counsel(s) of the plaintiffs are permitted to accompany the Local Commissioners at the spot.

Compliance of Order 39 Rule 3 CPC be made within reasonable time.

As already ordered, issue summons of this suit and notice of the applications to the defendant on filing of PF/RC/AD and authorised courier.

Steps be filed within two weeks for **18.07.2016**.

Copy of this order be given to the plaintiffs Dasti as prayed.

Self-
(Surinder S. Rath)
ADJ-03/PHC/NEW DELHI
31.03.2016

Id. ADJ-03, Patiala House Courts,
New Delhi

