

**(2003) 08 P&H CK 0157**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Regular First Appeal No. 638 of 1982

Kimat Gram Udyog Samiti

APPELLANT

Vs

Rasan Detergents Pvt. Ltd

RESPONDENT

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**Date of Decision:** Aug. 13, 2003

**Citation:** (2005) 30 PTC 293 : (2003) 4 RCR(Civil) 530 : (2004) 1 RCR(Criminal) 833

**Hon'ble Judges:** S.S. Nijjar, J

**Bench:** Single Bench

**Advocate:** Parmod Goyal, for the Appellant;

**Final Decision:** Dismissed

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### **Judgement**

S.S. Nijjar, J.

This Regular First Appeal has been filed against the judgment of Shri T.N. Gupta, Additional District Judge, Patiala, dated 15.12.1981 whereby Civil Suit No. 13-T of 3.12.1980 has been decreed with costs of Rupees 10,000. The respondent had filed a suit against the appellant for infringement and passing off goods under the Copyright Act, 1957, claiming a perpetual injunction restraining the appellant from infringing the plaintiffs' wrapper Registered No. A-16437/76 under the Copyright Act and from using the wrapper bearing "Captain" or any other wrapper deceptively similar to the wrapper of the plaintiffs, it was claimed that the appellants are a private limited concern, registered under the Companies Act. The suit was filed through the Managing Director of the appellant concern who had been duly authorised to file the same vide resolution dated 4.10.1980. It was averred that the appellants are renowned manufacturer of soap and they are carrying on their business in the manufacturing and sale of soap under the wrapper Captain specially designed with particular get-up and design. The wrapper is registered one under the Copyright Act, 1957, vide No. A-16437/76. The respondent had also claimed that it is manufacturing the soap and selling the same since the year 1976 under the aforesaid wrapper. The registration of the wrapper was valid and subsisting at the time when the suit was filed. The goods of the respondent were stated to be packed

inter alia in the wrappers having a particular get-up with its characteristic device, colour scheme and layout. Therefore, the wrapper had become distinctive of the goods in which it is used and had come to denote to the trade and public that the goods under the aforesaid trade mark, label and design are the goods of the respondent. Therefore, the trade mark and the goods sold therein had acquired wide reputation within the trade and with the public. By reason of such users by the respondent the soap cakes sold under the wrapper designed in a special manner has become known and are identified by the intending purchasers as goods of the respondents. The customers and the buyers of the respondents' soap included persons unacquainted with or imperfectly acquainted with the said wrapper and identify the goods by appearance, design and colour scheme. It was further led that the respondents have recently come to know that the appellants are manufacturing and selling the washing soap with the trade mark "Captain". The get-up of the wrapper used by the appellants is identical or substantially similar to the wrapper of the respondent. It was further averred that the appellants have even adopted the same colour combination including the matter written in the similar fashion as that of the respondent. The get-up of the wrapper was stated to be such that unless purchasers are educated and carefully examine the wordings on the wrappers, they are bound to be misled to purchase the washing soap of the respondent. In other words, the wrapper (Ex. P3), used by the appellant was deceptively similar to the wrapper used by the respondent. The case set-up by the respondent was denied by the appellant. Preliminary objection was taken to the maintainability of the suit. It was also pleaded that no cause of action had arisen in favour of the respondents.

2. On completion of pleadings, the Trial Court framed the following issues:

(1) Whether the defendant had infringed the Copyright as alleged? OPP

(2) Whether the plaintiff is entitled to the injunction prayed for? OPP

(3) Whether this Court has no jurisdiction to try this suit? OPD

(4) Relief.

3. After considering the entire evidence, the learned Trial Court has decreed the suit. Hence, the Regular First Appeal.

4. The respondent had brought on the record wrapper of the soap Ex. PC. The original registration of the Copyright was exhibited as Ex. PD. The infringing wrapper of the defendant-firm (appellant) was produced as Ex. PE. A comparison of the two clearly shows that there is hardly any distinction between the wrapper of the plaintiff and the wrapper used by the defendant. In the wrapper used by the defendants, the words, "superfine" and "machine made" have been substituted by words "fine quality". The word "Captain" used by the plaintiff has been replaced by the words "Captan" in the English script. The word "Captan" in Devnagri script used

by the plaintiff has been spelled as (Hindi matter). In the plaintiffs wrapper, "Superfine" is also written in the bottom right hand corner in Devnagri script. The same is missing in the wrapper used by the defendant. The documentary evidence has been supported by the oral evidence of PW-I, D.L. Sathu, Area Sales Manager of the plaintiff. He has proved the original registration certificate Ex. PA. He has stated that the plaintiff-firm deals in washing soap and manufacture "Captain" soap, the wrapper of which is Ex. PC. The wrapper is registered without the word "superfine" and "fine quality" instead of "machine made" in the artistic word with the Copyright Authorities. The Registration has been produced as Ex. PD. The wrapper of the defendant Ex. PE, has also been proved by this witness. He has categorically stated that the wrapper of the defendant is deceptively similar to the wrapper of the plaintiff. The customers are deceived in that either the wrapper Ex. PE is that of the plaintiff-firm or it has got some association with the plaintiff-firm. He further stated that the goodwill and reputation of the plaintiff-firm is spoiled by copying the wrapper of the plaintiff by the defendants. He has also placed on the record the accounts with regard to the sale of "Captain" soap which was Rs. 1,84,69,616.18. He has also proved that a sum of Rs. 5,59,395.97 was spent on the advertisement of "Captain" soap. He has also given the sale figures in Barnala was Rs. 59,317.42, which has been reduced to Rs. 22,693.36. In 1998 due to the fact that the consumers were deceived by using deceptive wrapper by the defendant firm. In cross-examination, this witness has reiterated the evidence given in the examination-in-chief. After appreciating the entire evidence, the learned Trial Court has come to the conclusion that the plaintiff-firm has succeeded in proving that the defendant has infringed the copyright of the plaintiff. I am of the considered opinion that the wrapper used by the defendant is not only deceptively similar to the wrapper of the plaintiff, but is almost identical. The copyright of the plaintiff has been registered and in existence for a long period of time. The plaintiff-firm is clearly entitled to the relief of injunction as granted by the learned Trial Court.

5. Learned counsel for the appellant had also argued that the plaintiff would not be entitled to the damages in the sum of Rs. 10,000 as granted by the learned Trial Court. I do not find any merit in the submission made by the learned counsel. The plaintiff has put on the record the damages suffered between the year 1979-80. Therefore, the damages of Rs. 10,000 cannot be said to be unreasonable.

6. In view of the above, I find no merit in the present Regular First Appeal and the same is hereby dismissed. No costs.