

(2002) 01 DEL CK 0142

Delhi High Court

Case No: S. No. 1748 of 1996

Britannia Industries Ltd.

APPELLANT

Vs

Om Food Products

RESPONDENT

Date of Decision: Jan. 9, 2002

Citation: (2002) 25 PTC 472

Hon'ble Judges: Dr. M.K. Sharma, J

Bench: Single Bench

Advocate: Hemant Singh, for the Appellant;

Judgement

Mukundakam Sharma, J.

The present suit is filed by the plaintiff seeking for a decree of permanent injunction restraining infringement of copyright and passing off. In the suit, the plaintiff has also sought for a decree for delivery of the infringed goods and also for payment of damages, rendition of accounts and profits.

2. Summons were issued in the suit. An injunction application was also filed by the plaintiff on perusal of which this Court ordered issuance of an ad interim injunction in favor of the plaintiff and against the defendant restraining the said defendant and its agents from manufacturing, selling, offering for sale, directly or indirectly dealing with biscuits under the trade mark "50 50" under the wrapper or under any mark with a wrapper as may be identical to or deceptively similar to the trade mark "50 50"

3. Summons having been served on the defendant, the defendant entered appearance and sought for time to file the written statement. However, in spite of opportunities granted to the defendant, no written statement was filed and the counsel also defaulted in appearance on subsequent dates. Accordingly, it was ordered that the suit would be proceeded ex parte as against the defendant.

4. Liberty was granted to the plaintiff to adduce evidence by filing an affidavit. The said affidavit by way of evidence was filed and was accepted by this Court. The suit is

now listed for final hearing and accordingly, I propose to dispose of the present suit by this judgment and order.

5. The plaintiff is a Company incorporated under the Companies Act and has a global presence in international market being engaged in the business of manufacturing and marketing various food items including biscuits. The trade mark/house mark of the plaintiff is "BRITANNIA" which according to the plaintiff is a household name not only in India but even in the international market and foreign countries. It is also stated that the plaintiff manufactures and markets a variety of biscuits including ANYTIME, DELIGHT, CIRCUS, GOOD DAY, MARIEGOLD, SNAX, LITTLE HEARTS, ORANGE CREAM etc. It is also stated that one of the varieties of CRACKERS biscuits manufactured and sold by the plaintiff is under the trade mark "50 50" and that the said trade mark was conceived so as to convey the character and quality of the CRACKERS biscuits peculiar thereto, that is partly sweet and partly salty. It is also stated that the plaintiff launched an exhaustive nation-wide advertising campaign of the said brand "50 50" through various media including television, radio, newspapers, magazines, hoardings, etc.

6. It is stated in the plaint that the defendant has adopted a trade mark and a wrapper which is identical and a total reproduction of the plaintiffs trade mark and the wrapper pertaining thereto. It is also stated that the defendant is using identical trade mark "50 50" represented in identical logoscript and in identical colour combination on its biscuit wrapper. In that view of the matter, the present suit is instituted seeking for the aforesaid reliefs.

7. The General Manager of the Bakery Operations working at Delhi of the plaintiff-Company has filed an affidavit by way of evidence. He has proved the statements made in the plaint and has specifically stated that the defendant has adopted the trade mark and wrapper which is identical and total reproduction of the trade mark of the plaintiff and the wrapper pertaining thereto and that the defendant is using the said trade mark "50 50" represented in identical logoscript and in identical colour combination on its biscuit wrapper. It is also proved and established that the defendant is further using a wrapper which is a colorable and slavish imitation and total reproduction of the plaintiffs "50 50" wrapper. The witness has further stated all salient and essential features of the wrapper of the defendant which appears to be identical to that of the wrapper of the plaintiff.

8. The allegations made in the plaint and the statements made in the evidence go un rebutted and unchallenged. I, Therefore, hold that the plaintiff has been able to establish and prove its case to the hilt. Accordingly, a decree by way of permanent injunction is passed in favor of the plaintiff and against the defendant restraining the defendant, its partners or the proprietor, as the case may be, its servants, agents, assigns in business, and all its retailers, dealers, stockists, etc., from manufacturing marketing, selling, offering for sale, advertising, directly or indirectly dealing in biscuits packed in the impugned "50 50" wrappers or any other wrapper

as may be a colourable imitation and substantial reproduction of the features of the "50 50" wrapper of the plaintiff in respect of its colour combination, get up, layout and arrangement of features amounting to infringement of plaintiff's copyright. A decree is also granted and a permanent injunction is ordered in favor of the plaintiff and against the defendant restraining the defendant, its partners or the proprietor, as the case may be, its servants, agents, assigns in business, its retailers and dealers, stockists, etc., from manufacturing, marketing, selling, offering for sale, advertising, directly or indirectly dealing in the biscuits under the impugned trade mark "50 50" and the impugned wrapper or any other mark or wrapper as may be identical to or deceptively similar with the plaintiff's trade mark "50 50" and the wrapper pertaining thereto amounting to passing off of the defendant's goods/business for those of the plaintiff.

9. Since a decree is passed in favor of the plaintiff and against the defendant in the aforesaid terms, counsel appearing for the plaintiff states that he is not pressing for a decree in respect of other three reliefs sought for in the plaint. In that view of the matter, no such decree is passed in respect of other reliefs as sought for in the plaint. There shall be no order as to costs.