

Intellectual Property Law and Practice

23.01.2024	Kamal Kant and Company LLP vs. Raashee Fragrances India Pvt Ltd.	Delhi High Court CS (COMM) 580/2022, I.A. 13422/2022, I.A. 13425/2022,
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Brief facts:

The Plaintiff in the present case is engaged in the business of manufacturing and marketing of pan masala, chewing tobacco, supari mixture, Zaffrani Patti, Zarda and other allied and cognate items since the year 1965. These products are sold in the market under the trade mark/name 'RAJSHREE' bearing various registrations in classes 6,29,31 and 34. The case of the Plaintiff is that it came across the trademark application by the Defendant bearing no.1895418 & 1895423 in classes 34 & 31 respectively for the mark 'RAASHEE' label. The mark is used in respect of similar business as that of the Plaintiff i.e., zarda mix, pan masala including gutkha, zarda, safrani, khaini, mouth freshners, scented supari, betel nuts, agricultural and other cognate and allied goods. The Defendants have been claiming user since 2009. The Plaintiff upon coming across these trademark applications opposed the said marks and the marks have been abandoned by the Defendant, as on the date of filing of the suit. The Plaintiff, however, felt a reasonable apprehension in the use of the mark 'RAASHEE' by the Defendant and hence, filed the present suit.

Judgement:


Court stated that - "The Plaintiff placed on record documents showing payments made by the Plaintiff to certain advertising agencies for advertising the mark in 1984 (page 552 to 595 PW-1/10 and PW-1/15). He further submits that the Plaintiff has reasonable business of earning royalty by licensing its seven brands. The Defendant shall stand restrained from using the trademark 'RAASHEE' or any other mark which is identical or deceptively similar to the Plaintiff's mark 'RAJSHREE' in respect of pan masala, mouth freshners, scented supari, betel nuts of zarda mix, pan masala like gutka, zarda, safrani and other chewing tobacco, khaini, tobacco products, tobacco raw or any other cognate and allied goods or services. The Defendant is, however, free to use the two proposed marks set out above so long as the said marks are used in a manner where the words 'MY' or 'ejli are of the same font, colour and size as the word 'RAASHEE'. The Defendant while adopting the above two proposed marks shall, however, ensure that the packaging, get up and lay out is not in any manner imitative of the Plaintiff's 'RAJSHREE' paan masala packaging."



For details:

https://dhccaseinfo.nic.in/jsearch/judgement.php?path=dhc/PMS/judgement/30-01-2024/&name=PMS23012024SC6802017_114022.pdf

04.12.2023	Cable News Network Inc. vs. City News Network & Ors,	Delhi High Court CS (COMM) 272/2021 & I.A. 7235/ 2021
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Brief Facts:

The plaintiff runs a news channel and has registrations for the device mark , which is an acronym for cable news network under classes 9, 16, 38 and 41 since 1991.

The marks, mark , , and "CNN" ("the CNN marks") are prominently displayed whenever the plaintiff's news channel is on air and have become source identifiers of the plaintiff and are indelibly associated with the services provided by the plaintiff. It is declared as a well-known trademark within the meaning of Section 2(1) (zg) of the Trade Marks Act, 1999 by this Court in Cable News Network, Inc. v.

Anshu Jain. Defendant is an entity located in Lucknow. It operates a website under the marks 

and . It also operates the website <https://citynewsnetworks.in/> for news broadcasting services.

The plaintiff alleges that Defendant marks and infringe the plaintiff's registered trademarks as they are identical to the plaintiff's registered trademarks, there is every likelihood of confusion in the minds of the viewing public between the marks of the plaintiff and Defendant and sought a decree of permanent injunction restraining the defendant of further use of impugned mark or any other mark which is deceptively similar to the plaintiff's registered CNN marks, either as a word mark or as a logo.

Judgement ;

Court observed that-

"The use, by the Defendant, of the expanded form "CITY NEWS NETWORK" would actually exacerbate the possibility of confusion. The aspect of likelihood of confusion has to be examined from the perspective of the consumer of average intelligence and imperfect recollection. All that is needed for the Defendant's mark to be treated as infringing is likelihood of confusion. Actual confusion need not be shown to exist. Applying these principles, the identity of the textual components of the plaintiff's and Defendants' marks, i.e. "CNN", when coupled with the similarity in the expanded forms of the acronyms – "CABLE NEWS NETWORK" and "CITY NEWS NETWORK" – is bound to result in confusion and the viewer may be led to believe that the services are in fact being provided by the plaintiff, and that, possibly, the plaintiff may have changed its logo.

The facts, therefore, also make out a clear case of passing off by Defendant. It is well settled that proof of mala fide intent is not necessary for passing off to be found to exist, even though, classically, passing off is regarded as a "tort of deceit".

Defendant is restrained from using the impugned marks or the mark "CNN" or any other mark which may be deceptively similar to the registered device mark of the plaintiff, either for providing news services or in connection with any other goods or services which may be allied or cognate thereto. Defendant to remove/disband its related websites/social media web pages/ channels along with the costs of ₹ 7 lakhs to the plaintiff."

02-04-2024	Haldiram India (P) Ltd. vs. Berachah Sales Corpn.,	2024 SCC OnLine Del 2265, Delhi High Court
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Brief facts

The Plaintiff - Haldiram India Pvt. Ltd. seeks protection of its mark 'HALDIRAM', and a declaration that the said mark, along with its variations such as 'HALDIRAM BHUJIWALA' is 'well-known' in terms of Section 2(1) (zg) of the Trade Marks Act, 1999 (hereinafter, 'the Act') and seeks a decree of permanent injunction, restraining the Defendants, a company by the name 'Haldiram Restro Pvt. from selling products under the impugned mark 'HALDIRAM'/ 'HALDIRAM BHUJIWALA' or any other marks that are deceptively similar to the Plaintiff's mark 'HALDIRAM'. The core elements of these labels include the 'HALDIRAM'S' registered mark and the 'HR' logo within a red oval (as part of the Oval-shaped mark), prominently featured on the labels, packaging, and trade dress. The Plaintiff claims that the color schemes themselves serve as distinct trade dresses.

Judgement

The Court, having considered the declaration of the 'HALDIRAM' and 'HALDIRAM BHUJIWALA' marks as 'well-known' across the entirety of India, including the state of West Bengal—where the Plaintiff does not exercise exclusive rights—finds a foundation in the broader principles of trade mark law (to prevent confusion) and the doctrine of spill-over reputation. Court stated that HALDIRAM has not only established a

presence within the national market but has also extended its influence globally, transcending geographical, cultural, and national boundaries. Plaintiff's global footprint is indicative of the brand's robust spill-over reputation, where the authenticity of 'HALDIRAM'S' products resonate with a diverse audience, including in those regions where the brand does not have legal presence. The Court opined that the concept of a 'well-known' mark is 'dynamic'. A well-known mark has the ability to imbue products with distinctiveness and assurance of quality that extends beyond mere geographical confines, it is spread across the globe. The claim for 'HALDIRAM' to be recognized as a 'well-known' mark throughout India, inclusive of West Bengal, is a testament to the Plaintiff's cultural and commercial imprint.

Considering the use of the mark since the 1960s in the food industry, and the factors outlined above, the mark and logo 'HALDIRAM' have achieved the status of a 'well-known mark'. Accordingly, a decree of declaration declaring the mark 'HALDIRAM', as well as the Ovalshaped mark, as a 'well-known' mark in respect of food items as well as in respect of restaurants and eateries, is granted.

26-07-2023	Dominos IP Holder LLC & Anr. (Plaintiffs) vs. Ms Dominick Pizza & Anr (Defendants)	CS (COMM) 587/2022, Delhi High Court
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Brief facts

Where the marks in question pertain to food items, or eateries where food items are dispensed and served, a higher degree of care and caution is expected to be observed. Dominos IP Holder LLC (plaintiff), was based and established in USA. To run Domino's franchises in India, they entered into a Master Franchise Agreement with Jubilant Food Works Limited. The plaintiff asserts that the mark "Domino's", with the distinctive logos, featuring faces of a domino, are unique, coined and arbitrary. Plaintiffs' has also registered trademarks "CHEESE BURST" and "PASTA ITLAIANO" for different varieties of the food items served by it. Defendant, Dominick Pizza provides pizza and fast-food services identical to those of the plaintiffs, under the name DOMINICK PIZZA and the logo and has also replicated the plaintiffs' registered trademarks "CHEESE BURST" and "PASTA ITLAIANO" for different varieties of the food items served by it. The plaintiff alleges infringement and passing off by defendant and sought injunction against Dominick Pizza and its outlets.

Judgement

Court held that in cases of food items, or eateries a higher degree of care and caution is expected to be observed. There is phonetic similarity between "Domino's" and "Dominick's", as well as in the logos along with dealing in same product and services. Thus, creating likelihood of confusion between "Domino's Pizza" and "Dominick's Pizza" as they appear to be ex facie deceptively similar to each other. It may cause confusion to a customer of average intelligence. Court granted permanent injunction restraining advertising, selling, offering for sale marketing etc. any product, packaging, menu cards using "Dominick Pizza", "CHEESE BURST" and "PASTA ITLAIANO" or any other mark which is identical or deceptively similar to the Plaintiffs' in any manner.