

Trade Mark Passing Off Suit

Suit No.....of 2010

In the High Court at Mumbai Ordinary Original Civil Jurisdiction

Plaintiff.....

versus..____

Defendant.....

The plaintiff states:

1. The plaintiff carries on business as the manufacturer of and dealer in Electronic goods in Mumbai. The plaintiff has agents in various places in India for sale of its products. The plaintiff's products have acquired good reputation and its products have distinctive features on the shape, size, layout marking as also the packaging.
2. The plaintiff uses its Trade Mark XY on all its products. The sale of the plaintiff's products are quite substantial both in India and abroad.
3. The plaintiff has advertised its products under its said Mark extensively since the last six years and spent a minimum sum of Rs. 6 lakhs on account thereof.
4. By reason of such extensive advertisement and sale of the products, the public associated the said mark XY to the plaintiff and with the plaintiff's products. As such the plaintiff enjoys good reputation abroad and throughout India including Mumbai within the jurisdiction of this Hon'ble Court.
5. The goods of the plaintiff are manufactured in Mumbai and sold in domestic market and exported abroad. Particulars of the sales for the last 5 years are given in a Schedule annexed hereto marked 'A'. Copies of some newspaper cuttings of advertisements are annexed hereto collectively marked 'B'. Particulars of advertisement costs year wise are given in a Schedule annexed hereto marked 'C'.
6. The plaintiff complied with all the necessary formalities and provisions of law for the registration of its products under the Trade Mark XY. The plaintiff's Trade Mark XY was registered with the Registrar of Trade Marks, Chowringhee Road, Mumbai being Trade Mark No. 1 in Class I in respect of the electronic goods and computers both hardware and software. The Office of the Registrar of Trade Marks, the Register concerned and the Record Containing registration of the plaintiff's said products are all within the jurisdiction of this Hon'ble Court. Certified copies of the application as also of the

Certificate of Registration are annexed hereto collectively marked 'D'.

7. The said mark XY became very popular among the purchasers of the plaintiff's products and the Mark XY became very much associated with the plaintiff's products. On or about 10th September 2005 it was brought to the plaintiff's knowledge by the Trade Marks Registry, Mumbai that the respondent has applied for registration of the alleged Trade Mark XZ for similar goods as that of the plaintiff. A copy of the Letter of Registrar of Trade Marks, Mumbai is annexed hereto marked 'E' informing the plaintiff of the said application of the defendant.

8. The defendant has been wrongfully selling the electronic goods and computers software and hardware through its sale outlets in Mumbai with the said Trade Mark XZ within the jurisdiction of this Hon'ble Court. Copies of certain cash memos showing the dealer's name, address, articles and the Trade Mark used thereon are annexed hereto collectively marked 'F'.

9. The plaintiff states that the sale of the said products by the defendant under the Trade Mark XZ has amounted to passing off of the plaintiff's goods as the goods of similar description under a deceptively similar Mark. The defendant has therefore infringed the plaintiff's said Trade Mark in as much as the articles marked XZ is deceptively similar to that of the plaintiff's Trade Mark XY and the goods are similar and of the same description.

10. The defendant's Trade Mark has been so much similar to the plaintiff's Trade Mark that the defendant has been passing off its goods as those of the plaintiff's goods and/or the defendant is enabling the others to do so and thus the defendant is deriving the ultimate benefit out of the reputation and goodwill of the plaintiff which the plaintiff was enjoying during the last several years. Such goodwill and reputation were created at a huge cost of the plaintiff.

11. The plaintiff states that the conduct of the defendant in respect of sale and advertisement of its products has been fraudulent and deceptive in nature inasmuch as the same are calculated to deceive the purchasers of the plaintiff's goods into believing that the products of the defendant are very much similar to and very much connected with the plaintiff. Thus the public have been made to wonder about the source or origin of the products which are very much the same and/or of similar description.

12. The defendant is by reason of such sales and advertisements causing great loss and injury to the public and to the plaintiff. The plaintiff has suffered and is still suffering and will continue to suffer substantial loss and injury if the defendant continues with its

wrongful acts. Until full discovery is made about the sales of the products of the defendant the plaintiff is unable to quantify the total amount of financial loss suffered by it and is likely to be suffered by the plaintiff due to the wrongful acts of the defendant.

13. The financial loss or injury caused to the plaintiff by the wrongful acts and conduct of the defendant cannot be ascertained and as such the compensation in money cannot be adequate and sufficient relief for the damages and loss suffered and/or likely to be suffered by the plaintiff.

14. The plaintiff claims delivery up of the infringing dies, blocks, labels etc. for cancellation and destruction. The plaintiff states that the defendant is not entitled to sell its products or advertise the same in the market under the Trade Mark XZ and as such the defendant should be restrained from selling its products under the Mark XZ or giving any publicity in respect thereof.

15. The plaintiff's cause of action for the suit is arising day-to-day inasmuch as the defendant is passing off its products as the products of plaintiff, inter alia, in Mumbai and Chennai outside the said jurisdiction and in Mumbai within the jurisdiction of this Hon'ble Court day to day and every day till date and intends to continue to do so.

16. The plaintiff's substantial cause of action arose in Mumbai where the defendant sold its products wrongly under the Trade Mark XZ similar to the mark of plaintiff deceiving the general public into believing that they have been purchasing the goods of the plaintiff¹. The office of the Trade Marks Registry is situated at Chowringhee Road, Mumbai, within the jurisdiction of this Hon'ble Court where the plaintiff's said Trade Mark XY is registered. As the said passing off took place both outside and within the said jurisdiction the plaintiff prays for leave under cl. 12 of the Letters Patent to institute this suit in this Hon'ble Court inasmuch as part of the cause of action arose within the jurisdiction of the Hon'ble Court and part of the cause of action arose in Chennai where the defendant is manufacturing the goods and packing the same with the deceptive Mark XZ and selling the same with the object of passing off the same as goods of the plaintiff outside the jurisdiction of this Hon'ble Court.

17. The plaintiff has other causes of action and also other claims for the continuing infringement of the plaintiff's Trade Mark and passing off the products of the defendant as the product of the plaintiff and as such the plaintiff has other claims which cannot be ascertained now and prays for leave under Or. 2, r. 2 of the Code of Civil Procedure 1908 to take further and appropriate legal proceedings in such Forum as the plaintiff may be advised.

18. For the purposes of jurisdiction and court fees the suit is valued at Rs.....on.....which court fees in stamps have been paid and as such this Hon'ble Court has the jurisdiction to entertain, try and determine this suit.

19. The plaintiff therefore prays for leave under Clause 12 of the Letters Patent under Or. 2, r. 2 of the Code of Civil Procedure 1908 and claims:

(a) Permanent Injunction restraining the defendant, its agents, servants and representatives from wrongfully selling the products or offering for sale or otherwise dealing in any goods similar to the goods of the plaintiff under the Trade Mark XZ or any other Mark deceptively similar to plaintiff's Trade Mark XY;

(b) A Decree for accounts of the profits earned by the defendant by wrongful use of the mark XZ similar to the mark of the plaintiff's Trade Mark XY and a decree for such amount in favour of the plaintiff against the defendant as may be found due on taking the accounts;

(c) An enquiry into the damages suffered by the plaintiff due to the wrongful acts of the defendant and a decree against the defendant for the sum found due on such enquiry;

(d) Decree for delivery up of the infringing dies, blocks, labels, etc. including the packing and advertising materials and destruction thereof;

(e) Receiver;

(f) Attachment;

(g) Injunction;

(h) Costs;

(i) Further and other reliefs as the plaintiff is entitled to in law and in equity.

Name and address of the
plaintiff's Advocate

Signature of the plaintiff

Verification

I.....son of.....by occupation service residing at.....do hereby solemnly affirm and say as follows:

I am a principal officer and the Constituted Attorney of the plaintiff and as such I am competent to sign this plaint and all petitions, Vakalatnamas and affirm affidavits on behalf of the plaintiff. I know and I have made myself acquainted with the facts and circumstances of this case and I am able to depose thereto. The statements contained in the paragraphs 1 to 16 of the foregoing plaint including the cause title thereof are true

to my knowledge based on records maintained by the plaintiff and believed by me to be true and those mentioned in paragraphs 17 to 19 are my humble submissions before this Hon'ble Court.

Solemnly affirmed by the said
Mr.....at the Court
House in Mumbai on this.....day
of 2010

Sd/.

Before me Commissioner