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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 1st September, 2023

+ **C.O.(COMM.IPD-CR) 841/2022**

SSG PHARMA (P) LTD Petitioner

Through: None.

versus

PARAS PAN PRODUCTS PVT LTD AND ANR Respondents

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

1. This hearing has been done through hybrid mode.
2. The Petitioner - SSG Pharma (P) Ltd. has filed the present petition seeking rectification of the copyright of the Respondents bearing no. A 68186/2005 for the artistic work "NAGRAJ HARFANMOLA". The case of the Petitioner is that it is the prior adopter and user of the artistic work 'SATMOLA'.
3. The petition was initially filed before the Copyright Board and has thereafter been transferred to this Court pursuant to the enactment of the Tribunal Reforms Act, 2021. The Copyright Board had recorded vide order dated 29th June, 2010 that the Respondent would be withdrawing the impugned registration. The same is extracted below:

“Counsels from both the sides have submitted that the parties are in the process of arriving at a settlement. In view of the settlement, the Respondent shall be withdrawing the impugned registration. Accordingly the matter is adjourned to 13th December, 2010 at 10.30 at Indian Law Institute, New Delhi.”

It is however not clear as to what transpired thereafter, as the records from



the Copyright Board are not available. The petition remained pending and has now been transferred to this Court, after the enactment of the Tribunal Reforms Act, 2021.

4. A comparative table of the works of the Petitioner and Respondent are set out below:

Petitioner's Mark	Respondent's Mark

5. A perusal of the two artistic works would show that the Respondent's artistic work has striking resemblance to the Petitioner's artistic work.

6. A perusal of the record would further show that the parties have been in litigation and a civil suit has also been filed by the Petitioner against the Respondent being *Suit No. 537/2003* titled *SSG Pharma (P) Ltd. v. Paras Pan Products (P) Ltd.* In the said case vide order dated 19th November, 2004 injunction was granted by the Additional District Judge in the



following terms:

“5. I have heard Id. Counsel for the Plaintiff at length. I have also gone through the file and evidence on record. If If we take a look at the pouches belonging to the plaintiff and those belonging to the defendant, we find that there is no similarity or possibility of deception in the name. The word SATMOLA does not rhyme as HARFANMOLA and the chances of deception on this account are very remote. **However, the colour scheme of the two pouches is likely to cause confusion in the minds of unwary public. The pouches of both the parties are in yellow and red combination. Both of them carry pictures of a boy and a girl. The colour scheme and the photograph of the children is certainly likely to deceive consumers.**

In AIR 1967 MADRAS 381,It was held

“We are satisfied upon a careful perusal of the two pictures, and the surrounding circumstances, that the defendant's picture reproduces substantial parts of the plaintiff's picture, its plan, its design, its arrangement of all the important component parts which help an artist to obtain a representation of the idea of a deity on plastic material. It is in these substantial elements. In the representation in pictorial form of the conception of Lord Subramania that the plaintiff's copyright essentially consisted. The reproducer after Incorporating these elements in his painting could add a deeper colour to the lips. He could give a darker shade to the hair or make it more curly. He could add to the vel a few ornaments or even lengthen the Vel by a few inches. But the essential reproduction of the substantial features of the Plaintiff's picture has already been effected and that constitutes the infringement of the copyright. The further modification or



variations will not alter the effect of such infringement as long as the mind is able to form on an examination of the two pictures that basically and in substance one is a reproduction of the other.

Hon'ble Supreme Court of India in AIR 1972 SC 357 held

According to Karly's law of Trade Marks and Trade names

Two marks, when placed side by side, may exhibit many and various differences, yet the main Idea left or the mind by both may be the same. A person acquainted with, one mark and not having the two side for comparison might well be deceived. If the goods were allowed to be Impressed with the second mark, into a belief that he was dealing with goods which bore the same mark as that with which he was acquainted. Thus, for example, a mark may represent a game of football, another mark may show players in a different dress and in very different positions, and yet the idea conveyed by each might be simply a game of football. It would be too much to expect that persons dealing with trade marked goods, and relying as they frequently do upon marks, should be able to remember the details of the marks upon the goods with which they are in the habit of dealing.

It further held

It is therefore, clear that in order come to the conclusion whether one mark is deceptively similar to another, the board and essential features of the two are to be considered. They should not be placed side by side to find out if there are any differences in the design and if so, whether they are of such character as to prevent one design from it being mistaken for the other.



It would be enough If the impugned mark bears such a overall similarity to the registered mark as would be likely to mislead poison usually dealing with one to accept the other if offered to him.

6. Coming back to the facts of the case, it seems that the pouches and the pictures on plaintiff's pouches were copied by the defendant and thereby infringe copy right of the plaintiff. I am therefore, of the opinion that plaintiff is entitled to relief which it had sought. I grant decree of permanent injunction and restrain the defendant, its agents servants, shop keepers etc. from advertising or displaying churan and chewable tablets in label/pouch which is identical with or deceptively similar to the pouch/label of the plaintiff having red and yellow colour scheme and photograph of two children. I further restrain them from passing off goods of the defendant as that of the plaintiff in identical or similar label pouches. Rest of the prayers are declined as counsel for the plaintiff had made a statement giving up their claim in this regard. Suit of the plaintiff is thus partly decreed. Decree sheet be drawn. File be consigned to Record Room.

A perusal of the above order would show that the trial court came to the conclusion that the pouches were similar in colour scheme, get-up, images of children etc., The trial court thus injuncted the Respondent from using the impugned label/pouch. However, as far as the mark is concerned, the trial court was of the opinion that the marks SATMOLA and HARFANMOLA are not similar. No injunction was granted in respect of the mark.

7. Pursuant to the aforementioned order, one of the applications for trademark registration of the Respondent bearing number 1204749 in Class 30 for the label mark was rejected by the Trade Mark Registry, Calcutta. In the said order dated 31st May, 2006 the Trade Mark Registry, Kolkata



recorded as under:

“15. I have gone through the submission of both the learned advocate and have gone through the records. I have also gone through the copy of the order dated 19th November, 2004 passed by the Ld. A.D.J., Delhi in a Suit No. 537 of 2003 between the parties. The Hon'ble Court has clearly held that the Applicants herein have copied the Opponents' label as far as the device of two children & the overall colour scheme and get up of the impugned label.

16. I am conscious of the submissions of Shri Shukla to the extent that the word 'SATMOLA' in the Opponents' trade mark cannot be held to be deceptively similar to the words 'HARFANMOLA' and 'NAGRAJ' in the impugned label. This was also admitted by Shri Sharma when he stated that he has to objection to the use of the aforesaid words by the Applicants. The only objection of the Opponents is towards the use of the colour scheme and the device of two children in the impugned label. The Applicants have already been injuncted by the Hon'ble A.D.J., Delhi vide order dated 19th November, 2004 for use of the colour scheme and the device of two children as duly given above.

17. Keeping in view the fact that the Applicants are already under injunction vide the order of the Hon'ble Court, therefore, the registration of the impugned mark in its present label form is out of question. The Applicants cannot or are not entitled to the registration of the impugned label as the same would be disentitled to protection in a Court of law and for which, they have in fact already been injuncted. Section 11(3) of the Act reads as under:- A trade mark shall not be registered if, or to the extent that, its use in India is liable to be prevented-

(a) by virtue- of any law in particular the law of passing off protecting an unregistered trade mark used in the course of trade; or

(b) by virtue of law of copyright."

18. Keeping in view the aforesaid facts and



circumstances and keeping in view the order of the Hon'ble Court dated 19th November, 2004 in Suit No. 537 of 2003, the Applicants are evidently not entitled to the registration of the impugned label as a trade mark under the Act and the issues are decided accordingly. It may be stated here that the Applicants, if so desire, may file separate applications for registration of the word marks containing the word 'HARFANMOLA' or the word 'NAGRAJ' or their combination which will be considered on its own merit at the appropriate time.

19. In view of the foregoing, the Opposition No. KOL-176949 is allowed and the Application No. 1204749 in class 30 for registration of the impugned LABEL MARK is refused registration. Parties are left to bear their own costs of these proceedings.”

8. In view of the above order, it is clear that the Respondent cannot continue to be the registered owner of copyright in the injuncted label. The label is a substantial imitation of the Petitioner's label/pouch. This finding is also rendered by the Trial court, in the order extracted above. The said finding is binding upon the parties. Accordingly the impugned copyright registration bearing no. A 68186/2005 can no longer survive in favour of the Respondent, owing to the fact that it is an obvious and slavish imitation of the Plaintiff's label. Accordingly, the same is directed to be rectified/expunged from the copyright register. Let the order be given effect within eight weeks.

9. The Registry is directed to supply a copy of the present order to the office of the Controller General of Patents, Designs & Trademarks of India on the e- mail- llc-ipo@gov.in for compliance of this order.

10. Accordingly, the petition is disposed of. All pending applications are also disposed of.

**PRATHIBA M. SINGH
JUDGE**

SEPTEMBER 1, 2023/Rahul/kt