Insecticides (India) Ltd. v. Parijat Industries (India) Pvt. Ltd- Defendant restrained from using the Mark "VICTOR" in any manner whatsoever

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In a suit involving Insecticides (India) Ltd. v. Parijat Industries (India) Pvt. Ltd, "The plaintiff (Insecticides India Ltd.) filed a suit against the defendant (Parijat Industries (India) Pvt. Ltd) for passing off its insecticides and any kind of agrochemical or other products, by adopting the mark 'VICTOR 80' which is similar/deceptively similar to the mark 'VICTOR' of the plaintiff". The subject matter came up for hearing on 11th July 2018 in Delhi High Court, before Hon'ble Mr. Justice Rajiv Sahai Endlaw for pronouncement of judgement. The Hon'ble Judge granted time to Parijat Industries to exhaust the existing stock of Victor-80 on or before 30th September 2018 and thereafter, the Parijat Industries has been restrained from using the mark "Victor" in any manner whatsoever w.e.f. 1st October 2018. The suit was decreed in favour of the Plaintiff with the following findings: (i) That the Plaintiff is the prior user since 2002, as admitted by the Defendant whereas the Defendant claims use since 2010; (ii) The Defendants' documents only show use since 2015; (iii) That since Defendants are required to keep documents for at least 3-7 years as per law, the only inference is that the plea of use since 2010 is false; (iv) Once it is concluded that the Defendants are using the mark since 2015, the plea of delay, acquiescence and waiver disappear. (v) Mere knowledge from examination report regarding Defendant's mark did not entitle the plaintiff to rush to court immediately and only when there is a cause of action. (vi) As regards estoppel on the basis of admissions by the plaintiff before the trademark registry regarding their trademark applications, the plaintiff cannot be bound to the statement that their goods are different from the goods for which cited marks in the examination report were filed. That neither the marks of which registration was sought nor the cited mark of the defendant stated whether it is with respect to liquid substance or powder form substance. The said difference between the two is thus immaterial. It cannot be lost sight of, that the Trade Mark Registry in its letters dated 10th April 2012 and 23rd January 2013 (supra) had cited 6/7 marks and of which the mark of the Defendant was one. The Advocate for the plaintiff appears to have overlooked the mark of the Defendant. Further, the same being a question of law, an incorrect admission of law cannot bind anyone. (vii) Further, the aforesaid submission may only be relevant for seeking relief for trademark infringement and not passing off. (viii) The Plaintiff has established having used the mark "VICTOR" as a suffix for selling different kinds of pesticides. Thus, the consumers of the goods of the plaintiff, when come across "VICTOR 80", are likely to associate the said goods also to be originating from the same source from which "VICTOR", "VICTOR GOLD", "VICTOR PLUS" and "VICTOR SUPER" are originating. (ix) Considering the nature of the product, i.e. pesticides, which can be in different strengths and in different forms, "VICTOR 80" is likely to be confused with "VICTOR", "VICTOR GOLD", "VICTOR PLUS" and "VICTOR SUPER". (x) Citing Shree Nath Heritage Liquor Pvt. Ltd. v. Allied Blender & Distillers Pvt. Ltd., 221 (2015) DLT 359, held that finding the marks to be deceptively similar, the

impact of different trade dress was highly unlikely to rule out consumer confusion. (xi) The defendant being in the same trade as the plaintiff is deemed to be aware of the admitted prior use by the plaintiff of the mark "VICTOR" and for this reason, the adoption cannot be said to be honest or bona fide. (xii) Third party user does not disentitle the plaintiff if otherwise found entitled to the relief.

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