Dharampal Stayapal Sons Private Limited vs. Mr Gagan Varshney and Others, CS (COMM) 108/2019 – Coursing Judiciary's Public Interest towards Animal Welfare

News & Updates • June 10, 2019

The plaintiff Dharampal Satyapal Sons Private Limited had instituted a lawsuit against the Defendant Gagan Varshney and his proprietorship for infringement of trademark, copyright, passing off, trade dress, layout, colour combination, get up, unfair trade practice, rendition of accounts of profit, delivery up, damages, etc. of the Plaintiff's PULSE candies by adopting the trademark "PULSER" along with a deceptively similar trade dress. The Plaintiff group is engaged in selling food, beverages, mouth fresheners, Pan Masala, tobacco and is also involved in hospitality, Agro forestry, rubber thread and infrastructure. In and around, 13th December, 2014 the Plaintiff commenced its business under the trade mark 'PULSE' under the umbrella name "PASS PASS PULSE" in respect of hard boiled candies and since then has been enjoying tremendous popularity amongst all classes of the public. The candies under the trade mark 'PULSE' are available in several flavours inter alia i.e. Kaccha Aam, Guava and Orange. It is stated that the candies under the mark 'PULSE' are sold in a unique packaging having a distinct layout, get-up and colour scheme. It is further stated that the Plaintiff is the registered proprietor of trade mark "PASS PASS PULSE" as well as its packaging under the Trade Marks Act, 1999. Team Anand and Anand representing the Plaintiff stated before the Hon'ble High Court of Delhi that in the second week of February, 2019, during a market surveillance in and around Pragati Maidan, New Delhi, the Plaintiff came across a street hawker advertising and selling candies having the flavour of raw mango and bearing the mark 'PULSER' and trade dress under the DADA trading style. The following bearings of the plaintiff's case is summarised as below:

- The Defendants have adopted a deceptively similar trade mark 'PULSER' for its candies, along with the Kaccha Aam flavour under the DADA brand which is a bare imitation of the Plaintiff's 'PULSE' candies which include Kaccha Aam/Raw Mango flavour.
- Not only have the Defendants adopted an identical trademark 'PULSER' with an additional "R" in addition to the word 'PULSE' for its candies, the Defendants have also adopted an identical trade dress.
- The unique filling of the raw flavour within the Plaintiff's 'PULSE' candies is popular amongst the public and the Defendants are also selling their impugned 'PULSER' candies as the "centre filled candy".
- Further, the Defendants have also adopted the tagline – *Kaccha Aam with Tangy Twist* which is identical to the Plaintiff's tagline – *Kaccha Aam with Tangy Twist.*

On 30 April 2019, the suit was decreed by Learned Justice Manmohan, holding the following:

- Defendants are directed to deposit the cost of Rs. 2,00,000/- with Friendicoes Animal Centre. Friendicoes is a shelter cum hospital for stray animals.
- Defendants are directed further to file a receipt of the same within two weeks.
- Defendants are directed to withdraw their trademark application bearing the "PULSER" trademark in addition to other reliefs as sought in the prayer.

Indian judiciary has recently been giving huge impetus to humanitarian and social causes as is evident through many of its recent orders, however, above order reflects that the humanitarian cause is not limited to humans but also encompasses animals and their welfare. Team Anand and Anand: Vaishali Mittal and Mrinali Menon.

RELATED INDUSTRIES

BRAND STRATEGY

RELATED PRACTICES

COPYRIGHT
TRADEMARK