
Designs must be novel

Dabur India Limited v Rajesh Kumar & Others

In an injunction petition filed by the Plaintiff to restrain the Defendants from infringing its registered design and trademark, the Delhi High court has held that while granting interim injunction it must keep in mind that the design must be validly registered and there must be some novelty and originality in the designs sought to be protected and it must not have been prior published.

Facts of the case

The Plaintiff was marketing 'Dabur Amla Hair Oil' in bottles having a distinctive design having semi circular shoulder with curvaceous back and front panel converging into each other. The shape and configuration of Plaintiff's bottle was unique, novel and original and was registered as design No. 17324 under the Designs Act. The green cap put over the bottle was also unique and this was also registered under Designs Act. It is also contended that these bottles are embossed with the trade mark 'Dabur' of the Plaintiff at the bottom. It is the Plaintiff's case that the Defendants are manufacturing plastic bottles which are imitation of the bottles of the Plaintiff and are also embossing 'Dabur' trade mark on the bottom and the Defendants are selling these bottles to counterfeiters of 'Dabur Amla Hair Oil'. Thus, the Defendants are infringing designs of the bottle of the Plaintiff as well as cap of the bottle.

The Defendant filed their reply on the following lines:

Pursuant to the filing of the suit, an ex-parte order was granted for seizure of the infringing products. The local commissioner appointed in the matter visited the premises of all the 3 Defendants and seized certain boxes of empty bottles as well as the ledger of Defendant No. 3 showing that the empty bottles were being sold to different persons.

The Defendants in their written statement made the following averments:

- The suit is liable to be dismissed as it is based on false and frivolous allegations.
- The Defendants are engaged in the business of selling bottles of different sizes and shapes.
- Defendants are not imitating the bottles of the Plaintiff neither was there any embossing of trade mark of the Plaintiff on the bottom or any part of the bottle seized by the Local Commissioner or being sold by the Defendants.

The bottles are being sold for multifarious uses of different persons and Defendants were only selling empty bottles without any mark or number over these bottles.

The matter was heard in detail and the bottles of the Plaintiff and Defendants were also produced before the court for comparison. After detailed submissions made by the rival parties, the Court made the following findings:

At the outset, the Court after comparing the bottles observed that the Plaintiff has made false averments in the plaint that Defendants were selling bottles with trade mark of the Plaintiff embossed on them. In fact, the court found that none of the bottles, seized from the Defendants, bear the trade mark 'Dabur' at the bottom or at any other place and the Local Commissioner in his report has also stated that the seized bottles did not have the trade mark 'Dabur' embossed on them. Therefore, it is apparent that the Plaintiff, in order to create a case of infringement of trade mark and design made this false averment.

A mere look at the bottles of the Plaintiff would show that the bottles used by the Plaintiff are common bottles being used by several other companies for marketing their hair oil, fixers and liquid products. Further, the design registration certificate of the Plaintiff would show that Plaintiff had not got any peculiar feature of the bottle registered as a design. The Plaintiff has got the whole bottle registered as a design and plastic bottles used by the Plaintiff is a very common shape and does not have any peculiar eye catching designing or shape. Moreover, there are also differences between the Plaintiff's and the Defendants bottles.

The Court further held that no specific novelty has been mentioned by the Plaintiff in the design of the bottle nor has any novelty been mentioned in the registration certificate. As similar designs are being used by many leading companies from the time much before the registration of this design by the Plaintiff, the court found that the Plaintiff is not entitled for interim injunction and dismissed their application.

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