
No 'jugglery' or 'twisting' of words

The Delhi High Court, in a case brought by Zara, the Spanish Clothing Company against oriental Cuisines Pvt. Ltd. (Oriental) running restaurant under the name ZARA TAPAS BAR, was asked to determine whether Zara had deliberately and mischievously made a false representation to gain an unfair advantage or it was a case of delay in filing a suit for infringement of a trademark and passing off. The court came to the conclusion that there is no evidence to show that the act was deliberate. However Zara had made incorrect averments which lead to incorrect inference.

Facts of the case

- a) The Spanish Company (Zara) alleged that Zara is a coined word. It was conceived adopted as a trade mark in 1975. In 2013, they operated 1763 ZARA stores in 86 countries.
- b) In 2009, they entered into an argument with Trent Limited (Part of TATA group) to develop its ZARA stores in India.
- c) In India they operate 12 stores and turnover in 2012 was in excess of 384 crores (approx US \$ 6.4 million).
- d) In April 2005, they came across application filed by Oriental for the mark ZARA TAPAS BAR in class 16 which is under opposition.
- e) In 2012, several other applications of Oriental for ZARA TAPAS BAR have also been opposed.
- f) In 2013, the evidence filed by Oriental in opposition cases showed use of mark ZARA per se and not ZARA TAPAS BAR. This lead to filing of suit for trade mark infringement
- g) The Court in July 2012 granted an ex-parte injunction restraining Oriental from using the mark ZARA in relation to restaurant and hospitality services

Oriental contested Zara's claim and applied for setting aside the injunction order. Oriental argued that:

1. Zara has suppressed knowledge of Oriental's use of ZARA TAPAS BAR from the Court.
2. Zara was aware of the use since 2008. However, did not disclose these facts to the court.
3. Zara knowingly made contradictory statements in relation to their knowledge of use of the mark ZARA TAPAS BAR by Oriental. This was false representation to mislead the Court.

Court ruling

The Court held that Zara has made incorrect statements which lead to incorrect inference. However, there was no fraud played upon the Court. It is essentially by jugglery and twisting of words that Zara created the impression that knowledge of Oriental's use of ZARA TAPAS BAR came to their attention in 2011. The Court thus modified the injunction order permitting Oriental to use the name/mark ZARA TAPAS BAR while reiterating that earlier order restraining them from using ZARA per se for restaurant services will remain in force.

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