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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(COMM) 915/2022**

TTK PRESTIGE LTD

..... Plaintiff

Through: Mr. Hemant Singh, Ms. Mamta Rani Jha, Mr. Manish Kumar Mishra, Ms. Akansha Singh, Ms. Saloni Kaslimal. Ms. Tarushi Agrawal and Ms. Pragya Jain, Advs.

versus

ARJUN RAM & ANR.

..... Defendants

Through: None

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)

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19.10.2023

IA 22321/2022 (under Order XXXIX Rules 1 and 2 of the CPC)

1. The plaintiff manufactures pressure cookers under the name "PRESTIGE".

2. This case deals with alleged design piracy and trade mark infringement and passing off, by the defendants, of the *Svachh* line of pressure cookers manufactured by the plaintiff. The defendants sell the pressure cookers under the name "PARISTONE".

3. Mr. Hemant Singh, learned Counsel for the plaintiff, submits that the aspect of design infringement is squarely covered by judgment dated 13 April 2023 rendered by me in *TTK Prestige Ltd. v. KCM*



*Appliances Pvt. Ltd.*¹, which was also a case where the defendants were alleged to have infringed the registered design of the plaintiff in respect of its *Svachh* line of pressure cooker. The same registration is being asserted in the present case.

4. Insofar as the aspect of trade mark infringement and passing off is concerned, Mr. Hemant Singh submits that, though it may be arguable whether “PRESTIGE” is phonetically similar to “PARISTONE”, the two marks are clearly visually identical, with the defendants having adopted a trade dress which is a clear imitative copy of the plaintiff’s trade dress used for its “PRESTIGE” mark.

5. The two marks may be thus viewed side by side:



6. Moreover, submits Mr. Hemant Singh, the arrangement of various features on the outer packing of the defendants’ product is also identical to the arrangement of features on the packing of plaintiff’s



product.

7. Mr. Hemant Singh submits that a customer of average intelligence and imperfect recollection, who sees the cartons of the plaintiff and defendant at different points of time, without viewing them side by side, has every likelihood of being confused between the two, especially given the similarity in the design of the pressure cookers and the design of the labels, and their placements on the pressure cookers.

8. As such, Mr. Hemant Singh submits that a clear case of passing off, by the defendants, of its product as that of the plaintiff, by adopting a trade dress, for its mark, which is deceptively similar to that of the plaintiff's mark, is made out.

9. Summons were issued in this case on 23 December 2022. The defendants entered appearance through Mr. Rajat Bhalla, learned Counsel on 9 January 2023, 17 January 2023, 10 February 2023, 27 February 2023 and 2 March 2023.

10. It may be noted that in few subsequent orders, the presence of Mr. Jayant Bhushan, learned Senior Counsel with assisting counsel has been noted, but this is obviously an error as Mr. Jayant Bhushan was appearing for the defendants in a connected suit CS (Comm) 697/2022.

11. This aspect was clarified in the order dated 29 March 2023



passed by this Court in the present proceedings.

12. As there was repeated non-appearance on behalf of the defendants, this Court, on 29 March 2023, directed court notice to be issued to Mr. Bhalla, who had been representing the defendants earlier. Subsequently, on 20 July 2023, the Registry was directed to telephonically contact Mr. Bhalla and inform him of the listing of this matter with a request to appear.

13. That was done; however, there is still no appearance on behalf of the defendants. Nor have the defendants filed any written statement by way of response to the suit or any response to IA 22321/2022, filed by the plaintiff under Order XXXIX Rules 1 and 2 of the CPC.




14. Apparently, the defendants are either not interested in contesting the suit or do not have any defence to offer to the allegations and assertions contained in the plaint.

15. Insofar as the aspect of interlocutory injunction is concerned, on the aspect of design piracy, I am in agreement with Mr. Hemant Singh that the issue stands covered by my earlier judgment dated 13 April 2023 in *TTK Prestige Ltd¹*. I need refer, in this context, only to paras 13, 39 and 42 with its various sub-paras 42.1 to 42.5 of the said decision:

“13. At the request of the Court, learned Counsel have also provided physical samples of the plaintiff’s Svachh Deluxe Alpha pressure cooker, bearing the suit design, and the defendants Dripless pressure cooker bearing the allegedly infringing design.



Perspective views of the 5 L and 8 L Svachh Deluxe Alpha pressure cookers of the plaintiff and of the 5 L Dripless pressure cooker of the defendant look like this:

5 L pressure cooker of plaintiff	8 L pressure cooker of plaintiff	5 L pressure cooker of defendant
		

39. With this understanding of the law, we may proceed to examine the remaining issues which survive for consideration. For ease of understanding, perspective views of the lid of the (i) 8L Svachh Deluxe Alpha pressure cooker (which is the shown design in the certificate of registration) (ii) the 5L Svachh Deluxe Alpha pressure cooker (iii) the 5L Impex Dripless pressure cooker (iv) the YouTube Pressure Cooker, are provided thus:



8L Svachh Deluxe Alpha pressure cooker of plaintiff



5L Svacch Deluxe Alpha pressure cooker of plaintiff



5L Impex Dripless pressure cooker of defendant



YouTube Pressure Cooker of plaintiff

XXX

XXX

XXX

42. The aspect of piracy/infringement.

42.1 Mr. Jayant Bhushan contends that the design of the Impex Dripless pressure cooker does not infringe the suit design. He



submits that there are significant differences between the suit design and the design of the Impex Dripleless pressure cooker.

42.2 I am unable, prima facie, to agree.

42.3 The container of the defendants' Impex Dripleless Pressure Cooker is similar in shape to the container of the suit design. The shape of the lid of the pressure cooker forming subject matter of the suit design is also similar to the shape of the Impex Dripleless pressure cooker. Barring superficial differences in shape, there is no substantial difference between the two lids. The lid of the Impex

Dripleless pressure cooker also has a central depressed portion, in which froth can collect and evaporate. Mr. Bhushan has not referred me to any earlier design, except the design of the pressure cooker in the YouTube video, which envisages such a central depressed portion for collection and evaporation of froth.

42.4 The differentiating features, as tabulated by the defendant in para 19 of the written statement and reproduced in para 17 supra, are clearly merely trade variants, or functional differences attributable to the different capacities of the pressure cookers. The heights of the lid and of the container are obviously because of the difference in capacity of the pressure cookers. If one compares the shape and configuration of the lids of the 5 l and 8 l pressure cookers, except for the height of the containers and lids, there is no difference whatsoever. The same shape and configuration, but for insignificant trade variations such as the —width of the raised wall of the lid, exist, between the suit design and the impugned design of the Impex Dripleless Pressure Cooker of the defendant. All other differences, such as the “straight moulding of bakelite”, minor change in the shape of the handle, shape of the base, etc., are insignificant in the light of the overall shape and configuration of the pressure cooker itself, and, vis-à-vis the shape and configuration of the lid, which is the feature which mainly imparts novelty to the suit design, are even more inconsequential.

42.5 Most significantly, the defendant has clearly borrowed the idea of the central depressed portion of the lid for collection and evaporation of froth, thereby resulting in spillage control, from the idea devised by the plaintiff. No other source, from which the said idea was adopted by the defendant, has been brought to my notice. Prima facie, therefore, a clear case of piracy exists.”

16. In para 39, a photograph of the lid of the pressure cooker in



respect of which design registration was granted and the lids of the pressure cooker – in which, essentially, novelty in the registered design resides – forming subject matter of controversy in that case has been provided. The photographs of the lid of the pressure cooker conforming to the suit design and the lid of the pressure cooker forming subject matter of controversy in the present case may also be thus provided:



5L Svacch Deluxe Alpha pressure cooker of plaintiff





5L Deluxe Paristone pressure cooker of defendants

17. It is seen that the various distinctive features of the lids of the pressure cookers in respect of which injunction had been granted are also replicated in the lid of the “PARISTONE” pressure cooker forming subject matter of controversy in the present case. The finding in paras 42.1 to 42.5 would, therefore, apply *mutatis mutandis* to the



present case, with the additional aspect that, in the present case, there is no difference in height between the lids in respect of which suit design had been granted and the lid of the pressure cooker forming subject matter of controversy.

18. The decision on *prima facie* design piracy, as returned in *TTK Prestige Ltd*¹ would also, therefore, apply with all force to the present case.

19. Adverting, now, to the aspect of trade mark infringement and passing off, I am of the opinion that, while the aspect of infringement of the rival marks may be arguable in view of the phonetic difference between the marks “PRESTIGE” and “PARISTONE”, nonetheless, the  trade dress adopted by the defendants is almost identical to the  and trade dress of the plaintiff, with identically printed white letters in a similar font on an identical pink background and a black swirl/line below it. There are, clearly, between the two, no such distinguishing features – barring the name itself – as would impress itself on the mind of a consumer of average intelligence and, more importantly, *imperfect* recollection, so as to enable him to distinguish the former from the latter, when seen at different points of time.

20. There is also substance in Mr. Hemant Singh’s contention that, even on the outer cartons, the manner in which the mark has been



affixed on the pressure cookers is also identical and that, therefore, a consumer of average intelligence and imperfect recollection, who may recollect the visual impression of the mark, is likely to confuse one with the other.

21. In any event, as the defendants have clearly copied the trade dress of the plaintiff insofar the visual appearance on its mark is concerned, a case of passing off is made out.




22. The plaintiff has placed material on record, including its annual turnover, which indicates that it has considerable goodwill and reputation in the market. Even otherwise, once the defendants have chosen to copy the manner in which the plaintiff has visualised its mark and also the manner in which the mark is affixed on the pressure cooker, as well as the design of the pressure cooker itself, it can hardly lie in the mouth of the defendants to question the goodwill and reputation of the plaintiff. That the defendants have chosen to imitate the manner in which plaintiff prints its logo is itself testimony to the goodwill and reputation of the plaintiff, in the perception of the defendant itself.

23. A *prima facie* case of passing off, by the defendants, of the plaintiff's product, by using a design which is nearly identical, a trade dress for the mark which is almost identical and overall appearance of the pressure cooker, including the manner in which the said mark is affixed on the body thereof, which is also deceptively similar, therefore, exists.



24. For the aforesaid reasons, the plaintiff would be entitled to an interlocutory injunction, both on the grounds of design infringement as well as passing off, by the defendants, of its product as that of the plaintiff.

25. In view thereof, pending disposal of this suit, the defendants as well as all others acting on their behalf shall stand restrained from manufacturing, selling, offering for sale, exporting, advertising or in any other manner directly or indirectly dealing in pressure cookers bearing the impugned design or any other design which infringes the suit design no. 324727-001.

26. The defendants shall also stand restrained from using the trade dress  for its mark, which is almost identical to the trade dress used by the plaintiff for its  mark. The defendants would not, however, be restrained, for the present, from using the mark PARISTONE in any other trade dress, which is *not* similar to the trade dress of the petitioner's  mark, on pressure cookers which *do not* imitate or infringe the registered design of the plaintiff's *Svachh* range of pressure cookers.

27. IA 22321/2022 filed by the plaintiff stands allowed to the aforesaid extent.



2023:DHC:7812



IA 20656/2023 (Order VIII Rule 10 of the CPC)

28. Issue notice, returnable on 31 January 2024.
29. Reply, if any, be filed within four weeks with an advance copy to learned Counsel for the plaintiff, who may file rejoinder thereto, if any, within four weeks thereof.

C. HARI SHANKAR, J.

OCTOBER 19, 2023

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Click here to check corrigendum, if any