



India: A small victory in the worldwide collective war against counterfeiting! – Delhi High Court awards punitive damages to the tune of INR 300,000

A Single Bench of the Delhi High Court consisting of the Hon’ble Justice Sanjiv Khanna passed an order dated September 25, 2017, *inter alia*, awarding punitive damages for trademark infringement vis-à-vis counterfeiting.

Since its founding in 1940, Ahuja Radios has developed into one of India’s leading manufacturer & exporter of Public Address Equipments. Ahuja Radios (hereinafter referred to as the ‘Plaintiffs’) has numerous registrations for “AHUJA” formative trademarks in Class 09 -

<u>Application No.</u>	<u>Trademark</u>	<u>Application date</u>	<u>User Date</u>	<u>Class</u>
136189	AHUJA	06/11/1948	01/12/1936	9
215330		02/05/1963	01/01/1953	9
264275		07/05/1970	01/12/1948	9
313757		06/04/1976	02/05/1963	9
1286128		25/05/2004	06/11/1948	9
1286126		25/05/2004	06/11/1948	15



3244785	AHUJA	27/04/2016	06/04/1976	9
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The Plaintiff had stated that it is the largest manufacturer of Public Address Systems (PAS) in India, and that it has been selling PAS equipment under the trade mark AHUJA since 1940. In this regard, it is pertinent to note that the Plaintiff has a registration over the word mark “AHUJA” in Class 09 vide application no. 136189 dated November 06, 1948, claiming use since December 01, 1936. They also stated that their PAS products are exported to over 50 countries. It has also been stated that the Plaintiff’s amplifier model SSB120 is one of their best selling products.

Brief facts of the case

The Plaintiff had conducted a market sweep in Mumbai in August 2014. During the course of investigation/survey, it was discovered that H.K. Sound Electronics (hereinafter referred to as the ‘Defendants’) were selling counterfeit AHUJA PAS products. Thereafter, the investigators procured a counterfeit amplifier from the Defendant, which was under the model number SSB 120. As regarding the counterfeit product, it was noted that –

- It had some features of the original SSB 120
- The price of the counterfeit was less than that of the original.
- Absence of date of manufacturing and MRP on the packaging.
- Spelling errors on the label printed at the reverse side.
- Discrepancy in the serial number of the product.
- Inferior quality of the product, as compared to the original SSB 120.

Original AHUJA RADIOS SSB 120 (From the website www.ahujaradios.com)





Plaintiff's contentions

In view of the aforesaid, the Plaintiff filed a suit for trademark infringement and sought a decree of permanent injunction against the Defendants, delivery of the impugned material and rendition of accounts and damages upto INR 2,005,000.

The Plaintiffs submitted a wide variety of evidence, including but not limited to copies of brochures and internet material in favor of the Plaintiff, catalogues, sales invoices of Plaintiff's products, copies of trademark registrations, copies of orders passed by various courts in favor of the Plaintiff, affidavit of the investigator, photographs of the Defendant's premises, photographs of the counterfeit products, Defendant's business cards, bill of purchase of the counterfeit product, etc.

The Defendants

Even though the Defendants were served, they did not appear. Hence the matter proceeded *ex parte*.

Court's observations

The Court noted that the Defendant's use of the Plaintiff's mark with respect of identical goods would count as causing irreparable damage and loss to the Plaintiff's business under the AHUJA trademarks. The Court observed that the Defendant's adoption of the mark AHUJA was *malafide*, which was calculated to take advantage of the Plaintiff's goodwill and reputation with respect to the mark "AHUJA". The Court was also of the opinion that all ingredients of passing-off were satisfied in the present case.

Further, on the basis of the evidence submitted by the Plaintiff, it was proved that the counterfeit products bearing the Plaintiff's registered trademarks were not originating from the Plaintiff, and that the Defendants action unequivocally amount to trademark infringement, namely of Plaintiff's registration nos. 136189, 313757 and 1495014.

Held

The Court decreed the below in favor of the Plaintiff –

- Permanent injunction against the Defendant with respect to trademark infringement as well as passing off.
- Permanent injunction with respect to dilution and tarnishment.
- Damages to the tune of INR 300,000.



S.S.RANA & CO.
ADVOCATES

As in interesting side note regarding the Court's judgment, the Court held that the Defendant's actions amounted to infringement of Ahuja Radio's trademark registration no. 1495014. However, as per the information available on the Registry's website, the aforesaid registration for the mark "SSB-120" (the product model) was valid October 09, 2016 and the same does not appear to have been renewed.