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IP Case Law Developments*

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This article attempts to summarize some of the recently reported cases on intellectual property law to enable the readers to understand how the courts have applied the principles of intellectual property law to actual IP disputes. The cases are chosen from the cases reported in the November and December 2007 issues of the Patents and Trade Marks Cases (PTC), a leading case law reporter on intellectual property laws. There was no patent case to report during this period.

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The concepts we read in intellectual property law acquire better clarity when understood in the context of application of the law by a court to a set of facts in a real life dispute. However, many of the readers of this magazine are scientists and do not get to read the cases. The attempt in this article is to summarize some of the recently decided cases to enable the readers to understand how the courts have applied the law. Obviously, it is neither practical nor necessary to narrate all of the reported cases. Some cases are chosen as they convey a certain principle. To ensure that readers do not get distracted, the issues other than the main principle being explained in the judgment are left out. This narration is intended only to kindle interest of a knowledge seeking mind to go through the full text of the cases and is not intended to be a definitive statement of law or a complete summary of the judgments involved.

Copyright Law

This Business of Music!

Many upcoming authors and artists have complaints against their publishers/producers. A decision which may be music to such ears can be found in *Simran Music Company* v *Prit Brar and Others*, 2007 (35) PTC (Del).

The plaintiff *M/s Simran Music Industry* is engaged in the business of manufacturing and marketing audio cassettes, video cassettes and compact discs in Punjabi and other languages. The defendant no.1, Prit Brar is an aspiring singer. On 21 February 2005, the plaintiff company entered into an exclusive sound recording agreement (Agreement) with the defendant for a period of four years from 10 March 2005 to 11 March 2009. As per this Agreement, the defendant, Prit Brar was to sing and perform exclusively for the plaintiff company. The defendant No 2, *M/s Super Cassette Industries Limited* is a recording company selling music cassettes.

The plaintiff company did the sound recording of defendant, Prit Brar's maiden album entitled *Teri Jehi Kudi* as well as his second album titled *Ek Tere Karke*, the production and promotional costs of both of which were borne by the defendant himself.

The plaintiff alleged that on 19 March 2007 it came to its knowledge that the defendant, Prit Brar in violation of the Agreement had recorded a music album titled *Pind Wich Jogi Aaya* with defendant no.2, *M/s Super Cassettes*. According to the plaintiff this act of the defendant is in violation of the terms of the Agreement. The plaintiff stated that it had invested its corporate skills and resources in developing the musical talent of defendant no.1, Prit Brar by recording and marketing his maiden musical album, *Teri Jehi Kudi*, a hugely popular music label of the plaintiff company. They alleged that the defendant no.1 has enjoyed an enviable launch in the music industry that has given a jumpstart to his career by raking on the goodwill and reputation of the plaintiff company.

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The plaintiff submitted that the defendant no.1 has breached the Agreement by singing and recording for defendant no.2 M/s *Super Cassettes*. The defendant no.2 has induced the defendant no.1 to sing and record for its music label to take advantage of defendant Prit Brar's popularity and image built up by the efforts and expenses incurred by the plaintiff company. They pleaded that on account of the breach of contract by the defendant no.1 and inducement thereto by defendant no.2, the plaintiff company has suffered irreparable loss and thus is entitled to claim damages from both the defendants.

The defendant no.1 in his reply pleaded that the impugned agreement was not a concluded contract for want of consideration and certainty. The defendant asserted that he had not received any consideration from the plaintiff company in lieu of singing and recording of his songs. All expenditure on the production and promotion of the songs and album were borne by the defendant himself. The defendant also pleaded that the Agreement was on grossly unfair, unreasonable and unconscionable terms, imposing unjustified restraint on the defendants freedom to trade and in general is opposed to public policy, and accordingly void in terms of Section 27 of the Indian Contract Act, 1872.

The defendant no.2, against whom the plaintiff company has claimed damages for unfair inducement, pleaded that it had no knowledge of the Agreement till it received the notice of the present suit. They further submitted that the plaintiff company had approached the court for an injunction only after the album which it had recorded was published, for which it has spent more than Rs 3 lakhs for its production marketing and release and if the prayer of injunction is granted defendant no.2 will suffer irreparable loss.

The Court examined the Agreement and found that its terms dictated that during its currency, the defendant, Prit Brar, cannot sing and record for any other company and in case he does, the plaintiff could recover Rs 1 lakh per song from the defendant. The cost of picturization and recording of two songs in each of four albums to be produced during this period is to be borne by the defendant. The rights over the song and music and the albums which are to be released during this period shall vest with the plaintiff company. The plaintiff company held the right to receive 50% earning of all performances carried out by the defendant in India and abroad.

The Court found that a complete reading of impugned agreement showed that the defendant no.1 alone has to perform his part of the bargain and no responsibility of any kind fell on the plaintiff, be it singing, producing, picturization, stage shows all of which have to be carried out by the defendant. Also no financial liability is to be shared by the plaintiff. Nowhere in the Agreement is it stated that the plaintiff will use its corporate skills, resource or experience to build up the image and promote the career of the defendant no.1. Although it was argued on behalf of the plaintiff that the plaintiff had invested its resources and skills in discovering and polishing the musical talent of the defendant, there is no material on record to support the argument of the plaintiff. The real test is to examine the terms of the Agreement to see if the defendant could force the plaintiff company to promote his musical career in future. A bare reading of the Agreement showed that it is one sided, cast no obligation on the plaintiff company, and the defendant gets nothing in return by way of consideration. The defendant had stated that while producing and promoting his album, the defendant had incurred an expenditure of Rs 32 lakhs and Rs 20 lakhs respectively. As per the terms of the Agreement nothing has been shared by the plaintiff and the plaintiff has not denied this fact.

The question, therefore automatically arises whether the plaintiff company has abused its superior bargaining position by imposing unfair and unreasonable terms on defendant no.1.

The Court relied on the decision of the House of Lords in *A Schroeder Music Publishing Company Ltd* v *Macauly* (1974) 3 All ER. In this case, the House of Lords outlined the theory of unreasonableness of the bargain to relieve a party from the contract when the relative bargaining power of the parties was not equal. In that case, a song writer was relieved from the bargain of the contract on the theory of gross inequality of the bargaining power. When the contract is between parties possessing unequal bargaining power or have been directed by a party who by virtue of his bargaining power is able to say: if you want these goods or services at all, these are the only terms in which it is obtainable; take it or leave it', the Court would relieve the party of the bargain.

The Court found that the terms of the impugned agreement were so crafted by the plaintiff company that all liabilities emanating there from fall on the defendant. The plaintiff company enjoyed the full liberty to terminate the impugned agreement as and when it desired and is not accountable to the defendant for doing so. Such 'take it or leave it attitude of the plaintiff company does not leave defendant no.1 with much choice except to accept the harsh terms of the impugned agreement, lest he is prepared to forgo a promising musical career. Since the impugned Agreement has apparently impaired the defendant No.1 of his legitimate right to freedom of trade on terms apposite to him, the Court held that the Agreement is void and unenforceable under the terms of Section 27 of the Indian Contract Act, 1872.

The Court observed that public policy demanded that the freedom of contract must be founded upon equality of bargaining power between contracting parties. However, it is perhaps the inherent feature of capitalist society that contracts entered into between parties possessing unequal bargaining power are seldom concluded on fair and reasonable terms. The party possessing relatively less bargaining power is left with little or no choice but to accept the unreasonable and unfair terms imposed on it by the party possessing superior bargaining power. In the present case, the plaintiff company owing to its goodwill and reputation in the music industry is undoubtedly placed on a superior pedestal as compared to the defendant, Prit Brar who is merely an aspiring singer. Believing that the plaintiff company will help him in actualising his dream, in sheer naiveté he acquiesced to the unreasonable and unfair terms of the impugned agreement. The Court observed that it was shocking to know that in lieu of merely providing with a recording label, the plaintiff company has appropriated all revenues of the music albums sold without sharing any revenue with the defendant. The Court held that it will be great injustice to restrain the defendant from pursuing his musical career with defendant no.2 as sought by the plaintiff and it would be greater injustice to allow the plaintiff company to continue to reap the profit of defendant Prit Brar's skill and labour.

Cognisable Offences

Is the offence under Section 63 of the Copyright Act a cognisable one? This was the issue involved in the writ petition decided by the Kerala High Court in *Abdul Sattar* v *Nodal Office*r, Anti Piracy Cell, Kerala Crime Branch, 2007 (35) PTC 780 (Ker). The petitioners in this case pleaded that the offence under Section 63 of the Copyright Act is not cognisable and consequently the registration of the crime and investigation undertaken against the petitioners was illegal.

The Section 63 of the Copyright Act deals with the punishment for the offence of infringement of copyright in a work. The offence is punishable with imprisonment for a term 'which shall not be less than six months but which may extend to three years and with fine'. The Copyright Act does not refer to cognisability for the purpose of investigation. The Court observed that it has to then fall back on the schedule to the Code of Criminal Procedure to correctly interpret this term.

Parts II of the Schedule to the Code of Criminal Procedure classifies the offences as cognisable/non-cognisable and bailable/non-bailable and prescribe the forum for trial depending on the gravity of punishment as ascertained from the nature of sentence imposable for the offence under such other laws. Offences under the special laws have been divided into three categories of cases depending on the maximum sentence which can be imposed:

1. Punishable with death, imprisonment for life, or imprisonment for more than 7 years
2. Punishable with imprisonment for 3 years and upwards but not more than 7 years.
3. Punishable with imprisonment for less than 3 years or with fine only

The first category of cases deals with offences which are punishable with imprisonment for more than 7 years. Those offences for which punishment imposable is 7 years do not come within this category. Thus only offences punishable with more than 7 years (not seven years only) can be imposed within the first clause.

The second category of cases is the class of offences which are punishable with sentence of 7 years and below up to three years. The Parliament which used the expression 'for more than 7 years' to identify the first category of cases had very cautiously used the word '3 years and upwards, but not more than 7 years' to identify the second category.

The third category of cases is offences punishable with imprisonment for less than 3 years or fine. Those punishable with imprisonment for three years do not come within this category evidently.

The offence under Section 63 of the Copyright Act is punishable with imprisonment for a period of 3 years. The Court held that there can be no doubt that this falls under the second category and is consequently cognisable.

Trademark Law

Retail Wars

The retail revolution spreading across the nation is finding its echoes in the courtrooms as major players establish their brands in the retail market. *Asian Paints Limited* v *Home Solutions Retail (India) Limited*, 2007 (35) PTC 697 (Bom), involves such a battle between two retail giants.

The plaintiff in this case, *M/s Asian Paints Ltd*, one of the oldest companies in India is a pioneer in paint industry. In the year 2000, the company commenced offering consultancy services in painting, particularly, homes, through its service providers. The plaintiff marketed this product under the mark 'Home Solutions' or Asian Paints Home Solutions. They claimed to have spent more than Rs 1.80 crores on advertisement, publicity and promotions to popularize these marks. The plaintiff's case is that the said product has acquired enviable reputation and goodwill in respect of the product and services offered.

The defendant is a part of Pantaloon Group whose main business is organized retail with presence in segments such as garments, logistics (supply chain management), brands, home solutions, foods, finance, knowledge services, etc, with the motto to 'deliver everything, everywhere, every time to every Indian consumer in the most convenient manner'. The defendant incorporated Home Solutions India Limited in October 2004. They asserted that the 'Home Solutions' concept was evolved from the real needs expressed by the consumers about the lack of one stop shop for home products. The defendant is selling the products and services related to home care and utility under the name and style 'Home Town' and has set up about 27 stand alone stores and 149 shop-in-shop stores by May 2007. They claimed that they are one of the largest providers of home solutions in the country. They stated that their shops are multi brand stores selling several goods and services of several well known brands and they do not sell any products under the plaintiff's trademark 'Home Solutions' or 'Asian Paints Home Solutions'. The defendant stated that the adoption of its corporate name, Home Solutions Retail (India) Limited is honest and bona fide and describes the nature and gamut of its business model of providing solution to customers home related needs under one roof. They also asserted that they are not using the word 'Home Solutions' as a trademark.

Plaintiff alleged that the defendant knowingly and deliberately adopted the corporate name 'Home Solutions' so as to create confusion and deception amongst the purchasing public and trade channels. The plaintiff stated that in the third week of January 2006 they came to know of news article published in Mumbai edition of DNA (a daily) stating that the defendant had incorporated a company 'Home Solutions Retail (India) Limited' which in future would set up a chain of retail stores called 'Home Town' offering services in paints and other like services and goods under the name and mark 'Home Solutions'. Thereafter the plaintiff company gave a legal notice to the defendant company. Though no suit was filed, the plaintiff stated that it kept a constant eye on the activities of the defendant. In June 2007, it came to know that the defendant had commenced the activities of providing services of selling paints, amongst other things, from its 'Home Town' retail stores in Noida, Uttar Pradesh. Thus the plaintiff's case is that the defendant has adopted a trademark and corporate name which is identical to their trademark 'Home Solutions'.

The defendant pleaded that the expression 'Home Solutions' is descriptive in nature and as such inherently incapable of becoming distinctive and hence cannot become a trademark. They stated that they have already started their business and any interim injunction granted would cause irreparable loss to them. The defendant being an established company, it would be in a position to make good any loss suffered by the plaintiff by denial of interim injunction in the event of plaintiff ultimately succeeding the suit. They argued that the plaintiff is not entitled to any relief on account of delay and laches in filing the suit as they were aware of defendant's act of incorporation as early as January 2006 but have filed the suit only in July 2007 and moved the application for interim relief only on 30 August 2007.

The Court found that the plaintiffs had registered the device/label 'Asian Paints Home Solutions' for the goods covered by Class 2. The registration is not in respect of services in relation to the said goods but goods as such. The defendant is engaged in providing services to its customers in respect of home care conveniences and offers products of various other brands under one roof. Thus understood, the Court held that it is not the case of infringement of registered trademark as such.

The plaintiff's mark being a registered trademark, they contended that they are entitled to the protection under Section 29(4) of the Trademarks Act. Section 29 deals with infringement of registered trademarks. According to Section 29 (4), a registered trademark is infringed even if the mark is used in relation to goods and services which are not similar, provided:

(i) The marks are identical or similar; and
(ii) The registered trademark has a reputation in India and the use of the mark is likely to cause unfair advantage of or its use detrimental to the distinctive character or repute of the registered trademark.

The Court examined whether the mark used by the plaintiffs and the defendants can be identical or similar. The business activity in dispute is similar. The plaintiff is using the mark ‘Asian Paints Home Solutions’ whereas the defendant is using the mark ‘Home Town’. The Court held that there is marked difference between the two marks and by no standards it can be said that the marks are identical or similar.

In this context, the plaintiff contended that the defendant has mala fide coined its corporate name as Home Solutions Retail (India) Limited, which is identical or similar to the mark used by the plaintiff. The Court observed that the mark used by the plaintiff is associated with its name, Asian Paints, which precedes the expression Home Solutions. Besides, the registered device of the plaintiff is an artistic work which depicts a house in the alphabet O in the expression Home in ‘Home Solutions’.

The Court found substance in the argument of the defendant that the plaintiffs cannot claim exclusivity in respect of the mark ‘Home Solutions’ which is inherently incapable of becoming distinctive, being a generic word. Hence the Court held that it is not possible to accept the plaintiff’s claim that it has unique enviable reputation and earned exclusive good will to the mark ‘Home Solutions’.

The Court noted that the defendant has already commenced its business in relation to home care services. In such a case, the consideration for grant of *ad interim* relief would be different than the purpose of granting interlocutory relief which is to preserve the status quo. When the defendant is yet to commence its enterprise, the consideration may be to preserve status quo, but consideration may be different if the enterprise of defendant has already commenced. In this case, it is not possible to hold that the adoption of the mark or the corporate name was itself dishonest and in the absence of such a finding the question of granting any interim relief did not arise. Also, the plaintiff cannot claim exclusivity in the mark ‘Home Solutions’ as it is a generic term descriptive of the services.

The Game Wars

Internet has exploded as a medium of commerce and has thrown up a slew of issues for trademark attorneys. One such issue dealing with its supra national nature was at the core of the dispute in *Contests2win.com India Private Limited* v *Cell Cast Interactive India Private Limited*, 2007 (35) PTC 727 (Bom).

The plaintiff herein is engaged in the business of creating and marketing various games and contests which are made available over the Internet, mobile phones, newspapers, magazines, etc. It owned a website named ‘contests2win.com’. They alleged that the defendant has committed an act of passing off by using the words ‘bid2win’.

It is the case of the plaintiff that it created the mark ‘contests2win’ in 1998 for the business carried out by the company in respect of games played on the Internet. The writing of ‘2win’ is in a stylised form used as a suffix for games and contests created by it and it forms a part of their corporate name which is ‘Contests2win.com India Private Limited’. It asserted at the mark ‘contests2win’ and/or ‘2win’ suffix forms a distinctive part of the website of the plaintiff and other contests organized by it. It advertised extensively from 1996 to 2006 for promoting its games and domain name and has also applied for registration of its trademark ‘2win’.

The plaintiff asserted that writing ‘2win’ is a stylised form of writing and is used as suffix for all games created by it .The plaintiff’s case is that the defendant launched a contest named ‘Bid2Win’ in India using the ‘2win’ suffix for its contests and was actively advertising the same over various television channels in India with the purpose of passing off its services as that of the plaintiff.

The defendant, *Cell Cast Interactive India Private Limited*, asserted in its written statement that its parent company is a global provider of participatory TV programs, having its business spread over Europe and Middle East. It claimed to be a global leader in providing interactive mobile content and participation television applications in the fast growing digital entertainment sector. The defendant stated that in about March 2005, they launched a reverse auction TV show ‘bid2win’, broadcast every evening in UK on game network which has also gained popularity on Internet. It launched this program in India on Star TV which received over 6.7 million bids, becoming the worldwide largest reverse auction TV show. The bid2win program is available in UK, India and China. The defendant stated that they launched the program bid2win in India on 7 May 2006 and the plaintiff filed the application for registration of trademark only on 19 May 2006 after the defendant had launched its TV program in order to thwart competition in business. The defendant pleaded that the word '2win' is a generic term and is commonly used.

The Court observed that the legal position of the law of passing off can be discerned from the ratio of *Rickitt & Colmann Products Limited* v *Borden Inc & Ors* (1990) RPC 341. The House of Lords held in that case that the law of passing off could be summarized in one general proposition: No man may pass off his goods as that of another. More specifically it could be expressed in terms of three elements, each a question of fact, which the plaintiff has to prove in order to succeed:

(a) That there was a good will or reputation attached to the goods and services of the plaintiff in the minds of purchasing public by association with their identifying get up;

(b) There was a misrepresentation to the public which is likely to lead the public to believe that the goods or services offered by the defendant are that of the plaintiff;

(c) That the plaintiff was suffering or is likely to suffer damages by reason of the misrepresentation by the defendant.

It was irrelevant whether or not the public was aware of the plaintiff's identity as the manufacturer of the goods in question so long as they were identified by the public with a particular source.

The Court observed that the decision of the Supreme Court in *Satyam Infoway Limited* v *Sifynet Solutions P Ltd* 2004 (28) PTC 566 (SC) summed up this legal position on the Internet. The Supreme Court observed that Internet is not merely a mere means of communication but a mode of carrying on commercial activity. With the increase in commercial activity on Internet, a domain name is also used as a business identifier and serves the function of trademark. The passing off action is normally available to the owner of a distinctive trademark. If two trade rivals claim to have invented the same mark then the trader who is able to establish prior user will succeed. The second element required to be established by the plaintiff, namely, misrepresentation is to be established by proving the likelihood of confusion , in the minds of the public (the word 'public' being used to mean actual or potential users) that the goods and services offered by the defendant are the goods or services of the plaintiff. In assessing the likelihood of confusion the courts must consider the 'imperfect recollection of a person of ordinary memory'. The third element of passing off is the loss or damages suffered or the likelihood of it. The Supreme Court had held that the use of same or similar domain name may lead to a diversion or of users which could result from such users' mistakenly accessing one domain name instead of another. The Court held that the domain name has all the characteristic of a trademark and could found an action of passing of.

The Supreme Court had observed in this case that there is a distinction between a trademark and a domain name which is not relevant to the nature of right of an owner but is material to the scope of protection available to the right. A trademark is protected by the laws of the country where it is registered. Hence there may be multiple registrations in many countries throughout the world. On the other hand since the Internet allows for access without geographical limitation, a domain name is potentially accessible without the geographical limitation. As a result, a domain name may acquire worldwide exclusivity and national laws may be inadequate to protect a domain name. A prior registrant may protect a domain name against subsequent registrants. At the same time the Court had observed that it would have been different matter if the opposite party is a bona fide concurrent user where the right to use was a coequal.

Based on the above premise, the Court framed the issue as whether the word/suffix '2win' is a distinctive trademark or domain name and the plaintiff enjoyed exclusivity thereon. The Court found that the word '2win' is a common word in use world over. *Prima facie* it is difficult to hold that '2win' is invented by the plaintiff. Merely because the plaintiff has applied for trademark registration does not imply that they have proprietary rights on the mark, which has to be determined in the proceedings before the registry. The Court found that there was no material on record to doubt the intentions of the defendants. The argument of the plaintiff that it is the first user of the word '2win' in India for which it is entitled to claim exclusivity did not find the favour of the court. The next issue was whether the defendant was using the said name bona fide. The defendant is a renowned company doing business at global level since long. The defendant has also spent substantial amounts in India on promotion of its business in India with the name 'bid2win'. The Court did not find any material which will lead it to believe that the adoption of the name was not bona fide.

The Court held that since the defendant is using the word bona fide and since the word '2win' is used worldwide, the question of granting *ad interim* relief did not arise.

Reddy versus Reddy

Dr Reddy's is a name synonymous with Indian pharmaceutical industry. This mark was at the core of the issue in the decision of the Division Bench of the Delhi High Court which affirmed the decision of the Single Bench in granting interim injunction favouring Dr Reddy's laboratories in *Reddy Pharmaceuticals L*td v *Dr Reddy's Laboratories Ltd*, 2007 (35) PTC 868 (Del) (DB).

The appeal was preferred against the decision of the single bench in the suit instituted by the plaintiff, Dr Reddy's Laboratories. The plaintiff company was established by Dr K Anji Reddy in the year 1984 to deliver innovative pharmaceutical healthcare solutions. The company claimed to have emerged as India's second largest pharmaceutical company with the distinction of being the only pharmaceutical company from Asia Pacific region to be listed in the New York Stock Exchange. It has substantial international presence with many wholly owned subsidiaries in USA, EU, UK, etc. It claimed to have carved out a niche for itself in branded finished dosage drugs market and is a world leader in pharmaceutical formulations. It has adopted a logo comprising of a symbol representing a man with an outstretched arm and the word mark 'Dr Reddy's which was created by *M/s Oglivy and Mather* for a valuable consideration.

The plaintiff's asserted that its trademark Dr. Reddy is recognized throughout the world and appears on packaging of all its products as a part of the logo with the result that the adoption of Dr Reddy or Reddy by any third party as a trade name or as a trading style for any products particularly in the field of pharmaceuticals is bound to make any consumer to believe that the products originated from the plaintiff.

The plaintiffs alleged that the defendant was initially carrying on the business of purchase and supply of active pharmaceutical ingredients which it was purchasing from the plaintiff for supply to various manufacturers since 1997. The defendant was at no stage creating or marketing its own finished dosages brand. Its activities were only of a nature of distributor of active pharmaceutical ingredients or formulations manufactured by the plaintiff without changing the packaging or the label. The result was that the defendants business activities were in no way detrimental to the business of the plaintiff, nor did the plaintiff raise any objection to the use of Reddy Pharmaceutical Ltd as the name of the defendant company.

In September 2003, the plaintiff claimed to have received information that the defendant appellant had gone beyond its initial area of operation of being mere supplier of active pharmaceutical ingredients and had entered into the field of marketing pharmaceutical preparations in finished dosages using the name Reddy Pharmaceutical Limited and is using a deceptively similar logo infringing the plaintiffs trademark and copyrights. Plaintiff alleged that this act of the defendant is bound to create confusion in the minds of consumers as the area of business of both the companies is the same. The plaintiff therefore prayed for permanent injunction restraining the defendant from using the trading style Reddy Pharmaceutical Limited in relation to pharmaceutical preparations and from copying the layout and get up of the plaintiff's products.

The defendant in its written statement asserted that the plaintiff cannot claim any monopolist or proprietary right in the common trade name 'Reddy'. The defendant claimed a bona fide statutory right to use it as the surname of its managing director. It was also alleged that the plaintiff did not have rights in the trade name 'Dr Reddy's as the plaintiff's right was limited to the mark 'Dr Reddy's and not 'Reddy' as used by the defendant. It was also claimed that the drugs involved were scheduled drugs which were dispensed by qualified physicians and trained chemists. They therefore claimed that there was no possibility of confusion.

The Single Bench had held that there was identity of goods, marks and identity of consumers. It had found that the defendant was not an honest and concurrent user of the trademark, Reddy and that it had started using the trademark, Reddy in bad faith to encash on the reputation of the plaintiff. The Single Bench's decision to grant injunction against the defendant was called in question before the Division Bench in this appeal.

The Division Bench noted that the plaintiff company had a reputation of one of the leading pharmaceutical manufacturer of the country with substantial global presence. It also noted that the defendant did not have any manufacturing facility of its own for manufacturing pharmaceutical preparations. What the defendant appears to be doing was to have pharmaceutical preparations manufactured by others and put the name 'Reddy 'on the same creating an impression as the preparation is 'Dr Reddy's' and not just 'Reddy' product. To add to that confusion the defendant had, without any real basis, given a Hyderabad address though its registered office is at Delhi and all disputes in relation to the supplies of its product were subject to the jurisdiction of Delhi Court. The logo of the defendant was similar to that of plaintiff's. The Court observed that the whole purpose behind the device was to encash the reputation and goodwill of the plaintiff company in the market to the detriment and at the cost of such company. Affirming the decision of the Single Bench, the Division Bench held that in view of the similarity of goods, identity of the trademarks, and the consumers as also the use of the trademark 'Reddy' leaves no doubt that the adoption of the trademark 'Reddy' is not honest or in good faith but to encash the enormous trade reputation and goodwill of the plaintiff.

The Court also held that the surname of the partners or the firm or a company would not be used to carry on trade in a brand name nor was the use of a family name permissible for passing off goods of another entity that enjoys the protection of law for its trade name.