



Mohan Meakin Limited vs. Accord Distillers & Brewers Pvt. Ltd.

COMS No.1 of 2023

17.03.2023

Present: Mr. Bipin C. Negi, Senior Advocate, along with M/s Arvind Sharma and Krishna Gambhir, Advocates, for the plaintiff.

COMS No.1 of 2023

Notice, returnable on 10.05.2023, on taking steps by tomorrow i.e. 18.03.2023, be issued to the defendant.

OMP No. 80 of 2023

Notice in the aforesaid terms.

Applicant-plaintiff has preferred a suit for permanent injunction against infringement of Trade Marks, passing off, unfair competition, damages, rendition of accounts etc. by submitting plaintiff-Company having its registered office at Solan Brewery in Himachal Pradesh, with Branch Offices at Mohan Nagar, Ghaziabad, U.P., is a renowned Indian Company in liquor industry with established Breweries and Distilleries in various parts of the Country, which owns and uses several distinctive Trade Marks, including prominent Trade Marks 'Old Monk' and 'Monk' being used by the Company since 1959 having been registered in favour of the plaintiff-Company since 1971 and 2008 respectively.

It has further been claimed that 'Old Monk' is the third largest selling rum in the world and is biggest Indian-Made Foreign Liquor (IMFL) brand. It has further been claimed that Old Monk has been awarded gold medals at Monde Selections. The products/bottles under the Trade Mark Old Monk/Monk are being sold in unique, artistic and distinctive trade dress/shape/design/label/packaging/layout/colour scheme since

many decades. Further that, plaintiff is enjoying extensive reputation and goodwill in India as well as abroad and sales in India during 2021-2022 amounts to ₹774.09 Crores and export of Old Monk Beer during 2021-2022 is ₹1,61,03,346/-. It has further been submitted that expenditure incurred by the applicant-plaintiff for marketing as well as promotion of sale with respect to its products, including Trade Mark 'OLD MONK' in India and worldwide during 2021-2022 is 774.09 lacs.

It has been submitted that, as per information available with the plaintiff, defendant is a Private Limited Company having its registered office in Chennai and engaged in the business of manufacturing and marketing of Alcoholic Beverages.

It has further been submitted by learned counsel for the applicant-plaintiff that though defendant is situated and has its registered office in Chennai and, applicant-plaintiff has its office in Himachal Pradesh, but for provisions of Section 134(2) of the Act, a suit has to be instituted where the person instituting the suit actually and voluntarily resides and carry on business or personally works for gain and, therefore, present suit has been preferred in this Court, as the applicant-plaintiff is entitled for relief for infringement and passing off the Trade Mark as provided under Section 135 of the Act.

It has been submitted on behalf of applicant-plaintiff that defendant has filed an application for registration of word mark 'MISSIONARY MONKS AUTHENTIC PURE XO BRANDY' in Class 33 being Application No.4258533 on 07.08.2019 with disclaimer that words 'AUTHENTIC PURE XO BRANDY' shall not have exclusive right for the descriptive matters/words

'AUTHENTIC PURE XO BRANDY' separately except substantially as shown on the form of representation.

Further that aforesaid application filed by defendant has been opposed by the applicant-plaintiff by filing opposition in the Trade Marks Office. Counter statement thereto, has also been filed by the defendant and the said application is pending adjudication before the concerned authority.

Applicant-plaintiff has also placed on record documents/printouts of e-Register maintained by Trade Mark Office, indicating that 'OLD MONK' and 'MONK' trademarks have been registered in its favour since 05.07.1971 and 04.08.2008 with respect to Class 33 with user thereof since 01.08.1959.

Plaintiff has also placed on record print of e-Register with respect to application filed by the defendant for registration of 'MISSIONARY MONKS AUTHENTIC PURE XO BRANDY' as its Trade Mark indicating that the said application is pending and under opposition. Printout of e-Register indicating opposition filed by the applicant-plaintiff and counter filed by the defendant thereto, have also been placed on record.

Applicant-plaintiff has also placed on record photographs/printout of exhibition of its trademark on its product as well as exhibition trademark proposed to be registered by the defendant on its product, wherein defendants have used word 'MONKS' in prominent manner giving impression of similar product to the product of applicant-plaintiff.

It has further been contended on behalf of the applicant-plaintiff that by expressing disclaimer with respect to

word 'AUTHENTIC PURE XO BRANDY', intention of the defendant to use/to propose trademark in descriptive manner is clear which is a dishonest act and fraud on its part.

As per applicant-plaintiff, defendant is selling Alcoholic Beverages, i.e. Brandy in the State of Tamil Nadu, Chennai since 01.01.2016 under the marks 'MISSIONARY MONKS AUTHENTIC PURE XO BRANDY' which conspicuously project the word 'MONK' in a prominent manner attempting to create an illusion in the minds of the consumers/trade that it belongs to the applicant-plaintiff, which amounts to grave misinterpretation and dilutes reputation and goodwill acquired by the applicant-plaintiff in course of Trade.

It has further been submitted on behalf of the applicant-plaintiff that plaintiff exercising vigilance in protecting its intellectual property rights, in the brand, earlier also, had approached Delhi High Court for using marks 'TOLD MOM' and 'CRAFTY MONK' by different Companies and the case in "TOLD MOM" has been decided in favour of the applicant-plaintiff whereas case pertaining to 'CRAFTY MONK' has been decreed as per compromise between parties and in those cases defendants have been restrained from using descriptive or similar Trade Marks involved in those cases i.e. "TOLD MOM" and 'CRAFTY MONK'. Copies of judgments/orders passed in those cases have also been placed on record.

Learned counsel for the applicant-plaintiff has submitted that trademark being used and proposed to be registered by the defendant Company is similar to the trademark being used by and registered in the name of applicant-plaintiff Company and its exhibition on the products of the defendant resembles with mark of the applicant-plaintiff

Company and, therefore, as defined under Section 2(h) of the Trade Marks Act, 1999 (hereinafter referred to as 'the Act') the Trade Mark, being used and proposed to be registered by the defendant Company, is deceptively descriptively similar to the Trade Mark used by the applicant-plaintiff Company.

Referring Section 28 of the Act, learned counsel for the applicant-plaintiff has submitted that applicant-plaintiff has exclusive right to use trade mark in reference and also to obtain relief in respect of infringement of these trade marks as provided under this Act. According to learned counsel for the applicant-plaintiff, act of the defendant is clearly an infringement of registered Trade Mark as provided under Section 29(2)(b) of the Act.

To substantiate claim of interim relief, learned counsel for the applicant-plaintiff has also placed reliance upon pronouncements of the Supreme Court in *Kaviraj Pandit Durga Dutt Sharma vs. Navaratna Pharmaceutical Laboratories, AIR 1965 SC 980*; and *Midas Hygiene Industries (P) Ltd. and another vs. Sudhir Bhatia and others, (2004) 3 SCC 90*.

Taking into consideration material placed before me, and submissions made by learned counsel for the applicant-plaintiff, I am of the considered opinion that *prima facie* case is made out in favour of the applicant-plaintiff for passing ad-interim order. Accordingly defendant, their promoters, assigns, relatives, successors-in-interest, licensees, franchisees, directors, representatives, servants, distributors, employees, agents, etc., or anyone associated with them are restrained from using the impugned marks 'MISSIONARY MONKS

AUTHENTIC PURE XO BRANDY'



and



' including transliterations thereof and/or any mark identical with or similar to the Plaintiff's registered trade marks OLD MONK and/or MONK and/or formative variants thereof singularly or in conjunction with any other word or monogram/logo as a trade mark, service mark, house mark, trade name, trading style, corporate name, website, email address, or otherwise in any manner whatsoever so as to infringe the Plaintiff's registered trade marks, till next date of hearing.

Compliance under Order 39 Rule 3 CPC be ensured within 24 hours.

Applicant-plaintiff is permitted to produce a copy of this order, downloaded from the web-page of the High Court of Himachal Pradesh, before the authorities concerned, and the said authorities shall not insist for production of a certified copy but if required, may verify passing of order from Website of the High Court.

(Vivek Singh Thakur)
Judge

March 17, 2023
(Purohit)