



news flash

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Pernod Ricard India Private Limited v. Karanveer Singh Chhabra trading as J.K. Enterprises

Prominent players in the alcoholic beverages industry are involved in legal battle for alleged trademark infringement in the realm of whisky branding. This trademark dispute was involving Pernod Ricard India Private Limited (“**Pernod**”) operating with registered trademarks such as ‘Blenders Pride’, ‘Imperial Blue’ and the house mark ‘Seagram’s’ accusing Karanveer Singh Chhabra trading as J.K. Enterprises (“**JK**”) imitating their trade mark ‘Blenders Pride’ by manufacturing and selling its whisky under the trade mark ‘London Pride’. Pursuant to number of decisions by Apex Court, the Madhya Pradesh High Court has directed to the trial court to proceed with the matter on merits and conclude it expeditiously within a period of nine months.

Background

Pernod are in business of manufacturing and distribution of wines, liquors and spirits and operating with established trademarks such as ‘Blenders Pride’, ‘Imperial Blue’ and the house mark ‘Seagram’s’. Pernod acquired the trademark ‘Blenders Pride’ from its predecessor namely, Seagrams Company Limited and use it both nationally and internationally on various branded products. JK is accused of imitating trademark ‘Blenders Pride’ by manufacturing and selling whisky under the trademark ‘London Pride’.

While the ‘Blenders Pride’ trademark was adopted in 1973, Pernod become the proprietor of the same from 27 June 2018 and was marketed by them with a distinctive label and features Seagram's logo. Garnering the goodwill and reputation from the adoption of ‘Blenders Pride’ since 1995, Pernod asserted that the term ‘Pride’ is a crucial and distinctive element of their mark. Upon acquired knowledge that JK is selling ‘London Pride’ whisky which is deceptively similar to its ‘Blenders Pride’ trademark. JK sold the whiskey by putting label, using packaging, getup and trade dress deceptively similar to Imperial Blue of Pernod. Pernod filed a suit for temporary injunction on account of infringement before the Commercial Court in Indore which was dismissed. Thereafter, an appeal against the said order was filed by Pernod, before the Madhya Pradesh High Court constituting misrepresentation and fraud, deceiving customers and causing significant financial losses and damage to Pernod trademarks, goodwill, and reputation.

Madhya Pradesh High Court’s decision

The trial court, in its ruling, identified ‘PRIDE’ as the only significant similarity between the two brands, and emphasizing differences in packaging, style, shape, and logo. ‘Pride’ is commonly

used, and exclusivity of the same cannot be claimed by Pernod. By merely by using word 'Pride' in its trademarks it cannot be said that JK has imitated Pernod's trademarks as consumers seeking premium whisky would not be confused by the term 'Pride' alone. Overall, since no similarity was found in JK's brand which can be said to be such imitation of Pernod's trademarks, which would deceive the consumers of their products, the trial court has rejected the notion of imitation based solely on the use of 'Pride' emphasizing the need to evaluate marks as a whole. Ultimately, the court concluded that no substantial similarity existed, denying the Pernod's request for a temporary injunction.

In an appeal against refusal of temporary injunction by the trial court, the Appellate Court informed that it will not interfere unless it is shown that the trial court has acted illegally or perversely since relief regarding grant of temporary injunction is a discretionary relief. Further, it was states as *“Overall appearance of defendant's mark cannot be said to be deceptively similar to marks of plaintiffs. Thus, examining the marks of plaintiffs with the mark of defendant as a whole, neither there is any visual nor phonetic nor structural similarity between any of the boxes or bottles of the plaintiffs with that of the boxes or bottles of the defendant. It is not a matter of mere dissimilarity but is a case of there being no actual similarity. It hence cannot be prima facie held that defendant's mark infringes the mark of plaintiffs.”*

Alleging infringement on the ground that JK is using a mark including 'PRIDE' as a part thereof cannot be accepted. Since the findings arrived at by the trial court are just and legal and call for no interference, the appeal was found to be devoid of any merits and dismissed by the Madhya Pradesh High Court with a direction to the trial court to adjudicate on the matter within the next nine months. Significantly, it emphasized that the trial court's decision should be rendered independently, free from any influence stemming from the observations made in the former decisions.

Conclusion

In a nuanced decision, the trial court meticulously examined the important element of contention for use of generic word 'Pride' and highlighted the significance of evaluating trademark as whole. Disparities in packaging, style, and the overall visual presentation were emphasised by the trial court leading to settle the well-established principle that exclusivity cannot be claimed over a common and generic term. Furthermore, this ruling, recognised that consumers seeking premium whisky would not be misled or confused by the use of generic term in the trademarks.

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