

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

**SUBJECT : TRADE MARK MATTER**

Date of Order : December 02, 2008

RFA 720/1993

HINDUSTAN LEVER LTD. .... Appellant  
Through: Ms. Mamta Jha, Advocate

versus

RAMESHWAR MUNDIA and ANR. .... Respondents  
Through: Nemo

CORAM:  
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG  
HON'BLE MR. JUSTICE J.R.MIDHA

PRADEEP NANDRAJOG, J.(Oral)

1. Heard learned counsel for the appellant.
2. A short issue arises for consideration: whether statutory authorities are governed by the principle of comity.
3. The principle of comity is well recognized in law, whereunder different statutory authorities and courts give due respect to the opinion rendered by each other. Only when the decision or an opinion of a Court or a statutory authority is contrary to law, public policy or morality are the grounds on which the principle of comity has to be ignored.
4. The appellant and the respondent are running a feud with respect to the claim of the appellant that the wrapper of the respondent in which it sells detergent is a slavish copy of the label of the appellant.
5. The appellant sells the detergent i.e. soap cake under the registered trademark LIFEBOUY. The wrapper is a mixture of white and red colours used, with the red colour taking a space of approximately 1/3rd of the size of the wrapper. The respondent is using a wrapper of same size, same colour, with same proportion of the segment of the colour red vis--vis white. The name used by the respondent is LUCKY SOAP.

6. In the opposition before the Registrar of Trademarks when respondent sought registration of the mark and the wrapper as its proprietary property, the opposition by the appellant succeeded with the Registrar of Trademarks turning down the application filed by the respondent vide order dated 13.9.1988.

7. In proceedings before the Copyright Board under Section 50 of the Copyright Act the appellant has failed.

8. The order passed by the Copyright Board, unfortunately, has not even taken judicial notice of the order passed by the Registrar of Trademarks.

9. We note that on a comparison of the two labels, whereas Registrar of Trademarks has held that the wrapper of the respondent, if permitted to be registered, would cause confusion in the eyes of the consumer and hence is deceptively similar to that of the appellant, the Copyright Board has arrived at a totally contradictory finding holding as under:- 4. Now on a very careful consideration of the two labels in their entirety one immediately reaches the conclusion that there is no substance in the contention of the petitioner that the impugned label of the respondent is a substantial reproduction of the label of the petitioner. The law is that while dealing with the question of infringement of copyright of an artistic work, the Court is to test on the visual appearance of the object and drawing; design of the artistic work in question and by applying the test viz. the lay observer test whether to persons who are not experts in relation to objects of that description, the object appears to be a reproduction. If to the lay observe it would not appear to be a reproduction, there is no infringement of the artistic copy right in the work. 5. Now, examining the two labels before us in the light of the aforesaid test, it is crystal clear to the naked eyes that the two labels by no standards can be considered to be similar or substantially similar. One cannot be the copy of the other simply because both the labels have red backgrounds and words in white. Apart from differences in detail in both the labels it is difficult to comprehend that one would be mistaken for the other. We have no hesitation to reach the conclusion that the impugned label registered in the name of the respondent is not a copy or substantial reproduction of the label of the petitioner. Simply because the petitioner is a very big company and is a manufacturer of a well known soap, it cannot be permitted to claim a monopoly of two labels with a red background and words in white colour. We are convinced that the petitioner has miserably failed to establish its case of piracy of label by the respondent. In the result the petition deserves to be dismissed. Since the respondent has not appeared we do not think it proper to saddle the petitioner with the costs of this petition. Hence the petition is hereby dismissed with no order as to costs.

10. We note that the appellant has raised a grievance in ground E that the Copyright Board gravely erred in not even discussing the order passed by the Registrar of Trademarks.

11. Learned counsel for the appellant states that the order passed by the Registrar of Trademarks has attained finality.

12. We do not intend to decide the issue on the process of reasoning adopted by the Copyright Board for the reason we are satisfied that on the principle of comity the Copyright Board ought to have given due respect and weightage to a prior order passed by the Statutory Authority namely the Registrar of Trademarks.

13. Before concluding we may note that there is a factual error in the order passed by the Copyright Board. The error being a statement of fact recorded, which is erroneous, that the appellant has not obtained any registration of its wrapper under the Copyright Act. This is incorrect.

14. The petition filed by the appellant under Section 50 of the Copyright Act requires to be allowed.

15. The appeal is allowed.

16. Impugned order dated 29.6.1993 passed by the Copyright Board is set aside. Petition filed by the appellant under Section 50 is allowed with a direction to the Registrar of Copyright to expunge the copyright granted vide entry No.A-30585/80 in the name of the first respondent.

17. No costs.

Sd./-  
PRADEEP NANDRAJOG, J.  
Sd./-  
J.R.MIDHA, J.

DECEMBER 02, 2008