

J.R. KAPOOR
v.
M/S. MICRONIX INDIA

AUGUST 10, 1994

[P.B. SAWANT AND S.C. AGRAWAL, JJ.]

Constitution of India—Article 136—Interim Order of High Court by which one party enjoined from using trade mark, logo and carton—Validity of—Two trade names being ‘MICROTEL’ and ‘MICRONIX’ with logos—Phoenetically words in trade names being totally dissimilar—Visual impression of two name also different—Visual effect of both logos not same on mind of buyers—No chance of buyers and users being misguided or confused—Whether High Court was right in exercising its jurisdiction in granting interim injunction restraining appellant from using his trade name, logo and carton.

Both the respondent-plaintiff and the appellant-defendant manufacture and sell various electrical and electronic goods, apparatus and instruments etc. The appellant was one of the partners of the firm, viz. M/s. Micronix India alongwith respondent. The firm had a registered trade mark, viz., ‘MICRONIX’ and logo ‘IM’ ‘I’ being shown in the well of ‘M’ and both letters being in black and white colours. The partnership was dissolved and under the terms of the compromise the said trade mark was allotted to the respondent. The appellant started his own business of manufacturing the same products, in the name and style of M/s. Microtel-matix with the trade name ‘MICROTEL’. Both the logo ‘M’ and the trade name were in colour, viz., blue and red respectively.

The plaintiff filed for injunction against the use of the trade name ‘MICROTEL’, the logo ‘M’ and the packaging carton. The High Court granted the injunction. Hence this appeal by special leave.

Allowing the appeal, this Court

HELD : 1.1. The word ‘micro’ being descriptive of the micro technology used for production of many electronic goods, no one can claim monopoly over the use of the said word. Anyone producing any product with the use of micro chip technology would be justified in using the said word as a prefix to his trade name. The users of such products are,

A therefore, not likely to be misguided or confused by the said word.

[570-E, F]

B 1.2. The only question which has to be *prime facie* decided at this stage is whether the words 'tel' and 'nix' in the trade names of the appellant and respondent are deceptive for the buyers and users and are likely to
 C misguide or confuse them in purchasing one for the other. Phonetically the words being totally dissimilar are not going to create any such confusion in the mind of the users. Secondly, even the visual impression of the said two trade names is different. The respondents' trade name 'MICRONIX' is in black and white in slimmer letters and they are ensconced in designs of elongated triangles both above and below the said name. The appellant's
 D trade name 'MICROTEL' is in thick bold letters in red colour without any design around. [570-G, H, 571-A]

E 1.3. As regards the logo, the respondent's logo consists of the word 'M' in a slim letter with 'T' sporting a dot on it and drawn in the well of
 F 'M'. Below the letter 'M' in small letters is written the word 'MICRONIX' and all these letters and words are written in white in a black square in north-south direction. As against this, the appellant's logo is one letter, viz., 'M' which is drawn in bold broad letter with its left leg slimmer then all other parts which are in thick broad brush. The letter has also
 G white lines drawn across it which is in blue colour. There is no other colour nor is it set against any background. The Court is unable to see how the visual effect of both the logos will be the same on the mind of the buyers. There is not even the remotest chance of the buyers and users being misguided or confused by the two trade names and logos. Same is the case with carton which merely reproduces both the trade names and the logos.

[571-B, C]

H 1.4. The observations made above are only for deciding whether the appellant would be restrained from using the trade mark, the logo and the carton, at this interim stage. The High Court will not be precluded from coming to a different conclusion at the final hearing. [572-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2253 of 1994.

H From the Judgment and Order dated 15.10.93 of the Delhi High Court in F.A.O. (OS) No. 229 of 1993.

S.V. Deshpande and Sudhanshu Batra for the Appellant. A

A.K. Goel, Mr. Wills Mathews, M.K.D. Namdoodry and Ms. Bindu Tamta for the Respondent.

The Judgment of the Court was delivered by B

SAWANT, J. This appeal is directed against an interim order of the High Court by which the appellant is enjoined from using the trade mark 'MICROTEL', the logo 'M' and the carton for manufacturing and selling his products which consist of electrical and electronic apparatus, instruments, TV boosters and TV tuners. C

2. We have heard the learned Counsel on both sides. We also examined the trade marks and logos as well as the cartons used by both the parties for selling their respective products. We also examined the relevant authorities on the subject, cited by the learned counsel. D

3. The undisputed facts are that both the respondent-plaintiff as well as the appellant -defendant manufacture and sell various electrical and electronic goods, cable TV, aerial boosters, solid state boosters etc. The appellant was one of the partners of the firm, viz., M/s. Micronix India along with the respondent- plaintiff. The firm was manufacturing and selling the said electrical and electronic products, apparatus and instruments etc. since 21st September, 1977. The said firm had a registered trade mark, viz., 'MICRONIX' and logo 'IM' 'I' being shown in the well of 'M' and both letters being in black and white. The trade mark also in black and white colours. The partnership was dissolved on 14th February, 1992 by a consent order filed in Suit No. 494 of 1991 instituted in the Court of Sub-Judge, Delhi. Under the terms of the compromise the said trade mark was allotted to the respondent-plaintiff. Thereafter, the appellant-defendant started his own business of manufacturing more or less the same products, in the name and style of M/s. Microtelmatix with the trade name 'MICROTEL'. He took simple M as his logo with the letter and background designed completely differently. Both the logo 'M' and the trade name 'MICROTEL' were in colour, viz., blue and red respectively. E F G

4. The respondent-plaintiff thereafter filed the present suit and sought for injunction against the use of the trade name 'MICROTEL', the logo 'M' and the Packing carton. The learned Single Judge granted the H

A injunction and the Division Bench dismissed summarily the appeal filed against the same. Hence the present appeal by special leave.

B 5. At this stage, we are concerned only with the question as to whether the High Court was right in exercising its jurisdiction in granting interim injunction restraining the appellant from using his trade name, logo and the carton. Therefore, the finding recorded and the observations made herein have to be confined to the present proceedings. The suit is still pending and final conclusions will have to be arrived at after perusal of the evidence produce by both sides.

C There are two things which impress us. Firstly, the appellant is not manufacturing any one product such as the boosters, which has been mainly taken into consideration by the High Court. He is producing various electrical and electronic apparatus in many of which micro-chip technology is used. Even the boosters which he manufactures and sells are of two types, viz., transistorised boosters and Integrated Circuit boosters whereas the respondent- plaintiff manufacturers aerial boosters only of the first type. Thus micro-chip technology being the base of many of the products, the word 'micro' has much relevance in describing the products. Further, the word 'micro' being descriptive of the micro technology used for production of many electronic goods which daily come to the market, no one can claim monopoly over the use of the said word. Anyone producing any product with the use of micro chip technology would be justified in using the said word as a prefix to his trade name. What is further, those who are familiar with the use of electronic goods know fully well and are not only likely to be misguided or confused merely by, the prefix 'micro' in the trade name. Once, therefore, it is held that the word 'micro' is a common or general name descriptive of the products which are sold or of the technology by which the products are manufactured, and the users of such products are, therefore, not likely to be misguided or confused by the said word, the only question which has to be *prima facie* decided at this stage is whether the words 'tel' and 'nix' in the trade names of the appellant and the respondent are deceptive for the buyers and users and are likely to misguide or confuse them in purchasing one for the other. According to us, phonetically the words being totally dissimilar are not going to create any such confusion in the mind of the users. Secondly, even the visual impression of the said two trade names is indifferent. In the first instance, H the respondent's trade name 'MICRONIX' is in black and white in slimmer

letters and they are ensconces in designs of elongated triangles both above and below the said name. On the other hand, the appellant's trade name 'MICROTEL' is in thick bold letters in red colour without any design around. As regards the logo, the respondent's logo consists of the word 'M' in a slim letter with 'I' sporting a dot on it and drawn in the well of 'M'. Below the letter 'M' in small letters is written the word 'MICRONIX' and all these letters and words are written in white in a black square in north-south direction. As against this, the appellant's logo is one letter, viz., 'M' which is drawn in bold broad letter with its left leg slimmer than all other parts which are in thick broad brush. The letter has also white lines drawn across it which is in blue colour. There is no other letter nor is it set against any background. We are, therefore, unable to see how the visual effect of both the logos will be the same on the mind of the buyers. This being the case, we are of the view that there is not even the remotest chance of the buyers and users being misguided or confused by the two trade names and logos. Same is the case with the carton which merely reproduces both trade names and the logos.

The learned counsel for the respondent-plaintiff contended that on the carton the same address, viz, "New Delhi-110020", has been given by the appellant. We are unable to understand how anybody can claim monopoly in the said address. He also tried to show us that there was a similarity in the words and letters in the two cartons inasmuch as the respondent-plaintiff's carton mentioned the words "MODEL TB-212 (indoor type)" while the appellant has also mentioned the words "MODEL MT-212 (Indoor Unit)". Hence, he submitted that there was a resemblance to the extent of the word "MODEL" and the figure "212". On a perusal, we do not find any such resemblance between the two descriptions. He then submitted that whereas the respondent-plaintiff had mentioned the words "Best for Colour Black and White TVs & FM Radio" with a black rectangular background of the word 'White' before the words "TVs and FM Radios", the appellant has also mentioned words "For Colour/Black & White TVs. and FM Radios". Again, we do not find that the manner in which the said words are written by both the parties on their respective cartons are likely to misguide or confuse the buyers. This is apart from the fact that whereas the respondent-plaintiff's carton is in black and white the appellant's carton is fully in colour.

6. Hence we allow the appeal and set aside the impugned order of

A the High Court. It is made clear that the observations made above are only for deciding whether the appellant should be restrained from using the trade mark, the logo and the carton, at this interim stage. The High Court will not be precluded from coming to a different conclusion at the final hearing on perusing the entire evidence before it. The costs will be the costs in the cause.

A.G.

Appeal allowed.