

MANMOHAN GARG  
v.  
M/S RADHA KRISHNA NARAYAN DAS  
THROUGH ITS PARTNERS

FEBRUARY 19, 1998

[DR. A.S. ANAND, B.N. KIRPAL AND S. RAJENDRA BABU, JJ.]

*Trade and Merchandise Marks Act, 1940 :*

*Trade Mark—Violation of—Suit for injunction and damages against—  
Suit filed by respondent against appellant—Allegations that the appellant  
was using a deceptively similar labels and passing off the Bidis manufactured  
by him as the Bidis manufactured by the respondent—Suit dismissed by Trial  
Court—Decreed by first Appellate Court—Order of appellate Court upheld  
by single Judge as well as Division Bench of the High Court—Finding that  
appellant's labels used on the Bidis manufactured and sold by him were  
deceptively similar and identical to the respondent's labels on the Bidis—  
Respondent's trade mark registered prior to that of appellant—Held single  
Judge as well Division Bench committed no error—Their judgments suffer  
from no flaw.*

CIVIL APPELATE JURISDICTION : Civil Appeal No.14200 of  
1996.

From the Judgment and order dated 20.12.95 of the Madhya Pradesh  
High Court in L.P.A. No. 5 of 1991.

Yogeshwer Prasad and Mrs. Rachna Gupta for the Appellants.

Shiv Sagar Tiwari for the Respondent.

The following Order of the Court was delivered :

The respondent filed a Civil Suit in the Court of the District Judge,  
Bhopal seeking relief of permanent injunction and damages on the allegations  
that the appellant/defendant was using a deceptively similar label and passing  
off the Bidis manufactured by him as the Bidis manufactured by the plaintiff.  
The plaintiff claimed damages besides permanent injunction and an order to  
restrain the defendant/appellant to sell the Bidis with the label *Khargosh*

A *Chhap*. A decree for accounts was also prayed for. The trial court dismissed the suit on 16th March, 1981. The first appeal filed by the respondent against the judgment and decree dated 16th March, 1981 succeeded before the learned Single Judge of the High Court on 19th February, 1991. The learned Single Judge held that the plaintiff had established infringement of his registered trade mark No. 112689 by the defendant by reason of deceptive similarity between the mark used by the defendant and the plaintiff's registered trade mark. Against the order of the learned Single Judge, the appellant herein filed a Letters Patent Appeal. A Division Bench of the High Court dismissed the Letters Patent Appeal on 20th December, 1985. Hence this appeal by special leave.

C *Briefly stated, the facts are :-*

D Trade Mark of Bidis, *Khargosh Chhap*, was first registered with the Sub-Registrar of Bombay on 26th January, 1928 and thereafter it was registered under the Trade Marks Act, 1940 on 14th August, 1945 in favour of the plaintiff/respondent in respect of the Bidis to be sold under that Trade Mark throughout the territories of India except Madras and Mysore. The Trade Mark was registered under Registration No. 112689. It appears that the plaintiff-respondent subsequently also got registered the Jhilli (tissue paper wrapper) on 2nd July, 1954 under registration No. 164797. According to the plaintiff/respondent, looking to the popularity, reputation and sale of the plaintiff's *Khargosh Chhap* Bidis, the defendant/appellant started selling Bidis using a label which was deceptively similar to and was a colourable imitation of the plaintiff's *Khargosh Chhap* Bidies, both in respect of the design, layout, get up and the colour scheme. It was on these allegations that the plaintiff/respondent had filed the suit seeking relief of permanent injunction and damages etc.

G The learned Single Judge as well as the Division Bench of the High Court, on the basis of the evidence on the record, have recorded categorical findings that the appellant's labels used on the Bidis manufactured and sold by him were deceptively similar and identical to the plaintiff-respondent's label on the Bidis bearing trade mark *Khargosh Chhap*. It has also been found by the High Court that the trade mark *Khargosh Chhap* had been registered prior in point of time than the trade mark *Goat Cub* of the appellant.

H From the material on the record, we find that the appellant had filed an affidavit on 30th January, 1964 (Ext.P/16) wherein he had deposed that the

trade mark "*Goat Cub*" was conceived by his firm in 1952 and that he started selling his Bidiies under that trade name. The appellants' documents Ext.p/16 and P/17 also unmistakably show that the trade mark *Goat Cub* was conceived and put into use by him since 1952 only. This documentary evidence of the appellant gives a complete lie to the stand of the appellant that he was using the trade mark *Goat Cub* since 1936. That being the position, no fault can be found with the findings recorded by the learned Single Judge and the Division Bench of the High Court to the effect that the plaintiff/respondent's trade mark was registered in 1945 and the defendant's claim of *prior user* of the label with *Goat Cub* was incorrect. In the light of this factual aspect of the case, we find and the Division Bench committed no error and their judgments suffer from no flaw whatsoever. This appeal, thus, has no merits. It is consequently dismissed with costs.

T.N.A.

Appeal dismissed.