

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

CS/94/2020
IA NO. GA/1/2020

DUROPLY INDUSTRIES LIMITED AND ANR.
Versus
MA MANSA ENTERPRISES PRIVATE LIMITED

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 08th October, 2020.

(Via Video Conference)

Appearance :
Mr. Debnath Ghosh, Adv.
Ms. Harshita Ginodia, Adv.
Ms. Pubali Sinha Chowdhury, Adv.
Mr. Shwetank Ginodia, Adv.
... for the petitioner.

The Court: The petitioner seeks an injunction on the respondents' use of the mark 'Duro Touch' or any other mark which is deceptively similar to the petitioners' registered trademark 'Duroply'. The petitioner claims to be the registered proprietor of the word mark 'Duroply' which was registered on 15th June, 1995. The petitioner has the label mark 'Duroply' registered as on 27th October, 1987, where the name of the first petitioner has been prominently displayed. The petitioner has numerous registered marks with 'Duro' being the most prominent part thereof in its kitty. The petitioner no.2 claims to be the assignee of all the registered trademarks which were applied for and

registered in the name of the first petitioner. The petitioner no.1 claims user of the expression 'Duro' from 1964 onwards as its trademark and primary brand name.

Learned Counsel appearing for the petitioners places various documents including substantial figures of sales amounting to Rs.27,252.47/- for goods incorporating the word 'Duro' in 2018-19 coupled with advertisement and promotional expenses to match the sales of the petitioner for products under the brand 'Duro' with accompanying suffixes. Counsel submits that the name of the first petitioner has become inextricably associated with the word 'Duroply' by reason of the volume of sales and the consequent goodwill which the petitioners enjoy in relation to any product incorporating the mark 'Duro'. Counsel submits that 'Duroply' has become a well-known mark under Sections 2(1)(zg) and 11 of The Trademarks Act, 1999. Counsel places the application for the trademark 'Duroply' which shows that the said mark has been used by the first petitioner from 1st January, 1964. Counsel urges that although the petitioners came to know of the respondent's use in 2018, the petitioner could only make this application in September 2020 by reason of a recent advertisement of the respondent's product on an interactive website.

The mark objected to is 'Duro Touch'. It is submitted that the said mark of the respondent could not have been used from a date prior to 25th February, 1986 since the respondent no.2 was

incorporated on that date as would appear from the Company Master Data annexed to the petition. The photographs showing a plywood block board shows that the respondent is using 'Duro Touch' as its brand name. The registration certificate for the mark 'Duro Touch' was granted in favour of the respondent on 19th April, 2012. Counsel submits that although the respondents' business is restricted to Delhi, Haryana and Himachal Pradesh, there is enough possibility of confusion from the use of 'Duro Touch' by the respondent since the petitioners have a substantial presence in northern India. A list of dealers in that area is part of records.

The respondent has received a copy of the plaint and petition as on 22nd September, 2020 but is not represented when the matter is taken up today. The affidavit of service is kept on record.

On considering the documents placed, this Court is of the view that the petitioners, particularly the petitioner no.1, has established sufficient goodwill for the mark 'Duroply' by reason of long use of the said mark and extensive sales of goods bearing the said mark at least from 1976 onwards. The invoices of sales have been shown to the Court. The most relevant consideration is that the respondent is using the mark 'Duro Touch' for plywood and allied products which are identical to the goods of the petitioners. The petitioners have established that the reputation and goodwill of the mark 'Duroply' extends also to those places where the respondent is

presently operating. There is no doubt that the mark 'Duroply' has developed a connection with the petitioner no.1 by reason of the aforesaid factors. The petitioner is admittedly the prior user of the mark/expression "DURO" including "DUROPLY".

In view of the above, this Court is inclined to allow the application in terms of prayer (a). The respondent and/or its agents and assigns are restrained from manufacturing, distributing and selling their goods under the mark 'Duro Touch' or any other mark which is deceptively similar to the petitioners' mark 'Duroply'.

The interim order will remain operative until 20th October, 2020. The respondent will be at liberty to apply for vacating of this order and the petitioners, alternatively, for extending the same.

(MOUSHUMI BHATTACHARYA, J.)