



SECOND TASK – CASE COMMENT

BATCH – MAY’ 2024

**TOPIC: BAJAJ ELECTRICALS LTD. VS. GOURAV BAJAJ AND ANR.
2020 (82) PTC 40 (BOM.)**

TABLE OF CONTENTS

Contents

BACKGROUND OF THE CASE.....	3
FACTS.....	4
ISSUES OF THE CASE:.....	5
CONTENTION:.....	6
<i>Arguments from the Plaintiff's side:</i>	6
<i>Arguments from the defendant's side:</i>	6
LEGAL PRINCIPLE USED IN CASE:.....	8
APPLICATION OF LAW:.....	9
<i>Who can infringe?</i>	9
<i>What constitutes infringement?</i>	9
JUDGEMENT IN BRIEF:.....	10
RATIONALE:.....	11
IMPACT OF THIS CASE:.....	12
CONCLUSION:.....	13

BACKGROUND OF THE CASE

Case Name	BAJAJ ELECTRICALS LTD. V. GOURAV BAJAJ AND ANR.
Court	BOMBAY HIGH COURT
Citation	2020 (82) PTC 40 (BOM.)
Petitioner	BAJAJ ELECTRICALS LTD.
Respondent	GOURAV BAJAJ
Date of Judgement	3RD MARCH 2020
Bench	HON'BLE JUSTIC B.P. COLABAWALLA

FACTS

- the publication replica in a public communication as well as all other forms.
- Bajaj Electricals is major Indian manufacturing company that deals with electrical appliances like kitchen appliances, lamps and Fans. Bajaj Electricals has thus formed a strong brand recognition over the years in the Indian homes. An incident which was recently reported is of Bajaj Electricals who had filed a civil suit against a person by name Gourav Bajaj who resides in Punjab and in no way is related to the company. The provision of the law under which the lawsuit was filed is ‘Trademark Infringement’ which is provided for under Section 29(2) of The Trademark Act 1999. He is charged with trademark abuse after trying to trade his goods under an faked Bajaj mark.
- Trademark violation is the utilization of a marked brand for business purposes without the authorization of the brand owner while passing off is concerned with the trade of products under the false assumption that the business runs on behalf of another individual. Defendant No. and this she needs to do in order to put an end to the mess. 1. The defendant in the suit for an interim injunction The Applicant Two Retail Electrical Appliance Stores in Punjab The Name “Bajaj” as “Apna Bajaj Store” and “Bajaj Excellent” Bajaj Electricals Ltd the ‘Bajaj’.
- Gourav also offered domain name services through www.apnabajajstore.com. additional and greater strategic advantage over com in addition to the latter. Gourav received lot of notices but he did not turn up on any of the courts fixed once. Armed with such information, Bajaj therefore applied for interim injunction order to restrain Gourav from further carrying out any of the so-called infringing activities using the registered trademark ‘BAJAJ’ in the business or label or domain name etc. The scope of the requested injunction denied the use in any form including the use in

ISSUES OF THE CASE:

1. Whether Gourav Bajaj is violating trademark laws and passing off when he uses the Bajaj brand on his products?
2. Whether customer will be able to distinguish between Gourav Bajaj and Bajaj Group of Industries and whether he will perceive that Gourav Bajaj is misusing the name which will ultimately affect the Bajaj Group Of Industries image?
3. Whether Gourav Bajaj's use of the Bajaj name amounts to 'Unfair Competition' under the Trademarks Act, 1999 and causes wrongful injury to the trademark rights of Bajaj Electricals Limited?

CONTENTION:

Arguments from the Plaintiff's side:

- Bajaj Electricals contended that therefore Gourav Bajaj had to resort to the usage of the 'Bajaj' mark on his products as per Section 29 (2) of the Trademark Act, 1999. They asserted that the use of such a trademark by Gourav Bajaj would confuse customers and also that it would have a negative impact on Bajaj brand.
- Bajaj also argued that Gourav Bajaj was selling products using the name of Bajaj. It is also defined as marketing products with an assurance that the said products originate from another institution.
- This is according to Bajaj Electricals who argue that Gourav Bajaj's use of the Bajaj name amounts to an unfair competitive conduct as stated in the Trademarks conduct of 1999. Bajaj Electricals Limited and Another –v-. The State of Maharashtra and Ors. The quality that is associated with the Bajaj trademark is well known. as Bajaj Electricals explained.
- They claimed that the use by Gourav Bajaj of a similar trade mark would cause consumer deception and also constitute dilution of the Bajaj trade mark. The other non-critical component to Bajaj Electricals was the IPR and trademarks particularly.
- He further said that they feel that a trademark is an asset and Gourav Bajaj using a similar trademark without their permission is a violation of Trademarks Act, 1999.

Arguments from the defendant's side:

- Gourav Bajaj asserted that he has been using both his last name and even Bajaj for that matter he has been using and not just free riding on the Bajaj Electricals brand. He stated that his products targeted niche markets and therefore the confusion amongst the customers on the origin of the products would be minimal. Gourav Bajaj insisted on the fact that Bajaj electricals never sued him because he has been selling under the Bajaj brand for too long.
- This was to show that using the Bajaj name was not a new thing and also to further nullify the claim that he was using a popular brand like Bajaj Electricals to flog his goods. Gourav Bajaj defended his actions by arguing that 'unfair competition' did not

come into play because he was not using the 'Bajaj' name.

- He clarified that the business was completely dissimilar to Bajaj Electricals and that there was no intention to provide the notion or establish an impression that the products using the Bajaj trade name would come from his firm.

LEGAL PRINCIPLE USED IN CASE:

Section – 29(2)¹ of the Trade Marks Act, 1999

A registered trade mark is infringed by a person who uses in the course of trade a mark which because of a similarity to the registered trade mark is liable to be deemed to be used as a trade mark...:

- (a) its identity with the registered trade mark and the similarity of the goods or services covered by such registered trade mark; or;
- (b) it is similar to the registered trade mark and the identity or similarity of the goods or services covered by such registered trade mark; or.
- (c) its identity with the registered trade mark and the identity of the goods or services covered by such registered trade mark, is likely to cause confusion on the part of the public, or which is likely to have an association with the registered trade mark.

¹ The Trade Marks Act, 1999

APPLICATION OF LAW:

- The protection against the infringement of registered trademarks in India is covered under section 29(2) of the Trademark Act, 1999. In other words, it enumerates what can be considered a breach and states the grounds for legal action by the side of the owner of the registered trademark – the plaintiff.

Who can infringe?

- A non registrant or any other licensee.

What constitutes infringement?

1. Identity with Trademark & Similar Goods/Services: This is when the offending mark is an identical mark to the registered Trade Mark and the goods/services the offending mark is used in connection with are similar to the registered Trade Mark. An example is car brand XYZ MOTORS. For instance, if XYZ Motors are to use the same name to retail bicycles then this may amount to infringement under this clause.
2. Similarity to Trademark & Identity/Similarity of Goods/Services: This arises when the infringing mark is in some way similar to the registered trademark and where the goods and services upon which it is being used are in some semblance of similarity to the registration of the trademark.. For instance if ‘ABC sports’ is selling shoes and the competitor uses say ‘XYZ Athletics’ for shoes then there maybe a breach under this clause.
3. Identity with Trademark & Identity of Goods/Services: This is the least challenging situation as far as the case is concerned. It occurs where the offending sign is differs from registered trade mark but they are sign for same products or services. Even an obvious mentioning of ‘Coca-Cola’ instead of cola as a drink would be a violation under this provision.

JUDGEMENT IN BRIEF:

- The Bombay High Court delivered the judgement of Suit No. Writ Petition (Civil) No. 109 of 2012 filed in the name of Bajaj Electricals Ltd. Judicial decision in favor of Bajaj Electricals would success of an application for interim preventative relief in form of interim injunction restraining Gourav Bajaj from employing Bajaj tag.
- The court arrived at such a conclusion as Gourav Bajaj was using the Bajaj name on his products while such a practice had the potential to harm the Bajaj brand name. Further the court ruled that it is relatively simple to make consumer confuse the Bajaj Electricals' trademark 'Bajaj' with a 'real person' as compared to the person of Mr. Gourav Bajaj.
- Further it has been held on the basis of prima facie evidence given to it by the court that use of the claimed trademark name label and domain name by the defendant would be amounting to infringement of the Bajaj brand of the plaintiffs as well as the aforementioned artistic labels. And these are the same as and therefore, equivalent to, and similar to the plaintiff's well-known BAJAJ mark and thus, factually, and otherwise, of no consequence or matter to the court.
- This is in relation to a man referred to as BAJAJ since 1961 and hence on record by the court and registry as the well known person. The registrar has on point noted that it was during the assessment of the defendant's mark that the plaintiff's mark was noticed. These elements allow the plaintiff to prove that the defendant selected and employed the challenged name, trademark, label, and domain name with fraud.

RATIONALE:

- The said reasoning of the court can be traced in the case of Bajaj Electricals Ltd. Gourav Bajaj and Anr primarily relied on Trademark law specifically for infringement of registered trademarks and misrepresentation of products.
- The court carefully analyzed the evidence provided and considered such factors as the history of business activity of Bajaj Electricals and possible damage that might be incurred by Gourav Bajaj in case he continues using a similar brand mark.
- The court after taking into consideration above factors ruled out that Gourav Bajaj had infringed the rights of Bajaj Electricals as mentioned in the Trademarks Act, 1999.
- This entailed an examination of the market to ascertain whether Bajaj Electricals was infringing on other companies' intellectual property rights and trampling on trademarks that were already established in the market.

IMPACT OF THIS CASE:

- Trademark rights: There is a clear illustration of why registered trademarks must be protected. It is explicitly stated that the use of a famous trademark even if such use differs to some extent from the original is an infringement of trademark rights if such use is likely to violate the public interest by creating the impression of endorsement of the product by the holder of the trademark. This then provides a basis for the idea that Intellectual property rights should be protected to this level of security provided by the government.
- Well Known Trademark Establishing: The decision given by the court confirms the well known trade name of Bajaj Electricals, the firm do use of the trade name BAJAJ from 1961 and such trade name was also recognised by law in past. This helps in establishing a good precedence/leverage in becoming a well-known trademark that can help in providing even more legal backing against this kind of illegality.
- The case also proves how critical it is for the trademark holder to be alert for infringement. Trademark owners should also be informed to go for court action against potential infringers as soon as possible in order to avoid weakening of their interests in the process. This is a rather strange decision which may even make the owners of trademarks more vigilant in their future attempts to protect their rights.

CONCLUSION:

- Bajaj Electricals Ltd. Vs. Gourav Bajaj & Anr. is another of the most appropriate cases that illustrated the necessity to protect famous trademarks and promote fair competition. Bajaj Electricals Limited, the producers of consumer electrical devices in India, filed a case against its former Director – the son of the founder G. H. Bajaj – who owns ‘retail electrical’ outlets in India named BAJAJ.
- Bombay High Court was able to understand the reason provided by each side and was satisfied that the decision was in favour of Bajaj Electricals. The court found that the name Gourav Bajaj was used to market products that look interchangeably with those of Bajaj Electricals and hence would cause confusion. The jurisprudence on the well known nature of the Bajaj Trademark in Bajaj Electricals was settled by an earlier judgment in the year 1987 which was relied upon by the court.
- The case highlight several key principle:
 1. The infringement on rights to use registered trademarks and primarily mature registered trademarks because such use may be confusing to the consumers.
 2. This is achieved by an examination of the ‘Likelihood of Confusion’ which forms the basis of the distinction between similar trademark.
 3. The analytical potential includes the identification of manipulations including the activities of separate citizens or legal entities to profit from the popularity of well-known companies using similar emblems.

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