



4. The plaintiffs have led their ex-parte evidence by filing the affidavits by way of examination in chief of their Assistant Secretary Mr. Carl J. Roof.

5. It is the case of the plaintiffs and in evidence that the plaintiff No.1 an American Company has been carrying on business as manufacturers and traders of a variety of personal grooming products including gels, shaving foams, safety razors, blades, tooth brushes, toiletries, etc. under the trademark GILLETTE and Oral B. The plaintiff No.1 is the owner of trademark GILLETTE used in India also since 1986 for shaving blades, razors, shaving cream, shaving brush etc. The trademark registrations of GILLETTE in the name of the plaintiff No.1 in relation to shaving brushes, shaving cream, shaving soap, brushes, surgical, medical, dental, instruments etc. have been proved as Exhibit PW1/5 to Exhibit PW1/7. The plaintiff No.2 is an Indian Company and a subsidiary of plaintiff No.1 and is licenced to use the said trademark. The trademarks GILLETTE and MACH 3 are deposed/proved to be well-known trademarks having trans border reputation and having huge sales. The plaintiffs have been spending large amount of monies on advertisements to enhance the sales under the said trademarks of the said products.

6. The defendants are deposed/proved to have commenced marketing tooth brushes under the trademark GILLETTE and MACH 3, taking advantage of the reputation and to ride on the goodwill, of the plaintiffs. The colour photographs of the defendants tooth brushes have been proved as Exhibit PW1/18. The court commissioner has also along with the report filed the photographs and the packing material and which show that the defendants not only copied the trademark of the plaintiffs but have also copied the manner and style of writing the said trademark. Anybody seeing the tooth brushes of the defendants is likely to believe that the same are from the same stable from which the well known and reputed safety razors, blades, shaving cream, gels etc. under the same trademark are emanating, i.e. of the plaintiffs and are likely to purchase the same believing the same to be having the same class and quality as the other products of the plaintiffs. It is significant that though the trademark GILLETTE is not registered with respect to the tooth brushes but the plaintiffs are also carrying on business of manufacture and sale of tooth brushes though under the name Oral B but since the plaintiffs are in the business of tooth brushes, a purchaser is likely to be deceived into believing that the tooth brush of the defendants is in fact of the plaintiffs. There is even otherwise similarity in the two goods within the meaning of Section 29 (2) of the Trade Marks Act, 1999; both occupy same shelf in houses, hotels and are generally also sold from the same shelf.

7. Needless to state that the evidence of the witness of the plaintiffs as well as the report of the court commissioner remain un-rebutted.

8. I, therefore, find the plaintiffs to have established the case for grant of permanent injunction in terms of paragraphs 37 (i) to (iii) of the plaint. Though a large quantity of infringed goods were found by the court commissioner and given on superdari to the employee of the defendant No.2, the counsel for the plaintiffs has rightly stated that since the defendants have moved from the premises where the court commissioner visited and

could not be found, no purpose would be served in directing the relief of delivery of goods. The counsel for the plaintiffs, however, pressed for relief of damages and costs.

9. The witness of the plaintiffs has stated that the defendants have caused damage in excess of Rs.25 lacs to the plaintiffs.

10. Though there is no evidence of since when the defendants were carrying on the infringing business and what was the volume of its sales, but considering the quantities found by the court commissioner and following the principle laid down in Microsoft Corporation Vs. Yogesh Papat 2005 (30) PTC 245 (Del) holding that the plaintiff would be entitled to damages for the reason that it would be futile to direct the defendants to render accounts for the reason of the defendants carrying on business surreptitiously and in Time Incorporated Vs. Lokesh Srivastava 2005 (30) PTC 3 (Del) holding that where infringement is found, punitive damages should follow to discourage such law breakers, damages in the sum of Rs.5 lac are awarded to the plaintiffs and against the defendants.

11. Accordingly, a decree for in terms of prayer paragraphs 37 (i) to (iii) of the plaint and a decree for recovery of damages in the sum of Rs.5 lac is passed in favour of the plaintiffs and against the defendants. The plaintiffs shall also be entitled to costs of the suit. Counsels fees assessed at Rs.25,000/-.

Sd./-  
RAJIV SAHAI ENDLAW, J

February 02, 2009