

MOOT PROBLEM - 1

Unique Foods Pvt. Ltd. v. Mukesh Confectionaries Pvt. Ltd.

Facts of the case:

M/S Unique Foods (Pvt.) Ltd (herein after referred as UFP Ltd) is a Company incorporated in the year 1970 under the Companies Act. The Company having its registered office in Mumbai, has been marketing and selling biscuits with popular brands like MILKY and CRUNCHY. UFPLtd wanted to foray in to the ready to cook market. In 2007, the Company's Research and Development team came out with a Noodles. UFP Ltd applied for the marketing approvals from the Food Safety Board and got the approval in the year 2010. On 11-06-2009, UFP Ltd has applied for the registration of Trade mark **'KIDOS CHOICE'** in Ariel Black font (Italic) and in script form. UFP Ltd in its application limited the registration of trademark **'KIDOS CHOICE'** to color combination of white background and orange letters.

The registration of trademark was completed and a certificate was issued in favour of the UFP Ltd on 6-2-2012 for the trademark **'KIDOS CHOICE'** for Foods under class 30 of the Trademarks Act. After the completion of these formalities, UFP Ltd started marketing its new product Noodles, **'KIDOS CHOICE'** from 6-8-2012. UFP Ltd has number of consumers across the Hindi speaking regions. It launched this new product simultaneously in all the major towns of the State of Maharashtra. The product has been so successful that the consumers started purchasing this new product, Noodles, directly from the Company's outlet at Mumbai by placing orders on Company's Website and making payments through credit or debit cards and UPI, taking delivery at their doorsteps.

Another Company, M/s Mukesh Confectionaries (Pvt.) Ltd (Herein after referred to as M C Ltd) located in Pune which has been in to the manufacturing chocolates, started selling Noodles with a mark **'CHILDREN'S CHOICE'** in the script forma and in the same font as used by the UFP ltd. MC Ltd started marketing the **'CHILDREN'S CHOICE'** from 4-1-2010 in the Pune city itself. Ltd was using the **'CHILDREN'S CHOICE'** for its Noodles with green background and white letters.

On 4-6-2013, UFPLtd filed a trademark infringement suit against MC Ltd in Civil City Court, Mumbai for using similar mark or a mark with some identity to its registered trademark. UFP Ltd. also claimed the infringement of copyright for using the similar font and for the use of the word 'CHOICE'. In its suit UFP Ltd. claimed a preventive remedy of injunction restraining the defendants from using the mark and claimed the damages.

UFP Ltd. contested the suit and argued that there is no trademark infringement by merely using the word 'CHOICE'. It is argued that the word 'CHOICE' in the registered trade mark is a descriptive word and of a non- distinctive character. As such, the word 'CHOICE' is not protectable part of the registered trademark capable claiming exclusive rights over its use as per the provisions of the Trademarks Act. M C Ltd. asserted that it has been using trademark prior to the use of trademark by the UFP Ltd. and countered the suit by arguing that the prior user cannot be proceeded against by the later user as per the Act. UFP Ltd. countered the copyright infringement by arguing that there cannot be any copyright in any word or combination of words and their use in a particular font.

The Trial Court, on 22-06-2020 disposed the suit by granting permanent injunction and awarding damages of Rs. 20 Lakhs to UFP Ltd. Aggrieved by this, M C Ltd preferred an appeal to the High Court on the same grounds pleaded before Trial Court; further in the appeal M C Ltd also raised jurisdictional issue. It was argued that as per the provisions of the CPC the suit had to be instituted in Pune only because it happened to be the place of cause of action, also the defendant's place of business. Even under the additional forum (i.e. the plaintiff's place of business) provided in Trademarks Act, the suit has to be instituted in Mumbai only, being the place of cause of action and also as the UFP Ltd.'s branch is located at Pune and further its business takes place through online sales. The High Court of Mumbai on 7-7-2022 allowed the appeal.

Aggrieved by the order of the High Court, UFP Ltd. filed Special Leave Petition before the Supreme Court. The SLP is pending for the final hearing.

Issues:

1. a) Whether M C Ltd. is entitled to raise the jurisdictional issue before High Court for the first time, in an appeal? b) Whether online sales by the UFP Ltd. in Vijayawada will make Vijayawada as its branch office and there by exclusive jurisdiction be inferred on the Vijayawada Court?

2. Whether the word 'CHOICE' in the Registered Trademark **'KIDO'S CHOICE'** is not distinctive in character to disentitle the exclusive right to use it?
3. Whether the M C Ltd. has infringed the UFP Ltd.'s trade Mark "**'KIDO'S CHOICE'**" by using the trademark **'CHILDREN'S CHOICE'**?
4. Whether M C Ltd. can claim prior user rights for its trademark **'CHILDREN'S CHOICE'** over the UFP Ltd.'s trademark **'KIDO'S CHOICE'** ?
5. Whether M C Ltd. infringed the copyright in trademark of UFP Ltd.?

1. India is the largest democracy in the world. One of the responsibilities that the state owes towards all her citizens is to raise the level of nutrition and the standard of living and improve public health.
2. 'India Speaks', the newspaper which is in maximum circulation in India conducted a survey to find of the death rate in India. The survey reports are as follows:-
 - Around 80 % of the Indian population on economic front belongs to middle and lower classes.
 - In India, every year 8 persons die out of every 100; out of these 8 persons, 5 die due to lack of accessibility to proper medicines and all these 5 persons belong to middle and lower classes to society.
3. The survey took a way into vast spread agitation. Indian Parliament as result, decided to make drugs as Essential Commodities (Vital Drugs) Act, 2012. The Act came into force from 16th January 2012. The object of this Act is to make vital drugs available to the public at reasonably affordable price. However, the Parliament delegated the power to the Central Government to decide what drugs are vital.
4. In exercise of this delegated legislation, the Central Government divided drugs as:-
 - (i) Vital drugs of Basic Type and
 - (ii) Vital Drugs of Special Type.

The former includes drugs of all diseases other than those coming under special Type and the latter includes drugs for AIDS, Cancer of all kinds, brain haemorrhage, hepatitis, H1N1, brain tumour, tuberculosis affecting spine, brain and skin and diseases affecting heart, brain and kidney.
5. Central Government provided that, vital drugs of basic Type shall be produced 50% by Generic medicine producers and 50% shall be imported from abroad and it shall be available at a reasonably affordable price in Government hospitals. However the imported medicines will be available at their market price and the generic medicines at

- reasonably affordable price which is half the price of the medicine as defined by the Central Government in Private Hospitals.
6. The Central Government provided that the medicines produced by Indian Industries in which several Multi- National Companies have invested would be available at their market price in Government as well as Private Hospitals. The Central government provided that the medicines coming under vital drugs of Special Type would be available at market price.
 7. After the Annual Budget of 2012-13, prices of all essential commodities went high and the Government treasury as a result showed a great financial setback during the year as most of the money was utilized in producing of generic medicines and making imported drugs available to public at reasonable affordable prices by subsidizing
 8. Further, in August 2012, H1N1 outbreak occurred in India. Many of the people diagnosed with H1N1 were from middle and lower classes of the society. But as the medicines came under "Vital Drugs Special Type", they were available at market price and were beyond the reach of public due to which several persons belonging to these classes died.
 9. Issues began when Ramesh, an industrial worker, who suffers from syphilis, claimed the medicines for the same at a reasonable affordable price. As the government refused his claim, he approached Swasth Nagarik, a registered NGO; Swasth Nagarik made a representation to the Central Government to provide subsidies for vital drugs of Special Type or to make the production of the same under the generic medicine and to make available drugs for sexually transmitted diseases at reasonably affordable price.
 10. As the government did not reply to any of the representations, Swasth Nagarik filed a writ petition before the honourable Supreme Court challenging the Constitutional validity of the delegated legislation. The Government in its reply has challenged the constitutional validity of the Writ Petition.

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Indiyana is a democratic country and has a detailed Constitution along with varied laws. Priyanka, the daughter of Mrs. Supriya Deshmukh and Mr. Rohit Deshmukh is a well-established theatre artist in Pune, Maharashtra. Nitin, the son of Mrs. Anita Kulkarni and Dr. Abhinav Kulkarni is a English Literature professor at the Pune University.

Priyanka got married to Nitin as per Hindu Rites on 05th December 2007 and she shifted with Nitin to stay along with her in-laws at Shanker Sheth Road, Pune. In 2008, from the said wedlock the couple was blessed with a son named Kiyan. Although they belonged to a middle-class background, the family afforded all the comforts to Kiyan. Kiyan was immensely loved and pampered by his grandparents. Dr. Abhinav, the grandfather was a retired man from Armed Forces Medical College, enjoyed spending most of the time with his grandson. Dr. Abhinav used to take Kiyan to school all by himself and also used to bring him back, took him for vacations to hill stations and taught him to be self-discipline in life. The family led a happy life but unfortunately, when Kiyan was six years old, his father Nitin passed away in the year 2014 due to cardiac arrest. Immediately after the death of the husband, Priyanka shifted to her paternal home along with her son, Kiyan. There Kiyan was offered all the luxury as Mr. and Mrs. Deshmukh were quite well off.

As time passed, Priyanka got married to Mr. Reyansh Roy, a theatre artist from Bangalore on 29th November, 2016. Mr. Reyansh Roy already had three years old twins sons from his previous marriage, therefore Priyanka decided not take Kiyan along with her. She left her child with her parents.

Kiyan was pampered with love and gifts at his maternal grandparents' house. However, Mr. and Mrs. Deshmukh had to travel for stage performance to various cities. They would returned home to their grandchild only on the weekends. Caretakers were appointed for Kiyan, who were responsible for his well-being. Kiyan was admitted in the best school of Pune, which was 40 kms away from their home. The driver was responsible for taking him and bringing him back from school in their personal car. The child was also given expensive gadgets to play and pass his time with. Overall, the maternal grandparents 'gave him luxury and showered him with love whenever they returned.

When Mr. and Mrs. Kulkarni came to know about Priyanka's remarriage and the fact that she had not taken the child along with her, they asked Priyanka and her parents for the custody of the child to which they refused.

Aggrieved of this, Mr. Kulkarni filed an application under section 7 of the Guardians and Wards Act, 1890, for their appointment as guardian and custodian of the child in the Family Court on 25th February, 2017. Further, Mr. Kulkarni also filed a separate application before the Family Court for injunction against Priyanka restraining her from giving the child in adoption to anyone including her parents. The Family court vide its order dated 26th February, 2017 granted an ex-parte order of injunction against Priyanka as prayed for and issued notice to file objection by 26th March, 2017 for show cause.

Mr. Deshmukh appeared before Family Court and filed objection stating that the child was given to him in adoption by his daughter Priyanka, verbally on 22th February, 2017 and by a deed of adoption, which was executed and registered on 27th February, 2017.

Priyanka also filed her objection separately by stating that she was the natural guardian so the application for appointment of guardian was not maintainable.

In the meanwhile, Mr. Kulkarni had brought a separate suit before the District Judge for cancellation of the deed of adoption executed in favour of Mr. Deshmukh.

In the meanwhile, the Family Court rejected the prayer of Mr. Kulkarni on the ground that, in presence of the natural guardian, the Hon'ble Court cannot appoint any guardian. Further, the Family Court allowed the prayer of Priyanka on the sole ground that she was the mother (natural guardian) of the child. Being aggrieved by the decision of the Family Court, Mr. Kulkarni filed an appeal before the Hon'ble High Court questioning the validity of the order passed by the Family Court.

Mr. Kulkarni, challenged the validity of the decision of the Family Court on the ground that the Trial Court erred in holding that the crucial issue of regarding the welfare of the child for the appointment of guardian.

After hearing the parties, the High Court also rejected the appeal stating that there is no error of law made by the Family Court in its order.

Thereupon, Mr. Kulkarni filed an Special Leave Petition in the Supreme Court against the order of the Hon'ble High Court praying for the Guardianship and Custody of the Child. The Supreme Court has admitted the SLP and has called for a hearing on September 12th 2023.

NOTE: All the laws of Indiyana are Pari Material to that of India.

ISSUES

- Whether the Petition filed u/s 7 of the Guardian & Wards Act, 1890 is maintainable?
- Whether this Court has jurisdiction to entertain the petition as averred in view of the preliminary objection raised by mother that she is the natural guardian of the child. Is the application for appointment of guardian by the Petitioner maintainable?
- Whether the deed of adoption executed between the daughter, Priyanka and Mr. Deshmukh is valid and substituting?
- Whether the Petitioner is entitled to any of the reliefs prayed for?