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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 29th November, 2022

+ **CS (COMM) 800/2022 and I.A. 19042/2022**

SWISS BIKE VERTRIEBS GMBH SUBSIDIARY OF ACCELL GROUP Petitioner

Through: Ms. Manisha Singh, Mr. Abhai Pandey, Mr. Varun Sharma, Mr. Gautam Kumar, Ms. Swati Mittal, Mr. Aditya Goel & Ms. Shivani Singh, Advocates.

versus

IMPERIAL CYCLE MFG. CO. (PARTNERSHIP FIRM) & ANR. Respondents

Through: Mr. Atul Sharma, Mr. Sanjay Gupta, Mr. Abhinav Sharma & Mr. Ayush Srivastava, Advs (M-9557423051)

**CORAM:
JUSTICE PRATHIBA M. SINGH**


Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The competing marks in the present case are 'RALEIGH' and 'RALLIES' for bicycles/cycles/bikes.
3. This suit has been filed on behalf of the Plaintiff - Swiss Bike Vertriebs GMBH a subsidiary of ACCELL Group based out of Switzerland, against Defendant No. 1 - Imperial Cycle Mfg. Co. and Defendant No.2 - Rocket Cycles Private Limited (*"hereinafter collectively as, Defendants"*) seeking permanent injunction restraining them from committing acts of trademark infringement, passing off, etc. with respect to the Plaintiff' mark - 'RALEIGH' used for bicycles/cycles/bikes.
4. The Plaintiff is in the business of manufacturing and selling of


bicycle/ cycles/bikes and has an international presence. It owns and operates a wide range of bike/bicycle brands throughout Europe including 'RALEIGH'. The history of the 'RALEIGH' mark is claimed to be more than 125 years old when it originated in Nottingham, U.K. The business is stated to be founded in 1887 in the name of Raleigh Cycle Co. Ltd. and the mark 'RALEIGH' is used for a wide product base i.e., for children's bikes, city bikes, mountain bikes, etc globally. The same are publicised through the Plaintiff's website www.raleigh.co.uk which was registered in 1998 as also through various social media platforms such as Facebook, Telegram, LinkedIn, Twitter, YouTube, etc.

5. Insofar as the Indian presence of the Plaintiff's mark is concerned, as per certain press articles, it is claimed that bicycles/cycles/bikes under the said mark were imported for the first time in India in 1910. Bicycle products were initially manufactured in Siliguri, India in the late 1920's - early 1930's by Sen-Raleigh Cycle Factory, Asansol (West Bengal) and sold under the mark 'SEN-RALEIGH'. Thereafter, the Plaintiff through its predecessors in titled commenced the use of the mark 'RALEIGH' and its different variations in India in 1939.

6. As of 2012, a distributorship and license agreement is stated to have been entered into between the Plaintiff and M/s Naren International (*"hereinafter, Indian Licensee"*), a company based out of Ludhiana, Punjab for exclusively manufacturing, importing, selling and distributing 'RALEIGH' bicycles products in India. The said mark is also a registered trademark in India, details of the registrations have been set out in the plaint. Illustratively, some registrations of the Plaintiff are set out herein below:

Trade Mark, Application Number & Date	Class & Goods' specification	Status
 <p>Trademark Application no. 1285 dated June 22, 1942</p>	<p>Class: 12 Goods: BICYCLES, MOTOR BICYCLES AND TRICYCLES</p>	Registered
<p>RALEIGH THE ALL-STEEL BICYCLE Trademark Application no. 92083 dated February 02, 1944</p>	<p>Class: 12 Goods: BICYCLES, TRICYCLES, THEIR PARTS AND ACCESSORIES NOT INCLUDED IN OTHER CLASSES</p>	Registered

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<p>RALEIGH</p> <p>Trademark Application no. 143830 dated June 01, 1950 claiming use since January 1, 1939</p>	<p>Class: 12</p> <p>Goods: BICYCLES, THEIR PARTS AND ACCESSORIES INCLUDED IN CLASS 12.</p>	Registered
 <p>Trademark application No. 147188 dated February 1, 1951</p>	<p>Class: 12</p> <p>Goods: Parts of Bicycles, Motor Bicycles and Tricycles.</p>	Registered
<p>THE RALEIGH (DEVICE)</p> <p>Trademark Application no. 391077 dated November 30, 1951</p>	<p>Class : 12</p> <p>Goods: BICYCLES, MOTOR-BICYCLES AND PARTS OF ALL SUCH GOODS, BABY CARRIAGES, PERAMBULATORS, SIDECARS, TRAILERS, INVALID CARRIAGES, CYCLE CARS AND TRI-CARS</p>	Registered
<p>RALEIGH</p>	<p>Class: 28</p>	Registered

Trademark application no. 1380126 dated August 10, 2005	Goods: SPORTING APPARATUS AND EQUIPMENT, FITNESS AND EXERCISE APPARATUS AND EQUIPMENT, PARTS AND FITTINGS FOR ALL THE AFORESAID GOODS INCLUDED IN CLASS 28	
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7. The Defendant No.1 is a partnership firm which is a dealer in bicycles and bicycles parts. Defendant No.2 is a company duly incorporated in India engaged in the business of manufacturing and supplying of bicycles and its parts. Both these entities are based out of Ludhiana, Punjab and are run by the same set of people. The Defendants are engaged in the manufacturing and selling of bicycles, city bikes, etc. under the mark 'RALLIES'. As per the Defendants' documents the sales of their bicycle products under the said mark is since 2018-19 and the total sales claimed for the last four years is a total of Rs.15 crores. A trademark application was filed by the Defendants, in 2002 for the word mark 'RALLIES' bearing no. 1101332 in class 12 claiming a user since 1999, however the same was abandoned. Thereafter the Defendants No.1 filed trademark application no. 3617279 for in Class 12 for Bicycles & its parts including tyres and tubes claiming usage from 1999, the same was granted registration. The Defendants promote and sell their products on their website www.ralliesbikes.com which was registered recently on 1st June, 2020.

8. The case of the Plaintiff is that the adoption of the mark 'RALLIES'

by the Defendants is violative of the Plaintiff's statutory and common law rights as the Defendants' mark is phonetically similar to the Plaintiff's mark 'RALEIGH'. It is further submitted that the Defendants are not merely copying the mark but also various other attributes such as colour combination used on the bikes, images of the Plaintiff's bicycles and even the Plaintiff's advertisement poster. The said poster is also available on the Defendants' website. Further, the Defendants are also portraying that their bicycles are manufactured in U.K. Thus, the case of the Plaintiff is that there is bound to be confusion between the two marks as the products and business of the parties are identical. Hence, an *ad-interim* injunction is sought.

9. The present suit was listed on 21st November, 2022. The Defendants were represented by Mr. Atul Sharma. Id. Counsel on the said date and after a short preliminary hearing, considering the stand of the Defendants, the following order was passed by this Court:

"11. The Plaintiff's Indian licensee has also opposed the application for registration of the Defendants' mark, 'RALLIES' which was applied on 21st August, 2017 bearing application no. 3617279. In these facts and circumstances, it is directed that the Defendants shall, by 23rd November, 2022 file a complete compilation of documents showing user details of the mark along with a Chartered Accountant's certificate giving the exact sales of the products under the mark 'RALLIES' along with the series of any other marks and products which are sold by the Defendants. Advance copy of the same shall be served upon the Plaintiff."

10. A compilation of documents was filed by Id. Counsel for the Defendants. On the prayer for ad-interim relief, detailed submissions were

made by Mr. Jayant Mehta, Id. Sr. counsel and Mr. Atul Sharma, Id. Counsel on 24th November, 2022.

11. The matter was listed for orders today. Prior to the Court announcing the order, Id. Counsel for the Defendants has upon instructions from Mr. Karan Mahajan, who is present in Court and is a partner in M/s. Imperial Cycle Mfg. Co. and a Director in Rocket Cycles Private Limited has submitted the following without prejudice proposal:

“Defendants are ready to give up use of the trademark "RALLIES". However, the Defendants would require time to clear the existing stock of RALLIES cycles, which is detailed below:

A	RALLIES STOCK AS ON 25.11.2022		
1	IMPORTED RALLIES STOCK	2300	PCS
2	INDIAN RALLIES STOCK	1244	PCS
3	IN PIPELINE (INDIAN STOCK)	400	PCS
	TOTAL STOCK	3944	PCS
C	TIME REQUIRED TO DISPOSE	18	MONTHS

The Defendants would require 18 months to clear the aforementioned stock as the bicycle industry is going through a rough phase and the Defendants are facing a slump in sales. Further, the imported stock is more expensive and would therefore, require more time to sell. In light of the above, the Defendants are seeking time of 18 Months to clear the stock of RALLIES cycle stated above and undertake that no bicycles will be manufactured, marketed or sold by the Defendants under the trade name "RALLIES" apart from the aforementioned stock.”

12. Considering the above proposal, Id. Counsel for the Plaintiff wishes to seek instructions from his client. However, in view of the fact that the Defendants have agreed to give up further manufacture and sale of the products being bicycles, motor-bicycles and parts of all such goods, baby

carriages, perambulators, sidecars and, trailers under the mark 'RALLIES', the *interim* injunction would be liable to is granted.

13. The undertaking of the Defendant is accepted. The Defendants shall cease manufacture as well as advertising in physical shops and through online platforms including e-commerce platforms of all such goods mentioned above, under the mark 'RALLIES' or any other mark which is identical/deceptively similar mark to the Plaintiff's mark 'RALEIGH'.

14. Insofar as the existing stock of the Defendants is concerned, the Defendants have prayed for 18 months to dispose of the same. Considering that the total stock of products is approximately 4,000 pieces, amounting to Rs. 1.2 crores, time is granted till 15th November, 2023 for the Defendants to dispose of the existing stocks in their custody. It is, however, made clear that there shall be no fresh manufacture of the products under the impugned mark. After the said date, none of the products under the mark 'RALLIES' shall be made available in the physical stores or on the e-commerce platforms. The Defendants shall also shut down their website i.e., www.ralliesbikes.com within one week from today.

15. The *interim* application being **IA No. 19042/2022** is disposed of in the above terms.

16. The statement extracted above, shall be filed by way of affidavit by Mr. Mahajan, Id. Counsel for the Defendants within one week.

17. Parties to appear before the Roster Bench on 13th December, 2022.

18. The matter shall no longer be treated as part heard.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 29, 2022/dj/kt