

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
NOTICE OF MOTION (L) NO. 155 OF 2017
IN
COMMERCIAL SUIT (L) NO. 150 OF 2017

Rubiks Brand Ltd & Anr ...Plaintiffs
Versus
Mahesh Vaman Manjrekar & Ors ...Defendants

Mr Ashish Kamat, *with Aakash Rebello, Rohan Rohatgi, Sunny Punamiya & Sujata Chaudhary, i/b SSP Legal, for the Plaintiffs.*

Mr SD Butala, *i/b Harshad Bhadbhade & Harshad Sathe, for Defendant No. 1.*

CORAM: G.S. PATEL, J

DATED: 5th April 2017

PC:-

1. This is one of those rare passing off actions that ought to be decreed the moment it is filed. The 1st Defendant is a film maker of some repute. It seems he proposes to make a film in Marathi, *Rubik's Cube*. He seems to believe that this, the name of an extremely popular puzzle, one that has achieved almost legendary status in the public domain, is one that he can freely adopt and use

at will, including as the title of his feature film. He ought to be disabused of this notion as rapidly as possible.

2. There is a two volume plaint with copious detail as to how the Plaintiffs have rights in respect of this well known puzzle and toy. They have international registrations. Plaintiff No. 1 has the exclusive right to market and distribute the Rubik's Cube puzzle. There are figures annexed to the Plaint and in the body of the Plaint attesting to the high sales of these products. It is hard to believe that the Defendants are unaware of this. The very word **Rubik's Cube** is an invented and coined work when attached to this puzzle. **Rubik's Cube** connotes one and only one item, viz., this puzzle or toy. Although there may be variants in the puzzle, the entire mark connote only this puzzle and this puzzle comes only from the Plaintiffs and no one else.

3. In addition, the Plaintiffs have registration of the mark **Rubik's Cube** in international jurisdictions. All of these are set out in the plaint. I am not concerned with the intention of the 1st Defendant in adopting the mark as the title of his forthcoming Marathi feature film. It is well settled in passing off that intention is immaterial and that fraud is not a necessary element. The three tests are well known. As to reputation and goodwill, there is nothing that Defendants can possibly say to assail the Plaintiffs' claims to both.

4. As to misrepresentation, there is no manner of doubt that by the Defendants using exactly the Plaintiff' mark, anyone would be led to believe that the 1st Defendant's film has something to do with

the Plaintiffs' well-known mark as applied to an extremely popular and well-known puzzle or toy. There is, therefore, clearly the kind of misrepresentation that is contemplated in an action in passing off. Damage of course need not be proved, but it is one to my mind suggests itself.

5. It is to the last two of these, i.e, the misrepresentation and the eminent likelihood of damage that I will turn my attention because this is also brought forth in the plaint. There is the necessary averment in paragraph 56. The Defendants' knowledge of the Plaintiffs' *Rubik's Cube* is apparent from the use in the Defendants' promotional poster of the very mark written in four of the six colours of the puzzle. The tag-line or slug of the film is a direct reference to the toy itself. In any case, the Defendants' publicity material from Exhibit "AK" onwards shows, page after page, all the way to Exhibit "AM-12" (pages 369 to 390) the blizzard of publicity that the Defendants have given their film which uses the Plaintiffs mark as its title. I would imagine that there is already considerable damage caused to the Plaintiffs in terms of dilution of their brand and their mark.

6. The Plaintiffs sent a cease and desist notice on 3rd March 2017 (page 391). To this they have received a holding reply only after the Suit was filed. The 1st Defendant is said to be travelling. That is totally irrelevant. Surely instructions can be obtained even digitally.

7. There will be an ad-interim injunction in terms of prayer clause (b), an overwhelming *prima facie* case having been made out, and the balance of convenience being in favour of the Plaintiffs. Moreover, incalculable harm would be caused to the Plaintiffs if an injunction is refused.

8. In addition, the 1st Defendant will disclose the exact address and particulars of Defendant No. 2. This is to be provided to the Plaintiffs within one week, i.e., on or before 13th April 2017.

9. The Defendants are restrained from continuing to work on any film or other material bearing the name or title ***Rubik's Cube*** or the word ***Rubik*** in the title.

10. There is of course no question of the Defendants releasing a film with this title either. They are restrained from doing so, pending the disposal of this Notice of Motion.

11. Affidavit in Reply to be filed and served on or before 16th June 2017. Affidavit in Rejoinder to be filed and served on or before 14th July 2017.

12. List the Notice of Motion for hearing and final disposal in the usual course thereafter.

13. The 1st Defendant's Advocates undertakes to communicate a copy of this order to the 2nd Defendant and 3rd Defendant immediately.

