

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

% Date of Decision : 26<sup>th</sup> March, 2014

+ **CS(OS) 523/2008**

M/S INTER IKEA SYSTEMS BV ..... Plaintiff  
Through: Mr. S.K. Bansal, Mr. Ajay Amitabh  
Suman and Mr. Pankaj Kumar, Advs.

versus

M/S IKEA FURNITURE PVT. LTD. .... Defendant  
Through: None

**CORAM:**  
**HON'BLE MR. JUSTICE G.S.SISTANI**

**G.S.SISTANI, J. (Oral)**

1. Plaintiff has filed the present suit for permanent injunction restraining infringement of trade mark, passing off, delivery up, damages etc.
2. Summons in the suit and notice in the application under Order XXXIX Rules 1 and 2 were issued on 24.03.2008. Fresh summons were issued to the defendant on 30.04.2008, 12.11.2008 as also on 25.02.2009. As per the order dated 30.04.2009, summons sent through ordinary process were received back unserved with a report that the defendant was unavailable on the given address. Vide order dated 31.08.2010 the defendant was directed to be served by way of publication in the daily newspaper "The Hindu" (Chennai edition). Despite service through publication, none appeared for the defendant and accordingly, vide order dated 01.02.2011 the defendant was proceeded *ex parte*.
3. Plaintiff has filed *ex parte* evidence by way of affidavit of PW-1, Ms. Surbhi Bansal, Constituted Attorney of the plaintiff. The *ex parte*

evidence by way of affidavit of PW-1 is marked as Ex. PW-1/A.

4. In her affidavit, PW-1 has deposed that the plaintiff is the worldwide owner of the IKEA trademarks and the IKEA Concept which it franchises to its franchisees for the operation of the IKEA Stores in which a wide range of furniture, accessories, bathrooms and kitchen fittings, home and office furnishing products; stationery including paper and paper articles; tools and implements are sold and also for the purpose of running and managing of retail stores and offering services in connection therewith and allied goods and services falling in Classes 2, 8, 11, 16, 18, 20, 21, 24, 25, 27, 28, 29, 30, 31, 35, 36, 39, 41, and 42 as detailed and described in Fourth Schedule appended to Trade Marks Act, 1999.
5. PW-1 has further deposed that the plaintiff is the proprietor of their celebrated and internationally renowned Trade Mark IKEA (word per se, stylized, as a device, in Hindi and local languages) as also of their trade name M/s Inter IKEA Systems BV of which the word/mark IKEA forms a significant, material and a key constituent (hereinafter jointly and collectively referred to as the “said trade mark/trade name” and to be construed, understood and interpreted in this manner). The Representation of the plaintiff’s Trade Mark IKEA is placed on record and the same is being exhibited as **EXHIBIT-PW1/1**.
6. PW-1 has further deposed that the artworks involved in the various stylized and device formats of the said trade mark have been created over a period of time and the plaintiff owns the copyrights therein by virtue of them being original artworks. All references to the plaintiff’s said trade mark/trade name include the respective artworks involved.

The true representation of said Trade Mark of the Plaintiff has been given below:



**IKEA®**

7. PW-1 has next deposed that the founder of the plaintiff coined, conceived and adopted the trade mark IKEA in about the year 1943. Ever since its bonafide and honest adoption in about the year 1943, the plaintiff has been honestly, commercially and in the course of trade using the said trade mark/trade name in relation to its said goods and business and has built up a globally valuable and enduring trade, goodwill and reputation thereunder. IKEA is a rare, coined, unique word having all the trappings of an invented mark and is an inherently strong mark.
8. PW-1 has also deposed that the plaintiff initially around the year 1943 started using his said trade mark/trade name in relation to pens, wallets, picture frames, table runners, watches, jewellery and *nylon stocking* etc. and in about the year 1947 the plaintiff started using the same in relation to furniture. Ever since then the plaintiff has been expanding and extending the use thereof to a wide range of its goods and business and intends to further expand the use thereof over a

period of time and to cover more and more countries of the world and across all regions and territories.

9. It has further been deposed by PW-1 that as of now the plaintiff's said goods and business under its said trade mark/trade name are branded and sold in over 75 countries of the world and across all continents and regions including in India where in addition to its actual use the plaintiff also enjoys its transborder reputation and use. The plaintiff's said goods are sold and traded through its extensive marketing network including through retail, internet, e-commerce and its affiliates/subsidiaries.
10. PW-1 has next deposed that the plaintiff immensely values and guards its Intellectual Property Rights. A list of plaintiff's registered trade mark IKEA in different classes is placed on record and the same is marked as **MARK – A (COLLY)**. Status report of the plaintiff's trademark IKEA under nos. 471123, 471124, 471125, 616434, 7742408, 772410, 772411, 772412, 772413, 772414, 772415, 772416, 772417, 772419, 772420, 772421, 772422, 772423, 772424, 772425 are placed on record and the same are exhibited as **EXHIBIT-PW1/8**. PW-1 has also deposed that the plaintiff has placed on record the list of pending applications for registrations of the plaintiff's trademark and the same is marked as **MARK-B (COLLY)** and copies of registration certificates of the plaintiff's in different countries and details thereof are marked as **MARK – C (COLLY)**.
11. Ms Surbhi Bansal, PW-1 has next deposed that the sales for the IKEA Group for the financial year 2004 (1 September 2004 – 31 August 2005) are 14.8 billion Euros and for the financial year 2006 (1 September 2005 – 31 August 2006) are 17.3 billion Euros. The sale of the plaintiff has been steadily increasing. The Plaintiff's said

Trade Mark IKEA stood amongst the top 50 Brands in the BEST GLOBAL BRANDS 2010. Copy of Invoice bearing No. IKI/BA7/208110 dated 16.10.2007 is being exhibited as **EXHIBIT-PW1/9**.

12. PW-1 has further deposed that the Plaintiff is an international home products company whose franchisees sell ready-to-assemble furniture such as beds and desks, appliances and home accessories. The company's franchising network is the world's largest furniture retailer and Plaintiff has regularly and continuously been promoting the said distinctive trade mark/trade name and the goods and business there under through extensive advertisements, publicities, promotions, marketing and marketing research and the plaintiff has been spending enormous amounts of money, efforts, skills and time thereon. The plaintiff has been doing so through various means and modes including through the visual and print media, in leading newspapers, trade literature & magazines, over the internet etc. and all of which have tremendous reach, availability and circulation world over including in India. Copies of advertisements and other sales promotional literature of the plaintiff as published and circulated are placed on record and the same is collectively exhibited as **EXHIBIT-PW1/6 (COLLY)**.
13. PW-1 has also deposed that the plaintiff's said trade mark/trade name have acquired enviable and enduring goodwill, reputation and users in India as also in the international markets.
14. PW-1 has next deposed that the plaintiff's said goods and business are known, recognized, demanded, sold and traded world over with reference to its said trade mark/trade name. The members of the trade, industry, the consumers and general public at large in India and world over are well aware of the plaintiff, the plaintiff's said trade

mark/trade name and the plaintiff's said goods and business thereunder. PW-1 has further deposed that the plaintiff's said trade marks/trade name are well known Trade Marks within the meaning of Section 2 (1) (zg) of the Trade Marks Act, 1999. Brochure of the plaintiff is placed on record and the same is being exhibited as **EXHIBIT-PW1/3** and **EXHIBIT-PW1/4**.

15. PW-1 has also deposed that plaintiff's said trade mark/trade name has become distinctive, and is associated with the plaintiff and plaintiff's said goods and business only. The purchasing public, the trade and industry at large in India and world over identify and distinguish the plaintiff's said goods under the said trade mark/trade name with the plaintiff and from the plaintiff's source and origin alone and regard them as a high quality product exclusively as that of the plaintiff.
16. It has further been deposed by PW-1 that the Plaintiff has adopted the said Trade Mark IKEA as an essential and material part of its Domain Name viz [www.IKEA.com](http://www.IKEA.com) as well.
17. PW-1 has also deposed that M/s Ikea Trading (India) Pvt. Ltd., is an Indian subsidiary/affiliate of the plaintiff in India. It has further been deposed by PW-1 that the said Indian subsidiary of the plaintiff is one of the 40 odd superstar trading houses in India. This is a special status accorded by the Government for companies with trading activities in excess of INR 7 billion (USD 140 million) per year. IKEA INDIA is a major regional buying center for the IKEA GROUP, *specializing in purchases of textiles and fabrics* from South Asia comprising India, Pakistan, and Sri Lanka.
18. PW-1 has next deposed that in view of the plaintiff's proprietary rights both statutory and common law in its said trademark/trade name/domain name, its goodwill and reputation, the plaintiff has the exclusive rights to the use thereof and nobody can be permitted to use

the same or any other deceptively similar trade mark/trade name/domain name thereto in any manner whatsoever, in relation to any specification of goods without the leave and license of the plaintiff.

19. PW-1 has further deposed that the defendant M/s IKEA Furniture Private Ltd., No.1 and 2, Balaji Nagar II ST, Royapettah, Chennai-14 is apparently engaged in the same trade and business as that of plaintiff namely manufacture of furniture etc.
20. PW-1 has also deposed that the defendant has adopted and started using or intends to use, in relation to its impugned goods and business an identical trade Mark/ trade name **IKEA** (hereinafter referred to as the “impugned Trade Mark/ Trade Name) and the impugned trade mark/ trade name as copied and imitated by the defendant is identical with and deceptively similar to the plaintiff’s said trade marks/trade name IKEA in each and every respect including phonetically, structurally, in its basic idea and in its essential features. The impugned goods and business thereunder are of the same/similar/allied/cognate nature and description as that of the plaintiff.
21. PW-1 has further deposed that the defendant by the adoption and use of the impugned trade mark is violating the plaintiff’s statutory and common law right in the said trademark and trade name and thereby infringing plaintiff’s registered trademark(s) and passing off and enabling others to pass off their goods and business as that of the plaintiff as well as diluting the plaintiff’s proprietary rights and goodwill and reputation therein.
22. Ms. Surbhi Bansal, PW-1 has further deposed that the defendant is fully aware or ought to be aware of the plaintiff’s rights, goodwill, reputations, benefits and users etc. in the plaintiff’s said trade mark,

trade name & domain name at the time of their impugned adoption and use of the impugned trademark. The resemblance between the rival trade mark / trade name is so close that it can hardly occur except by deliberate imitation.

23. It has further been deposed by PW-1 that the defendant has adopted and started using the impugned trade mark/ trade name dishonestly, fraudulently and out of positive greed with a view to take advantage and to trade upon the established goodwill, reputation and proprietary rights of the plaintiff in the plaintiff's said trade mark/ trade name. By the defendant's impugned adoption and use, deception and confusion is ensuing and/or is likely to so ensue in the market and amongst the general public at large. The plaintiff's said trade mark is otherwise being diluted and eclipsed thereby and any person not knowing clearly the relationship between the parties to this action is bound to be confused by the defendant's impugned adoption and use and might well do business with the defendant thinking that he is dealing with the plaintiff or that some strong, vital and subtle links exist between the plaintiff and the defendant. The defendant intends to encash upon the hard earned goodwill of the plaintiff.
24. PW-1 has further gone on to depose that due to the defendant's impugned activities, the plaintiff is suffering/ought to suffer massive losses and damage both in business and in reputation and as such these losses and damage are unliquidated; monetarily being incapable of exact and accurate assessment. Unwary purchasers and trade persons are being confused and deceived/likely to be deceived as to the origin of goods and business. It has further been deposed that the defendant in view of its impugned business activities is liable to pay damages to the plaintiff to the tune of minimum Rs. 20,000,01/-.

25. PW-1 has also deposed that the plaintiff in the month of August, 2007 launched inquiries through the trade to ascertain the defendant's activities under the impugned trade mark/trade name. The said enquiries revealed that the defendant has so far not started using the impugned trade mark/trade name in the course of trade on its vendible impugned goods and business and nor has the plaintiff so far come across any of the impugned vendible goods under the impugned trade mark/trade name in the market, however, the defendant is soliciting trade, distribution and marketing networks in relation to the impugned goods under the impugned trade mark/trade name in Delhi and other parts of the country. The defendant has all the intention of commercially using the impugned trade mark/trade name in relation to the impugned goods/business if not already so used. The defendant's user, thereof if any would be clandestine, surreptitious, sporadic, restricted, minimal and very recent and that too without issuing any formal bills and invoices making it very difficult to detect and verify the precise nature of the defendant's activities and therefore the defendant's use of impugned trade mark/trade name, if any, is void *ab-initio*.
26. I have heard counsel for the plaintiff and carefully perused the documents which have been placed on record along with the affidavit by way of evidence of PW-1. Plaintiff has proved the copies of its trade mark registration certificates in different classes in India which have been marked as Mark-A(Colly). Plaintiff has also proved its copies of legal proceeding certificates which have been exhibited as Ex. PW-1/14. Plaintiff has also proved its pending applications for registration in India and the same are marked as Mark-B (Colly). Further, plaintiff has proved the copies of registration certificates of the plaintiff in different countries across the world which have been

marked as Mark-C (Colly). Plaintiff has also proved the copies of advertisements and other sales promotional literature of the plaintiff which is exhibited as Ex.-PW-1/6 (Colly) as also its brochure which has been exhibited as Ex. PW-1/3 and Ex. PW-1/4. Plaintiff has also proved the downloaded documents from its website which is exhibited as Ex.-PW-1/5. In addition to the above, plaintiff has also placed reliance on copies of news reports showing commencement of plaintiff's activities in India which are exhibited as Ex. PW-1/13.

27. On the basis of the documents placed on record, plaintiff has been able to prove that the plaintiff is the registered proprietor of the trade mark "IKEA" not only in India but is the worldwide owner of its "IKEA" trade marks which is evident from the certificates of registrations placed on record. Plaintiff has also established that the plaintiff has created various stylized and device formats of the said trade mark over a period of time and hence the plaintiff owns the copyright therein by virtue of them being original artworks. Plaintiff is an international company that deals in ready-to-assemble furniture, home accessories etc. Plaintiff has also established that the trade mark "IKEA" was coined by the plaintiff as far back as in the year 1943, which is evident from the timeline displayed by the plaintiff on its website. Furthermore, the plaintiff has been able to establish that over a period of time, the plaintiff has diversified not only with respect to its products and services but also in terms of its presence and business operations in various countries world over, including India. By virtue of its presence across more than 70 countries in the world, which is evident from the perusal of its sales promotional literature placed on record, plaintiff has been able to prove that it enjoys trans border reputation and boasts of an extensive marketing network through internet, retail, e-commerce and its

affiliates/subsidiaries. Further, the plaintiff has established that ever since its adoption, the plaintiff has been using the said trademark regularly and continuously and in fact, the plaintiff has been promoting the said mark along with the goods sold thereunder through extensive advertisements, publicity, promotions and marketing by way of publication/broadcast through print/visual media including leading newspapers, magazines etc. In addition to the above, plaintiff has also placed reliance on the an article published in the magazine, "The Business Week", wherein, the plaintiff company has been rated among the top 50 brands in the year 2002 as also in the year 2010. The plaintiff has successfully established that the plaintiff's trade mark has acquired an enviable and enduring goodwill, reputation and users not only in India but across numerous countries inasmuch as the plaintiff's goods are known, recognized, demanded, sold and traded worldwide with reference to its trade name/trade mark IKEA. The evidence of the plaintiff remains unchallenged and unrebutted.

28. In the case of *Evergreen Sweet House Vs. Ever Green and Ors.* reported at 2008 (38) PTC 325 (Del), it was observed as under:

"15.... Section 29(1) deals with a situation where the defendant uses a mark, which is identical or deceptively similar to that of the plaintiff, in respect of the same goods or services, and in such manner that it is likely that such use is taken as being an use as a trademark. This amounts to infringement. To fall within Section 29(1), the defendant's use of the mark must be so that it is likely that the public assumes that the said mark is used as a trademark. Section 29(2) deals with three situations; one where the defendants mark is identical to that of the plaintiff and in respect of similar goods. Two, where the marks are similar and in respect of goods which are identical or similar. Three, the marks as well as the goods are identical. Infringement does not take place if only one of the three ingredients are satisfied; the plaintiff has to prove that use by the defendant

is likely to cause confusion on the part of the public or is likely to have an association with the registered mark.”

29. Having regard to the evidence on record and comparing the impugned trademark of the defendant with that of the plaintiff, I am of the view that the impugned trade mark of the defendant “IKEA” is identical to that of the plaintiff in each and every respect including phonetically, structurally, in its basic idea and in its essential features. Furthermore, the defendant is engaged in the same trade/line of business as the plaintiff namely manufacture of furniture etc. It has been established by the plaintiff beyond reasonable doubt that the said distinctive trade mark “IKEA” has come to be associated with the plaintiff and plaintiff’s goods for a long time now and the purchasing public and the industry at large distinguishes and identifies the goods under the said trade mark as originating from the plaintiff. In light of the above, in my view, adoption of an identical mark by the defendant, that too in the same line of business, is malafide and illegal as it is bound to cause confusion and deception in the minds of public at large with respect to the source of the goods originating from the defendants and many existing/prospective consumers may assume a commercial link/nexus between the plaintiff and the defendant and otherwise also adoption of the impugned mark by the defendant will lead to dilution of the trade mark of the plaintiff if the quality of products originating from the defendant is inferior to that of the plaintiff. Furthermore, by projecting such a commercial connection or relationship with the plaintiff, the defendants would be encashing on the hard earned goodwill and reputation established by the plaintiff over the period of years and passing off their goods as those of the plaintiff.

30. The plaintiff has also claimed damages on account of illegal profits earned by the defendant along with delivery up of the goods bearing the trade mark “IKEA” or use of the said mark as their trade name or a constituent of their trade name.
31. Order sheets show that despite service of summons, the defendant has deliberately stayed away from the present proceedings to ensure that an enquiry into their accounts for determination of damages cannot take place. In the case of *Tata Sons Ltd. v Hoop Anin & Ors.* reported at 188(2012)DLT327 punitive damages to the tune of 5 lacs were awarded to the plaintiff. Relevant paras of the judgment are reproduced below:

“9. The plaintiff has also claimed Rs. 20,05,000/- as damages from defendants No. 1 & 2. Dealing with the damages, this Court in *Tata sons Ltd. v. Manoj Dodia & Ors. (supra)* inter alia observed as under:

The promotion and building of a Trade Mark, particularly a mark which is used in relation to a variety of good and/or services, requires considerable efforts, skill and expenses. The brands are not built in a day, it takes years to establish a brand in the market. Moreover, brand equity can be earned only if the quality of the product sold and/or services provided under that name are consistently found to be of superior quality. No amount of marketing efforts and promotional expenditure can build a brand, particularly in the long run, if the quality of the product/service does not commensurate with the marketing efforts. The brands, particularly well known brands, themselves are now becoming highly valuable and in fact are being sold as standalone products. The companies which invest heavily in brand building and back them up by quality products are bound to suffer not only in reputation but also in financial terms, on account of diminution in the value of the brand as well as sale of their products/services, if the brands are not given adequate protection by the Courts, by awarding punitive damages against the infringers. Also, a soft or benevolent approach while dealing with such persons, is also likely to prejudicially affect the interests of the

consumer, who may pay the price which a premium product commands in the market, but may get an inferior product on account of such unscrupulous persons using trademarks of others for their own commercial benefit, at the cost not only of the trade mark owner, but also the consumer who purchases their product.”

32. Another purpose behind awarding punitive damages is to deter those who may be waiting in the wings and may be tempted to imitate the trade mark of others, in case those who are sued before the Courts are not made to pay such damages as would really pinch them. Awarding token damages may, therefore, not serve the desired purpose. Our country is now almost in the league of advanced countries. More and more foreign companies are entering our markets, with latest products. They would be discouraged to enter our country to introduce newer products and make substantial investments here, if the Courts do not grant adequate protection to their intellectual property rights such as patents, trademarks and copyright. Most of the products sold by these companies are branded products, the marks on them having trans-border reputation and enjoying tremendous brand equity. It is, therefore, becoming increasingly necessary to curb such trade mark piracies lest they drive away the huge foreign investment our country is attracting. The Court should not give premium to dishonesty and unfair practices by those who have no compunctions in blatantly using the trademark of others for making unearned profits.

See also *Hero Honda Motors Limited v. Rafiq Memon* [2012 (52) PTC 449 (Del.)]; *Gora Mal Hari Ram Ltd. Vs. Ashique Exports* [2012 (50) PTC 428 (Del.)]; *Relaxo Rubber Limited and Anr. Vs. Selection Footwear and Anr.* [1999 PTC 578].

33. I am in agreement with the aforesaid submission of learned counsel for the plaintiff that damages in such cases must be awarded in order

to provide adequate protection to such brands that take years and decades to establish their brand names in the public domain and also to deter such blatant indulgence in infringing activities by people. Also, in my view, a defendant, who chooses to stay away from the proceedings of the Court, should not be permitted to enjoy the benefits of evasion of court proceedings. R.C. Chopra, J. has very succinctly set out in *Time Incorporated v. Lokesh Srivastava and Anr.* reported at 2005 (30) PTC 3 (Del) that punitive damages are founded on the philosophy of corrective justice. A party who chooses not to participate in court proceedings and stays away must, thus, suffer the consequences of damages as stated and set out by the plaintiff. There is a larger public purpose involved to discourage such parties from indulging in such acts of deception and, thus, even if the same has a punitive element, it must be granted.

34. For the reasons stated above, the plaintiff has made out a case for grant of decree as prayed in the plaint. Accordingly, the suit is decreed in favour of the plaintiff and against the defendant in terms of para (a) of the prayer. Plaintiff is also entitled to damages to the tune of Rs.2 lakhs.
35. Decree sheet be drawn up accordingly.

**(G.S.SISTANI)**  
**JUDGE**

**March 26, 2014**  
**dkb**