

Treading On Another's Tyres

Recognising once again that proprietary rights can vest in the tyre tread pattern of a truck, the Delhi High Court in a passing off action (*Apollo Tyres Limited v. Pioneer Trading Corporation & Ors. CS(COMM) 594/2022*), confirmed Apollo Tyres' (one of the leading tyre manufacturers in the world) interim injunction motion (issued in August 2022) and restrained the defendants from passing off the unique tread pattern of Apollo Tyres with regard to 'ENDURACE LD 10.00 R20 truck tyres'.



In 2015, Apollo Tyres had approached the Delhi High Court against the very same defendants - Pioneer Trading Corporation and Sativinder Singh Chadha - who were manufacturing and importing tyres through a Chinese entity that bore a tread pattern identical to that of Apollo Tyres' unique tread pattern re its ENDURACE LD 10.00 R20 truck tyre. The High Court of Delhi *vide* a detailed judgement dated August 17, 2017, had held tread patterns in a tyre to be source indicators and confirmed Apollo Tyres' interim injunction motion. The court, while dealing with whether tyre grooves/treads were functional in nature, concluded that since the same functionality could be achieved by other means, the defendants were guilty of passing off their tyre tread as that of the plaintiff. Thereafter, the parties entered a settlement wherein the defendants unequivocally admitted and acknowledged Apollo Tyres' common law rights in its unique tread pattern and additionally undertook to refrain from using the impugned tread pattern and/or any other tread pattern either identical or similar on its own products. Subsequently, the matter stood decreed in terms of the settlement agreement between the parties.

In the present suit, the defendants' primary contention before the court was that there were no discernible similarities between the competing tread patterns and the adoption of the new tread pattern could not be considered as a breach of the settlement agreement in the earlier suit.

The High Court while providing a detailed analysis on the issue, drew a comparison of the competing tread patterns and held that the placement of the various cubes/pieces are identical and noted that the only difference is in the nature of the cuts/incisions on the cubes. Further, the Court opined that minute changes have been made by the defendants in the impugned tread pattern. Thus, it rejected the defendants' contention that such changes should be treated as compliance of the undertaking. While addressing the contention *re* Apollo Tyres having filed design applications for tyres bearing identical tread patterns signifying that Apollo Tyres' tread pattern at issue lacked distinctiveness to act as a trade mark, the court held that the same was an issue to be tested at trial.

