

MOOT PROPOSITION

Ormetic S.R.L., - PLAINTIFF

vs.

Sintel Cosmetics India Pvt. Ltd. - DEFENDANT

Facts of the case:

1. Ormetic S.R.L., a prominent and globally recognized player in the cosmetics industry since 1920, is headquartered in Grasse, France and specializes in premium perfumes. Known worldwide for its luxury products under heritage brands, the company manufactures, markets, and sells high-quality fragrances. The trademark ORBISH has been pivotal in its branding, allowing Ormetic to establish a strong global distribution network with its products available in over 50 countries. This global reach is bolstered by extensive marketing initiatives, including endorsements from prominent international celebrities and sports figures, establishing ORBISH as a widely recognized brand and contributing to its popularity and awareness among many people in India.
2. Ormetic holds trademark registrations for ORBISH in over 100 jurisdictions, including one registration in India in Class 3 dating back to September 15, 1989, although this registration was not renewed. Despite its extensive global promotional efforts, Ormetic has not yet officially entered the Indian market or begun selling products in India. However, the brand is known to many Indian consumers who encounter it through e-commerce platforms and while traveling abroad. As Ormetic prepared to launch its goods under its mark ORBISH in India in March 2024, it became aware that an entity named Sintel Cosmetics India Pvt. Ltd. had been selling cosmetic products under the similar-sounding trademark ARBIS for products like nail polish, makeup powder and creams and also secured registration for the same in class 3 under registration no. 1234567 since January 24, 2016 in India.
3. Ormetic sent a cease-and-desist notice to Sintel on May 12, 2024, highlighting the similarity and risk of confusion, with requisition to stop using the trademark ARBIS and voluntarily cancel Sintel's trademark registration for ARBIS. In its notice, Ormetic claimed that Sintel's use of the mark ARBIS would constitute infringement and passing off of its well-known trademark ORBISH. Ormetic further claimed that Sintel's adoption of the ARBIS mark was dishonest, as Sintel must have been aware of the reputation of the

ORBISH brand in the international market, which was likely the sole reason Sintel chose to adopt a mark so deceptively similar for similar goods in same class.

4. Ormetic stated that, due to the widespread recognition of its ORBISH brand in international markets, any use of the ARBIS mark by Sintel could lead to a wrongful association between the two marks in the minds of the purchasing public and members of the trade. It was further asserted that Sintel's subsequent adoption and use of the phonetically similar trademark was intended to gain unfair advantage at Ormetic's expense and that such action was pursued by Sintel with the sole intention of causing harm and damage to Ormetic's interests and reputation.
5. Sintel responded with a reply notice dated June 2, 2024, denying any infringement or passing off of Ormetic's trademark and stating that its mark ARBIS was derived from the names of its founding directors Mr. Arvind and Ms. Bishaka. Sintel asserted that it has been using the said mark since at least April 2015 and has built a strong reputation and goodwill in the market for its high-quality, affordable products offered under this mark. Sintel also claimed to have spent over 50 lakh rupees in the last nine years in promoting and marketing its goods under the ARBIS mark, which has led consumers and trade members to associate the mark with Sintel and its products alone.
6. Sintel stated that, due to extensive market promotion, exceptional quality of goods offered under the ARBIS mark and well reception of the same by the consumers in India, it has already built its own reputation and goodwill and therefore, it has no need to rely on the reputation of others. Sintel further asserted that its trademark ARBIS in its entirety is different and dissimilar from the mark ORBISH and its goods under the said mark are also not conflicting with Ormetic's goods and hence, there is no likelihood of any confusion of deception in the market. Sintel stated that it is the prior registered proprietor of the ARBIS mark in India and holds the statutory right to its exclusive use for its products. It argued that Ormetic has no grounds to restrict Sintel from offering its goods under the said mark ARBIS in India.
7. Ormetic filed a suit and a rectification petition before the High Court of Jesly (vested with jurisdiction identical to that of the High Court of Delhi) against Sintel and sought:

- i. an order of permanent injunction restraining Sintel from using in any manner infringing Ormetic's trademark ORBISH in any manner whatsoever or causing infringement of the said mark
- ii. an order of permanent injunction restraining Sintel from passing off its products as that of the Ormetic's by using the trademark ARBIS which is deceptively similar and identical to its trademark ORBISH or by using any other trademark which is similar, deceptively similar or identical to that of the Ormetic's trademark ORBISH
- iii. a decree declaring its mark ORBISH as a 'well-known trademark under Section 2(zg) Trade Marks Act, 1999
- iv. an order directing cancellation / removal of Sintel's registered trademark ARBIS in class 3 bearing registration no. 1234567 from the Register of Trade Marks
- v. interim stay of operation of Sintel's registration no. 1234567 until the rectification petition is finally decided

8. Issues before the High Court of Jesly are as follows:

- i. Whether the mark ORBISH is entitled to be declared as a well-known trademark under the Trade Marks Act, 1999?
- ii. Whether Sintel's use of the mark ARBIS amounts to an act of passing off of Ormetic's trademark ORBISH?
- iii. Whether Sintel's registration for the trademark ARBIS in class 3 bearing registration no. 1234567 liable to be expunged from the Register of Trade Marks

Note: The above mentioned three issues are mandatory. Apart from the above, participants are free to frame additional issues, if they deem fit.