



C.S.No.753 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.09.2023

PRONOUNCED ON: 11.12.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.S.No.753 of 2016

and

A.Nos.21 to 23 of 2022 and 5271 of 2016

and

O.A.Nos.912 to 914 of 2016

Dhanam Textiles,
30, Coral Merchant Street,
Mannady, Chennai, 600001,
Rep. by its Partner
Mr.P.Babu

...Plaintiff

Vs.

1.Gowri Textiles,
KaniyammanKovil Street,
Amaiarkuppam post,
Palipattutaluk - 631301
Thiruvallur Dist.

2.M/s.Sri Vari Offset,
20, Andavar Street,
Erode - 638011



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3.Bikaner Assam Raod Lines India Ltd.
No.125, Adinath Nagar,
Madhavaram, Chennai 600060

4.Great Eastern Road Carriers
No.552, Linghi Chetty Street,
Mannady, Chennai - 600001.

...Defendants

PRAYER: Plaintiff is filed under order IV Rule 1 of O.S. Rules and Order VII Rule 1 of C.P.C. read with Sections 27, 28, 29, 134 & 135 of the Trademarks Act, 1999 and Sections 51, 55 & 62 of the Copyright Act, 1957, praying for the following judgment and decree:-

a. a permanent injunction restraining the defendants by themselves, their directors/partners/proprietor as the case may be, legal representatives, successors in business, assigns, servants, agents, transporters, distributors, printers, stockists, wholesalers, dealers, retailers, advertisers or any one claiming through or under them from infringing plaintiff's registered trademarks Areeba label, Switch Brand label and Champion Cup label by manufacturing, distributing, marketing, selling, offering for sale, advertising or in any other



manner dealing in lungies or any other product bearing the almost identical/deceptively similar trademarks Aazan label, Dimmer Brand label and Challenge Cup label with colour scheme, getup, layout which are almost identical to plaintiff's registered trademarks in any manner whatsoever;

b. a permanent injunction restraining the defendants by themselves, their directors/partners/proprietor as the case may be, their legal representatives, successors in business, assigns, servants, agents, transporters, distributors, printers, stockists, wholesalers, dealers, retailers, advertisers or any one claiming through or under them from committing acts of copyright infringement by making substantial reproduction of the plaintiff's registered copyright in the artistic work Areeba label, Switch Brand label, Champion Cup label and copyright in DVD label and Marina label by use of almost identical/deceptively similar labels, colour scheme, get up and layout for their Aazan label, Dimmer Brand label, Challenge Cup label, LED label and Marina Mix label or in any manner whatsoever;



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c. a permanent injunction restraining the defendants by themselves, their directors/partners/proprietor as the case may be, their legal representatives, successors in business, assigns, servants, agents, transporters, distributors, printers, stockists, wholesalers, dealers, retailers, advertisers or any one claiming through or under them from in any manner passing off and enabling others to pass off the defendants' lungies and other textile goods as and for the plaintiff's lungies, and other textile goods by use of the trademarks Aazan label, Dimmer Brand label, Challenge Cup label, LED label and Marina Mix label or any other mark deceptively similar to the plaintiff's trademarks Areeba label, Switch Brand label, Champion Cup label, DVD label and Marina label in any manner whatsoever;

d. the defendants be ordered to surrender to plaintiff for destruction of all lungies, labels, dyes, blocks, moulds, screen prints, packing materials and other materials bearing the identical/deceptively similar trademarks Aazan label, Dimmer Brand label, Challenge Cup label, LED label and Marina Mix label or any



trademark similar to plaintiffs trademarks Areeba label, Switch Brand label, Champion Cup label, DVD label and Marina label.

e. a preliminary decree be passed in favour of the plaintiff directing the defendants to render account of profits made by use of trademarks Aazan label, Dimmer Brand label, Challenge Cup label, LED label and Marina Mix label and a final decree be passed in favour of the plaintiff for the amount of profits thus found to have been made by the defendants after the latter have rendered accounts;

f. the defendants be ordered and decreed to pay to the plaintiff a sum of Rs. 1,00,000/- as damages for acts of infringement of trademark and passing off committed by the defendants by manufacture and sale of lungies bearing the trademarks Aazan label, Dimmer Brand label, Challenge Cup label, LED label and Marina Mix label;

g. for costs of the suit; and

h. pass such further or other reliefs as this Hon'ble Court may



deem fit and necessary in the circumstances of the case and thereby render justice.

For Plaintiff : M/s.Arun C.Mohan
For Defendants : D.1 to D.4 – ex parte
: M/s. V. Vanitha –
Advocate Commissioner.

JUDGMENT

The plaintiff has filed the suit for the following reliefs:-

a. a permanent injunction restraining the defendants by themselves, their directors/partners/proprietor as the case may be, legal representatives, successors in business, assigns, servants, agents, transporters, distributors, printers, stockists, wholesalers, dealers, retailers, advertisers or any one claiming through or under them from infringing plaintiff's registered trademarks Areeba label, Switch Brand label and Champion Cup label by manufacturing, distributing, marketing, selling, offering for sale, advertising or in any other manner dealing in lungies or any other product bearing the almost identical/deceptively similar trademarks Aazan label, Dimmer Brand label and Challenge Cup label with colour scheme, getup, layout



which are almost identical to plaintiff's registered trademarks in any manner whatsoever;

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b. a permanent injunction restraining the defendants by themselves, their directors/partners/proprietor as the case may be, their legal representatives, successors in business, assigns, servants, agents, transporters, distributors, printers, stockists, wholesalers, dealers, retailers, advertisers or any one claiming through or under them from committing acts of copyright infringement by making substantial reproduction of the plaintiff's registered copyright in the artistic work Areeba label, Switch Brand label, Champion Cup label and copyright in DVD label and Marina label by use of almost identical/deceptively similar labels, colour scheme, get up and layout for their Aazan label, Dimmer Brand label, Challenge Cup label, LED label and Marina Mix label or in any manner whatsoever;



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c. a permanent injunction restraining the defendants by themselves, their directors/partners/proprietor as the case may be, their legal representatives, successors in business, assigns, servants, agents, transporters, distributors, printers, stockists, wholesalers, dealers, retailers, advertisers or any one claiming through or under them from in any manner passing off and enabling others to pass off the defendants' lungies and other textile goods as and for the plaintiff's lungies, and other textile goods by use of the trademarks Aazan label, Dimmer Brand label, Challenge Cup label, LED label and Marina Mix label or any other mark deceptively similar to the plaintiff's trademarks Areeba label, Switch Brand label, Champion Cup label, DVD label and Marina label in any manner whatsoever;

d. the defendants be ordered to surrender to plaintiff for destruction of all lungies, labels, dyes, blocks, moulds, screen prints, packing materials and other materials bearing the



identical/deceptively similar trademarks Aazan label, Dimmer Brand label, Challenge Cup label, LED label and Marina Mix label or any trademark similar to plaintiffs trademarks Areeba label, Switch Brand label, Champion Cup label, DVD label and Marina label;

e. a preliminary decree be passed in favour of the plaintiff directing the defendants to render account of profits made by use of trademarks Aazan label, Dimmer Brand label, Challenge Cup label, LED label and Marina Mix label and a final decree be passed in favour of the plaintiff for the amount of profits thus found to have been made by the defendants after the latter have rendered accounts;

f. the defendants be ordered and decreed to pay to the plaintiff a sum of Rs. 1,00,000/- as damages for acts of infringement of trademark and passing off committed by the defendants by manufacture and sale of lungies bearing the trademarks Aazan label, Dimmer Brand label, Challenge Cup label, LED label and Marina



Mix label;

g. for costs of the suit.

Plaintiff's Case:-

2. It is the contention of the plaintiff that they are a leading manufacturer of textile goods such as lungies and various other textile products for the last several decades. The suit is filed with reference to 5 brands of lungies that the plaintiff manufactures. It is the contention of the plaintiff that they are marketing their lungies under the trademarks **AREEBA**, **CHAMPION**, **SWITCH BRAND**, **DVD** and **MARINA**. The plaintiff has set out the distinctive get-up, layout and artistic features of each of these brands in the plaint. The striking features of each is set out hereinbelow:-

2.1. With reference to **AREEBA** label, the trademark consists of:



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- a) Colour combination of yellow, gold and white;
- b) The device of a mosque at the left hand side bottom of the label.
- c) The word Areeba written in English at the centre of the label;
- d) The device of a half moon and star above the mark Areeba;
- e) Device of outstretched hands at the right side bottom of the label;
- f) "100% cotton" written in a tree like device placed between the device of mosque and device of the outstretched hands;
- g) The name and address of the plaintiff company at the bottom of the label outside the border.

2.2. With reference to **SWITCH BRAND** label, the trademark consists of:

- a) Colour combination of red, black and white;
- b) The label is in a square shape with the centre portion in red colour and in white colour with black lettering;
- c) The device of a switch in white colour in the middle;



d) The words SWITCH BRAND written in English at the top within the border and the same written in Urdu and Hindi on either side of the device;

e) The copyright details given at the top of the label outside the border.

f) The name and address of the plaintiff at the bottom of the label.

2.3. With reference to **CHAMPION CUP** label, the trademark consists of:-

- a. Colour combination of red, gold yellow and white;
- b. The label is in an rectangular shape;
- c. The trademark "CHAMPION CUP" written at the top in gold colour on red background;
- d. The device of a champion cup at the centre of the label in gold colour.



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2.4. With reference to **DVD** label, the trademark consists of:

- a) Colour combination of red, gold and white;
- b) The device of a mosque at the left hand side bottom of the label;
- c) The word DVD written in English at the centre of the label;
- d) The word Gold and Fresh written below the mark DVD;
- e) The device of a half moon and star above the mark DVD;
- f) Device of outstretched hands at the right side bottom of the label;
- g) "100% cotton" written in a tree like device placed between the device of mosque and device of the outstretched hands;
- h) The name and address of the plaintiff company at the bottom of the label outside the border.

2.5. With reference to **MARINA** label, the trademark consists

- of:
- a) Colour combination of red, gold, yellow and black;



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- b) The label is in a rectangular shape;
- c) The trademark "MARINA" written at the middle in gold colour on yellow background;
- d) The word "2.20mts" written in gold and "200*200" "Extra size" written in red colour;
- e. The mark 360 brand written throughout the border.

3. It is the contention of the plaintiff that their turnover which was Rs.4.62 Crores in 2011-12 had risen to a sum of Rs.26.22 Crores in 2014-15 and had dropped to Rs.19.66 Crores in 2015-16. The plaintiff would submit that they have also been spending a considerable sum on advertisements both through print media as well as the electronic media, hoardings and all its sales promotional materials including stationery materials, carry bags, calendars, diaries, brochures, pamphlet etc. The plaintiff would submit that by long usage the trademarks and the artistic work have become synonymous with that of the plaintiff.



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4. While so, in the month of October 2016, the plaintiff came to learn that the 1st defendant is manufacturing and selling lungies under identical/deceptively similar trademarks with the labels alone being titled as **AAZAN** Label, **DIMMER BRAND** label, **CHALLENGE CUP** label, **LED** label and **MARINA MIX** label. The 2nd defendant was printing the infringing marks and defendants 3 and 4 were marketing the same. Therefore, the plaintiff would submit that they are jointly and severally liable for committing the infringement and passing off.

5. The plaintiff's case is that their products are purchased by all sections of society literate, illiterate and semi-literate. Considering the class of the customers, the channels of trade and price involved, a person with an average intelligence and imperfect memory would not be able to distinguish between the plaintiff's distinctive trademarks **AREEBA**, **CHAMPION**, **SWITCH**, **DVD** and **MARINA** and the



defendant's marks **AAZAN** Label, **DIMMER**, **CHALLENGE CUP**, **LED** and **MARINA MIX**. They would submit that the deception is identical in fact the same is nothing but an imitation. The plaintiff has set out the similarities of both the brands in their plaint. It is also the case of the plaintiff that their business has suffered on account of the copying of the plaintiff's mark. Therefore, they have come forward with the above suit.

6. Along with the suit, the plaintiff had also filed an application for an ad interim injunction and for appointing an Advocate Commissioner. This Court was pleased to grant an ad interim injunction which injunction has also been violated. This Court was also pleased to appoint an Advocate Commissioner to inspect the premises of the respondents and seize the infringing products.

7. The defendants who had been served had not entered



appearance and were therefore set ex parte. However, the plaintiff was directed to lead ex parte evidence. The plaintiff has also examined P.W.1 and marked Ex.P.1 to P.14.

Submissions:-

8. The learned counsel appearing for the plaintiff would submit that a mere perusal of the marks/labels of the 1st defendant with that of the plaintiff would clearly establish that the 1st defendant has simply copied the mark of the plaintiff and given it a different name. The plaintiff has registered its marks and Ex.P.2 to P.10 are the registration certificates of the marks/labels. Ex.P.13 is the printout of the plaintiff's labels. Ex.P.14 is the printout of the defendant's labels and a perusal of the same would show that the 1st defendant has simply copied the plaintiff's marks. He would therefore submit that the suit be decreed as prayed for.



9. Heard the counsel for the plaintiff and perused the records.

Issues:-

10. The only issue that requires consideration is "*whether the plaintiff has proved the infringement by the defendants and is therefore entitled to the decree*".

Discussion:

11. The plaintiff has come forward with the instant suit with reference to 5 marks/labels. Ex.P.13 is the series showing the plaintiff's label and Ex.P.14 is the series showing the defendant's labels. A perusal of Ex.P.13 plaintiff's label and Ex.P.14 defendants' label would show the striking similarities between the plaintiff's label and that of the defendants. This has been set out by the plaintiff in their plaint and this Court has drawn the details from the same:-

11.1. The defendants' label **AAZAN** is similar to the plaintiff's label **AREEBA** and the following tabular statements would show the



similarities:-

<i>Plaintiff's Label</i>	<i>Defendants' Label</i>
The Device of a mosque at the left hand side bottom of the label	The device of a mosque at the left hand side bottom of the label.
The word Areeba written in English at the centre of the label.	The word Aazan written in English at the centre of the label.
The device of a half moon and star above the mark Areeba.	The device of a half moon and star above the mark Aazan.
Device of outstretched hands at the right bottom of the label;	Device of outstretched hands at the right hands at the right side of the label;
“100% Cotton” written in a tree like device placed between the device of mosque and device of the outstretched hands.	“100% Cotton” written in a tree like device placed between the device of mosque and device of the outstretched hands.
The name and address of the plaintiff at the bottom of the label outside the border.	The name and address of the 1 st defendant at the bottom of the label outside the border.
The 360 brand label right above the Areeba label.	The 060 brand label right above the Areeba label.

11.2. The defendants' label **DIMMER BRAND** is similar to the plaintiff's label **SWITCH BRAND** and the following tabular statements would show the similarities:-



<i>Plaintiff's Label</i>	<i>Defendants' Label</i>
Colour combination of red, black and white	Colour combination of red, black and white
The label is in a square shape	The label is in a square shape
The device of a switch in white colour at the centre	The device of a dimmer in white colour at the centre
The words SWITCH BRAND written in English at the top within the border and the same written in Urdu and Hindi on either side of the device	The words DIMMER BRAND written in English at the top within the border and the same written in Urdu and Hindi on right side of the device
The name and address of the plaintiff at the bottom of the label	The name and address of the 1 st defendant at the bottom of the label

11.3. The defendants' label **CHALLENGE CUP** is similar to the plaintiff's label **CHALLENGE CUP** and the following tabular statements would show the similarities:-

<i>Plaintiff's Label</i>	<i>Defendants' Label</i>
Colour combination of red, gold and white	Colour combination of red, gold and white
The label is in a rectangular shape	The label is in a rectangular shape
The device of a prize cup in gold colour at the centre	The device of a prize cup in gold colour at the centre
The word CHAMPION CUP written above the device	The device of a CHALLENGE CUP in gold colour at the centre



<i>Plaintiff's Label</i>	<i>Defendants' Label</i>
The name and address of the plaintiff at the bottom of the label	The name and address of the 1 st defendant at the bottom of the label

11.4. The defendants' label **LED** is similar to the plaintiff's label **DVD** and the following tabular statements would show the similarities:

<i>Plaintiff's Label</i>	<i>Defendants' Label</i>
Colour combination of red, gold and white	Colour combination of red, gold and white
The device of a mosque at the left hand side bottom of the label.	The device of a mosque at the left hand side bottom of the label.
The word DVD written in English at the centre of the label	The word LED written in English at the centre of the label
The device of a half moon and star above the mark DVD	The device of a half moon and star above the mark LED
Device of outstretched hands at the right side bottom of the label;	Device of outstretched hands at the right side bottom of the label;
“100% Cotton” written in a tree like device placed between the device of mosque and device of the outstretched hands.	“100% Cotton” written in a tree like device placed between the device of mosque and device of the outstretched hands.
The name and address of the plaintiff at the bottom of the label	The name and address of the 1 st defendant at the bottom of the



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<i>Plaintiff's Label</i>	<i>Defendants' Label</i>
outside the border	label outside the border

11.5. The Defendants' label **MARINA MIX** is similar to the plaintiff's label **MARINA** and the following tabular statements would show the similarities:

<i>Plaintiff's Label</i>	<i>Defendants' Label</i>
Colour combination of red, gold, black and white	Colour combination of red, gold, black and white
The trademark "MARINA" written at the middle in gold colour on yellow background with black border	The trademark "MARINA MIX" written at the middle in gold colour on yellow background with black border
The words "Extra Size", "200*200" written in red below the mark "2.20 mts" written in yellow below the mark MARINA	The word "Extra Size" "2.20 mts" written in red below the mark MARINA MIX and 200*200 written above the mark
The mark 360 brand written throughout the border	The mark 060 brand written throughout the border

12. The Advocate Commissioner who was appointed and who had inspected the premises had also seized the identical products which have been marketed by the defendants. The plaintiff has got a



registration in respect of the aforesaid marks as is evidenced from Ex.P.2 to P.10. The comparative table set out supra would clearly prove that the defendants have simply copied the plaintiff's label. Considering the fact that the defendants have copied the marks of the plaintiff and made it a near perfect imitation, the registered owner has to be protected. The defendants by adopting the very same features of the plaintiff it is clear that the intention of the defendants is to ride on the goodwill created by the plaintiff. This action of imitation has to necessarily be stopped. Therefore, the issue is answered in favour of the plaintiff and the suit stands decreed. No costs. Consequently, the connected applications are closed.

11.12.2023

Index : Yes/No
Internet : Yes/No
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List of witness on the side of the Plaintiff:

P.W.1 - Ms.Durga Babu (P.W.1)

List of Exhibits marked on the plaintiff's side:

Ex.P.1 - is the letter of authorization dated 27.07.2023.

Ex.P.2 - is the photocopy of the Registration certificate of the plaintiff's partnership firm dated 24.05.2007. (Original is produced, compared and the original is returned to the plaintiff's counsel.)

Ex.P.3 - is the photocopy of the Registration certificate for the trademark AREEBA label under number 1872682 dated 13.10.2009. (Original is produced, compared and the original is returned to the plaintiff's counsel.)

Ex.P.4 - is the photocopy of the Registration certificate for the trademark Switch Brand label under number 513161 dated



10.07.1989.

Ex.P.5 - is the photocopy of the copyright certificate for the artistic work in Areeba label dated 13.03.1997. (The counsel for the plaintiff has submitted that the Ex.P5 is a photocopy and it was obtained in the year 1997 therefore the original is unavailable with the plaintiff due to lapse of time. The counsel for the plaintiff submitted that as per the Supreme Court order in the case Dhanpat Vs Sheo Ram, it is not mandatory to take out separate application to produce secondary evidence if sufficient foundation has been laid in pleading or in evidence. The counsel for the plaintiff submitted that the proof affidavit is filed which lays down the reasons for non production of original.)

Ex.P.6 - is the certified copy of the copyright certificate for the artistic work in Switch Brand label with certificate for change of proprietor's name dated 17.03.1997.

Ex.P.7 - is the photocopy of the Registration certificate for the trademark Champion Cup label under number 1872681 dated 13.10.2009. (Original is produced, compared and the original is returned to the plaintiff's counsel.)

Ex.P.8 - is the photocopy of the Registration certificate for the trademark Champion Cup label under number 1872683 dated 13.10.2009. (Original is produced, compared and the original is returned to the plaintiff's counsel.)

Ex.P.9 - is the photocopy of the Registration certificate for the trademark Champion Cup label under number 1974627 dated 03.06.2010. (Original is produced, compared and the original is returned to the plaintiff's counsel.)

Ex.P.10 - is the photocopy of the copyright registration certificate for the artistic work in Champion Cup label with certificate



for change of proprietor's name dated 27.07.1998. (The counsel for the plaintiff submitted that the proof affidavit is filed which lays down the reasons for non production of original.)

Ex.P.11 - (Series) are the original invoices for sale of lungies by the plaintiff with certificate for change of proprietor's name.

Ex.P.12 - is the advertisements issued by the plaintiff for the plaintiff's goods. Page no.1 to 12 are printouts and page no.13 to 15 are originals.

Ex.P.13 - is the printout of the plaintiff's labels.

Ex.P.14 - is the printout of the defendants labels.

List of witness examined on the side of the Defendant:- -NIL

List of documents marked on the side of the Defendant:- -NIL

P.T. ASHA, J,

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Pre-Delivery Judgment
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