



C.S.No.824 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.06.2024

CORAM:

THE HON'BLE MR. JUSTICE P.B. BALAJI

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1. The Tintometer Limited,
Lovibond House, Solar Way,
Solstice Park, Amesbury,
Wiltshire SP4 7SZ
United Kingdom.

2. Tintometer India Pvt.Ltd,
B-91, A.P.I.E. Sanath Nagar,
Hyderabad-500 018.

.... Plaintiffs

VS

1. M/s Wensar Weighing Scales Limited,
No.83. Audiappa Naicken Street,
Near Elephant Gate, Sowcarpet,
Chennai-600 079.

2. M/s Labman Scientific Instruments Private Limited,
No.83, Audiappa Naicken Street,
Near Elephant Gate, Sowcarpet,
Chennai-600 079.

.... Defendants

Plaint filed under Order VII Rule 1 CPC read with Order IV Rule 1

Original Side Rules read with Sections 27, 28, 29, 134 and 135 of the Trade



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Marks Act, 1999 praying for (a) permanent injunction restraining the defendants, by itself, its partners, men, servants, agents, distributors, stockiest, representatives or any one claiming through or under them from in any manner infringing the plaintiff's registered trademarks TINTOMETER by using an identical trademark TINTOMETER or any other trademark deceptively similar to the plaintiff's registered trademark or in any other manner whatsoever; (b) permanent injunction restraining the defendants, by itself, its partners, men, servants, agents, distributors, stockiest, representatives or any one claiming through or under them from in any manner passing off and/or enabling others to pass off the defendants' products under the trademark TINTOMETER as and for the plaintiffs' products by manufacturing, importing, selling or offering to sell, distributing, displaying, printing, stocking, using, advertising their products with the trademark TINTOMETER or any other trademarks which is identical or similar to the plaintiffs' trademark TINTOMETER or in any other manner whatsoever; (c) the defendants be ordered to surrender to plaintiffs for destruction of all products, labels, cartons, dyes, blocks, moulds, screen prints, packing materials and other materials bearing the trademark TINTOMETER or any mark deceptively similar to plaintiffs registered trademark TINTOMETER;



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(d) a preliminary decree be passed in favour of the plaintiffs directing the defendants to render account of profits made by use of trademark TINTOMETER and a final decree be passed in favour of the plaintiffs for the amount of profits thus found to have been made by the defendants after the latter have rendered accounts and (e) for a decree directing the defendants to pay damages of Rs.25,00,000/- to the plaintiffs.

For Plaintiffs

: Mr.R.Sathish Kumar

Defendants

: Set Exparte on 18.03.2024

JUDGMENT

The suit has been filed for a permanent injunction to restrain the defendants or any one claiming through or under them from in any manner infringing the plaintiff's registered trade marks "TINTOMETER", by using an identical trade mark "TINTOMETER" or any other trade mark deceptively similar to the plaintiff's registered trade mark; permanent injunction restraining the defendants or any one claiming through or under them from in any manner passing off and/or enabling others to pass off the defendants' products under the



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trade mark “TINTOMETER” as and for the plaintiffs' products by manufacturing, importing, selling or offering to sell, distributing, displaying, printing, stocking, using, advertising their products with the trade mark “TINTOMETER” or any other trade mark which is identical or similar to the plaintiffs' trademark “TINTOMETER” or in any other manner whatsoever; to direct the defendants to surrender to the plaintiffs for destruction of all products, labels, cartons, dyes, blocks, moulds, screen prints, packing materials and other materials bearing the trade mark “TINTOMETER” or any mark deceptively similar to plaintiffs registered trade mark “TINTOMETER” and; a preliminary decree directing the defendants to render account of profits made by use of trade mark “TINTOMETER” and for a decree directing the defendants to pay damages of Rs.25,00,000/- to the plaintiffs.

2. The brief facts, as set out by the plaintiffs in the plaint, are as hereunder:-

The first plaintiff Company was founded in the year 1895 by one Mr. Joseph Williams Lovibond. It is submitted that the first plaintiff developed



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the world's first practical Colorimeter which is a device used to test the concentration of a solution by measuring its absorbance of a specific wavelength of light. The first plaintiff's founder coined the term “TINTOMETER” and incorporated a Company under the said name “TINTOMETER” which is the trade mark for the product.

3. The plaintiffs submit that they are one of the oldest companies in the world having commenced business in the year 1895. Further the claim of the plaintiffs is that the trade mark “TINTOMETER” has been used in India ever since early 1900s and the first plaintiff has been selling their products bearing the trade mark “TINTOMETER” through out India. The first plaintiff also sells “TINTOMETER” through its subsidiary, the 2nd plaintiff. The plaintiffs have also registered its trade mark “TINTOMETER” in two classes viz., Class - 9 and Class - 99 bearing Registration Nos.229094B and 1539925 dated 24.05.1965 and 14.03.2007 respectively. Both the registrations are valid through 24.05.2027 and 14.03.2027 respectively.

4. The plaintiffs were shocked to find colorimeters being sold in the



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market bearing the identical trade mark “TINTOMETER”. On enquiries, the plaintiffs came to know that the defendants, who are in the identical field of business, have adopted identical trade mark “TINTOMETER” and are selling their products. The plaintiffs have further stated that any purchaser would be misled and deceived by the defendants' products on sale. The plaintiffs caused cease and desist notice dated 24.06.2015 to the 1st defendant and its Director calling upon them to stop using the trade mark “TINTOMETER”. To the said notice, the 1st defendant sent a reply on 10.07.2015. The plaintiffs have also found that the 2nd defendant was also using the trade mark “TINTOMETER” in active connivance with the 1st defendant.

5. The first defendant also filed three rectification petitions against the plaintiffs registered trade marks before the Hon'ble Intellectual Property Appellate Board. All the three rectification petitions were dismissed for non-prosecution. According to the plaintiffs, the defendants are using the plaintiffs' trade mark “TINTOMETER”, which is phonetically, visually and structurally identical to the plaintiffs registered trade marks “TINTOMETER” and therefore, the plaintiffs are entitled to the suit reliefs.



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6. The 1st plaintiff being the registered proprietor of the trade marks and the 2nd plaintiff being the user of the trade mark in India they are entitled to prevent the defendants from counterfeiting and copying the same by using an identical trade mark TINTOMETER, since an ordinary purchaser could not differentiate between the plaintiff's and the defendants' products.

7. Though the defendants filed separate written statements before this Court, the sum and substance of both their written statements are that the word “TINTOMETER” is generic in nature and the device is used for measurement of colour or in colorimetry and therefore, the defendants are entitled to use the term “TINTOMETER”. However, though the defendants filed written statements, subsequently, they have not chosen to appear before the Court and this Court, by order dated 18.03.2024, set the defendants exparte and also felt that there is no need for framing issues and posted the matter before the learned Additional Master for recording exparte evidence.

8. Before the Additional Master No.IV, one Neeraj Kanwal, the Director



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of the 2nd plaintiff and constituted attorney/authorised signatory of the 1st

plaintiff entered into witness box and besides filing his proof affidavit, also

marked the following documents:-

S.No.	Exhibits	Date	Description
1.	P-1	04.09.2018 and 17.09.2018	Photocopy of the Board resolution from plaintiffs 1 and 2.
2.	P-2	23.08.1895	Certified copy of the incorporation of the 1 st plaintiff in England
3.	P-3	24.05.1965	Printout of the registration of trademark under No.229094B in Class 9
4.	P-4	14.03.2007	Certified copy of the registration of trademark under No.1539925 in Class 99
5.	P-5	...	Photocopy of the renewals of the trademarks under No.229094B in Class 9 and 1539925 in Class 99.
6.	P-6		Printout of the material from the Internet regarding the plaintiffs and the trademark TINTOMETER.
7.	P-7	24.06.2015	Office copy of the cease and desist notice from the plaintiff's counsel to the defendant.



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8	P-8	10.07.2015	Original reply sent from the defendant to the plaintiffs' counsel.
9	P.9	...	Printout of the defendants website showing their use of the trade mark TINTOMETER.
10	P.10	11.01.2015	Photocopy of the letter by the 1 st defendant.
11	P.11	11.01.2015	Photocopy of the letter by the 2 nd defendant.

9. Section 65-B affidavits were also duly filed in respect of Exs.P.5, P.6 and P.9.

10. I have heard Mr.R.Sathish Kumar, learned counsel for the plaintiffs.

11. Learned counsel for the plaintiffs would take me through the plaintiff averments and also the documents filed in support of the plaintiffs' claim in Exs.P.1 to P.11. He would invite my specific attention to the certified copy of the incorporation of the 1st plaintiff in the year 1895/Ex.P.2, which evidences that the Company has been incorporated under the name and style of "TINTOMETER" way back in 1895 itself. From Exs.P.3 and P.4, it is evident that the 1st plaintiff is the registered proprietor of the trade mark



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“TINTOMETER”. The renewal certificates have been filed as Ex.P.5 series to show that the registration is valid as on date. From Ex.P.6, it is seen that the 1st plaintiff has been selling the product “TINTOMETER” not only in India but also world wide and has been doing successful business. Cease and desist notice dated 24.06.2015 has been filed as Ex.P.7 and reply notice has been marked as Ex.P.8. The defendants website evidencing use of the trade mark “TINTOMETER” is marked as Ex.P.9.

12. Pending the suit, the defendants have written to the counsel for the plaintiffs in and by letters dated 11.10.2015 stating that they have already discontinued the use of “TINTOMETER”. The letters are marked as Exs.P.10 and P.11.

13. The learned counsel for the plaintiffs would also invite my attention to the dismissal of the following three rectification petitions filed by the first defendant against the 1st plaintiff's registered trademarks:-

i) (T) OP (TM) 49/2023 – dismissed for default on 24.01.2024



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ii) (T) OP (TM) 523/2023-dismissed for default on 07.02.2024
(Madras HC)

iii) IPDATM/2022 – dismissed for default on 03.04.2023
Calcutta High Court

14. Apart from the above, the defendants have also not chosen to contest the present suit as well. The only issue that arises for consideration is as to whether the plaintiffs are entitled to restrain the defendants from infringing their registered trade mark and whether they are entitled to the suit reliefs.

15. From the evidence of P.W.1 and Exs.P.1 to P.11, the plaintiffs have established that the first plaintiff is the registered proprietor of the trade mark “TINTOMETER”. Under Class 9, the registration has been issued in the year 1965 and under Class 99 registration has been issued in the year 2007. Both the registrations are valid as on date. It is also seen that the 1st plaintiff's Company itself was incorporated under the name and style of “TINTOMETER LIMITED” and from Ex.P.2, it is seen that the incorporation was in the year 1895 itself. From Ex.P.6, it is evident that the plaintiffs' products are popular in the market and they have been selling their products successfully for the past several years.



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16. The plaintiffs have established that the defendants are using an identical trade mark “TINTOMETER”. In fact, from Exs.P.10 and P.11, it is clear that the defendants have themselves admitted having used the registered trade mark “TINTOMETER”. However, despite the said letters, the defendants have chosen to file three rectification petitions, two before this Court and one before the Calcutta High Court. Therefore, their stand of discontinuance appears to be clearly not bonafide. In any event, all the three rectification petitions filed by the defendants against the first plaintiff's registered trade marks have been dismissed and even before this Court, the defendants have not chosen to come and contest the suit, despite filing their written statements.

17. The plaintiffs have established that they have been using the trade mark “TINTOMETER” for the past several decades and the defendants by selling the products in the same field, using the same name, would clearly affect the goodwill and reputation of the plaintiffs. The defendants have clearly infringed the registered trade mark of the first plaintiff and there is every likelihood of a purchaser venturing to purchase the products of the defendant under the mistaken impression that the products are manufactured by the



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plaintiffs.

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18. Mr.R.Sathish Kumar, learned counsel for the plaintiffs would also invite my attention to Section 29(3) of the Trade Marks Act, 1999 and would contend that trade mark is shown to be identical and the goods are also identical, the Court shall presume that there would be a confusion. He also places reliance on the decision of the Hon'ble Supreme Court in case of ***Renaissance Hotel Holdings vs B.Vijaya Sai and Others*** reported in (2022) 5 SCC 1, wherein, the Hon'ble Supreme Court was dealing with the trade mark “Renaissance” and “SAI RENAISSANCE” and held that they were confusingly similar and the Hon'ble Supreme Court has granted injunction restraining the infringement of the plaintiffs' trade marks in the facts of the above case.

19. I find force in the argument of the learned counsel for the plaintiffs. Under Section 28 of the Trade Marks Act, 1999, registration of trade marks confers certain rights on the registered proprietor of the trade marks. Section 29 of the Trade Marks Act, 1999 deals with infringement of registered trade marks. Sub Section (2) of Section 29 of the Act states that a registered trade mark



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would be infringed by a person, not being a registered proprietor or a person

using by way of permitted use, when such person uses in the course of trade, a mark which (a) because of its identity with the registered trade mark and the similarity of the goods or services covered by such registered trade mark or (b) its similarity to the registered trade mark and the identity or similarity of the goods or services covered by such registered trade mark or (c) its identity with the registered trade mark and the identity of the goods or services covered by such registered trade mark is likely to cause confusion on the part of the public, or which is likely to have an association with the registered trade mark.

20. Sub Section (3) carves out a special circumstance in respect of clause (c) alone of sub section (2) where there is identity of not only registered trade mark but also identity of goods or services covered by the registered trade mark and in all such cases, the Court is bound to presume that there is a likelihood of confusion being caused on the part of the public.

21. I find force in the submission of the learned counsel for the plaintiffs. In the present case, the plaintiffs have established that the defendants are



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dealing with the plaintiffs registered trade mark “TINTOMETER” and they are also selling their products in the very same field of business. Thus, it is a clear case where Section 29(3) of the Trade Marks Act, 1999 would stand attracted and this Court is bound to presume that confusion shall be caused amongst public. The decision of the Hon'ble Supreme Court in the case of *Renaissance Hotel Holdings vs B.Vijaya Sai and Others* reported in (2022) 5 SCC 1 also is on the same lines.

22. Insofar as the award of damages to the tune of Rs.25,00,000/- is concerned, though the plaintiffs have made a claim, I do not find that the plaintiffs have substantiated the claim for damages by leading satisfactory oral and documentary evidence. However, in any event, the plaintiffs are being granted liberty to move this Court for ascertaining the profits made by the defendants by using the 1st plaintiff's trade mark and have a final decree passed thereafter. Therefore, the same would suitably compensate the plaintiffs. Therefore, I am not inclined to award any damages as prayed for by the plaintiffs.



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23. The suit is therefore partly decreed, in the following manner:-

(a) the plaintiffs are entitled for permanent injunction restraining the defendants or any one claiming through or under them from in any manner infringing the plaintiff's registered trade mark "TINTOMETER" by using an identical trade mark "TINTOMETER" or any other trade mark deceptively similar to the plaintiff's registered trade mark;

(b) permanent injunction restraining the defendants or any one claiming through or under them from in any manner passing off and/or enabling others to pass off the defendants' products under the trade mark "TINTOMETER" as and for the plaintiffs' products by manufacturing, importing, selling or offering to sell, distributing, displaying, printing, stocking, using, advertising their products with the



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trade mark “TINTOMETER” or any other trade marks which is identical or similar to the plaintiffs' trade mark “TINTOMETER”;

(c) the defendants are directed to surrender to plaintiffs for destruction of all products, labels, cartons, dyes, blocks, moulds, screen prints, packing materials and other materials bearing the trade mark “TINTOMETER” or any mark deceptively similar to plaintiffs registered trade mark “TINTOMETER”;

and

(d) a preliminary decree is also passed directing the defendants to render true and proper accounts of profits made by them by using of trade mark “TINTOMETER” and liberty is granted to the plaintiffs to take out suitable application for enquiring into the said profits and for passing of



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final decree thereafter.

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23. In the result, the suit is partly decreed on the above terms. No costs.

04.06.2024

Index:yes/No
Speaking Order/Non-Speaking Order
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P.B.BALAJI,J.,

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