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C.S. (Comm. Div) No.136 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.S. (Comm. Div) No.136 of 2023

1. Mr. A.D. Padmasingh Isaac
Proprietor,
Aachi Spices and Foods,
Old No.4, New No.181/1,
6th Avenue,
Thangam Colony,
Anna Nagar,
Chennai – 600 040.

2 M/s. Aachi Masala Foods Private Limited
No.1926, 34th Street,
I Block,
Ishwarya Colony,
Anna Hagar West,
Chennai-600 040.
Represented by its Director
Mr. Ashwin Pandian

3. M/s. Flora Foods
A Partnership Firm,
No. 1926, 34th Street,
I Block,
Ishwarya Colony,
Anna Nagar West,
Chennai-600 040.
Represented by its Partner
Mrs. Thelma Isaac

...

Plaintiffs

vs.



C.S. (Comm. Div) No.136 of 2023

1. Karaikudi Aachi Mess
No. 388, Durai Complex,
Valliammai Nagar,
Dharapuram Road,
Tirupur Bazaar,
Tiruppur-641 604.
Tamil Nadu

2. Zomato Limited
Having Registered Office at
Ground Floor 12A,
94, Meghdoot, Nehru Place,
New Delhi – 110 019
Also having office at
251, Rattan Bazaar,
Chennai – 600 003.

3. Swiggy India,
Having its Head Office at
Sarjapur Main Road,
Koramangala, 1st Block,
Near Sony World Signal & GKP Optical
Bangalore – 560 034,
Karnataka
Also having its office at
6th Floor,
Capital Towers,
No.180, Kodambakkam High Road,
Tirumurthy Nagar,
Nungambakkam,
Chennai – 600 034.

... Defendants

Prayer : Plaintiff has been filed Order IV, Rule 1 of the Original Side Rules and Order VII, Rule 1 of the C.P.C. Read with Sections 27(2) 29, 134 and 135 of the Trade Marks Act, 1999 prays for judgment and decree:

a) granting a permanent injunction, restraining the 1st Defendant,



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by himself, his servants, agents, distributors, or anyone claiming through him from manufacturing, selling, advertising and offering for sale or providing services using the name 'KARAIKUDI AACHI MESS' or any other similar Trade Mark name or similar sounding expression in any media, websites, online trade, mobile applications and use the same in name board, invoices, letter heads and visiting cards or by using any other trade mark/name which is in any way visually or deceptively or phonetically similar to the 1 Plaintiff's trade mark/name AACHI/AACHI CHETTINAD RESTAURANT/AACHI KITCHEN/AACHI NAMMA KITCHEN/AACHI BHAVAN and use the same in pouches, packets or use the mark in invoices, letters heads and visiting cards, websites, online trade, mobile applications and internet advertising or part of their restaurant name any other trade literature or Menu card by using any other trade mark which is in any way visually, or phonetically similar to the Plaintiffs' registered Trade Mark Nos. 838786, 1116254, 1479159, 1715718, 2965624, 5275581, 5274680 & 5446987 or in any manner infringing the 1st Plaintiff's registered Trade Marks referred herein.

b) granting a permanent injunction restraining the 1^a Defendant by itself, its agents or servants or anyone claiming through or under him any business marketing, selling advertising using in trade literature, menu cards, invoices, name boards, websites, online trade, mobile applications, internet advertisements the mark/name 'KARAIKUDI AACHI MESS' in relation to the Restaurant or with respect to or any other food preparation or on any other business the impugned trademark/name which is in any manner deceptively or phonetically confusingly similar to the Plaintiffs

Trade	Mark/name	AACHI/AACHI	CHETTINAD
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RESTAURANT/AACHI KITCHEN/AACHI NAMMA KITCHEN/AACHI BHAVAN or in any other manner pass off their hotel, business or goods as and for that of the Plaintiffs.

c) mandatory injunction directing the 2nd & 3rd Defendants to remove or take down the name and details of the 1st Defendant in the following impugned links :

<https://www.zomato.com/tiruppur/karaikudi-aachi-mess-valliammal-nagar/order>

<https://www.swiggy.com/restaurants/karaikudi-aachi-mess-south-karuyampalayam-tirupur-210982>

from the local searches of the 2nd & 3rd Defendant's online databases. web and mobile application reflecting the infringing name KARAIKUDI AACHI MESS in relation to the Restaurant services or with respect to any other food preparation or on any other similar business or providing information, menus and user reviews pertaining to such Restaurant services or with respect to any other food preparation or on any other similar business in any manner so as to cause confusion to the public with respect to the Plaintiffs Trade Mark/name AACHI/AACHI CHETTINAD RESTAURANT/AACHI KITCHEN/AACHI NAMMA KITCHEN/AACHI BHAVAN.

d) directing the Defendants to surrender to the Plaintiffs all the



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packing material, cartons, advertisement materials and hoardings, letter-heads, visiting cards, office stationery and all other materials containing/bearing the name "KARAIKUDI AACHI MESS or other identical trade mark used in the pouches and packets bearing the word AACHI/AACHI CHETINAD RESTAURANT/AACHI KITCHEN/AACHI NAMMA KITCHEN/AACHI BHAVAN.

e) directing the Defendants to render an account of profits made by them by the use of the impugned trademark 'KARAIKUDI AACHI MESS on the service referred and decree the suit for the profits found to have been made by the Defendant, after the Defendant has rendered accounts:

f) directing the Defendants to pay to the Plaintiffs the costs to the suit, and

g) pass such further or other orders, as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Plaintiffs : Ms.Gladys Daniel

For Defendant : Set exparte

JUDGMENT

The suit has been filed for infringement and passing off. The 1st plaintiff is a registered proprietor of the trademark AACHI. The 2nd and 3rd plaintiffs are the licencees of the 1st plaintiff. All three of them are entitled to use the trademark AACHI.

2. The 1st plaintiff has obtained the trademark registration for his trademark AACHI under various classes from the Trademark Registry.



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Earlier the very same plaintiffs filed a suit in C.S. (Comm. Div.) No.195 of 2022 against the defendants seeking for the very same reliefs.

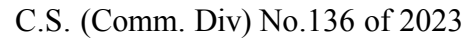
However, the plaintiffs were anti suited, since Section 12A of the Commercial Courts Act, 2015, was not complied with. Thereafter, the Plaintiffs have sent a notice to the defendants calling upon them to come for mediation. However, despite the said notice, the defendants chose not to participate in the mediation. Only under those circumstances, the present suit has been filed seeking for the very same relief that were sought earlier in C.S. (Comm. Div). No.195 of 2022. The defendants are using the trademark KARAIKUDI AACHI MESS, which according to the plaintiffs is deceptively similar to that of the plaintiffs trademark AACHI. The 1st plaintiff has also obtained registration of the trademark for its restaurant business. They are having restaurants in Chennai and other places. They claim that their trademark AACHI by its long and continuous usage has acquired a distinctive identity of its own and the general public associate the said trademark AACHI only with that of the plaintiffs and no one else. Having come to know that the 1st defendant is using a deceptively similar trademark KARAIKUDI AACHI MESS for its restaurant business, the plaintiffs have issued Cease and Desist notices to the respective defendants, all dated 10.01.2023.



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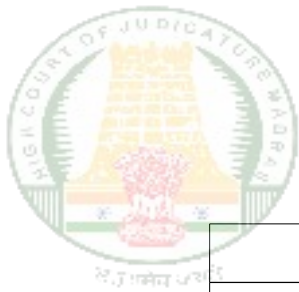
Despite the same the 1st defendant is continuing to use the trademark KARAIKUDI AACHI MESS which is deceptively similar to that of the plaintiffs trademark. The 2nd and 3rd defendants are the platforms through whom the 1st defendant is marketing its food items for its restaurant business under the trademark KARAIKUDI AACHI MESS, which is deceptively similar to that of the plaintiff's trademark.

3. The 1st and 3rd defendants have been served with the suit summons and the 2nd defendant has been served through Substituted Service effected by the plaintiffs, pursuant to the orders passed by this Court. All the defendants have been set exparte by this Court. Till date, none of the defendants have filed any application seeking to set aside the exparte order. The plaintiffs have also recorded the exparte evidence before the learned Additional Master II. The plaintiffs authorised representative Mr.Gnanasambandam has been examined as a plaintiff's witness (PW1). He has also filed a proof affidavit reiterating the contents of the plaint. Through PW1, the following documents were marked as Exhibits on the side of the plaintiffs before the learned Additional Master – II :



Ex.P1.	Original Authorization letters dated on 02.12.2023
Ex.P2.	Original Board Resolution dated on 25.07.2022
Ex.P3.	Print out of the list of products manufactured and marketed by the Plaintiffs bearing the trademark AACHI
Ex.P4.	Certified copy of the Certificate of incorporation of Aanchi Masala Foods P Ltd. Dated 30.06.2006
Ex.P5.	Certified copy of the Certificate of Commercial Tax Registration of Aachi Masala & Foods (P) Ltd., dated 10.07.2006
Ex.P6.	Certified copy of the Dissolution Deed between Mrs.Rani Pandian and Mr.A.D. Padmasingh Isaac dissolving the partnership firm, Naveen Products dated 31.03.2007
Ex.P7.	Certified copy of the Certificates of Commercial Tax Registration and Central Sales Tax of Aachi Spices & Foods dated 28.12.2006 and 03.01.2007
Ex.P8.	Certified copy of the Trade Mark License User Agreement between Mr.A.D. Padmasingh Isaac trading as Aachi Spices and Foods and Aachi Masala Foods Pvt. Ltd., dated 01.04.2007.
Ex.P9.	Certified copy of the Memorandum of Association of Aachi Spices and Foods P. Ltd. dated 06.03.2010
Ex.P10.	Certified copy of the Certificate of incorporation of Aachi Spices and Foods P. Ltd., dated 17.03.2010.

Ex.P11.	Certified copy of the Trade Mark License User Agreement between Mr.A.D. Padmasingh Isaac and Aachi Spices and Foods Pvt. Ltd., dated 21.04.2010.
Ex.P12.	Certified copy of the Trade Mark License User Agreement between Mr.A.D. Padmasingh Isaac and Aachi Masala Foods



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	P. Ltd., dated 21.04.2010.
Ex.P13.	Certified copy of the Trade Mark License User Agreement between Mr.A.D. Padmasingh Isaac and Aachi Masala Foods P. Ltd., dated 04.03.2020
Ex.P14.	Certified copy of the Trademark License User Agreement between Mr.A.D. Padmasingh Isaac and Aachi Spices and Foods Pvt. Ltd., dated 04.03.2020.
Ex.P15.	Certified copy of the Plaintiffs Advertisement in RITZ Magazine.
Ex.P16.	Certified copy of the Registration Certificates of the mark AACHI in various countries around the world
Ex.P17.	Certified copy of the Madrid Protocol Registration in classes 29, 30, 43 with respect to the Trademark AACHI (Word) & (Device) designating 107 & 117 countries valid and subsisting as on date
Ex.P18.	Certified copy of the Sample Sales Invoices for the years 2000- 2022
Ex.P19.	Certified copy of the Sample Advertisement Invoices and Expenses for the years 1999-2022
Ex.P20.	Certified copy of the Chartered Accountant certificates
Ex.P21.	Certified copy of the Legal use certificate of Trade Mark No. 838786 in Class 30, dated 29.01.1999
Ex.P22.	Certified copy of the Legal use certificate of Trade Mark No. 1116254 in Class 30, dated 22.07.2022
Ex.P23.	Certified copy of the Legal use certificate of Trade Mark No. 1715718 in Class 43, dated 30.07.2008
Ex.P24.	Certified copy of the Legal use certificate of Trade Mark No. 2965624 in Class 43, dated 18.05.2015
Ex.P25.	Certified copy of the Legal use certificate of Trade Mark No. 1479159 in Class 30, dated 17.08.2006
Ex.P26.	Certified copy of the Legal use certificate of Trade Mark No. 5275581 in Class 43. dated 06.01.2022



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Ex.P27.	Certified copy of the Legal use certificate of Trade Mark No. 5274680 in Class 43, dated 06.01.2022
Ex.P28.	Certified copy of the Legal use certificate of Trade Mark Na 5446987 in Class 43, dated 13.05.2022
Ex.P29.	Photograph of the Aachi Namma Kitchen's name board
Ex.P30.	Original Aachi Namma Kitchen's menu card
Ex.P31.	Print out of the order passed by Trademark Trial and Appellate Board, United States Patent and Trademark office dated 13.09.2016
Ex.P32.	Print out of the order passed by the Australian Trademark Office in an Opposition filed by the 1 Plaintiff dated 04.06.2021
Ex.P33.	Certified copy of the Partnership Deed of the 3 Plaintiff dated 30.09.2021
Ex.P34.	Certified copy of the Trade Mark License user Agreement between Mr. A.D.Padmasingh Isaac, Aachi Spices and Foods and Flora Foods dated 01.11.2021
Ex.P35.	Print out of the Invoice receipts for Aachi Namma Kitchen for the year 2022
Ex.P36.	Photograph of the 1 st Defendant's name Board & visiting card
Ex.P37.	Print out of the 1 st Defendant's Restaurant name as reflected in the online platform of the 2 nd Defendant
Ex.P38.	Print out of the 1 st Defendant's Restaurant name as reflected in the online platform of the 3 rd Defendant
Ex.P39.	Print outs of the Common Judgment in C. S. (Comm. Div) Nos. 192-195, 177, 183, 186 of 2022 dated 23.11.2022
Ex.P40.	Office copy of the Cease & Desist Notice sent to the 1 st Defendant with Postal Receipt and Returned cover
Ex.P41.	Office copy of the Cease & Desist Notice sent to the 2 nd Defendant with Postal Receipt and online Truck consignment and Returned cover
Ex.P42.	Office copy of the Cease & Desist Notice sent to the 3 rd Defendant with Postal Receipt and online Track consignment



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4. In the plaint, the plaintiffs have disclosed their sales turnover and as seen from the same, their turnover is huge. They have disclosed the advertisement costs incurred by them for promoting their products under the registered trademark AACHI. As seen from the same, the plaintiffs have incurred huge amount of expenditure for promoting their products through various advertisements given by them. The 1st plaintiff is the Proprietor of the trademark AACHI. He continues to use the trademark AACHI through his Licensees viz., the 2nd and 3rd plaintiffs. A Trademark License User Agreement, dated 04.03.2020 has also been entered between the 1st plaintiff and the 2nd plaintiff which has been marked as Ex.P13. The 1st plaintiff has also executed a Trademark License User Agreement, dated 01.11.2021 in favour of the 3rd plaintiff, which has been marked as Ex.P.34. The certified copy of the plaintiffs advertisement in RITZ Magazine is marked as Ex.P15 and the plaintiffs have also filed Chartered Accountants Certificate (Ex.P20) and sample advertisement invoices in Ex.P19 which will reveal that the plaintiff has incurred huge amount of expenditure towards advertisement cost. The plaintiff has also filed the sample invoices which have been Ex.P18, which will reveal that the plaintiffs are in continuous use of the registered trademark AACHI from 1995 onwards. Ex.P17, confirms that the



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plaintiffs trademark AACHI has been registered in 117 countries world wide. As seen from the documents, which have been marked as Exhibits on the side of the plaintiffs, it is clear that the plaintiffs trademark AACHI is a reputed trademark in the restaurant business and they are in the field from 1995 onwards. The plaintiffs through its lawyer have also issued Cease and Desist notice to the defendants, all dated 10.01.2023, which have been marked as Exs.P40 to P42. Despite receipt of the same, the defendants have not stopped using the deceptively similar trademark KAM. The defendants 2 and 3 who are the platforms which are being used by the 1st defendant to market their food items under the infringing trademark KARAIKUDI AACHI MESS have also not taken down the links despite the Cease and Desist notices sent by the plaintiffs, till date.

5. This Court after giving due consideration to the pleadings in the plaint as well as the oral and documentary evidence produced by the plaintiffs is of the considered view that the suit claim insofar as prayer (a), (b) and (c) in the plaint are proved by the plaintiffs. Accordingly, the suit is partly decreed by granting the following reliefs in favour of the plaintiff :

a) permanent injunction restraining the 1st defendant or any



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person claiming through him from manufacturing, selling, advertising and offering for sale or providing services using the name 'KARAIKUDI AACHI MESS' or any other similar Trade Mark name or similar sounding expression in any media, websites, online trade, mobile applications and use the same in name board, invoices, letter heads and visiting cards or by using any other trade mark/name which is in any way visually or deceptively or phonetically similar to the 1 Plaintiff's trade mark/name AACHI/AACHI CHETTINAD RESTAURANT/AACHI KITCHEN/AACHI NAMMA KITCHEN/AACHI BHAVAN and use the same in pouches, packets or use the mark in invoices, letters heads and visiting cards, websites, online trade, mobile applications and internet advertising or part of their restaurant name any other trade literature or Menu card by using any other trade mark which is in any way visually, or phonetically similar to the Plaintiffs' registered Trade Mark Nos. 838786, 1116254, 1479159, 1715718, 2965624, 5275581, 5274680 & 5446987 or in any manner infringing the 1st Plaintiff's registered Trade Marks referred to supra.

b) permanent injunction restraining the 1st defendant or any person claiming through him or under him any business marketing,



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selling advertising using in trade literature, menu cards, invoices, name boards, websites, online trade, mobile applications, internet advertisements the mark/name 'KARAIKUDI AACHI MESS' in relation to the Restaurant or with respect to or any other food preparation or on any other business the impugned trademark/name which is in any manner deceptively or phonetically confusingly similar to the Plaintiffs Trade Mark/name AACHI/AACHI CHETTINAD RESTAURANT/AACHI KITCHEN/AACHI NAMMA KITCHEN/AACHI BHAVAN or in any other manner pass off their hotel, business or goods as and for that of the Plaintiffs.

c) mandatory injunction directing the 2nd & 3rd Defendants to remove or take down the name and details of the 1st Defendant in the following impugned links :

<https://www.zomato.com/tiruppur/karaikudi-aachi-mess->

valliammal-nagar/order

<https://www.swiggy.com/restaurants/karaikudi-aachi-mess-south-karuyampalayam-tirupur-210982>

from the local searches of the 2nd & 3rd Defendant's online databases. web and mobile application reflecting the infringing name



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KARAIKUDI AACHI MESS in relation to the Restaurant services or

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with respect to any other food preparation or on any other similar business or providing information, menus and user reviews pertaining to such Restaurant services or with respect to any other food preparation or on any other similar business in any manner so as to cause confusion to the public with respect to the Plaintiffs Trade Mark/name AACHI/AACHI CHETTINAD RESTAURANT/AACHI KITCHEN/AACHI NAMMA KITCHEN/AACHI BHAVAN, within a period of one month from the date of receipt of a copy of this judgment.

6. The learned counsel for the plaintiffs submits on instructions that the plaintiffs are not pressing the reliefs sought for as against the prayers (d), (e) and (g) in the plaint. The said submission is recorded.

7. The 1st defendant is also directed to pay the cost of the suit.

05.03.2024

Index: Yes/ No
Speaking order / Non speaking order
Neutral citation : Yes / No
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APPENDIX

List of Witness Examined on the side of the Plaintiffs:

Mr.B.Gnanasambandam as PW1

List of documents marked on the side of the plaintiffs :

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ABDUL QUDDHOSE, J.

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