



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.06.2024

CORAM:

THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

C.S. No.197 of 2014

Ashok Kumar Sethi

... Plaintiff

Vs.

1. M/s.Sangam Mehendi Industries,
Sojat City,
Rajasthan – 306 104.

2. Mukehs Kumar & Company,
N.H.Road, Industrial Area,
Sojat City,
Rajasthan – 306 104.

... Defendants

Civil Suit is filed under Order IV Rule 1 of the Original Side Rules and Order VII Rule 1 Civil Procedure Code read with Sections 54, 55 and 62 of the Copyright Act, 1957 and Section 27(2) read with Section 134 & 135 of the Trade Marks Act, 1999, praying for a judgment and decree against the defendant:

a) granting a permanent injunction, restraining the defendants, by themselves, their servants, agents, distributors or anyone claiming through them from reproducing by selling, advertising and or offering for sale by



using the impugned Copyright APNA GOLD as shown in Document No.2 upon the goods or in any media and use the same in invoices, letter heads and visiting cards or by using any other Copyright which is in any way visually, phonetically or deceptively similar to the plaintiff's Copyright BLACK GOLD the picture mark as shown in Document No.1 or in any manner infringing the plaintiff's Copyright as shown in Document No.1.

b) granting a permanent injunction, restraining the defendants by themselves, their servants, agents, men or anyone claiming through them from manufacturing, marketing, distributing, offering or advertising for sale black hennas, dyes or any toilet preparation of all kinds using the Mark APNA GOLD or its color scheme and get up as shown in Document No.2 in the course of their business and passing of their black hennas dyes, toilet preparations of all kinds using the Plaintiff's Trade Mark BLACK GOLD or its color scheme and get up of the cartons of the plaintiff goods as shown in Document No.1 or enable others to pass off by using deceptive marks and names.

c. directing the defendants to surrender to the plaintiff all the black hennas, packing materials, cartons, advertisement materials and hoardings, letter-heads, visiting cards, office stationery and all other materials containing / bearing the Trade Mark APNA GOLD and other deceptively similar Trade Mark in respect of black hennas.

d. for a preliminary decree in favour of the plaintiff, directing the



defendants to render an account of profits made by them by the use of the Trade Mark APNA GOLD on the goods referred and for a final decree in favour of the plaintiff for the amount of the profits found to have been made by the defendants, after the defendants have rendered accounts;

e. directing the defendants to pay to the plaintiff the costs to the suit.

For Plaintiff : M/s.Gladys Daniel

For Defendants : Set exparte

JUDGMENT

The plaintiff has filed this Civil Suit for grant of permanent injunction, restraining the defendants from reproducing by selling, advertising and or offering for sale by using the impugned Copyright “APNA GOLD” and use the same in invoices, letter heads and visiting cards or by using any other Copyright which is deceptively similar to the plaintiff's Copyright “BLACK GOLD” and permanent injunction restraining the defendants from manufacturing, marketing, distributing, offering or advertising for sale black hennas, dyes or any toilet preparation of all kinds using the mark “APNA GOLD” or its color scheme and passing of their black hennas dyes, toilet preparations of all kinds using the Plaintiff's Trademark “BLACK GOLD” and to direct the defendants to surrender to the plaintiff all the black hennas,



packing materials, cartons, advertisement materials and hoardings, letter-heads, visiting cards, office stationery and all other materials containing / bearing the Trademark “APNA GOLD” and other deceptively similar Trade Mark in respect of black hennas and for grant of preliminary decree in favour of the plaintiff, directing the defendants to render an account of profits made by them by the use of the Trademark “APNA GOLD” on the goods referred and for a final decree in favour of the plaintiff for the amount of the profits found to have been made by the defendants, after the defendants have rendered accounts.

2. It is the case of the plaintiff that the plaintiff is a renowned manufacturer and exporter of hair dyes and other products made of 'Henna'. The plaintiff commenced its business in the year 1992 and has been a leading manufacturer and marketer of dye based products in India with its turnover running into several lakhs of rupees. The plaintiff has also been manufacturing and selling its products under the Trademark “BLACK GOLD” in India and to various countries around the world since the year 1992. The plaintiff is also the owner of the Copyright of the artistic work in the pouch and carton of the product bearing the trademark “BLACK



GOLD”.

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2.1 The subject matter of this suit is the new pouch adopted by the plaintiff in the year 2004. Since its publication in the year 2004, the plaintiff is the sole and absolute owner of the Copyright “BLACK GOLD” and the plaintiff has been continuously using the same in the course of business and trade for over several years. Apart from the Copyright, the plaintiff is also the owner of the trademark “BLACK GOLD” and also applied for its registration in order to protect its statutory right. The trademark “BLACK GOLD” is unique and exclusively associated with the plaintiff in the minds of the consumers and the public at large. The plaintiff is spending lakhs of rupees every year in promoting the said Copyright / Trademark material found in the carton of “BLACK GOLD” by way of expenditure on advertisements in different medias. The plaintiff has asserted its exclusive right over the trademark and copyright “BLACK GOLD” and prevented infringement of Copyright and has invested huge amounts in protecting its intellectual property rights in the said IPRs.

2.2 During the month of February, 2014, the plaintiff discovered that



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the defendants were manufacturing and selling black hennas thereby exploiting the plaintiff's copyright / trademark "BLACK GOLD" by adopting the word "APNA GOLD" in the same manner in which the plaintiff's copyright / trademark "BLACK GOLD" is displayed and the colour scheme used is as exact the reproduction of the plaintiff's copyright. Further, the following essential features have been adopted by the defendants:

- i) The black colour pouch
- ii) The trademark written in yellow colour at the top
- iii) The square shaped border
- iv) The silver colour background
- v) The girl's fact along with the word black henna
- vi) The words "Permanent Powder Hair Dye Kali Mehendi" written at the bottom of the pouch.

2.3 The present suit relates to *inter alia* the copyright "BLACK GOLD" of the plaintiff which has come to be exclusively associated with the goods of the plaintiff and their authorized users. The plaintiff is particularly concerned about the rampant infringement of copyright and passing off committed by the defendants using the plaintiff's copyright "BLACK GOLD"



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with respect of their black henna products. The defendants are guilty of committing fraud since they have substantially reproduced the essential features of the copyright. The acts of the defendants amount to infringement of the plaintiff's copyright. The marks / logo / packaging as adopted by the defendants are blatant and specious imitations of the copyright / trademark of the plaintiff. The defendants have chosen to commit the aforesaid wrongful and unlawful activities with the object of misleading and confusing the customers solely with the object of appropriating to themselves the goodwill and reputation of plaintiff in relation to "BLACK GOLD" black henna. The whole purpose of this adoption of the impugned mark / work is to confuse the public and to pass off its products as those of the plaintiff which leads to deception.

2.4 In view of the above stated reasons, the plaintiffs prays that the defendants ought to be restrained permanently by granting a decree of permanent injunction from infringing the plaintiff's copyright and from passing off their goods, labels and packaging as those of the plaintiff and the defendants are also liable to render accounts to the plaintiff in respect of black hennas manufactured and sold by them in violation of the plaintiff's



afore stated rights.

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3. Despite notice being served on the defendants, they have not chosen to contest the matter. Hence, the defendants were set *ex parte* by this Court.

4. The plaintiff has recorded the *ex parte* evidence. The authorised signatory of the plaintiff is examined as P.W.1. He had also filed a proof affidavit reiterating the contents of the plaint filed in support of this suit. Through PW1, 9 documents have been marked as Exs.P1 to P9. Ex.P1 is the original authorization letter dated 06.03.2024. Ex.P2 is the photocopy of the passport for address proof of residence of the plaintiff. Ex.P3 is the photocopies of the Manufacturing License for “BLACK GOLD” for the years 1992-2016. Ex.P4 is the original plaintiff's carton label “BLACK GOLD”. Ex.P5 is the photocopies of Invoices showing the sale of “BLACK GOLD” for the years 1993-2014. Ex.P6 is the photocopies of Advertisement for “BLACK GOLD” for the years 1994-1996. Ex.P7 is the photocopies of the Bills for making advertisements for the years 1994-1997. Ex.P8 is the original Chartered Accountant Certificate for the years 1992-2013. Ex.P9 is the original defendant's carton label “APNA GOLD”.



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5. The defendants neither challenged the averments in the plaint nor challenged the proof affidavit of the plaintiff. Upon hearing the learned counsel for the plaintiff and on analysis of the above oral and documentary evidence adduced on the side of the plaintiff, it is clear that the plaintiff has proved his case.

6. In view of the same, the Civil Suit is decreed with costs.

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(1/2)

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Plaintiff's witness: P.W.1 – Mr.Karunakar Das

Defendants' witness: Nil

Documents exhibited by the plaintiff:

SNo	Exhibit	Description of the document
1	Ex.P1	Original authorization letter dated 06.03.2024.
2	Ex.P2	Photocopy of the passport for address proof of residence of the plaintiff.
3	Ex.P3	Photocopies of the Manufacturing License for “BLACK GOLD” for the years 1992-2016.
4	Ex.P4	Original plaintiff's carton label “BLACK GOLD”
5	Ex.P5	Photocopies of Invoices showing the sale of “BLACK GOLD” for the years 1993-2014
6	Ex.P6	Photocopies of Advertisement for “BLACK GOLD” for the years 1994-1996.
7	Ex.P7	Photocopies of the Bills for making advertisements for the years 1994-1997
8	Ex.P8	Original Chartered Accountant Certificate for the years 1992-2013.
9	Ex.P9	Original defendant's carton label “APNA GOLD”.

Documents exhibited by the Defendant: Nil

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