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C.S. (COMM. DIV.) No.272 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.S. (COMM. DIV.) No.272 of 2023

CavinKare Pvt. Ltd.,
rep. by its Authorised Signatory
R. Thazhalan

...

Plaintiff

vs.

1. CH Trading Company
Anjukunnu P.?.
Wayanad
Mananchira-670 645.

2. K.Hamsa,
Golden Pazhamudi P.O.
Maravayal, Kalpetta,
Wayanad
Kerala-673 122.

...

Defendants

PRAYER : PLAINT FILED UNDER ORDER VII RULE 1 CPC READ WITH ORDER IV RULE 1 OS RULES READ WITH SEC. 27, 28, 29, 134 & 135 OF THE TRADEMARKS ACT, 1999 to grant a judgment and decree on the following terms: -

a) 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 trademark MAA under No. 1109946 in class 32



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by using an identical trademark MAA or any other trademark deceptively similar to the plaintiff's registered trademark or in any other manner whatsoever,

b) 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 passing off and/or enabling others to pass off the Defendants' products under the trademark MAA as and for the plaintiffs' products by manufacturing, selling, or offering to sell, distributing, displaying, printing, stocking, using, advertising their products with a trademark MAA or any other trademark which is identical or similar to the plaintiff's trademark MAA or in any other manner whatsoever;

c) the Defendant 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 MAA or any mark deceptively similar to plaintiffs' registered trademark MAA.

d) a preliminary decree be passed in favour of the Plaintiffs directing the Defendant to render account of profits made by use of trademark MAA and a final decree be passed in favour of the Plaintiffs for the amount of profits thus found to have been made by the Defendant after the latter have rendered accounts,

e) for costs of the suit; and

f) pass such further or other reliefs



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For Plaintiff	: Mr.R. Sathish Kumar
For Defendants	: Set exparte

JUDGMENT

The suit has been filed for infringement and passing off. The plaintiff is the registered Proprietor of the trademark **MAA**. They have been using the said trademark since 2002 in respect of fruit drinks. By the long and continuous usage, they claim a distinctive identity for the said trademark **MAA**. They also claim that the trademark **MAA** is exclusively associated only with them. They have also obtained trademark registration under class 32 for **MAA** on 07.06.2002. They have also disclosed their sales turnover in the plaint for the past several years, which will reveal that they are having a huge turnover. They have also disclosed the advertisement costs incurred by them for promoting their products under the trademark **MAA**, which also reveals that the plaintiff has incurred huge amount of expenditure towards costs. The plaintiff came to know in the month of September 2023 that the defendants are also using an identical trademark **MAA** for the very same product of manufacturing and selling fruit drinks. After coming to know of the same, the plaintiff has also issued a cease and desist notice to the



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defendants on 20.09.2023. The said notice has also been received by the defendants. However, the defendants have chosen neither to reply the same nor stopped using the offending trademark which is identical to that of the plaintiff. Under the aforementioned circumstances, the suit has been filed.

2. The defendants have already been set ex-parte by this Court on 14.02.2024 before the learned Additional Master- III. The plaintiff has recorded the ex-parte evidence. The plaintiff's Authorised Signatory Mr.S. Srivatsan was examined as PW1 on the side of the plaintiff. He has also filed a proof affidavit reiterating the contents of the plaint filed in support of this suit. Through PW1, the following documents have been marked as Exhibits :-

Ex.P1 is the original Board Resolution dated 31.05.2013
Ex.P2 is the original trademark registration of the plaintiff under No.1109946 in class 32 for MAA dated 07.06.2002 along with the printout of the renewal certificate.
Ex.P3 is the photocopy of the press clippings showing the news regarding the plaintiff's products under the trademark MAA for the period 2008 onwards.
Ex.P4 is the printout of the plaintiff's MAA soft drinks
Ex.P5 is the printout of the defendants' MAA soft drinks



Ex.P6 is the office copy of the cease and desist notice to the defendants from the plaintiff with acknowledgement cards from the defendants dated 20.09.2023.

3. As seen from the Exhibits marked on the side of the plaintiff, the plaintiff has obtained its trademark registration for the trademark **MAA** on 07.06.2022 under class 32 and the trademark registration certificate has also been marked as Ex.P2. As seen from the trademark registration certificate dated 07.06.2002 (Ex.P2), the plaintiff has been using the mark since 2002. The plaintiff has also filed press clippings with respect to their credentials which has been marked as Ex.P3 for the period from 2008 onwards. The print out of the plaintiff's trademark **MAA** soft drinks has been marked as Ex.P4 and the print out of the defendants' trademark **MAA** soft drinks has been marked as Ex.P5.

4. As seen from the Exs.P4 and P5, it is clear that the defendants have blatantly copied the plaintiff's trademark **MAA**. The trade dress of the defendants as seen from Ex.P5 also reveals that it is identical to that of the plaintiff. The plaintiff had also issued a cease and desist notice on 20.09.2023, after coming to know that the defendants have copied the



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plaintiff's registered trademark. The said cease and desist notice dated 20.09.2023 has been marked as Ex.P6. The acknowledgement cards received from the defendants have also been marked as an Exhibits. Despite receipt of the same, the defendants have also not chosen to send any reply and till date, they have also not stopped using the plaintiff's trademark **MAA** as seen from the averments contained in the plaint and the affidavit as well as from the plaint documents.

5. This Court after giving due consideration to the plaint averments and the documents filed along with the plaint, which have been marked as Exhibits is of the considered view that the plaintiff has proved the suit claim. Therefore, they are entitled for the plaint reliefs as prayed for in the plaint. Accordingly, the suit is decreed as prayed for in favour of the plaintiff by granting the following reliefs against the defendants :-

a) 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 trademark **MAA** under No. 1109946 in class 32 by using an identical trademark **MAA** or any other trademark deceptively



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similar to the plaintiff's registered trademark or in any other manner whatsoever,

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b) 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 passing off and/or enabling others to pass off the Defendants' products under the trademark MAA as and for the plaintiffs' products by manufacturing, selling, or offering to sell, distributing, displaying, printing, stocking, using, advertising their products with a trademark MAA or any other trademark which is identical or similar to the plaintiff's trademark MAA or in any other manner whatsoever;

c) the Defendants be ordered to surrender to Plaintiff for destruction of all products, labels, cartons, dyes, blocks, moulds, screen prints, packing materials and other materials bearing the trademark MAA or any mark deceptively similar to plaintiffs' registered trademark MAA.

d) a preliminary decree be passed in favour of the Plaintiff directing the Defendants to render account of profits made by use of trademark MAA 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.



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6. The defendants are directed to pay the costs of the suit to the plaintiff.

21.03.2024

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



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List of Witness Examined on the side of the Plaintiff:

WEB COPY P.W.1 – S. Srivatsan

S. No.	Exhibits	Description of documents
1.	P1	Ex.P1 is the original Board Resolution dated 31.05.2013
2.	P2	Ex.P2 is the original trademark registration of the plaintiff under No.1109946 in class 32 for MAA dated 07.06.2002 along with the printout of the renewal certificate.
3.	P3	Ex.P3 is the photocopy of the press clippings showing the news regarding the plaintiff's products under the trademark MAA for the period 2008 onwards.
4.	P4	Ex.P4 is the printout of the plaintiff's MAA soft drinks
5.	P5	Ex.P5 is the printout of the defendants' MAA soft drinks
6.	P6	Ex.P6 is the office copy of the cease and desist notice to the defendants from the plaintiff with acknowledgement cards from the defendants dated 20.09.2023.



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ABDUL QUDDHOSE, J.

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