

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2015

CORAM :

THE HONOURABLE Mr.JUSTICE **R.SUBBIAH**

C.S.No.519 of 2014
and
O.A.Nos.619 and 620 of 2014

Texmo Industries rep. By its
Constituted Attorney Palaniappan

... Plaintiff

Vs.

1.Vinod Hirani
2.Texmo Industries,
Chennai – 1.

... Defendants

Plaint under Order VII Rule 1 CPC r/w Order IV Rule 1 of O.S.
Rules and Sections 11, 27, 29, 134 and 135 of the Trade Marks Act,
1999.

For Plaintiff : Mr.M.S.Bharath

For Respondents : Mr.Akhil R.Bhansali
for M/s.BFS Legal

JUDGMENT

The plaintiff has filed the suit for the following reliefs:

(a)a decree of permanent injunction restraining the defendants, their directors, employees, officers, servants, agents and all others acting for and on their behalf from making, selling, distributing, advertising, exporting, offering for sale, and in any other manner, directly or indirectly, dealing in any product in the name of TEXMO or carry on any business under the name and style of TEXMO or TEXMO INDUSTRIES or any other similar mark amounting to an infringement of the plaintiff's registered trademarks Nos.315049, 315050, 794417, 794418, 794425, 794426, 794426, 794432, 794434, 794436, 794451, 794464 and 794465;

(b)A decree of permanent injunction restraining the defendant, its officers, employees, servants and agents, from manufacturing, selling, offering for sale, advertising and directly or indirectly dealing in any product or service under the trademark TEXMO INDUSTRIES or carry on any business under the name and style of TEXMO or TEXMO INDUSTRIES or any other similar marks amounting to passing off of the products and services of the defendants as and for that of the plaintiff's mark TEXMO & TEXMO INDUSTRIES;

(c)To declare the plaintiff's trademark TEXMO as a well known

trade mark;

(d) To grant order of delivery up of any brochures/printed material and/or any material which infringes of plaintiff's registered trademarks TEXMO;

(e) To direct the defendant for rendition of accounts in respect of their alleged activities especially sale and promotion of products bearing the mark TEXMO and TEXMO INDUSTRIES for their goods and business; and

(f) Costs.

2. Today, when the suit was taken up for consideration, learned counsel for the respective parties represented that the matter was settled between the plaintiff and the defendants and a memo of compromise has also been filed to that effect. The terms and conditions of the Memorandum of Compromise read as follows:-

"The plaintiff and Defendant Nos. 1 and 2 (hereinafter referred to as the "Defendants") have arrived at a settlement on the following terms and conditions:

1. The terms Plaintiff and Defendants shall mean and include their heirs, legal representatives, executors, administrators, successors in business and assigns of each party.

2.The Plaintiff instituted the instant suit against the Defendants seeking following reliefs:

(a)a decree of permanent injunction restraining the defendants, their directors, employees, officers, servants, agents and all others acting for and on their behalf from making, selling, distributing, advertising, exporting, offering for sale, and in any other manner, directly or indirectly, dealing in any product in the name of TEXMO or carry on any business under the name and style of TEXMO or TEXMO INDUSTRIES or any other similar mark amounting to an infringement of the plaintiff's registered trademarks Nos.315049, 315050, 794417, 794418, 794425, 794426, 794426, 794432, 794434, 794436, 794451, 794464 and 794465;

(b)A decree of permanent injunction restraining the defendant, its officers, employees, servants and agents, from manufacturing, selling, offering for sale, advertising and directly or indirectly dealing in any product or service under the trademark TEXMO INDUSTRIES or carry on any business under the name and style of TEXMO or TEXMO INDUSTRIES or any other similar marks amounting to passing off of the products and services of the defendants as and for that of the

plaintiff's mark TEXMO & TEXMO INDUSTRIES;

(c)To declare the plaintiff's trademark TEXMO as a well known trade mark;

(d)To grant order of delivery up of any brochures/printed material and/or any material which infringes of plaintiff's registered trademarks TEXMO;

(e)To direct the defendant for rendition of accounts in respect of their alleged activities especially sale and promotion of products bearing the mark TEXMO and TEXMO INDUSTRIES for their goods and business; and

(f)Costs and such other relief as this Hon'ble Court may deem fit, in the circumstances of the case, in the interests of justice and equity.

3.By order dated August 12, 2014 this Hon'ble Court was pleased to pass an exparte ad interim injunction order restraining the defendants as prayed in Prayer A above. Subsequently the injunction order was extended and valid till date.

4.In compliance with the above order the defendants have changed the name of their shop and removed the word TEXMO/TEXMO INDUSTRIES thereby stopped using

the mark TEXMO/TEXMO INDUSTRIES and now changed the name of the defendants as T.R.Metals.

5.It is also brought to the notice of this Hon'ble Court that Ms.Fancy Devi is the Sole Proprietor of the defendants thus the affidavit filed by Ms.Fancy Devi dated 7th January 2015 be recorded and decree be passed based on the undertaking given by them against all the defendants including Ms.Fanci Devi.

6.The defendants seeks time till 31st March 2015 to change the name in their Bank account and undertakes to give written confirmation to the plaintiff with the change of name of the account number and sales tax registration to which the plaintiff agrees.

7.The defendants agree and acknowledge that the plaintiff is the registered proprietor of the trademark TEXMO as detailed below and has exclusive statutory rights by virtue of such registrations and proprietary and common law rights on account of prior, long and extensive use of the trademark TEXMO INDUSTRIES to the exclusion of others.

Sl. No.	Trademark	Filed in the year	TM No. & Class	Status
1	TEXMO	1976	315049 in class 7	Registered
2	TEXMO	1976	315050 in class 7	Registered

Sl. No.	Trademark	Filed in the year	TM No. & Class	Status
3	TEXMO	1998	794417 in class 25	Registered
4	TEXMO	1998	794418 in class 26	Registered
5	TEXMO	1998	794425 in class 2	Registered
6	TEXMO DEVICE	1998	794426 in class 11	Registered
7	TEXMO	1998	794432 in class 22	Registered
8	TEXMO DEVICE	1998	794434 in class 24	Registered
9	TEXMO	1998	794436 in class 23	Registered
10	TEXMO	1998	794451 in class 11	Registered
11	TEXMO	1998	794464 in class 23	Registered
12	TEXMO DEVICE	1998	794465 in class 25	Registered

8.The defendants agree and undertake that they shall not use TEXMO, TEXMO INDUSTRIES or any other mark similar thereto as a trade mark, trade name, shop name or in any other manner, in relation to any of their products, services and business, present or future.

9.The defendants agree and undertake that they shall not use TEXMO, TEXMO INDUSTRIES or any other mark similar thereto in any of their advertising/marketing/promotional material in any form or domain, including hoardings, letter heads, invoices or any other material used in respect of their business.

10.The defendants undertake that they shall never in the future make an application either by themselves or through their agents before the Trademarks Registry for

registration of a trade mark which is in any manner identical or similar to or comprises the trade marks TEXMO, TEXMO INDUSTRIES.

11.The defendants submit to judgment and decree as prayed for in terms of prayer (A) and (B) of the plaint as follows:

A. A decree of permanent injunction restraining the defendants, their directors, employees, officers, servants, agents and all others acting for and on their behalf from making, selling, distributing, advertising, exporting, offering for sale, and in any other manner, directly or indirectly, dealing in any product in the name of TEXMO or carry on any business under the name and style of TEXMO or TEXMO INDUSTRIES or any other similar mark amounting to an infringement of the plaintiff's registered trademarks Nos.315049, 315050, 794417, 794418, 794425, 794426, 794426, 794432, 794434, 794436, 794451, 794464 and 794465;

B.A decree of permanent injunction restraining the defendant, its officers, employees, servants and agents, from manufacturing, selling, offering for sale, advertising and directly or indirectly dealing in any product or service under the trademark TEXMO INDUSTRIES or carry on any business under the name and style of TEXMO or TEXMO INDUSTRIES or any other similar marks amounting to

passing off of the products and services of the defendants as and for that of the plaintiff's mark TEXMO & TEXMO INDUSTRIES;

12.All the aforesaid undertakings will be binding henceforth on the said defendants, their Directors, successors-in-business, legal representatives and assignees.

13.It is therefore prayed that the present memorandum of compromise may be recorded and a decree in terms of paragraphs 60(A), 60(B) of the plaint may be passed in favour of the plaintiff and against the defendants by the Hon'ble Court, incorporating the terms of the settlement as a part thereof.

14.Should the defendants be found to be in breach of the present memorandum of compromise at any future date, they agree to be liable to pay as liquidated damages and such other amount as may be calculated as unliquidated damages to the plaintiff.

15.Subject to the aforesaid express undertaking by the defendants, the plaintiff agrees to give up the other reliefs claimed by them in the plaint.

3. So far as the prayer C, D and E are concerned, they are given up by the plaintiff. Hence there shall be a decree in terms of the memorandum of compromise. The memorandum of compromise shall form part of the decree. Consequently, connected applications are closed.

10.03.2015

Index : Yes / No
Internet : Yes / No
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R.SUBBIAH, J.,

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