

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2016

CORAM

THE HONOURABLE MR.JUSTICE **M.M.SUNDRESH**

C.S.No.877 of 2015

Banana Brand Works Pvt. Ltd.,  
rep. By its Authorised Signatory  
Mufadhal Ali

... Plaintiff

Vs

1.Kavan Antani,  
Director,  
Bananabandy Network Private Limited,  
505, Floor – 5, Plot No.16,  
Pushpa Kunj, Sitaram Deora Marg,  
A Road, Churchgate City,  
Mumbai – 400 020.

2.Bananabandy Network Private  
Limited,  
505, Floor – 5, Plot No.16,  
Pushpa Kunj, Sitaram Deora Marg,  
A Road, Churchgate City,  
Mumbai – 400 020.

... Defendants

Plaint filed under Order VII Rule 1 C.P.C. R/w Order IV Rule 1  
of the Original Side Rules of the Madras High Court and Sections 11,  
29, 134, 135 of Trade Marks Act, 1999.

For Plaintiff : Mr.M.S.Bharath

For Defendants : Mr.B.N.Suchindran

### **JUDGMENT**

The suit is laid 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 operating any business, making, selling, distributing, advertising, exporting, offering for sale, and in any other manner, directly or indirectly, dealing under the mark BANANA BANDY and its logo banana Bandy, BANANA BANDY, banana Bandy and/or any other mark deceptively similar for any service including advertising, branding, designing, marketing services amounting to an infringement of the plaintiff's registered trademark No.1974704.*

*(b)to grant permanent injunction restraining the defendants, their directors, employees, officers, servants, agents and all others acting for and on their behalf from operating any business, making, selling, distributing, advertising, exporting, offering for sale, and in any other manner, directly or indirectly, dealing under the mark BANANA BANDY and its logo banana Bandy, BANANA*

*BANDY, banana Bandy and/or any other mark deceptively similar for any services including advertising, branding, designing, marketing services that amounts to passing off of the goods and services of the defendants as though they are those of the plaintiff.*

*(c)to grant order of delivery up for destruction of all products, brochures, printed material, all banners, labels, packing materials and/or any material which infringes of plaintiff's registered trademarks under registered trademark No.1974704.*

*(d)to direct the defendant for rendition of accounts in respect of their alleged activities especially sale and promotion of services bearing the mark BANANA BANDY which is a substantial reproduction of the plaintiff's trademark BANANA and its logo banana.*

2.When the matter is taken up for hearing, learned counsel appearing for the parties, placing reliance on the memo of compromise filed on 21.10.2016, submits that the suit may be decreed in terms of the said memo. The said memo of compromise reads as under:

*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 operating any business, making, selling, distributing, advertising, exporting, offering for sale, and in any other manner, directly or indirectly, dealing under the mark BANANA BANDY and its logo banana Bandy, BANANA BANDY, banana Bandy and/or any other mark deceptively similar for any service including advertising, branding, designing, marketing services amounting to an infringement of the plaintiff's registered trademark No.1974704.*

*(b)to grant permanent injunction restraining the defendants, their directors, employees, officers, servants, agents and all others acting for and on their behalf from operating any business, making, selling, distributing, advertising, exporting, offering for sale, and in any other manner, directly or indirectly, dealing under the mark*

*BANANA BANDY and its logo banana Bandy, BANANA BANDY, banana Bandy and/or any other mark deceptively similar for any services including advertising, branding, designing, marketing services that amounts to passing off of the goods and services of the defendants as though they are those of the plaintiff.*

*(c)to grant order of delivery up for destruction of all products, brochures, printed material, all banners, labels, packing materials and/or any material which infringes of plaintiff's registered trademarks under registered trademark No.1974704.*

*(d)to direct the defendant for rendition of accounts in respect of their alleged activities especially sale and promotion of services bearing the mark BANANA BANDY which is a substantial reproduction of the plaintiff's trademark BANANA and its logo banana.*

*(e)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 15<sup>th</sup> July 2016, this Hon'ble Court was pleased to allow applications O.A.1173 of 2014 and O.A.1174 of 2014.*

*4.The Plaintiff and Defendants have therefore come forward with the following terms of settlement, in lieu of the orders passed by this Hon'ble Court.*

*a.The Defendants agree and acknowledge that the Plaintiff is the registered proprietor of the trademark BANANA and its logo banana bearing Trademark Registration No.1974704 in classes 35 and 42 and has exclusive statutory rights by virtue of such registration, proprietary and common law rights on account of prior, long and extensive use of the trademark BANANA and its logo banana to the exclusion of others.*

*b.The Defendants have refrained from using the trademark "BANANA and/or BANANA BANDY" for and during the course of its business, whether in word or in logo form, with effect from 27<sup>th</sup> September 2016. Notwithstanding the above, the Defendants shall have the right, until 21<sup>st</sup> October 2016, to use the phrase "earlier known as BananaBandy" along with the new trademark/tradename adopted by the Defendants for its business. The Defendants shall on or before the 21<sup>st</sup> of October 2016, file on the record of this Hon'ble Court an affidavit deposed by its representative, confirming that they have ceded all use of the mark "BANANA" during the course of its business, whether in word or in logo form along with reasonable proof. The Affidavit shall be filed along with the present memo of compromise before this*

*Hon'ble Court to pass appropriate orders. The Court may take the affidavit filed by the Defendants along with this Memo of Compromise signed by both the Plaintiff and the Defendants and decree the suit accordingly.*

*c.The Defendants agree to adopt a different trademark/tradename, which shall not be similar or identical, or in any way conflict with the Plaintiff's trademark "BANANA" , i.e. The trademark/tradename adopted and used by the Plaintiff for its business;*

*d.The Defendants has ceded use of the mark "BANANA" on 27<sup>th</sup> September 2016. However until a period ending 21<sup>st</sup> October 2016, the Defendants would have the right to use the phrase "earlier known as BananaBandy" along with the new trademark/tradename adopted by the Defendants for its business. Until such date, the Plaintiff agrees that it shall not file a suit against the Defendants for contempt of Court or legal proceedings, or press for damages or claim any form of relief against the Defendants in relation to the Defendants' use of the "BANANA BANDY". The Plaintiff however acknowledges that certain material, in print and/or in digital form, containing the mark "BANANA BANDY", including but not limited to newspapers, advertising and marketing material, articles, published prior to 21<sup>st</sup> October 2016 is already available in public domain and it will not be possible for the Defendants to recall or destroy such material. The Plaintiff*

*hereby confirms that it will not take any action or file a suit against the Defendants for contempt of court or legal proceedings, or press for damages or claim any form of relief against the Defendants, at any point in time, in relation to the use of the mark "BANANA BANDY", whether by the Defendants or by third parties, on material available in public domain prior to 21<sup>st</sup> October 2016.*

*e. The Defendants hereby undertake that they shall not represent themselves to be a franchisee, agent or representative of the Plaintiff nor shall the Defendants conduct their business in a manner that it appears that the Defendants are connected with the Plaintiff in any manner whatsoever.*

*5. The Defendants submit to judgment and decree as prayed for in terms of prayer (A) & (B) of paragraph 41 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 operating any business, making, selling, distributing, advertising, exporting, offering for sale, and in any other manner, directly or indirectly, dealing under the mark BANANA BANDY and its logo banana Bandy, BANANA*



*BANDY, banana Bandy and/or any other mark deceptively similar for any service including advertising, branding, designing, marketing services amounting to an infringement of the plaintiff's registered trademark No.1974704.*

*B. To grant permanent injunction restraining the defendants, their directors, employees, officers, servants, agents and all others acting for and on their behalf from operating any business, making, selling, distributing, advertising, exporting, offering for sale, and in any other manner, directly or indirectly, dealing under the mark BANANA BANDY and its logo banana Bandy, BANANA BANDY, banana Bandy and/or any other mark deceptively similar for any services including advertising, branding, designing, marketing services that amounts to passing off of the goods and services of the defendants as though they are those of the plaintiff.*

*6.All the aforesaid undertakings will be binding henceforth on the said Defendants, their directors, successors-in-business, legal representatives and assignees.*

*7.It is therefore prayed that the present memorandum of compromise may be recorded and a decree in terms of paragraphs 41(A) and 41(B) of the plaint may be passed in favor of the Plaintiff and against the Defendants by the Hon'ble Court, incorporating the terms of the settlement as a part thereof.*

*8.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 a sum of INR 10,00,000 (Ten Lakhs) as liquidated damages and such other amount as may be calculated as unliquidated damages to the Plaintiff. The Plaintiff hereby reserves the right to initiate a legal proceeding if the Defendants are found in violation of this Memo of Compromise.*

*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.The affidavit of undertaking filed by the defendants reads as under:

*1. I am the Defendant No.1 and the Authorised Signatory of Defendant No.2 and I am well aware of and conversant with the facts and circumstances of this case and duly authorized and entitled to swear to this affidavit on behalf of the Defendants.*

2. *Subject to point 4 below, I state that the Defendants in accordance with the Memo of Compromise dated October 4, 2016 ceded use of the trademark "BANANA" in for and during the course of its business, whether in word or in logo form, with effect from 27<sup>th</sup> September 2016.*
3. *Subject to point 4 below, I state that the Defendants have changed the name of their business from "BananaBandy" to "İndiefolio" as on August 26, 2016 and this process of rebranding the business from "BananaBandy" to "İndiefolio" has been complete as of September 27, 2016.*
4. *I state that, until a period ending 21<sup>st</sup> October 2016, the Defendants had been using the phrase "earlier known as BananaBandy" along with the new trademark/tradename adopted by the Defendants for its business.*
5. *Defendant No.2 hereby agrees and acknowledges that the Plaintiff is the registered proprietor of the trademark BANANA and its logo banana bearing Trademark Registration No.1974704 in classes 35 and 42 and has exclusive statutory rights by virtue of such registration, proprietary and common law rights on account of prior, long and extensive use of the trademark BANANA and its logo banana to the exclusion of others.*
6. *Defendant No.2 hereby agrees to not operate any business, make, sell, distribute, advertise, export, offer*

*for sale, and in any other manner, directly or indirectly, deal under the mark BANANA BANDY and its logo bananaBandy, BANANA BANDY, banana Bandy and/or any other mark deceptively similar to the mark "BANANA" for any services including advertising, branding, designing, marketing services.*

*7. Defendant No.2 hereby agrees to be bound by the Memo of Compromise dated October 4, 2016 filed by the Plaintiffs and the Defendants before the Hon'ble Madras High Court.*

4.In such view of the matter, the suit stands decreed in terms of the memo of compromise dated 21.10.2016 signed by the parties on 14.10.2016. The memo of compromise shall form part of the decree. The affidavit of undertaking filed by the defendants in terms of the memo of compromise signed on 21.10.2016 and filed today is also taken on record. No costs.

**01.11.2016**

mmi

To

The Sub Assistant Registrar,  
Original Side, High Court, Madras.

**M.M.SUNDRESH,J**

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**C.S.No.877 of 2015**

**01.11.2016**