

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2016

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

CIVIL SUIT No.307 of 2009

Cavinkare Private Limited
No.12, Cenotaph Road
Teynampet
Chennai 600 018
rep. By its Director
Mr.M.D.Sudharsan
(Amended as per order dated 16.12.2015
in A.No.3049 of 2015)

.. Plaintiff

vs

1. Daily Fresh Fruits P. Ltd.,
No.4A, Veera Savarkar Street
North of Cluny School
Subramaniapuram Extn.,
Salem 636 007

and also at

2/68-I, N.H.7,
Namakkal Main Road
A.K.Samuthram
Pachal (PO)
Namakkal Taluk and
District 637 018.

2. Mrs.Manjula Bhaskar,
42-B, Mettu Vellala Street,
Salem 636 010.

3. Mrs. Jaybharathi Balamurugan,
28 C, Srirangan New Street,
Dadagapatty, Salem 636 006.

4. Mr. John Peter,
No.6,/72 E, Naduvoorkarai,
Mondaikadu PO,
Kanyakumari Dt. 629 252.

5. Mr. Bhaskar Ramasamy
42, Mettu Vellala Street,
Kondalampatty,
Salem 636 010.

.. Defendants

Civil Suit filed under Order IV Rule 1 of Original Side Rules and Order VII Rule 1 of Code of Civil Procedure read with Sections 27, 134 and 135 of the Trade Marks Act, 1999, Sections 11 and 22 of Designs Act, 2000 and Sections 51, 54, 55 and 62 of the Copyrights Act, 1957 praying for a judgment and decree granting a permanent injunction restraining the defendants by themselves their heirs legal representatives men servants agents distributors stockists wholesalers retailers representatives or any one claiming through them from in any manner infringing the plaintiffs copyright in the registered design by manufacturing assembling sale and distribution of bottles/packaging with identical designs for their DAILEE or any packaging which is an imitation of the plaintiffs copyright in the registered design No.203635 dated 24th March 2006 in class 09-01 for MAA or in any other manner whatsoever; a permanent injunction restraining the defendants, by themselves, their heirs, legal representatives men servants agents distributors stockists wholesalers retailers representatives or any one claiming through them from in any manner infringing the plaintiffs copyright in the artistic work

MAA label by use of Dailee label or any other label, which is a substantial reproduction of plaintiff's artistic work MAA label, amounting to infringement of copyright; a permanent injunction restraining the defendants by themselves their heirs legal representatives men servants agents distributors stockists wholesalers retailers representatives or any one claiming through them from in any manner passing off and enabling others to pass off their Fruit beverage bottle as and for plaintiff's Fruit beverage bottle by using the identical shape and configuration for DAILEE or any other products which are identical to that of or an obvious imitation of the plaintiffs' MAA bottles respectively and amount to imitation of plaintiffs' label/trade dress in MAA label or in any other manner whatsoever; ordering the defendants to surrender to the plaintiff for destruction all moulds, blocks, dyes, brouchers, packaging material etc., which are identical to or an obvious imitation of the plaintiff's copyright in the registered design and an imitation of label/trade dress in MAA label and for a preliminary decree in favour of the plaintiffs directing the defendants to render account of profits made by use of copyright DAILEE label shape and configuration of plaintiff's bottle 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 and ordering and decreeing the defendant to pay to the plaintiff a sum of Rs.1,00,000/- as damages for acts of Design infringement, Copyright infringement and passing off committed by the defendant by manufacture and sale Fruit beverage

bottles bearing the shape and configuration and artistic works of the plaintiff label and for costs:

For Plaintiff	: Mr.N.C.Vishal for Mrs.Brinda Mohan
For Respondents	: Defendants set exparte

JUDGMENT

The plaintiffs would aver in the plaint, as follows:-

(a) The plaintiff is a well reputed manufacturer and marketer of fruit juice extracted from various fruit pulps and it was established in the year 1996 as a partnership firm under the name and style of "MAA Food products" and the said Firm was subsequently converted into a private limited company in November 2001 and registered as "MAA Fruits India Private Limited".

(b) The plaintiff in the course of their regular business, has adopted a distinctive label/packaging with unique shape and configuration of bottles for selling their fruit beverages under the name of MAA and also got registration for the said name. The said label with artistic features and unique shape and configuration of the bottle has earned great reputation and goodwill among trade and public. The plaintiff also adopted a distinct artistic label/trade dress and design for their products to distinguish its uniqueness from its competitors.

(c) The plaintiff is the registered proprietor of the shape and configuration of the bottles under No.203635 dated 24th March 2006 in class 09-01. The plaintiff claims intellectual property rights for the above shape and configuration vests exclusively with them and any substantial imitation without any authorization from them would amount to infringement of their registered design.

(d) The plaintiff would further state that by virtue of long, continuous and extensive use, the design and artistic work in the MAA label, has become distinctive and is exclusively identified with the fruit beverage manufactured and sold by them. The sales value for the year 2006-07 was Rs.27,16,62,569/- and for the year 2007-08, it was Rs.37,98,58,417/- and also incurred expenditure for advertisement to the tune of Rs.6,70,027/- and Rs.14,19,527/- for the years 2006-07 and 2007-08 respectively.

(e) It is the specific case of the plaintiff that it became aware in the month of April 2009 that the defendants are manufacturing and selling Fruit Beverage, which is an imitation of the plaintiff MAA label and registered design. The defendants 2 to 5 were involved in the said business. The label and design of bottles adopted by the defendants are completely identical to the plaintiff's copyright in the artistic work MAA and registered design of plaintiff's product. Therefore, fraudulent, deliberate and dishonest trade practices are adopted by the defendants.

Hence, the defendants 2 to 5 are individually, jointly and severally liable for the acts of design infringement, copyright infringement and trade dress passing off.

(f) It is further averred by the plaintiff that one of the erstwhile Directors of the plaintiff Mr.T.Issac Bright has instigated his brother John Peter, who is a Director of D1 and D4 to incorporate the same for the purpose of piggy-back on the enviable reputation of the plaintiff. The defendants have deliberately copied the design and colour scheme, get up, lay out of plaintiff's MAA Label. It is not possible for an ordinary person to make out any difference between the plaintiff's distinctive packaging and defendants packaging. On account of the said infringement, the reputation and goodwill gained by the plaintiffs for a period of time, would also definitely bound to suffer and hence, they came forward to file the present suit.

2. Though the defendants were served, they did not enter appearance and therefore, the suit was directed to be listed under the caption “ for undefended board” and this Court has set them exparte on 12.10.2015.

3.The learned Counsel appearing for the plaintiffs, has drawn the attention of this Court to the pleadings and oral and documentary evidences and would contend that the act of the defendants in infringing

as well as adopting the label and design of the bottles identical to that of the plaintiff are with malafide motive and with fraudulent intention and it would also amount to deliberate, dishonest trade practices. Since the defendants have projected the shape and configuration of the bottles registered by the plaintiff under No.203635 dated 24th March 2006 in class 09-01, the defendants are not entitled to get any relief as claimed by them and prayed for appropriate orders.

4.P.W.1, the Senior Manager (Legal) and Secretary of the Plaintiff concern has filed his proof affidavit in lieu of the chief-examination, and marked Exs.P1 to P7 and M.O.1.

5.This Court has considered the submissions of the learned Counsel appearing for the plaintiff, and also perused the pleadings and oral and documentary evidences.

6.The following issues are framed for adjudication:-

(i) Whether the plaintiff has adopted a distinct label and design with unique shape, configuration of the bottle in selling their products in the name of MAA?

(ii) Whether the act of the defendants in adopting the label and design of the bottles identical to that of the plaintiff and infringing

with the artistic work of MAA and registered design of the plaintiff's products are with fraudulent intention deliberate and dishonest trade practice?

(iii) Whether the plaintiff is entitled to a judgment and decree as prayed for?

7.ISSUE No.(i):- A perusal of the proof affidavit of P.W.1 coupled with documentary evidences would disclose the following facts. Ex.P2 is the copy of the design registration certificate No.203635 for bottle dated 24.03.2006, bearing the design of the plaintiff, which has been registered under the Designs Act, 2000 and Design Rules,2001. Ex.P3 is the specimen of plaintiff's MAA label. A comparison of the same with Ex.P.4, the specimen of defendant's DAILEE label would clearly reveal that the defendants have adopted the label an design. That apart, a perusal of Ex.P.5, the comparison photograph of plaintiff and defendant's bottles and Ex.P.6, the comparison of photograph of plaintiff and defendant's bottles with labels would disclose that the defendants had adopted similar design of the bottles of the plaintiff. It is very difficult to make a distinction between the plaintiff's container and the defendants container. A perusal of Ex.P.7, the comparison of labels of other fruit beverages and labels of fruit beverages of plaintiff and defendant also would make it clear that the defendants had adopted the

label, similar colour, pattern of the plaintiff. The shape and configuration of the bottles of the plaintiff which was registered is evidenced under Ex.P.2 and since they are in the said line of business right from 1996 and adopted a distinctive label with artistic features and unique shape and configuration of the bottle has earned great reputation and goodwill among the trade and public, and they adopted a distinct artistic label/trade dress and design for their products to distinguish its uniqueness and proved the same, issue No.(i) is answered in affirmative and in favour of the plaintiff.

7. ISSUE No.(ii):- As already pointed out the defendants are manufacturers of fruit beverages and that there is nothing wrong in manufacturing and selling fruit beverage with mango flavour, however, adopting the label and design of bottles as that of the plaintiff, in the considered opinion of this Court, has to be said that it has been done with fraudulent intention and the said act is deliberate and also dishonest trade practice. Hence, issue No.(ii) is answered in affirmative and in favour of the plaintiff.

7. Issue No.(iii) In the light of above finding, this Court is of the view that the plaintiff is entitled to a judgment and decree as prayed for.

8. In the result, the suit is decreed as prayed for, as against the defendants, with costs. The defendants, by themselves, their heirs, legal representatives, men, servants, agents, distributors, stockists, wholesalers, retailers, representatives or any one claiming through them are restrained by way of permanent injunction from in any manner infringing the plaintiff's copyright in the registered design by manufacturing assembling sale and distribution of bottles/packaging with identical designs for their DAILEE or any packaging which is an imitation of the plaintiff's copyright in the registered design No.203635 dated 24th March 2006 in class 09-01 for MAA or in any other manner whatsoever; the defendants, by themselves, their heirs, legal representatives, men, servants, agents, distributors, stockists, wholesalers, retailers, representatives or any one claiming through them are restrained by way of permanent injunction from in any manner infringing the plaintiff's copyright in the artistic work MAA label by use of Dailee label or any other label, which is a substantial reproduction of plaintiff's artistic work MAA label, amounting to infringement of copyright; the defendants by themselves, their heirs, legal representatives, men, servants, agents, distributors, stockists, wholesalers, retailers, representatives or any one claiming through them are restrained by way of permanent injunction from in any manner passing off and enabling others to pass off their Fruit beverage bottle as and for plaintiff's Fruit beverage bottle by using the identical shape and configuration for DAILEE or any other products which are identical to that

Index: yes/no

P.W.1 R.Thazhalan

Ex.P4 Specimen of Defendants DAILEE label

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| Ex.P5 | Comparison photograph of plaintiff and defendants bottles |
| Ex.P6 | Comparison photograph of plaintiff and defendants bottles with labels |
| Ex.P7 | Comparison of labels of other fruit beverages and labels of fruit beverages of plaintiff and defendants |

MATERIAL OBJECT:-

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| M.O.1 | Specimen of plaintiff's MAA Mango drink pet bottle along with label |
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29.04.2016

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M.SATHYANARAYANAN, J.

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