

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 15.12.2016

PRONOUNCED ON: 20.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.420 of 2010

1. A.D.Padmasingh Isaac Trading as
Aachi Spices and Foods, Chennai-40

2. M/s.Aachi Masala Foods (P) Limited
represented by its Director
Ashwin Pandian

Plaintiffs

Vs

M/s.Aachi Hot Chips
Chennai-24

Defendant

Prayer:- This Civil Suit is filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 of CPC read with Sections 27(2), 29, 134 and 135 of the Trade Marks Act 1999, for the reliefs as stated therein.

For Plaintiffs : Ms.Daniel Gladys

For Defendant : Set Exparte

JUDGEMENT

This civil suit has been filed, to pass a judgement and decree, against the Defendant:-

- a) granting permanent injunction, restraining the Defendant from manufacturing, selling, advertising and offering for sale using the name AACHI or used by the Plaintiffs and the trademark name AACHI HOT CHIPS or any other similar trademark name or similar sounding expression in any media and use the same in name board, invoices,

letter heads and visiting cards or by using any other trademark which is in any way visually or deceptively or phonetically similar to the Plaintiff's trademark AACHI and use the same in pouches, packets or use the mark in invoices, letter heads and visiting cards or any other trade literature or by using any other trademark which in any visually, or phonetically similar to the Plaintiffs's registered trademark nos. 922594 922595 1374937 1340324, 1340325, 1367430, 1372439, 1372440, 1375754, 838786, 976559, 1025302, 1025304, 1025305, 1318493, 1318494, 1318495, 1375755, 1375756, 1380625, 1357284, 1479158, 1479159, 1418281, 1025303, 1415328, 1415329 or in any manner infringing the Plaintiffs' registered trademark.

- b) Granting permanent injunction, restraining the Defendant from marketing, selling, advertising using in trade literature, menu cards, invoices, name boards, website, internet advertising the mark name AACHI in relation to the Restaurant or any other business or with respect to or any other food preparation or on any other business the impugned trademarks/name, which is in any manner deceptively or phonetically confusingly similar to the trademark of the Plaintiffs AACHI or in any other manner pass off their business or goods as and for that of the Plaintiffs .
- c) directing the Defendant to surrender to the Plaintiffs all the packing material, cartons, advertisement materials and hoardings, letter heads, visiting cards, office stationery and all other materials containing/bearing the name AACHI as shown in Document No.2 or other deceptively similar trademark used in the pouches and packets bearing the word AACHI.
- d) directing the Defendant to render account of profits made by them by use of the impugned trademark and get up as shown in Document No.2 on the goods referred and granting decree for the profits found to have been made by the Defendant, after the Defendant has rendered the accounts.
- e) directing the Defendant to pay the costs of the suit to the Plaintiff.

2. The case of the Plaintiff is that the Plaintiff Company has been carrying on the business of manufacturing and selling various kinds of masalas and spices from 1995. The Plaintiffs are dealing in about 130 different products bearing the trademark AACHI. The Plaintiffs have also spent huge money towards advertising their products under the trademark AACHI in all forms of media and had also received awards for the quality of their products and customer service. The expression AACHI has become very popular and is a very valuable intellectual property of the Plaintiffs and the said trademark is unique and distinctive.

3. The subject matter of the suit is in respect of the work mark of the Plaintiffs AACHI. This word is the registered trademark of the Plaintiffs. The turnover and promotional expenditure incurred by the Plaintiff was Rs.3,96,420 and Rs.9,893 for the financial year 1995-1996 and had been gradually increased in the subsequent years and it was Rs.1,015,014,560 and Rs.28,955,025/- in the financial year 2008-2009. It had further been stated in the plaint that the Registrar of Trademarks had granted registration for the trademark AACHI in Reg.No.922594 on 04.05.2000 in Class 29. Thus, the Plaintiffs have sole proprietary right over the said trademark. While so, in March 2010, the Plaintiffs came to know the Defendant Restaurant through an internet advertisement bearing the mark AACHI HOT SHIPS, which is a blatant infringement of the registered trademark of the Plaintiffs AACHI and both are visually and phonetically similar. As the Defendant is violating and copying the trademark of the Plaintiffs, the conduct of the Defendant would amount to fraud.

4. It had been further stated that the Defendant is using the deceptively similar mark of the Plaintiffs. On investigation, the Plaintiffs came to know that the Defendant was not carrying on the business at the address mentioned in the internet advertisement. The Plaintiffs apprehends that the Defendant may claim equitable right based on the said internet advertisement. The label of the Defendant consists of the word AACHI incorporated in the name AACHI HOT CHIPS. The use of the same is bound to create confusion and deception in the market. The general public will assume that there is a business relationship between the Plaintiffs and the Defendant has no right whatsoever to use the mark AACHI, which is visually, phonetically and deceptively identical to that of the Plaintiffs. The conduct of the Defendant amounts to falsification of the trademark, an offence punishable under the Trade Marks Act, 1999 apart from action of infringement of the registered trademark of the Plaintiffs and passing off. The trademark has been adopted by the Defendant in order to enrich themselves illegally. The Defendant should not be allowed to malign and dilute the goodwill and reputation enjoyed by the Plaintiffs. In such circumstances, this civil suit has been filed for the reliefs as stated above.

5. Though the Defendant was served on 14.06.2010, no written statement has been filed by the Defendant and hence, the matter was posted under the caption of 'Undefended Board'. For non filing of the Written Statement, the Defendant was set exparte and Exparte Evidence was ordered to be recorded by the order of this court dated 03.10.2016.

6. One B.Gnanasambandam, agreement of the Plaintiff Company had filed the proof affidavit for his chief examination and receipt of 14 documents. In the Exparte Evidence, the said AGM examined himself as PW.1 and marked Exs.P1 to P14 as documentary evidence.

7. In this civil suit, the Plaintiffs had sought for the relief (a) and (b) relating to infringement and passing off the trademark of the Plaintiffs by the Defendant. The Plaintiff has also sought for the relief (c) for surrender of the materials by the Defendant. In this regard, apart from the fact that the Defendant did not let in evidence whatsoever and remained exparte, this court finds that there are valid evidence, both oral and documentary, adduced by the Plaintiffs. Therefore, taking into consideration the materials on record and there was also payment of court fee by the Plaintiffs, this Court is of the view that only the reliefs (a), (b) and (c) as prayed for by the Plaintiff can be granted along with costs.

8. In so far as the relief (d), namely, to pass a judgement and decree, directing the Defendant to render accounts of profits made by the Defendant on account of the usage of the trademark of the Plaintiffs by the Defendant is concerned, though for non filing of the written statement, the Defendant had been set exparte, which resulted in recording of the exparte evidence, in order to sustain such a claim for rendering of accounts of profits, there should be valid evidence on the side of the Plaintiffs, but, on a perusal of the oral and documentary adduced by the Plaintiffs, this court finds no valid evidence both oral and documentary to show that the Plaintiffs had sustained

loss of profit because of the use of the trademark of the Plaintiffs by the Defendant. The Plaintiff also did not produce any evidence to show that the Defendant had unlawfully gained against the Plaintiffs. Therefore, in the absence of any evidence, showing that the Plaintiffs have directly suffered and incurred business loss owing to the usage of the trademark of the Plaintiffs by the Defendant, this court holds that the relief (d) sought for by the Plaintiffs for a direction to render accounts of profits would not lie and accordingly, the same cannot be granted.

9. In the result, considering the oral and documentary evidence, viz. Ex.P1 to Ex.P14 adduced by PW.1, this Court is of the view that the Plaintiff has proved the suit claim only in respect of the reliefs (a), (b) and (c) and that the Plaintiff has failed to prove the relief (d) by letting in legally acceptable oral and documentary evidence. Accordingly, this civil suit is decreed only in respect of the reliefs (a), (b) and (c) with costs. In so far as the relief (d) is concerned, this civil suit is dismissed.

20.12.2016

Index:Yes/No
Web:Yes/No
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1. List of Witnesses Examined on the side of the Plaintiffs:-

1. P.W.1 - B.Gnanasambandam

2. List of Exhibits Marked on the side of the Plaintiffs:-

S.No	Exhibit	Description	Date
1	Ex.P. 1	The authorisation letter given by the Plaintiffs	
2	Ex.P. 2	Original label of the Plaintiffs trade mark Aachi Chettinad Restaurant	
3	Ex.P. 3	Certified copy of the Plaintiffs' advertisement in Ritz magazine	
4	Ex.P. 4	Legal use certificate of trade mark no.922594 dated 18.06.2008 along with the online status reflecting the renewal of trade mark till 4.5.2020	
5	Ex.P. 5	Series are the legal use certificate of trade mark nos.922594, 1374937, 1340324, 1340325, 1367430, 1372439, 1372440, 1375754, 1318493, 1318494, 1318495, 1375756, 1380625, 1357284, along with the status reflecting the renewal of the trade mark.	
6	Ex.P. 6	Series are the Registration Certificate for the Trade mark nos.838786, 976559, 1025305 and 1375755	
7	Ex.P. 7	Registration certificate of the trade mark no.1116254 dated 3.7.2002	
8	Ex.P. 8	Certificate of incorporation of M/s.Nazareth Foods P Limited	
9	Ex.P. 9	The copy of certificate of registration under TNGST Act in favour of the 2 nd plaintiff	10072006
10	Ex.P. 10	Certificate of the registration issued under the TNGST Act, 1959,	28122006
11	Ex.P. 11	Certificate of the registration issued under the CST	28122006
12	Ex.P. 12	The copy of the certificate of registration under VAT	03012007
13	Ex.P. 13	Trade Mark Licence User Agreement, dated 1.4.2007 entered into between A.D.Padmasingh Isaac trading as Aachi Spices and Foods and M/s.Aachi Masala Foods P Limited	
14	Ex.P. 14	Defendant's website 'Aachi Hot Chips' along with the supporting affidavit of D.Venkatakrishnan under Section 65B of the Evidence Act	

3. List of Witnesses Examined on the side of the defendant:-

Nil

4. List of Exhibits Marked on the side of the defendant:-

Nil

20.12.2016

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C.V.KARTHIKEYAN, J.

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Pre-Delivery Judgement in
CS.No.420 of 2010

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