

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2016

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.885 of 2008

Britannia Industries Limited
Through its Authorised Signatory
Sanjay K.Handur

.. Plaintiff

Versus

1. Milka Nutriments (P) Ltd.
2. V.Nandagopal Chettiar & Sons

.. Defendants

The plaint is filed and numbered as Civil Suit under Order IV Rule 1 of O.S. Rules and Order VII Rule 1 of CPC r/w 134 and 135 of Trade Marks Act 1999 & r/w Sec.55 & 62 of Copy Rights Act, praying for a judgment and decree:

- a) This Court should be pleased to grant permanent injunction restraining the 1st defendant, its directors, employees / personnel / workers, agents, distributors, stockists, retailers, successors in business, legal representatives, assigns or any other person claiming through or under them from in any manner manufacturing, selling, ordering, offering for sale or supply, supplying, advertising, directly or indirectly dealing, adopting, using or otherwise dealing with the said biscuits under the name "MILKA-B", by using any packaging whatsoever with the colour scheme, getup and layout identical or similar to the trade dress and get up of the plaintiff in the distinctive BRITANNIA MILK BIKIS, thereby infringing of the plaintiff's

trademark "BRITANNIA MILK BIKS".

- b) This court should be pleased to grant permanent injunction restraining the 1st defendant, its Directors, employees / personnel / workers, agents, distributors, stockists, retailers, successors in business, legal representatives, assigns or any other person claiming through or under them, from in any manner passing off or enabling others to pass off their products as that of the plaintiff's products bearing trade mark BRITANNIA MILK BIKIS.
- c) This Court should be pleased to grant permanent injunction restraining the 1st defendant, its Directors, employees / personnel / workers, agents, distributors, stockists, retailers, successors in business, legal representatives, assigns or any other person claiming through or under them, from in any manner by using the trade dress and artistic work in the packaging of the plaintiff's products i.e. BRITANNIA MILK BIKIS or in any other manner whatsoever thereby infringing the copy right of the plaintiff's product i.e. BRITANNIA MILK BIKIS.
- d) The defendants be ordered to surrender / deliver to the plaintiff for destruction, packaging, labels, cartons, containers, foils, prints, dies, blocks, moulds and plates, screen prints, negatives, advertising material, stationery, letterheads or other printed material in their possession, which are substantial reproduction of the plaintiff's trade dress and copyright in the artistic work in BRITANNIA MILK BIKIS packaging;
- e) a decree for damages in the sum of Rs.75,000/- in favour of the plaintiff and against the defendants on account of damages for committing infringement of trademark and copyright and

passing off its products as that of the plaintiff's product -
BRITANNIA MILK BIKIS;

f) a decree be passed in favour of the Plaintiff directing the defendants to render account of profits made by use of packaging which is a substantial reproduction of the plaintiff's BRITANNIA MILK BIKIS packaging 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.

g) for costs of the suit;

For Plaintiffs : M/s.R.Saravanakumar

For Defendants : Mr.Abhinav Parthasarathy, for D1

JUDGMENT

Originally the matter is posted before the learned Additional Master IV, to record evidence in the year 2014. On perusal of the notes paper, it appears that from 25.11.2014 the plaintiff is not ready to tender his evidence, in spite of several adjournments. Finally, on 27.08.2015 also the plaintiff is not present, hence the matter is again posted before this Court. The conduct of the plaintiff clearly shows that he is not interested in prosecuting the case. Hence, the suit is dismissed for non prosecution. No costs. Consequently, connected applications are closed.

01.12.2016

pvs

N.Sathish Kumar, J.,
pvs

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