

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26 / 07 / 2016

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.S.NO.849 OF 2006

1.AGRIGOLD Foods and Farm Products Ltd.,

Having its Registered Office at

No.40-1-21, 4th Floor, Catholic Complex,

M.G. Road, Vijayawada - 520 010.

Andhra Pradesh.

Represented by its Chairman & Managing Director

Mr.Venkata Rama Rao Avvas

2.AGRIGOLD Organics Pvt. Limited

Having its Registered office at

No.40-1-21, 4th Floor, Catholic Complex,

M.G. Road, Vijayawada - 520 010.

Andhra Pradesh.

Represented by its Managing Director

Mr.M.R.K. Nayudu

3.Mr.Venkata Rama Rao Avvas

Having his Registered office at

No.40-1-21, 4th Floor, Catholic Complex,

M.G. Road, Vijayawada - 520 010.

Andhra Pradesh.

.. Plaintiffs

Versus

Agrigold Healthcare (P) Ltd.,

15-A, 1st Floor, Gurmehar Complex,

South Model Gram

Ludhiana - 141 001.

Punjab.

.. Defendant

PRAYER: Plaint filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 CPC read with Sections 27, 134 and 135 of the Trade Marks Act, 1999, praying for the following judgment and decree against the defendant:

(a) granting a permanent injunction, restraining the defendant by themselves, their servants, agents, or anyone claiming through them from passing off their goods or their business as the business of the plaintiffs', by using the expression AGRIGOLD or any other expression visually, phonetically or deceptively similar to it either as or part of its business / trading name, or otherwise in the course of their business, in their sign boards, correspondence, letter heads, trade literature, advertisement in the print or electronic media including as e-mail ID or web address and in such other business literature and or enable others to pass off.

(b) granting a permanent injunction, restraining the defendant by themselves, their servants, agents, distributors, or anyone claiming through them from manufacturing, selling, offering and advertising for sale using the Trade Mark AGRIGOLD upon the goods or in any media and use the same in invoices, letter heads and visiting cards or any other trade literature or by using any other Trade Mark which is in any way visually, phonetically or deceptively similar to the plaintiffs' registered trade mark nos.935848, 935849, 1051706, 1051758, 1051769, 1174585, 1174586, 1174587, 1174588, 1174589, 1174590, 1174592, 1174594, 1174595, 1174599, 1174600, 1174602, 1174603, 1174605, 1174607, 1174608, 1296901, 1176229 or in any manner infringing the plaintiffs aforesaid registered trade marks by using the mark AGRIGOLD either as prefix or suffix in the course of business.

(c) directing the defendant to surrender to the plaintiffs all the packing material, cartons, advertisement materials and hoarding, letter-heads, visiting cards, office stationery and all other materials containing / bearing the trade mark / trading style AGRIGOLD or other deceptively similar trade mark.

(d) for a preliminary decree in favour of the plaintiffs, directing the defendant to render an account of profits made by them by the use of the trading style AGRIGOLD on the goods referred and for a final decree in favour of the plaintiffs for the amount of the profits found to have been made by the defendant, after the defendant has rendered accounts.

(e) directing the defendant to pay to the plaintiffs the costs to the suit.

For Plaintiffs : Mr.Gladys Daniel

J U D G M E N T

The plaintiffs have filed the Civil Suit against the defendant for the following reliefs:-

(a) to grant a permanent injunction, restraining the defendant by themselves, their servants, agents, or anyone claiming through them from passing off their goods or their business as the business of the plaintiffs', by using the expression AGRIGOLD or any other expression visually, phonetically or deceptively similar to it either as or part of its business / trading name, or otherwise in the course of their business, in their sign boards, correspondence, letter heads, trade literature, advertisement in the print or electronic media including as e-mail ID or web address and in such other business literature and or enable others to pass off;

(b) to grant a permanent injunction, restraining the defendant by themselves, their servants, agents, distributors, or anyone claiming through them from manufacturing, selling, offering and advertising for sale using the Trade Mark AGRIGOLD upon the goods or in any media and use the same in invoices, letter heads and visiting cards or any other trade literature or by using any other Trade Mark which is in any way visually, phonetically or deceptively similar to the plaintiffs' registered trade mark nos.935848, 935849, 1051706,

1051758, 1051769, 1174585, 1174586, 1174587, 1174588, 1174589, 1174590, 1174592, 1174594, 1174595, 1174599, 1174600, 1174602, 1174603, 1174605, 1174607, 1174608, 1296901, 1176229 or in any manner infringing the plaintiffs aforesaid registered trade marks by using the mark AGRIGOLD either as prefix or suffix in the course of business;

(c) to direct the defendant to surrender to the plaintiffs all the packing material, cartons, advertisement materials and hoarding, letter-heads, visiting cards, office stationery and all other materials containing / bearing the trade mark / trading style AGRIGOLD or other deceptively similar trade mark;

(d) for a preliminary decree in favour of the plaintiffs, directing the defendant to render an account of profits made by them by the use of the trading style AGRIGOLD on the goods referred and for a final decree in favour of the plaintiffs for the amount of the profits found to have been made by the defendant, after the defendant has rendered accounts; and

(e) to direct the defendant to pay costs to the plaintiffs.

2. The averments of the plaintiffs as set out in the plaint are as follows:

(a) The plaintiffs' 1 and 2 are Companies incorporated under the Companies Act, having their office at No.40-1-21, 4th Floor, Catholic Complex, M.G. Road, Vijayawada - 520 010, Andhra Pradesh, represented by its Chairman and Managing Director. The third plaintiff is also having his registered office at the same address.

(b) The first plaintiff commenced its business in the year 1995 with the objective of promoting corporate cultivation. The first plaintiff and its group of companies have firm faith in agriculture and agro based industries. It was started to promote an evergreen revolution in sectors that are catalysts for economic growth. The first plaintiff and its group of companies provide plant fertilizers, bio-fertilizers, food, nutrition etc.

(c) Since its inception in 1995, first plaintiff and its group companies have been using the trade mark and the corporate name "AGRI GOLD".

(d) The plaintiffs had obtained trade mark registration certificate for Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes under Registration No.1174585 dated 13.02.2003, including pharmaceutical, veterinary and sanitary

substances, infants and invalids, foods, plasters, materials for bandaging, etc., in Class 5, under Registration No.1051709 dated 12.10.2001.

(e) The plaintiffs became the registered Proprietors of the Trade Mark “AGRI GOLD” in respect of the specific goods mentioned above and they have been extensively using the Trade Mark “AGRI GOLD” as registered all over India continuously and substantially in respect of the goods allotted to them from the respective dates of the formation of the firms. The plaintiffs have acquired enormous goodwill in respect of the goods, on which “AGRI GOLD” Trade Marks are affixed. The plaintiffs have spent substantial sums of money for advertising their products “AGRI GOLD” in all forms of media.

(f) While so, the plaintiffs came to know from the defendant's website the use of an identical name AGRI GOLD in respect of the same field of activities, namely, for fertilizers and for caller care and for human care segments. The plaintiffs have already initiated proceedings before the Regional Director of Northern Region of India for the removal of the defendant's name from the Register of Companies.

(g) The defendant has adopted the deceptively similar Trade Mark “AGRI GOLD” solely for the purpose of exploiting the commercial goodwill

attached to the plaintiffs' Trade Mark "AGRI GOLD". The defendant's use of the Trade Mark "AGRI GOLD" is bound to create confusion and deception in the market. Under the provisions of the Trade Marks Act, the use of the identical or deceptively similar Trade Mark with respect to the same or similar goods amounts to infringement of registered Trade Mark. The use of the Trade Mark "AGRI GOLD" by the defendant amounts to infringement and passing off.

(h) The plaintiffs have been carrying on business using the Trade Mark "AGRI GOLD" since 1995. The defendant is recent entrant into this field. Considering these facts, as a prior user and a registered trade mark owner, the plaintiffs have exclusive right to the trade mark "AGRI GOLD". The defendant has no valid reasons whatsoever to use the mark "AGRI GOLD" which is visually, phonetically and deceptively identical to that of the plaintiffs. The conduct of the defendant amounts to falsification of Trade Mark, an offence punishable under the Trade Marks Act, 1999, apart from action of infringement of the plaintiffs' registered mark and passing off. Hence, the plaintiffs have come up with this Civil Suit for the reliefs stated supra.

3. The learned Master, on 14.10.2015, has directed the Registry to list the matter before this Court under the caption "for Undefended Board",

recording the fact that inspite of completion of service, the defendant did not enter appearance. Besides, though the name of the defendant also appeared in the cause list, there was no representation on their behalf and hence, the defendant was set *ex parte* on 19.11.2015.

4. Mr.P.Venkatesan, Authorised Representative of M/s.AGRIGOLD FARMS LTD., on behalf of the plaintiffs, has filed proof affidavit for his chief examination to prove the suit claim, besides examining himself as P.W.1 and marked the following documents as Exs.P1 to P7 as documentary evidence.

<i>Sl.No.</i>	<i>Exhibits</i>	<i>Description of documents</i>	<i>Date</i>
1	P-1	Authorisation letters given in PW1's favour	
2	P-2	Office copy of the Form TM1 along with O2 certificate in respect of Trade Mark application No.935849	
3	P-3	Copy of the Certificate of Incorporation in respect of AGRIGOLD Farms Limited, AGRIGOLD Files I Ltd., AGRIGOLD Super Market and Export Ltd., AGRIGOLD Construction Ltd., AGRIGOLD Project Ltd., and AGRIGOLD Organic P. Ltd.	
4	P-4	Copy of Advertisement published in various newspaper	
5	P-5	Copy of the Article which appeared in the Economic Times about 3 rd Plaintiff	01.11.2001
6	P-6	Copy of O2 Certificate and Legal Use Certificate reflecting the registration of the Trade Mark AGRIGOLD in favour of the plaintiff no.3	
7	P-7	Office copy of the application filed under Section 22 of the Companies Act before the Regional Director	20.06.2000

5. Heard the learned counsel appearing for the plaintiffs and perused the materials available on record.

6. The only question that has to be decided by this Court is whether the plaintiffs are entitled to a decree as prayed for.

7. Learned counsel appearing for the plaintiffs contended that though the plaintiffs company started their business as early as in 1995, the products of the defendant viz., fertilizers in the trade mark “AGRI GOLD” are available in all the places wherever the plaintiffs' “AGRI COLD” trade mark products are marketed and the same will create confusion in the minds of the public.

8. It is settled law that no man is entitled to represent his goods or business as being the goods or business of another person, whether such representation is made by the use of any mark, name, sign, symbol, device or other means.

9. The term 'deceptively similar' has been defined in [Section 2\(d\)](#) of the Trade and [Merchandise Marks Act](#), 1958, which reads as follows:-

"a mark shall be deemed to be deceptively similar to another mark if it so nearly resembles that other mark as to be likely to deceive or cause confusion".

Section 2(j) defines a "Mark" as including a device, brand, heading, label, ticket, name, signature, word, letter or numeral or any combination thereof. The word 'trademark' means in relation to any provision other than Chapter X of the Act, vide Section 2(v):

".....(ii) in relation to the other provisions of this Act, a mark used or proposed to be used in relation to goods for the purpose of indicating or so as to indicate a connection in the course of trade between the goods and some person having the right either as proprietor or as registered user, to use the mark whether with or without any indication of the identity of that person, and includes a certification trade mark registered as such under the provision of Chapter VIII".

10. To come to a conclusion whether one mark is deceptively similar to another, it would be enough if the impugned Trade Mark bears such an overall similarity to the registered trade mark as would be likely to mislead a person usually dealing with one to accept the other if offered to him.

11. In the instant case, it is not in controversy that the plaintiffs have been using the trade mark "AGRI GOLD" for manufacturing and selling Plant Fertilizers, Bio-Fertilizers, Apparatus for lighting, heating, steam

generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes, including pharmaceutical, veterinary and sanitary substances, infants and invalids, foods, plasters, materials for bandaging, etc. Admittedly, the defendant is using the trade mark AGRI GOLD for Fertilizers.

12. Under the provisions of the Trade Marks Act, the use of the identical or deceptively similar trade mark with respect to the same or similar goods amounts to an infringement of registered trade mark.

13. At this juncture, it would be relevant to refer to Section 29(4), which is the amended provision of the Trade Marks Act and the same is usefully reproduced hereunder:

“29. Infringement of registered trade marks:

(1)...

(2)...

(3)...

(4) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which -

(a) is identical with or similar to the registered trade

mark; and

(b) is used in relation to goods or services which are not similar to those for which the trade mark is registered; and

(c) the registered trade mark has a reputation in India and the use of the mark without due course takes unfair advantage of or is detrimental to, the distinctive character or repute of the registered trade mark.”

14. Though the articles of the plaintiffs and the defendant are not identical, indisputably, they are goods of the same or similar nature and sold across the same counter and hence, the trade mark “AGRI GOLD” is undoubtedly, phonetically, deceptively similar to the plaintiffs' trade mark AGRI GOLD, which, in the opinion of this Court, will have chances of great confusion in the market, if the trade marks are used side by side.

15. Since the plaintiffs' also had registered to deal with health care products, the defendant is liable to be restrained from using the very same name, which is the registered trade mark of plaintiffs', that too in the field of health care products. Therefore, it is a clear infringement of trade mark.

16. Considering the oral and documentary evidence viz., Exs.P1 to P7 adduced by P.W.1, this Court is of the view that the plaintiffs' have proved the suit claim against the defendant and hence, the plaintiffs are entitled for the reliefs against the defendant, as asked for.

17. In the result, this Civil Suit is decreed, as prayed for, with costs.

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Index : Yes/No
Internet : Yes/No
TK

LIST OF WITNESSES EXAMINED ON THE SIDE OF THE PLAINTIFFS

P.W.1 - Mr.P.Venkatesan

LIST OF EXHIBITS MARKED ON THE SIDE OF THE PLAINTIFFS

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LIST OF EXHIBITS MARKED ON THE SIDE OF THE DEFENDANT - NIL

PUSHPA SATHYANARAYANA, J.

TK

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