

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 20.12.2016

PRONOUNCED ON: 06.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.783 of 2009

M/s.Veppolodai Chemicals
represented by its Partner Michael Motha
Chennai-18

Plaintiff

Vs

1. LRC Salts and Dyes India (P) Limited
Tuticorin 628003

2. Kerala Salt Company, Tuticorin 628002

Defendants

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 29, 134 and 135 of the Trade Marks Act 1999 and Section 62 of the Copyright Act, for the reliefs as stated therein.

For Plaintiffs : Ms.G.Daniel Gladys

For Defendant : Mr.P.J.Rishikesh
DD1&2-Set Exparte

JUDGEMENT

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

- a) granting permanent injunction, restraining the Defendants, from manufacturing, selling, advertising and offering for sale, using the name DANDI upon the goods or in relation to goods or in the course of any media and use the same in invoices, letter heads and visiting cards or any other trade literature which is in any way visually

or deceptively or phonetically similar to the Plaintiff's registered composite mark SPRINKLE or in any manner infringing the Plaintiff's registered trademark no.592204.

- b) granting permanent injunction, restraining the Defendants from reproducing by selling, advertising or offering for sale using the impugned copyright DANDI as shown in Document No.2 upon the goods or in any media and use the same in goods, invoices, letter heads and visiting cards or by using any other copyright which is in any way visually or deceptively or phonetically similar to the Plaintiff's copyright SPRINKLE the artistic work as shown in Document No.1 or in any manner infringing the Plaintiff's copyright as shown in Document No.1.
- c) directing the Defendants to surrender to the Plaintiffs all types of goods containing/bearing the trademark DANDI or other deceptively similar trade literature.
- d) granting a preliminary decree, directing the Defendants to render account of profits made by them by use of the trademark DANDI on the goods referred and impugned trademark and final decree for the amount of the profits found to have been made by the Defendants after the Defendants have rendered accounts.
- e) directing the Defendant to pay the costs of the suit to the Plaintiffs.

2. The case of the Plaintiff is that the Plaintiff is engaged in the business of manufacturing and selling refined and iodized salt since 1986. Since 1986 the Plaintiff has been adopting the distinctive trademark SPRINKLE throughout India continuously and openly without any interruption or opposition from the trade and public. The said trademark contains unique colour scheme, get up and lay out, with a red sun logo having a happy face with the words 'Iodine Salt' in Hindi. The turn over has been gradually increased from Rs.3,37,962/- in the year 1986-87 to Rs.26,26,64,870/- in the year 2008-2009. The Plaintiffs had also spent huge sums of money towards advertisement

expenses. The Plaintiff had got registration of the said trademark in A.No.592204 dated 8.3.1993 in Class 30. The Plaintiff is also the proprietor of the copyright in the SPRINKLE label. In July 2009, the Plaintiff came to know about the Defendants from the report of their employees that they are using the word mark DANDI, to which the Plaintiff has no objection, however, the device and label mark used by the Defendants have all the essential features of the mark and label of the Plaintiff. The device and label mark used by the Defendants are visually and deceptively similar and identical to that of the Plaintiff. The Defendants copied the colour scheme, get up, layout and representation of the Plaintiffs trademark SPRINKLE with respect to iodized crystal salt. Packing made by the Defendants is also similar to the packing product of the Plaintiff.

3. It had been further stated that the Defendants are using the deceptively registered trademark and copyright in the label, except the word DANDI. 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. The Defendants have no right whatsoever to use the trademark SPRINKE and the copyright in the SPRINKLE label, which is visually, phonetically and deceptively identical to that of the Plaintiff. The use of the trademark and the copyright in the label of the Plaintiff by the Defendants, apart from being an infringement of registered trademark, is also an infringement of the copyright under the provisions of the Copyright Act. In such circumstances, this civil suit has been filed for the reliefs as stated above.

4. Though the the Defendants 1 and 2 were served as early as on

6.3.2010 and 30.11.2009, no written statement has been filed. Hence, the matter was posted under the caption of 'Undefended Board'. For non filing of the Written Statement and since there was no representation for the 2nd Defendant, the 2nd Defendant was set exparte by the order of this court dated 11.11.2016. On the same day, i.e. on 11.11.2016, at the request of the learned counsel for the 1st Defendant, time was extended to file the written statement and to get instructions from the 1st Defendant and the matter was adjourned to 23.11.2016, with a direction to the learned counsel for the 1st Defendant to file the written statement on behalf of the 1st Defendant, failing which, further orders will be passed on merits. Even on 23.11.2016, when the matter was taken up for consideration, the learned counsel for the 1st Defendant had reported 'No Instructions' from the 1st Defendant and hence, the 1st Defendant was set exparte and exparte evidence was ordered to be recorded by the order of this court dated 23.11.2016.

5. One A.R.Ramesh Rajkumar, GM of the Plaintiff Company had filed the proof affidavit for his chief examination and receipt of 7 documents. In the Exparte Evidence, the said GM examined himself as PW.1 and marked Exs.P1 to P7 as documentary evidence to prove the suit claim.

6. In this civil suit, the Plaintiffs had sought for the relief (a), (b), (c) and (d) relating to infringement of the trademark and copyright of the Plaintiff by the Defendants and to surrender of the materials by the Defendant for destruction and render of accounts of profits by the Defendants, respectively.

7. In respect of the relief (a), since the Plaintiff has no objection in using the word DANDI by the Defendants, as stated in paragraph 10 of the

plaint, the said relief would not lie.

8. In respect of the reliefs (b) and (c), apart from the fact that the Defendants did not let in evidence whatsoever and remained exparte, this court finds that there is 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 (b) and (c) as prayed for by the Plaintiff can be granted along with costs only with respect to copyright i.e. the colour scheme, get up and lay out, except the word mark DANDI.

9. 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 Defendants on account of the usage of the trademark and copyright of the Plaintiffs by the Defendants is concerned, though for non filing of the written statement, the Defendants 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 Plaintiff, but, on a perusal of the oral and documentary adduced by the Plaintiff, this court finds no valid evidence both oral and documentary to show that the Plaintiff had sustained loss of profit because of the use of the trademark and copyright of the Plaintiff by the Defendants. The Plaintiff also did not produce any evidence to show that the Defendants had unlawfully gained against the Plaintiff. Therefore, in the absence of any evidence, showing that the Plaintiff had directly suffered and incurred business loss owing to the usage of the trademark and copyright of the Plaintiff by the Defendants, 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.

10. In the result, considering the oral and documentary evidence, viz. Ex.P1 to Ex.P7 adduced by PW.1, this civil suit is decreed only in respect of the reliefs (b) and (c) to the extent that the Defendants are restrained from using the copyright right only in respect of the colour scheme, get up and lay out and not in respect of the word mark DANDI, with costs. In so far as the reliefs (a) and (d) is concerned, this civil suit is dismissed.

.01.2017

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	Original authorization letter dated 7.12.2016	
2	Ex.P. 2	Original label of the Plaintiff	
3	Ex.P. 3	Copies of the invoice for the sale of the product under the trademark sprinkle	
4	Ex.P. 4	Copies of the advertisement materials showing the display of sprinkle salt	
5	Ex.P. 5	Copy of the article in the New Indian Express	
6	Ex.P. 6	Copy of the trademark certificate no.592204	
7	Ex.P. 7	Original defendant's label	

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

Nil

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

Nil

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C.V.KARTHIKEYAN, J.

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Pre-Delivery Judgement in
CS.No.783 of 2009

06.01.2017

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