

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.03.2017

CORAM

THE HONOURABLE Mr. JUSTICE P.KALAIYARASAN

C.S.No.913 of 2010

M/s.Darshan International
A partnership Firm
No.125, II Main Road,
Chamrajpet,
Bangalore 560 018.
Rep. by its Business Development Manager,
E.Charles Antony

... Plaintiff

Vs

1.M/s.Aditya Aromatics
New No. 33, Old No.26/2,
Second floor, Naval Hospital Road,
Periamet, Chennai.

2.M/s.Brindavan Industries,
New No.33, Old No.26/2,
First floor, Naval Hospital Road,
Periamet, Chennai.

3.M/s.A.M.R.Impex,
No.38, Ekambaresware Agraharam Street,
Park Town, Chennai-3.

... Defendants

Plaint filed under Order IV Rule 1 of the Original Side Rules r/w Order VII Rule 1 of C.P.C., Section 51, 63 & 64 of the Copyright Act, 1957 and Section 27, 134 & 135 of the trade marks Act, 1999 praying to pass a decree and judgment on the following terms :

a) granting a permanent injunction restraining the Defendant, their

directors, partners/proprietors, servants representatives, successors, agents, stockists,C&F Agents, dealers, distributors, wholesalers, retailers or any of them from in any manner infringing the plaintiff's Copyright in the Artistic Work "SAPTHAMI" Carton filed along with the Plaint by using an almost identical SATHAMI Carton filed along with the Plaint or any other carton resembling Plaintiff's "SAPTHAMI" Carton for the purposes of sale in India any by exporting to foreign countries;

b) granting a permanent injunction restraining the Defendant, their directors, partners/proprietors, servants representatives, successors, agents, stockists,C&F Agents, dealers, distributors, wholesalers, retailers or any of them from infringing the plaintiff's registered Trade Mark "SAPTHAMI" Carton under No. No. 1131798 in class 3 by using an almost identical "SANTHAMI" Carton filed along with the plaint or any other Carton resembling Plaintiff's "SAPTHAMI" Carton for the purposes of sale in India and by exporting to foreign countries;

c) granting a permanent injunction restraining the Defendant, their directors, partners/proprietors, servants representatives, successors, agents, stockists,C&F Agents, dealers, distributors, wholesalers, retailers or any of them from in any manner selling in India and exporting to foreign countries thereby passing off or enabling others to pass-off Defendant's goods as and for the Plaintiff's goods by use of Trade Mark "SANTHAMI" Carton or any mark/label/carton deceptively similar to plaintiff's "SAPTHAMI" Carton label or in any other manner whatsoever;

d) A preliminary decree be passed in favour of the Plaintiff directing the Defendants to render an account of profit made by them by sale of incense sticks, dhoop and agarbatties under Trade Mark "SANTHAMI" Carton and final decree be passed in favour of the Plaintiff for the amount of the profits found to have been made by the defendants after rendering accounts;

e) A decree directing the Defendant to pay a sum of Rs. 25,00,000/- as damages to the Plaintiff;

f) A decree directing the Defendants to surrender to the Plaintiff for destruction of all goods, labels, dies, moulds, printing material, pamphlets, brochures and other materials bearing Trade Mark "SANTHAMI" Carton or any other deceptively similar marks; and

g) for cost.

For Plaintiff : Mr. R.Sathish Kumar
For Defendants : No representation

J U D G M E N T

The suit has been filed seeking permanent injunction restraining the defendants and their men from infringing plaintiff's copyright in the artistic work "SAPTHAMI" cartons and for other related reliefs including damages.

2. The case of plaintiff is that the plaintiff is a reputed manufacturer, trader and exporter of agarbatties, incense sticks, dhoop sticks etc. The plaintiff's products are in great demand in export market, especially in South Asia and Africa with major supplies exported to SriLanka and Ethiopia. The plaintiff owns and uses several trade marks for their products, catering to different range of customers in different territories. One of the plaintiff's trade marks most popular in the export, is the trade mark " SAPTHAMI" used for its incense sticks and dhoop sticks. The said trade mark was independently coined, adopted and used by the plaintiff from the year 1999-2000.

3. The trade mark "SAPTHAMI" carton was also got registered on

09-09-2002 and the same is still valid and subsisting. The plaintiff is the owner of the copyright of the artistic work "SAPTHAMI" label having colour combination, having get-up and layout, having a pattern consisting of orange flower petals in saffron colour background by red border on four sides with yellow flower petals on two sides. Due to demand from export market, the plaintiff's partners formed another Associate Firm by name M/s.Darshan Exports and they are also permitted to use the mark "SAPTHAMI" in the course of the export.

4. The plaintiff's annual sales turnover of the "SAPTHAMI" branded products have exceeded Rs.8Crores during the financial year 2009-10. The mark "SAPTHAMI" has enviable reputation all over India and in foreign countries. Having received oral complaints from the distributors, concerning spurious cartons of incense sticks bearing an almost identical artistic work, trade mark and packing, the plaintiff found that the defendants have indulged in providing in false trade description. The defendants are indulging in manufacturing, packing, marketing and exporting spurious "SANTHAMI" branded incense sticks in cartons that is almost identical to the branded "SAPTHAMI" cartons. The trade mark as well as the trade dress including the colour scheme, get-up, and layout copied and adopted by the defendant for its "SANTHAMI" cartons does so closely resemble to that of the plaintiff's "SAPTHAMI" cartons. Use of an almost identical and deceptive trade mark and artistic work with colour scheme in respect of identical products would cause confusion and deception amongst the trade and public.

5. The defendants have infringed the plaintiff's registered trade mark "SAPTHAMI" cartons by use of an almost identical trade mark "SANTHAMI" with same colour scheme, get-up, layout and features. Thus, the defendants have committed act of passing off and attempting to pass off the defendant's "SANTHAMI" cartons as and for the plaintiff's "SAPTHAMI" cartons. The defendants activities appear to have been done so clandestinely with false and fictitious address on the carton and exporting under different names and through different agents. Therefore, suit has been filed.

6. The Manager of the plaintiff has been examined as P.W.1. The Trade mark Registration Certificate for "SAPTHAMI" and the original carton of the plaintiff "SAPTHAMI" incense sticks and the original cartons for the defendants "SANTHAMI" incense sticks have been marked as Exhibits-P2, P9 and P10. The original statement annual sales turn over is Exhibit-P4. Other documents have also been marked.

7. The plaintiff has made out a case through the evidence of P.W.1 and the above documents. Balance of convenience is also in favour of the plaintiff. In spite of summons, the defendants have not appeared and they were set ex parte, at the stage of filing written statement.

8. Considering the fact that the defendants have not contested the matter, this court is of the view that nominal damage is to be ordered. As far as reliefs of permanent injunction, suit is decreed as prayed for with cost. The defendants are

directed to pay damages of Rs.1,00,000/- [Rupees one lakh only] to the plaintiff. Granting of relief regarding accounts, in the absence of defendants will not serve any purpose and therefore, the relief as to rendering of accounts of profit is dismissed.

15.03.2017

Index : Yes/No

bsm/gya

P.KALAIYARASAN, J.

bsm/gya

C.S.No.913 of 2010

15.03.2017