

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 06th DAY OF JUNE 2018

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

O.A. Nos.331, 333 to 336 of 2018
and
A. Nos.3584 to 3586 of 2018
in
C.S. No.226 of 2018

Tirumala Milk Products Private Limited,
No.125, 1st Floor, 7th Cross Street,
Senthil Nagar, Chennai-600 099
rep. by its Manager(Legal),
S.Mukundh ... Applicant/Plaintiff
(in O.A. Nos.331, 333 to 336 of 2018)

-Versus-

1. Thirumalaivasa Milk Products Private Limited,
No.5, 2nd Street, Sri Ayyappa Nagar,
Kolathur, Chennai-600 099.
2. Danda Brahmanandam,
3. Danda Brahmanandam Danda Srinivas,
2 & 3 are at 1399, 4th Steet,
Golden Colony, Mogappair West,
Chennai-600 050.
4. Harish Milk and Milk Products,
#8, Shop 8/2, Shri Sayi Garden Layout,
TC Palya Main Road,
Near Anandapura Circle,
Bangalore-560 016. ... Respondents/Defendants
(in O.A. Nos.331, 333 to 336 of 2018)

O.A. No.331 of 2018:-

Original Application praying that this Hon'ble Court be
pleased to grant an order of interim injunction restraining
the respondents or their assigns, successors-in-interest,
licensees, franchisees, sister concerns, representatives,

servants, distributors, agents, family members, employees, etc., and/or any person or entity acting for or on behalf of them, from using applicant's trade mark 'THIRUMALA'/'THIRUMALA MILK', components thereof, or any other mark(s) deceptively similar thereto singularly or in conjunction with any other words or monogram/logo, as a trade mark, service mark, corporate name, trade name, trading style, domain name, website address, electronic mail identity or in any other manner whatsoever, on or in relation to or any product or dairy business including advertising, business papers, etc. during the pendency of the present suit.

O.A. No.333 of 2018:-

Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction restraining the respondents, their assigns, successors-in-interest, licensees, franchisees, sister concerns, representatives, servants, distributors, agents, family members, employees, etc., and/or any person or entity acting for or on behalf of them, from infringing the artistic copyright of the applicant in the old packaging, particularly the device of round globe, the unique image of Lord Venkateshwara in its unique arrangement and layout of the old packaging or any other work substantially similar thereto or in any other manner whatsoever during the pendency of the present suit.

O.A. No.334 of 2018:-

Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction restraining the respondents their assigns, successors-in-interest, licensees, franchisees, sister concerns, representatives,

servants, distributors, agents, family members, employees, etc., and/or any person or entity acting for or on behalf of them, from passing off their business or milk and dairy products as or for the products of the applicant by restraining them from using applicant's trade mark "THIRUMALA"/"THIRUMALA MILK", impugned branding, or any other mark(s) deceptively similar thereto singularly or in conjunction with any other words or monogram/logo, as a trade mark, service mark, corporate name, trade name, trading style, domain name, website address, electronic mail identity or in any other manner whatsoever; on or in relation to or any product, service/business including advertising, business papers, etc., during the pendency of the present suit.

O.A. No.335 of 2018:-

Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction restraining the respondents, their assigns, successors-in-interest, licensees, franchisees, sister concerns, representatives, servants, distributors, agents, family members, employees, etc., and/or any person or entity acting for or on behalf of them, from passing off the trade dress, get up, color scheme, arrangement and layout of the round globe device, unique image/device of Lord Venkateshwara comprising the old packaging or any other trade dress deceptively similar thereto in any manner whatsoever during the pendency of the present suit.

O.A. No.336 of 2018:-

Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction restraining

the respondents, their assigns, successors-in-interest, licensees, franchisees, sister concerns, representatives, servants, distributors, agents, family members, employees, etc., and/or any person or entity acting for or on behalf of them, from indulging in acts of unfair competition by use of the impugned branding or any other mark(s) or any other mark/trade dress deceptively similar thereto, or perpetrating confusion and deception regarding the source of the respondents' products verbally or in written or in any other manner whatsoever during the pendency of the present suit.

A. Nos.3584 to 3586 of 2018:-

1. Thirumalaivasa Milk Products Private Limited,
No.5, 2nd Street, Sri Ayyappa Nagar,
Kolathur, Chennai-600 099.
2. Danda Brahmanandam,
3. Danda Brahmanandam Danda Srinivas,
2 & 3 are at 1399, 4th Steet,
Golden Colony, Mogappair West,
Chennai-600 050.
4. Harish Milk and Milk Products,
#8, Shop 8/2, Shri Sayi Garden Layout,
TC Palya Main Road,
Near Anandapura Circle,
Bangalore-560 016. Applicants/Respondents/Defendants

-Versus-

Tirumala Milk Products Private Limited,
No.125, 1st Floor, 7th Cross Street,
Senthil Nagar, Chennai-600 099
rep. by its Manager(Legal),
S.Mukundh ... Respondent/Applicant/Plaintiff

A. No.3584 of 2018:-

Application praying that this Hon'ble Court be pleased to suspend the order of ex-parte interim injunction dated

11.04.2018 passed in O.A. No.331 of 2018 in C.S. No.226 of 2018 on the file of this Hon'ble Court until further orders.

A. No.3585 of 2018:-

Application praying that this Hon'ble Court be pleased to suspend the order of ex-parte interim injunction dated 11.04.2018 passed in O.A. No.334 of 2018 in C.S. No.226 of 2018 on the file of this Hon'ble Court until further orders.

A. No.3586 of 2018:-

Application praying that this Hon'ble Court be pleased to suspend the order of ex-parte interim injunction dated 11.04.2018 passed in O.A. No.335 of 2018 in C.S. No.226 of 2018 on the file of this Hon'ble Court until further orders.

These Applications coming on this day before this court for hearing the court made the following order:-

CS.No.226 of 2018 has been filed by Tirumala Milk Products Private Limited, a Company incorporated under the Companies Act, 1956 against (1) Thirumalaivasa Milk Products Private Limited, a Company incorporated under the Companies Act, 2013, (2) Danda Brahmanandam, (3) Danda Brahmanandam Danda Srinivas, who are both Directors of the 1st Defendant Company and (4) Harish Milk and Milk Products, a Company incorporated under the Companies Act, 1956.

2. The suit has been filed under Sections 134 and 135 of the Trade Marks Act 1999 and under Section 62 of the

Copyright Act, 1957 and also under the provisions of Order 4 Rule 1 of the Original Side Rules and Order 7 Rule 1 of CPC, seeking a judgement and decree, against the Defendants for permanent injunction, against infringement of the Plaintiff's registered trademark, THIRUMALA / THIRUMALA MILK or any other mark deceptively similar to that of the Plaintiff's trademark and also for permanent injunction, restraining the Defendants from infringing the artistic copyright of the Plaintiff in old packaging, particularly, the device of round globe, the unique image of Lord Venkateshwara and lay out of the old packaging and also for permanent injunction, against the Defendants from passing off their business by using the Plaintiff's trademark THIRUMALA/THIRUMALA MILK and also for permanent injunction, restraining the Defendants from passing off their products by using their trade dress, get up, colour scheme of the old packaging and for permanent injunction against the Defendants from indulging in acts of unfair competition by using the trademark/ trade dress, deceptively similar to that of the Plaintiff and for a direction against the Defendants to deliver to the Plaintiff for destruction all the materials bearing the corporate name THIRUMALAIVASA or any other mark deceptively similar to the Plaintiff's trademark THIRUMALA/ THIRUMALA MILK and for accounts and

for damages of Rs.1 crore and for costs.

3. The Plaintiff is in the business of procurement, processing, packaging and marketing of milk and other dairy products, under the registered trademark and brand name THIRUMALA MILK. They have been carrying on business since the time of incorporation on 13.11.1998. The 1st Defendant is a Company incorporated under the Companies Act, 2013 and the 2nd and 3rd Defendants are the Directors of the 1st Defendant Company. The 2nd and 3rd Defendants were originally associated with the Plaintiff's Company. The 2nd Defendant was the Managing Director and the 3rd Defendant was the AGM (Marketing) as well as minority shareholders of the Plaintiff Company. They sold their entire shareholdings to the Plaintiff's parent Company BSA International (part of the Lactalis Group) for consideration by way of a share purchase agreement, dated 4.11.2013. This agreement came into effect on 7.1.2014. The 4th Defendant manufactures and packages the 1st Defendant's dairy products.

4. The suit has been filed primarily to restrain the Defendants from infringing the Plaintiff's registered trademark THIRUMALA MILK and also for restraining the Defendants from copying the trademark and also parts of the original artistic work, trade dress and get up of the

Plaintiff's old packaging. The Plaintiff Company is a leading dairy Company in India established in the year 1998. The shares of the Company were originally owned by the 2nd and 3rd Defendants. They sold their entire shareholdings to the French Company Lactalis Group by a share purchase agreement dated 4.11.2013. The 2nd and 3rd Defendants received consideration of a sum of Rs.182,45,54,560.0 and Rs.36,88,36,407.3/- respectively.

5. The Plaintiff uses the trademark THIRUMALA as a stand alone word and also THIRUMALA MILK and THIRUMALA written in stylized form. According to the Plaintiff, these have acquired substantial goodwill and reputation. The Plaintiff had also registered the trademark THIRUMALA MILK in registration no.1007423 on 4.5.2001 in Class No.29 for milk, ghee and butter and also the trademark THIRUMALA MILK with the image of the lord Venkateswara's bust under registration no.1007425, dated 4.5.2001 in Class 16 for printed matter, articles advertisement.

6. The sales turn over of the Plaintiff was Rs.3,738,023,759/- in the year 2007-2008 and this had increased to Rs.19,462,302,085/- in the year 2016-2017. The Plaintiff had spent Rs.18,263,438/- in the year 2007-2008 towards advertising expenditure and a sum of Rs.139,264,113/- in the year 2016-2017 towards advertising

expenditure. The Plaintiff claimed that the names THIRUMALA/ THIRUMALA MILK are solely and exclusively associated with the Plaintiff. They have a unique image/device of Lord Venkateshwara along with the trademark THIRUMALA. They also have a round globe like device with the words 'Tasty, Thirumala, Healthy'. This has been used extensively on a wide variety of products for nearly 12 years before it was replaced by the Plaintiff in 2013. The old packaging with the image is the subject matter of the present suit.

7. According to the Plaintiff, this packaging had been imitated by the 1st Defendant in their milk and milk products to give an impression that both the products are emanating from the same source. The 1st Defendant was incorporated on 12.2.2018. The 2nd and 3rd Defendants are its Directors. They were the Ex-Promoters and Ex-Shareholders of the Plaintiff. Consequently, they knew about the Plaintiff's rights and goodwill. The 1st Defendant was incorporated under name Thirumalaivasa Milk Products Private Limited and this name is a direct infringement of the Plaintiff's right in the registered trademark THIRUMALA MILK. The 1st Defendant has also similar image of Lord Venkateshwara in their packaging. They have also a globe logo like that of the Plaintiff, but

with the words 'Purity, Tasty and Healthy'. The Plaintiff's words are 'Tasty, Thirumala, Healthy'.

8. It has been claimed by the Plaintiff that the Defendants are packaging the products, under the name SRINIVASA in bold red font within a green oval format, which is deceptively similar to the old packaging of the Plaintiff. It has been further stated that the Defendants had been directly and deliberately infringing the registered trademark of the Plaintiff. It is under these circumstances that the suit had been instituted for the reliefs as stated above.

9. Along with the plaint, the Plaintiff had filed OA.No.331 of 2018, seeking interim injunction, restraining the Defendants from using the trademark THIRUMALA/THIRUMALA MILK and OA.No.333 of 2018 seeking interim injunction, restraining the Defendants from infringing the artistic copyright of the Plaintiff in the old packaging, particularly, the device of the round globe and unique image of Lord Venkateshwara and also OA.No.334 of 2018, seeking interim injunction restraining the Defendant from using the Plaintiff's trademark THIRUMALA/ THIRUMALA MILK deceptively similar to that of the Plaintiff's trademark and OA.No.335 of 2018, seeking interim injunction, restraining the Defendants from infringing the artistic

copyright of the Plaintiff in the old packaging and OA.No.336 of 2018, seeking interim injunction, restraining the Defendants from indulging in unfair competition using their trademark or any other mark similar to that of the Plaintiff.

10. These applications came up for consideration before this Court. This Court, by order dated, 11.4.2018, had granted interim injunction in OA.No.331 of 2018 in all aspects, except with respect to the corporate name of the Defendant, on which aspect, this Court had observed that the Defendant must be heard.

11. This court had also granted interim injunction as prayed for in OA.Nos.334 and 335 of 2018. Notice was also directed to the Defendants. The Defendants entered appearance and filed A.No.3584 of 2018 to suspend the order of injunction granted in OA.No.331 of 2018 and A.No.3585 of 2018 to suspend the order of interim injunction granted in OA.No.334 of 2018 and A.No.3586 of 2018 to suspend the order of interim injunction granted in OA.No.335 of 2018.

12. This Court had directed notice to the Defendant in OA.No.333 of 2018 and 336 of 2018. Pending these applications, the Plaintiff has also filed A.No.3587 of 2018 for appointment of an Advocate Commissioner to visit the premises of the Defendants and to inspect, make

inventory, seize and seal the packaging materials under the mark THIRUMALAIVASA MILK, which is deceptively similar to that of the Plaintiff's mark.

13. In the applications filed by the Defendants, they have stated that the suit is borne out of spite and there is no cause of action. It has been stated that in view of the on going business, they had made changes pending suit, to the packaging labels used by them, namely, (a) change in the device of Lord Venkateshwara from the bust image to a head to toe image and (b) removed the round globe device completely from the label. They have also produced copies of the amended labels for reference to this Court.

14. On consideration of the changes, which had been effected, this Court had thereafter passed the following order on 23.4.2018:-

"7. Since the issues between the Plaintiff and the Defendants have now narrowed down to the extent to the name of the Company of the Defendants and more particularly the usage of the name of the Company in the advertisement Boards used by the Defendants, the learned senior counsel for the Defendants has stated that they would try to reduce the font size of the name of the Company in the advertisement Boards. He offered to produce the copy of the same on 26.04.2018. This change is still without prejudice to the right of the Plaintiff to pursue the case and raised objections as against the usage of the very same Thirumalaivasa Milk Products Private Limited as the Corporate name of the

Defendant's Company.

8. Mr.Sathish Parasaran further pointed out that the Defendants can use the name Thirumalaivasa Milk Products Private Limited, however with the caveat that the Company is not related or connected with the Plaintiff's Company Tirumala Milk Products Private Limited. These are issues for the Defendants to answer.

10. Call the matter once again on 26.04.2018. The injunction granted earlier in OA.Nos.331, 334 and 335 of 2018 is kept in abeyance with respect to the pouches to be sold by the Defendants using the whole image of Venkateshwara and removal of three words as stated above."

15. Even before examining the issues, the trademark/ device of the Plaintiff and the Defendant and also the changed mark of the Defendant will have be produced in judicial form for better appreciation.

16. The Plaintiff's trademarks and logos are as under:-







17. The Defendant's marks and logos are as under:-









18. Subsequent altered marks of the Defendant are as follows:-





19. This court heard Mr.Sathish Parasaran, the

learned senior counsel for the Plaintiff and Mr.P.S.Raman, the learned senior counsel for the Defendants. I have given deep consideration to the arguments advanced.

20. The 2nd and 3rd Defendants, namely, Danda Brahmanandam and Danda Brahmanandam Danda Srinivas were originally associated with Plaintiff Company as Managing Director and AGM (Marketing). They were also shareholders of the Plaintiff Company. They had, along with few others, sold their entire shareholdings to a French Company, BSA International, part of the Lactalis Group by a share purchase agreement dated 4.11.2013, which came into effect on 7.1.2014.

21. The Plaintiff is engaged in the business of procurement, processing, packaging and marketing of milk and other dairy products under the registered trademark and brand name, THIRUMALA MILK. The manner, in which the Plaintiff produces and packages these products, has been exhibited above. The Plaintiff is the registered Proprietor of the trademark THIRUMALA with registration no.1007423 and THIRUMALA MILK with bust image of Lord Venkateshwara in registration no.1007425, both with effect from 4.5.2001.

22. The sales turn over of the Plaintiff and its advertisement expenses have also been given in the plaint

and it has been extracted above. It must be pointed out that till the year 2013-2014, the 2nd and 3rd Defendants were directly in control of the Plaintiff's Company. From the year 2007-2008, when the sales figure was Rs.3,738,023,759/-, it had increased to Rs.15,807,838,912, in the year 2013-2014. Thereafter, the Plaintiff Company had been taken over by the Lactalis Group, France. The sales has also been increased from the year 2013-2014 to 2016-2017 when the sales turn over was Rs.19,462,302,085/-. Simultaneously, the expenses for advertisements has also increased from the year 2007-2008 when it was Rs.18,263,438/- to Rs.77,768,088/- in the year 2013-2014 and thereafter, to Rs.139,264,113/- in the year 2016-2017.

23. The Plaintiff is aggrieved by the incorporation of the 1st Defendant under the name Thirumalaivasa Milk Products Private Limited. According to the Plaintiff, the share purchase agreement placed a restriction on the 1st and 2nd Defendants from being engaged in any competitive business for a period of four years from the date on which the share purchase agreement came into effect. The share purchase agreement is a comprehensive agreement entered into between BSA International (Buyer) and First Carlyle Growth VII (FCG VII) and First Carlyle Ventures III (FCV III) and The Persons Listed in Annexure 1 (Co-Investors)

and The persons Listed in Annexure 2A (Promoters) and The persons Listed in Annexure 2B (Minority Shareholders) and Tirumala Milk Products Private Limited (Company). It was dated 4.11.2013.

24. The said share purchase agreement is, as stated, a comprehensive agreement giving rise to both duties, rights and mutual obligations. The 2nd and 3rd Defendants were shown under the category 'Promoters' and the shareholders under the heading " Brahmanandam and Family'. There was a Clause 11 with respect to 'Non Compete'. In Clause 11.2, it has been provided as follows:-

"11.2 The Promoters and the Minority Shareholders hereby understand, acknowledge and agree that the Company's and the Buyer's need for protection afforded by Clause 11.1 is greater than any hardship the Promoters and the Minority Shareholders might experience in complying with its terms. The Promoters and the Minority Shareholders agree that the limitations as to time and scope of activity to be restrained as contained in this agreement are reasonable and are no greater than are necessary to protect the business and other interests of the Company. The Promoters and the Minority Shareholders further understand and agree that in the event of any breach of any or all of the promises and/or covenants in this Clause 11.1 by any of them, the Company and the Buyer will suffer immediate, material, immeasurable, continuing and irreparable damage and harm, the remedies at law for such breach will be inadequate, and therefore the Company and the Buyer shall be entitled to injunctive relief against the Person in breach of Clause 11.1 in addition to any and all other legal or

equitable remedies (including but not limited to, specific performance of Clause 11.1 or an action and judgement for damages."

25. This Court had examined the share purchase agreement and it is found that there was no restriction subsequent to the period of four years for the 2nd and 3rd Defendants to commence the business under any name. They had chosen to commence business under the name 'Thirumalaivasa Milk Products Private Limited'. The Plaintiff is totally aggrieved by the same. This is the cause for institution of the suit.

26. Pursuant to the institution of the suit, the learned senior counsel for the Defendants had produced in Court the changed packagings. He pointed out the differences made, namely, (1) change in the logo from the bust image of Lord Venkateshwara to a Head to Toe image of Lord Venkateshwara and (2) removal of globe, actually all the words were also removed. It is under these circumstances that the Court had passed the order dated 23.04.2018. However, the learned senior counsel for the Plaintiff was not satisfied.

27. The learned senior counsel for the Plaintiff stated that the Corporate name of the 1st Defendant should also be changed from Thirumalaivasa Milk Products Private Limited to any other name. According to him, the 1st

Defendant is eating away into the customers of the Plaintiff and the milk business being predominantly at the rural areas, the customers feel that the products are actually that of the Plaintiff and consequently, the 1st Defendant is riding on the reputation of the Plaintiff. This objection was taken in view of the fact that the 2nd and 3rd Defendants have received substantial consideration at the time of the share purchase agreement. Therefore, the learned senior counsel insisted that there must be an order of interim injunction restraining the 1st Defendant from using the name of Thirumalaivasa Milk Products Private Limited. However, the learned senior counsel admitted that the name of manufacturer must be printed in the packets, which are distributed by the 1st Defendant. The learned senior counsel wanted a rider that the name of the 1st Defendant Company is not in any way connected with that of the Plaintiff Company.

28. The learned senior counsel for the Defendant has produced advertisement boards, in which it is aparent that they had reduced the size and font of the name of the 1st Defendant Company. The learned senior counsel has also produced the present packaging of the Plaintiff and stated that the Plaintiff is not using any image of Lord

Balaji in the present milk products. He had produced the following:-



He stated that though the Plaintiff has projected that

they have a registered trademark, they have, in fact, abandoned the entire image of Lord Venkateshwara.

29. The name of the Plaintiff's products are THIRUMALA and the name of the Defendant's products are SRINIVASA. They are distinctively dissimilar names.

30. It must be appreciated that to a large extent, the Defendants have come forward by altering their image and also the get up of the packages. They have removed the bust image of Lord Venkateshwara and have alternatively used a full size image of Lord Venkateshwara. This is in contrast to the present packages of the Plaintiff where there is no image of any deity at all. Consequently, the Plaintiff cannot have any grievance over the present packaging of the 1st Defendant.

31. The 1st Defendant has also removed the globe with the three words incorporated in the same, which is mentioned in the plaint and consequently, on that ground also, the Plaintiff cannot have any grievance. It is admitted that in every packet, the name of the manufacturer has to be imprinted and consequently, the name of the 1st Defendant has to be imprinted on each and every milk products which are sold in the market. This is a statutory requirement.

32. The only grievance of the Plaintiff is that in

the advertisement boards fixed in the shops, the name Thirumalaivasa Milk Products Private Limited would give an impression to the general public that the products of the 1st Defendant are actually the products of the Plaintiff. It is under these circumstances that the Plaintiff wants the words, "not related to Thirumala Milk Products Private Limited", to be included in the advertisement boards.

33. I hold that this request of the Plaintiff cannot be accepted. There is no restriction in the share purchase agreement with respect to the name, in which the 2nd and 3rd Defendants can recommence the business. If the name of the 1st Defendant Company is objectionable to the Plaintiff, then the Plaintiff must let in evidence to show as to the manner in which they have suffered loss owing to the fact that the Defendants have used the name Thirumalaivasa Milk Products Private Limited. This would require evidence also on sales, drop in sales, etc. This Court cannot come to a prima facie conclusion that merely because the 1st Defendant name is 'Thirumalaivasa Milk Products Private Limited', the sales of the Plaintiff would get affected. Having entered into a share purchase agreement on each and every minute detail, the Plaintiff should have made this aspect clear at that point of time. They had actually placed an embargo on the 2nd and 3rd

Defendants from commencing the business for a period of four years, which was honoured by the Defendants. They should have also included a clause that the Defendants should not commence business in a name similar to that of the Plaintiff Company. The Plaintiff cannot complain when they have consciously chosen not to include such a clause. The Defendants have a right to choose any name and if they have chosen a name which is offensive to the Plaintiff, then the Plaintiff must establish during trial by means of admissible and legal evidence that they have actually suffered owing to the fact that the 1st Defendant had recommenced the business under the name 'Thirumalaivasa Milk Products Private Limited'.

34. The fact that the Defendants have changed the packages to a large extent and that the name in the products is only 'Srinivasa' and not 'Thirumala' also shows that there can be no doubt in the minds of the people who purchase the products marketed by the Plaintiff and the Defendants. The Plaintiff has abandoned the entire image of the Lord Venkateshwara. The Defendants have chosen to incorporate the entire head to toe image of Lord Venkateshwara in their packages. They have also removed the globe and the words 'Purity, Tasty and Healthy' from the packages, which have been presented before this Court.

The Plaintiff cannot expect the Defendant to change even the name of the Company. To obtain an order on that score, evidence is required.

35. I hold that in the present case, the Plaintiff will have to establish loss by establishing drop in sales from the time when the 1st Defendant commenced business and impress upon the court that incorporation of the 1st Defendant in the name of 'Thirumalaivasa Milk Products Private Limited' has directly affected the Plaintiff Company. Without evidence, this Court cannot force upon the 1st Defendant to change the name. The Plaintiff had an opportunity at the time of the share purchase agreement to put in any clause they wanted since at that point they had also parted with consideration to the 2nd and 3rd Defendants. Having chosen not to do so, they cannot now wake up and seek orders from this Court. Consequently, the order dated 23.04.2018 holds good and the same is made absolute.

36. Consequently, the Defendants are permitted to market the products as given in the following images:-



37. I further hold that this would not have any confusion with the corresponding images of the Plaintiff which are as following:-



38. The names of the products being totally different and distinct, I hold that OA.Nos.331, 333, 334

and 335 and 336 of 2018 are dismissed. Injunction granted in OA.No.331, 334, & 335 of 2018 are vacated. A.Nos.3584, 3585, and 3586 of 2018 are allowed. The 1st Defendant is permitted to use the Corporate name, 'Thirumalaivasa Milk Products Private Limited', pending disposal of the suit. The 1st Defendant is also permitted to use the images as shown above in their products. No costs.

Sd/.C.V.K.J

06.06.2018

//Certified to be a true copy//
Dated this the day of 2018

JJ 07/06/2018

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.