

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 08.06.2018

PRONOUNCED ON: 12.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.748 of 2017

OPPO Mobiles India Private Limited
represented by Manager-Legal, Company Secretary
and Compliance Officer Gaurav Garg
Haryana 122001, presently at Chennai.

Plaintiff

Vs

M/s.Samaira Online Enterprises
Central Warehousing Corporation,
Virugambakkam, Chennai 600092

Defendant

Prayer:- This Civil Suit is filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of CPC and Sections 29, 134 and 135 of the Trade Marks Act , for the reliefs as stated therein.

For Plaintiff : Mr.S.Raveekumar

For Defendant : Set Exparte

JUDGEMENT

This Civil Suit is filed, seeking a Judgement and Decree, for the following reliefs:-

- a) permanent injunction and perpetual injunction restraining the Defendant, its principal officers/ partners/ servants/ representatives/ agents or any one acting on behalf of them or claiming any right through or under them, from unauthorized marketing, advertising, promoting, displaying or selling directly or indirectly any of the Plaintiff's products on any of the online e-commerce websites including www.amazon.in.
- b) mandatory injunction directing the Defendant to render its accounts exhibiting the amounts/ profits the Defendant had

earned by unlawfully selling the Plaintiff's products on any of the online e-commerce websites including www.amazon.in.

- c) decree for delivery up to the Plaintiff for destruction of all packaging, labels, blocks, dyes, stickers, signage, advertising materials, all types of stationary and brochures and all other infringing materials of the Defendant, bearing the words 'OPPO Mobiles'.
- d) preliminary decree in favour of the Plaintiff directing the Defendant to render account of profits made through use of the 'OPPO Mobiles' mark and a final decree thereafter be passed in favour of the Plaintiff for the amount of profits that have been found to be made by the Defendant after it had rendered accounts.
- e) for costs.

2. The case of the Plaintiff is as follows:-

a. The Plaintiff is a Company registered and incorporated under the Companies Act, 1956 and having its registered Office at Haryana. The Plaintiff is in the field of mobile industry in India with licence to use the mark OPPO and sell the OPPO products within the territory of India. The Plaintiff is an affiliate of global electronics and technology service provider in over 20 countries. The Plaintiff is engaged in the business of manufacturing and selling of mobile phones in India. The Plaintiff is the authorized user of the trademark OPPO in India, having registered the same in India.

b. The Defendant is engaged in the business of selling mobile phones in the name and style of M/s.Samaira Online Enterprises, having its Office at Chennai. The Defendant is indulging in unauthorized acts of marketing, displaying, offering for sale at low price and exhibiting the Plaintiff's products by publication on the e-commerce websites including www.amaozn.in.

<http://www.judis.nic.in> The Defendant is depreciating the Plaintiff's market by publishing or offering the products of the Plaintiff online without any authority or agreement. The

Defendant is impliedly projecting a picture as if they are authorized dealers and licensee of the Plaintiff. The advertisement of the Defendant offering the products of the Plaintiff at a low price on the e-commerce websites is not in comparison with the price being offered by the registered dealers of the Plaintiff, thereby causing distress in the unique business model of the Plaintiff.

c. The Plaintiff had registered the trademark OPPO both in the form of logo and word mark in India in favour of Sky Capital Limited, bearing trademark No.2591198, dated 4.9.2013, with Journal No.1757, dated 8.8.2016 and trademark No.1100623 dated 29.4.2002 with Journal No.1333-1, dated 15.08.2005, respectively for the logo and word mark. By virtue of long and continuous use, the Plaintiff has acquired global reput and good will in the market of their OPPO products with an established name in the WIPO Global Brand Database. The Plaintiff is also spending huge monies towards advertisements. The Plaintiff has been title sponsor for the ICC Asia cup and ICC World T20. The Plaintiff had already spent Rs.140 crores over the period of last three financial years towards promotional and advertising activities. The average sales turnover of the Plaintiff for the financial years 2014-2015 and 2015 -2016 was Rs.1000 crores.

d. The Plaintiff found that the price at which unauthorized products are sold on the e-commerce websites is too low as compared to the price on which the Plaintiff's authorised dealers sell the product. Only authorised dealers and distributors of the Plaintiff can sell the products in the e-commerce websites. Such colossally discounted pricing technique adopted by the Defendant is hampering the business of the Plaintiff. The Defendant has unlawfully procured the products of the Plaintiff and is selling and marketing these products without any authorization from the Plaintiff under the name and

brand of OPPO and by doing such act, the Defendant is making profits for itself and is causing immense loss of business, goodwill and market reputе to the Plaintiff. The products being sold by the Defendant at a low price on e-commerce websites as compared to the other authorised dealers of the Plaintiff may be of substandard quality, fake or procured illegally from grey market, which in turn will adversely affect the brand value and market standing of the Plaintiff.

e. The Plaintiff is receiving complaints about the authenticity of the products that are being sold and bought online. The Plaintiff has received a complaint, dated 22.6.2017 from an end customer on the used/ duplicate/ poor quality accessories supplied with the product i.e. OPPO A37 (Gold, 2GB) sold by the Defendant in the month of June 2017 through www.amazon.in with product order no.408-33416139-7791506, dated 13.06.2017, which is adversely affecting the brand value, good will and market standing of the Plaintiff. The method of marketing and the manner of sale by the Defendant is to deceive, mislead and create confusion in the minds of the ordinary consumers or buyers as to the origin of the product. Such acts of Defendants are in direct violation of the law of the trademark.

f. The Plaintiff has sent a legal notice dated 3.08.2017 to the Defendant, asking to immediately cease the aforesaid illegal acts. The Defendant did not send any reply. The aforesaid illegal acts by the Defendant have caused immeasurable loss to the business and goodwill of the Plaintiff. The Defendant is under an obligation not to indulge in any such unlawful and unauthorized marketing, advertisement or sale of products of the Plaintiff on the basis of concocted and implied representation as being the authorised retailer of the Plaintiff. In such circumstances, this civil suit has been filed, seeking the

reliefs as stated above.

3. Though the Defendant had been duly served on 6.10.2017, no written statement has been filed within time and there was no representation for the Defendant on 16.02.2018. Hence, the Defendant was set exparte by order dated 16.02.2018 and the matter was ordered to be posted under the caption 'Undefended Board' on 23.02.2018. Even on 23.02.2018, there was no representation for the Defendant and no written statement has been filed by the Defendant. Hence, recording of exparte evidence was ordered.

4. Accordingly, Gaurav Garg, Manager (Legal) of the Plaintiff Company has filed his proof affidavit for his chief examination and receipt of 10 documents in order to prove the suit claim. In the exparte evidence, the said Manager (Legal) was examined as PW.1 and Ex.P1 to Ex.P10 were marked on the side of the Plaintiff.

5. Ex.P2 is the copy of the trade mark certificate bearing No.1100623, dated 29.4.2002 along with clean typed copy. Ex.P3 is the downloaded copy of trade mark certificate bearing No.2591198, dated 4.9.2013. Ex.P4 is the original legal use certificate for trade mark certificate in Ex.P2. Ex.P5 is the original legal use certificate for trade mark certificate in Ex.P3. Ex.P6 is the copy of licence agreement between SKY Capital Limited, and the Plaintiff.

6. Clause 10 of the licence agreement Ex.P6 is as follows:-

“10. Infringement:- If Licensee learns of any use by any person of any product, service or other material bearing any name, mark, or designation similar to the mark(s), it shall promptly notify Licensor and, if requested by Licensor, cooperate with Licensor in such actions as Licensor in his reasonable discretion may deem advisable for the protection of its rights. Licensee is entitled to take legal action with respect to the infringement of

the mark(s), include but not limited to proceeding litigations, filing applications to intellectual property authorities, in accordance with laws and regulations within the Territory.”

7. These documents show that the Plaintiff is the licensee for use of the trademarks and trade names shown in the attached schedule of marks in connection with the promotion, advertisement and sale of mobile phones and spare parts and that the Plaintiff is entitled to take legal action with respect to infringement of the marks, by any person of any product, service or other material bearing any name mark, or designation similar to the marks assigned to the Plaintiff by the said licence agreement, Ex.P6.

8. Accordingly, considering the oral and documentary evidence, viz. Ex.P1 to Ex.P10 adduced by PW.1, the Plaintiff is entitled to the suit claim, as prayed for. Accordingly, this civil suit is decreed as prayed for, with costs.

12.06.2018

Index:Yes/No

Web:Yes/No

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1. List of Witnesses Examined on the side of the Plaintiff:-

1. P.W.1 - Gaurav Garg

2. List of Exhibits Marked on the side of the Plaintiff:-

1. Ex.P1 is the true extract of the board resolution of the Plaintiff dated 9.12.2015.

2. Ex.P2 is the copy of the trade mark certificate bearing No.1100623, dated 29.4.2002 along with clean typed copy.

3. Ex.P3 is the downloaded copy of trade mark certificate bearing No.2591198, dated 4.9.2013.

4. Ex.P4 is the original legal use certificate for trade mark certificate in Ex.P2.

5. Ex.P5 is the original legal use certificate for trade mark certificate in Ex.P3.
6. Ex.P6 is the copy of licence agreement between SKY Capital Limited, and the Plaintiff.
7. Ex.P7 is the original complaint dated 22.06.2017 received by the Plaintiff from the end customer.
8. Ex.P8 is the copy of the Memorandum of Articles of Association of the Plaintiff.
9. Ex.P9 is the office copy of cease and desist notice dated 3.9.2017 issued on behalf of the Plaintiff to the Defendant.
- 10.Ex.P10 is the copy of India Post Track consignment.
3. List of Witnesses Examined on the side of the defendant:-
Nil
4. List of Exhibits Marked on the side of the defendant:-
Nil

12.06.2018

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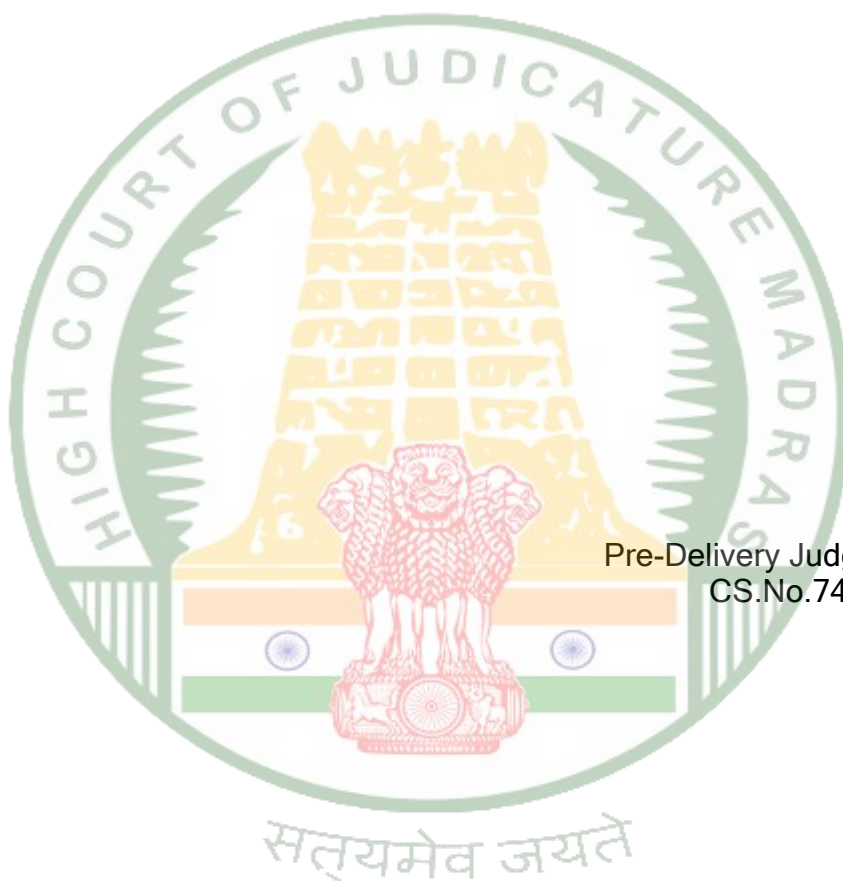
Note to Office:-

Issue on 12.06.2018

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C.V.KARTHIKEYAN, J.

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Pre-Delivery Judgement in
CS.No.748 of 2017

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