

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:14.03.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.835 of 2017**&****O.A.Nos.1071 and 1072 of 2017**

- 1 Confederation of Indian Industry(CII)
Tamil Nadu State Office
98/1 Velacherry Main Road Guindy Chennai-
42. Rep.by Its Authorizes signatory Mr.
Ashutosh Deshpande. ... Plaintiff

Vs

- 1 Mr.Sanyal S Desai
Chief Executive Officer (CEO)
M/s Radeecal Communications
402 4 th Floor Optionz complex
Opp.Nest Hotel Off C.G.Road
Navrangpura, Ahmedabad-380 009
Gujarat.
- 3 M/s.Radeecal Communications
402 4 th Floor Optionz Complex
Opp.Nest Hotel Off C.G.Road
Nabrangpura Ahmedabad-380 009
Gujarat. ... Defendants

Plaint filed under Order VII Rule 1 CPC read with Order IV Rule 1 of the Original Side Rules of the Madras High Court and Sections 11, 29 and 134 of Trademarks Act, 1999 seeking permanent injunction restraining the defendants their directors employees officers servants agents and all others acting for and on their behalf from using the trademark trade name and trading style featuring the mark FOODPRO or any other name/mark deceptively similar to plaintiffs mark FOODPRO in any manner whatsoever including the depiction FOODPRO TECH in relation to its events or services in relation to the food processing sector or any other business including all use as part of its signage, business cards, labels,

promotional materials, advertisements, domain name/s, company name/s, URLs e-mail addresses, screen names, user names, website contents [whether visible or not visible], staff uniforms, transportation vehicles, documents, reports, data invoices, receipts, stationery, and on any other materials and things on which they are using mark "FOODPRO" or anything similar to Plaintiff's mark "FOODPRO", amounting to infringement of plaintiff's trademark "FOODPRO" under Registration No.1872192 in class 41 respectively that amounts to infringement thereof; permanent injunction restraining the defendants their directors, employees, officers, servants, agents and all others acting for and on their behalf from using the trademark, trade name and trading style featuring the mark "FOODPRO" or any other name/mark deceptively similar to plaintiff's mark "FOODPRO" in any manner whatsoever including the depiction of "FOODPRO TECH" in relation to its events or services in relation to the food processing sector or any other business including all use as part of its signage, business cards, labels, promotional materials, advertisements, domain name/s, company name/s, URLs e-mail addresses, screen names, user names, website contents [whether visible or not visible], staff uniforms, transportation vehicles, documents, reports, data invoices, receipts, stationery, and on any other materials and things on which they are using mark "FOODPRO" or anything similar to Plaintiff's mark "FOODPRO", amounting to infringement of plaintiff's trademark "FOODPRO" that amounts to passing off the defendants' business or services as those of plaintiff; to grant order of delivery up of any brochures/printed material and/or any material which contributes ultimately to the infringement of plaintiff's trademark for destruction thereof; to direct the defendants for rendition of accounts and for costs.

For Plaintiffs : Ms.Chitra Subbiah

For Defendants : Mr.Hiren U.Trivedi

JUDGMENT

Ms.Chitra Subbaih, learned counsel on record for the sole plaintiff is before this Commercial Division. Mr.S.Kannan @ S.Kannuchamy, who has been duly authorized by the plaintiff vide resolution dated 14.03.2018 is before this Commercial Division on behalf of the plaintiff i.e, Confederation of Indian Industry (CII).

2. On behalf of the Defendant, Mr.Hiren U.Trivedi, learned counsel on record is before this Commercial Division. I am informed that Mr.Hiren U Trivedi is an outstation counsel and he travelled from Ahmedabad for this matter. Learned counsel made a prayer to dispense with the presence of his client before this Commercial Division today and has made an endorsement to this effect in the suit file, which reads as follows:

"Mr.Sanyal S. Desai has personal difficulty to remain the present before this Court. Hence, his presence may be dispense with and I will remain present in this Hon'ble Court."

3. Both the learned counsel, on instructions, from their respective clients submitted that the parties have entered into a memorandum of compromise dated 13.03.2018. The memorandum of compromise dated 13.03.2018, which has been duly signed by the plaintiff, defendants and their respective counsel has been placed before me. To be noted, the parties have thought it fit to compromise the matter and entered into the aforesaid memorandum of compromise after hearing for some time on merits of the matter.

4. Both sides make a joint request to this Commercial Division that a decree be passed in terms of the aforesaid memorandum of compromise dated 13.03.2018. The joint request is acceded to.

5. There shall a decree in the main suit i.e, C.S.No.835 of 2017 in terms of the aforesaid memorandum of compromise dated 13.03.2018.

The contents of which reads as follows:

"The Plaintiff and Defendant Nos.1 and 2 (hereinafter referred to as the "Defendants") have arrived at a settlement on the following terms and conditions:

1. The terms Plaintiff and Defendants shall mean and include their heirs, legal representatives, executors, administrators, successors in business and assigns of each party.

2. The Plaintiff instituted the instant suit against the Defendants seeking following reliefs:

A. To grant permanent injunction restraining the Defendants, their directors, employees, officers, servants, agents and all others acting for and on their behalf from using the trademark, trade name and trading style featuring the mark 'FOODPRO' or any other name / mark deceptively similar to plaintiff's mark 'FOODPRO' in any manner whatsoever, including the depiction of ,



in relation to its events or services in relation to the food processing sector or any other business, including all use as part of its signage, business cards, labels, promotional materials, advertisements, domain name/s, company name/s, URLs, e-mail addresses, screen names, user names, website contents [whether or not visible], staff uniforms, transportation vehicles, documents, reports, data, invoices, receipts, stationery, and on any other materials and things on which they are using mark "FOODPRO", or anything similar to Plaintiff's mark "FOODPRO", amounting to infringement of plaintiff's trademark "FOODPRO" under Registration No.1872192 in class 41 respectively that amounts to infringement thereof;

B. To grant permanent injunction restraining the Defendants, their directors, employees, officers, servants, agents and all others acting for and on their behalf from using the trademark, trade name and trading style featuring the mark "FOODPRO" or any other name / mark deceptively similar to Plaintiff's mark "FOODPRO" in any manner whatsoever, including the depiction of



in relation to its events or services in relation to the food processing sector or any other business, including all use as part of its signage, business cards, labels, promotional materials, advertisements, domain name/s, company name/s, URLs, e-mail addresses, screen names, user names, website contents [whether or not visible], staff uniforms, transportation vehicles, documents, reports, data, invoices, receipts, stationery, and on any other materials and things on which they are using mark "FOODPRO", or anything similar to Plaintiff's mark "FOODPRO", amounting to infringement of Plaintiff's trademark "FOODPRO" that amounts to passing off the Defendants' business or services as those of Plaintiff;

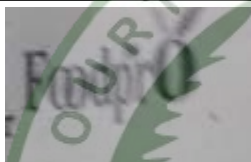
C. To grant order of delivery up of any brochures / printed material and / or any material which contributes ultimately to the infringement of Plaintiff's trademark for destruction thereof;

D. To direct the Defendants to rendition of accounts;

E. Costs and such other relief as this Hon'ble Court may deem fit, in the circumstances of the case, in the interests of justice and equity.

3. This Hon'ble on 30th October, 2017 was pleased to order notice to the Defendants. The Defendants on taking notice acknowledged the prior right of the Plaintiff in the mark 'FOODPRO' and undertook to propose a settlement.

4. Pursuant to the said undertaking, the Defendants herein agree and acknowledge that the Plaintiff is the registered proprietor of the trademark as detailed below and has exclusive statutory rights by virtue of such registrations and proprietary and common law rights on account of prior, long and extensive use of the trademark FOODPRO to the exclusion of others.

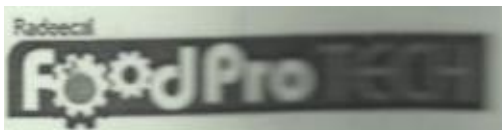
S.No.	Mark	Application No.	Class	Services
1.		1872192	41	Education, Providing of Training, Creating Awareness, Knowledge, Dissemination, Study & Report

5. The Defendants agree and undertake that they shall not use 'FOODPRO' or

or any other mark similar to Plaintiff's registered trademark 'FOODPRO', as a trade mark, trade name, shop name or in any other manner, in relation to their events or services in relation to the food processing sector or any other business, services and business, present or future or apply for a trademark or copyright for the aforesaid marks with effect from date of execution of this compromise i.e., 14.03.2018.

6. The Defendants agree and undertake that they shall not use

'FOOD PRO' or



or any other mark similar to Plaintiff's registered trademark 'FOODPRO' in any of their advertising / marketing / promotional material in any form or domain, including hoardings, letter heads, invoices or any other material used in respect of their business.

7. The Defendants agree and confirm that they have filed appropriate request letters before trademarks registry seeking withdrawal of following trademark application filed by them:

S.No.	Application No.	Mark	Class
1	2941928		35

8. The Defendants agree and confirm that they shall stop using the domain name <http://www.agriasia.in/food-pro-tech.php> and shall not use or register any other website with the domain name having 'FOOD PRO' or foodprotech or any other mark similar to plaintiffs' registered trademark 'FOOD PRO' as a part of it.

9. The Defendants agree and confirm that the impugned brochure at <http://www.agriasia.in/pdf/food-tech-brochure.pdf> consisting

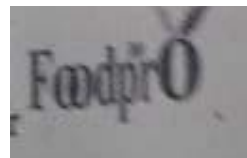


of the mark

has been removed and that there no other webpage consisting of any such brochure or photographs or materials 'FOOD PRO' or 'FOODPROTECH' or any other mark similar to plaintiffs' registered trademark 'FOOD PRO' as a part of it.

10. The Defendants undertake that they shall never in the future

make an application either by themselves or through their agents before the Trademarks Registry for registration of a trade mark or Copyright Office for any work which is in any manner identical or similar to or comprises the trade mark 'FOOD PRO' or



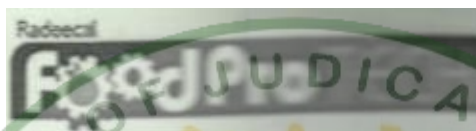
11. The Defendants submit to judgment and decree as prayed for in terms of prayer (A) and (B) of the plaint as follows:

A. A permanent injunction restraining the Defendants, their directors, employees, officers, servants, agents and all others acting for an on their behalf from using the trademark, trade name and trading style featuring the mark 'FOODPRO' or any other name/mark deceptively similar to Plaintiff's mark 'FOODPRO' in any manner whatsoever, including the depiction of



in relation to its events or services in relation to the food processing sector or any other business, including all use as part of its signage, business cards, labels, promotional materials, advertisements, domain name/s, company name/s, URLs, e-mail addresses, screen names, user names, website contents [whether or not visible], staff uniforms, transportation vehicles, documents, reports, data, invoices, receipts, stationery, and on any other materials and things on which they are using mark "FOODPRO" or anything similar to Plaintiff's mark "FOODPRO", amounting to infringement of Plaintiff's trademark "FOODPRO" under Registration No.1872192 in class 41 respectively that amounts to infringement thereof;

B. A permanent injunction restraining the Defendants, their directors, employees, officers, servants, agents and all others acting for and on their behalf from using the trademark, trade name and trading style featuring the mark "FOODPRO" or any other name/mark deceptively similar to plaintiff's mark "FOODPRO" in any manner whatsoever, including the depiction of



in relation to its events or services in relation to the food processing sector or any other other business, including all use as part of its signage, business cards, labels, promotional materials, advertisements, domain name/s, company name/s, URLs, e-mail addresses, screen names, user names, website contents [whether or not visible], staff uniforms, transportation vehicles, documents, reports, data, invoices, receipts, stationery, and on any other materials and things on which they are using mark "FOODPRO" or anything similar to Plaintiff's mark "FOODPRO" amounting to infringement of Plaintiff's trademark "FOODPRO" that amounts to passing off the Defendants' business or service as those of Plaintiff;

12. All the aforesaid undertakings will be binding henceforth on the plaintiff and the Defendants, their directors, successors-in-business, legal representatives and assignees.

13. It is therefore prayed that the present memorandum of compromise may be recorded and a decree in terms of paragraphs 43(A) and 43(B) of the Plaint may be passed in favour of the Plaintiff and against the Defendants by the Hon'ble Court, incorporating the terms of the settlement as a part thereof.

14. Should the Defendants be found to be in breach of the present Memorandum of Compromise at any future date, they agree to be liable to pay a sum of INR 10,00,000 (Ten Lakhs) as liquidated damages and such other amount as may be calculated as unliquidated damages to the Plaintiff.

15. Subject to the aforesaid express undertaking by the Defendants, the Plaintiff agrees to give up the other reliefs claimed by them in the plaint."

The aforesaid memorandum of compromise dated 13.03.2018 and photocopies of photo identify card of the plaintiff's representative together with the resolution dated 14.03.2018 shall all form part of the decree.

The suit is decreed on above terms. No costs. Consequently, the connected miscellaneous petitions are closed.

14.03.2018

gpa

सत्यमेव जयते

WEB COPY

M.SUNDAR, J.

gpa



C.S.No.835 of 2017

WEB COPY

14.03.2018