

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2018

CORAM

The HON'BLE MS.INDIRA BANERJEE, CHIEF JUSTICE
AND
The HON'BLE MS.JUSTICE P.T.ASHA

O.S.A.No.121 of 2018
and C.S.No.876 of 2015

Nexmo Inc.
rep. by its CEO, Tony Jamous
having office at
4th Floor, 217, Second Street
San Francisco, CA - 94105
United States of America. ... Appellant in OSA.121/18/
Defendant in CS.876/2015

Vs.

Nexmo Solutions (India) Private Limited
rep. by its Managing Director, S.Pandiarajan
18/8, Selvarangaraja Street
Little Mount, Saidapet
Chennai - 600 015. ... Respondent in OSA.121/18/
Plaintiff in CS.876/2015

PRAYER in O.S.A.No.121 of 2018: Appeal under Order XXXVI
Rule 9 of the Original Side Rules read with Clause 15 of
the Letters Patent against the order dated 1.3.2018 made in
O.A.No.1171 of 2015 in C.S.No.876 of 2015.

PRAYER in C.S.No.876 of 2015: Plaint filed under Order VII
Rule 1 of CPC read with Order IV Rule 1 of the Original
Side Rules and Sections 134 and 135 of the Trade Marks Act,
1999 seeking a judgment and decree granting: (i) a
permanent injunction restraining the defendant, its
directors, officers, servants, agents, legal
representatives, successors-in-business, assigns or any one
claiming through or under them from passing off or enabling
others to pass off the defendant business/goods/services as
and for the business/goods/services of the plaintiff by
using the corporate trading style/trade name of Nexmo Inc
and domain name www.nexmo.com or any other trading
style/trade name and/or e-email address, website address
bearing the name of Nexmo or any other mark deceptively

similar to the plaintiff's trade name 'Nexmoo' thereto or any other manner whatsoever connected with the Plaintiff; (b) the defendant to be ordered to surrender to the plaintiff for destruction of all goods, cartons, containers, name boards, signage, labels, bills, advertisement materials, printed matters bearing the trademark/trade name of Nexmo or mark deceptively similar to plaintiff's trademark and service mark 'Nexmoo'; (c) a preliminary decree be passed in favour of the plaintiff directing the defendant to render true and faithful account of profits made by use of trade name trading style or trade mark Nexmo by use of trade name Nexmo Inc., domain name www.nexmo.com or using the mark and a final decree may be passed in favour of the plaintiff for the amount or profits so ascertained; (d) the defendant may be ordered to pay to the plaintiff a sum of Rs.26,00,000/- as liquidated damages for committing continuous acts of violation by using mark of "Nexmo" in various manner which is deceptively and phonetically similar to the plaintiff's trade mark/trade name "Nexmoo"; (e) for costs of the suit.

For Appellant/ : Mr.K.Harishankar
Defendant

For Respondent/ : Mr.G.S.Vivekmani
Plaintiff for M/s.Giridhar and Sai

JUDGMENT

(Made by Ms.Indira Banerjee, Chief Justice)

The appeal and the suit are disposed of in terms of the memorandum of settlement filed in Court today. The memorandum of settlement shall form part of the decree. No costs. Consequently, C.M.P.No.7817 of 2018 is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

sasi

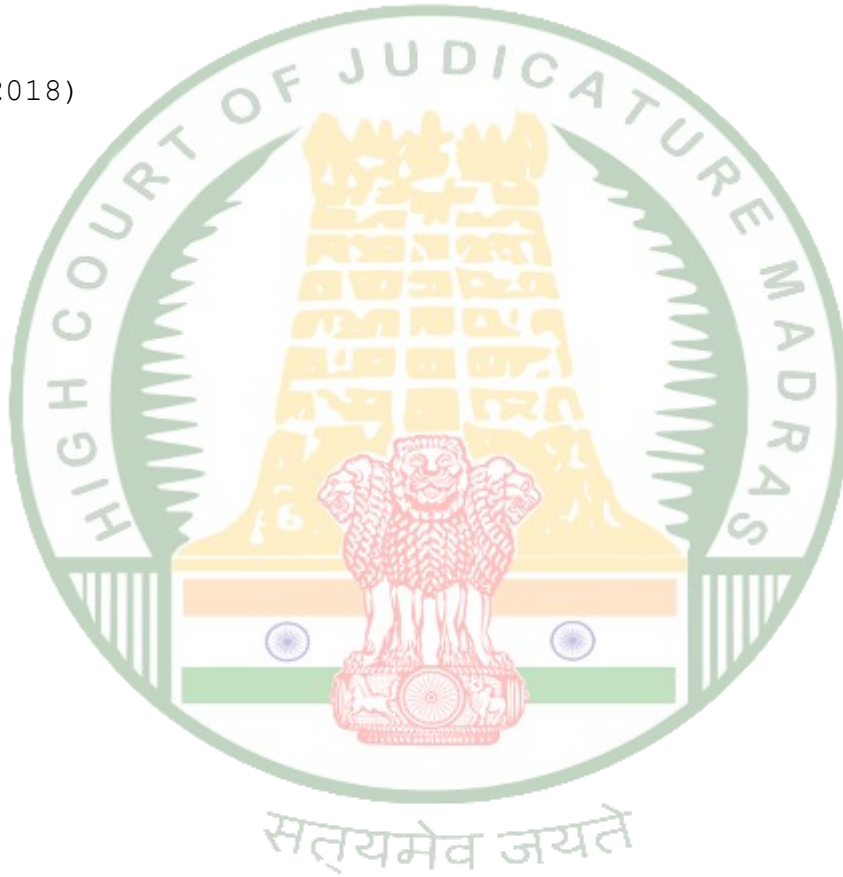
To:

The Sub Assistant Registrar
Original Side
High Court, Madras.

+2cc to Mr.K.HARISHANKAR, Advocate, S.R.No.38140
+1cc to M/s.GIRIDHAR & SAI Advocate, S.R.No. 38625

O.S.A.No.121 of 2018
and C.S.No.876 of 2015

NM(CO)
TR(23/07/2018)



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