

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2018

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

C.S.No. 176 of 2018

And

O.A.Nos. 253 & 254 of 2018

And

A.No. 2443 of 2018

1. Aqua Pump Industries
Rep. by its Managing Partner
Mr.Ramaswamy Kumaravelu
Thudiyalur Post
Coimbatore 641 034
Having their branch office at
New No.10, Old No. 26
Errabalu Chetty Street, Parrys Corner
Chennai - 600 001.
2. Aqua Sub Engineering
Rep. by its Managing Partner
Mr.Ramaswamy Kumaravelu
Thudiyalur Post
Coimbatore 641 034
Having their branch Office at
New No.10, Old No. 26
Errabalu Chetty Street,
Parrys Corner
Chennai - 600 001

... Plaintiffs

Vs.

Matrix Iron Foundry

No.52/1, Dr.Abani Dutta Road
Howrah
West Bengal - 711 101.

... Defendant

PRAYER: This Civil Suit filed under Order IV Rule 1 O.S. Rules read with Order VII Rule 1 CPC, read with Section 27,134 & 135 of the Trade Marks Act, 1999 praying for the following reliefs:

(a) granting a permanent injunction, restraining the defendant, by itself, their servants, agents, distributors, or anyone claiming through them from manufacturing, selling, advertising and offering for sale using the plaintiff's registered Trade Mark TEXMO/TEXMO DELUXE as such or prefix or suffix in any Hand Pumps or in any other goods manufactured and sold by the defendant or its trading style or in any media and use the same in invoices, letter heads and visiting cards or by using any other trade mark which is in any way visually, or phonetically similar to the plaintiffs' registered Trade Mark TEXMO/TEXMO or in any manner infringing the plaintiffs registered Trade Mark Nos. 315049 [SP-I], [SP-II] & 315050 [SP-I], [SP-II] renumbered as 2702778, 2702779, 2702780 and 2702781 respectively;

(b) granting a permanent injunction, restraining the defendant, by itself, their servants, agents, distributors, or anyone claiming through them from manufacturing, selling, advertising and offering for sale using the Trade Mark TEXMO/TEXMO DELUXE as such or with prefix or suffix in any Hand Pumps or in any other goods manufactured and sold by the defendant and its trading style or in any media and use the same in invoices, letter heads and visiting cards or by

using any other trade mark which is in any way visually, or phonetically similar to the plaintiffs' registered Trade Mark TEXMO/TEXMO or in any manner pass off the plaintiffs' goods;

(c) directing the defendant to surrender to the plaintiffs all the goods, packing materials, cartons, advertisement materials and hoardings, letter-heads, visiting cards, office stationery and all other materials containing/bearing the Trade Mark TEXMO DELUXE or other deceptively similar to the plaintiffs' Trademark TEXMO/TEXMO;

(d) directing the defendant to render an account of profits made by them by the use of the impugned trademark TEXMO DELUXE on the goods referred prayer (a) and (b) and decree the suit for the profits found to have been made by the defendant, after the defendant has rendered accounts; and

(e) directing the defendant to pay to the plaintiffs the costs of the suit.

For Plaintiffs : M/s. C.Daniel & Gladys Daniel

For Defendant : Mr. B.Dhiyaneswaran

WEB COPY
JUDGMENT

The Memorandum of Compromise, which had been entered into between the plaintiffs and the defendant, has been presented before this Court. It had

been signed by the Managing Partner of the first and second plaintiffs and also by the partner of the defendant.

2. The learned counsel for the plaintiffs and the learned counsel for the defendant had also signed the Memorandum of Compromise.

3. According to the Memorandum of Compromise, it had been agreed between the parties as follows:-

"2. The defendant (an Indian Company) submits to a Judgment and Decree as prayed for in terms of prayer [a] & [b] of para 20 of the plaint for

(a) granting a permanent injunction, restraining the defendant, by itself, their servants, agents, distributors, or anyone claiming through them from manufacturing, selling, advertising and offering for sale using the plaintiff's registered Trade Mark *TEXMO/TEXMO DELUXE* as such or prefix or suffix in any Hand Pumps or in any other goods manufactured and sold by the defendant or

its trading style or in any media and use the same in invoices, letter heads and visiting cards or by using any other trade mark which is in any way visually, or phonetically similar to the plaintiffs' registered Trade Mark TEXM0/TEXM0 or in any manner infringing the plaintiffs registered Trade Mark Nos. 315049 [SP- I], [SP- II] & 315050 [SP- I], [SP- II] renumbered as 2702778, 2702779, 2702780 and 2702781 respectively;

(b) granting a permanent injunction, restraining the defendant, by itself, their servants, agents, distributors, or anyone claiming through them from manufacturing, selling, advertising and offering for sale using the Trade Mark TEXM0/TEXM0 DELUXE as such or with prefix or suffix in any Hand Pumps or in any other goods manufactured and sold by the defendant and its trading style or in any media and use the same in invoices, letter heads and visiting cards or by using any other trade mark which is in any way visually, or phonetically similar to the plaintiffs' registered Trade Mark TEXM0/TEXM0 or in any manner pass off the plaintiffs' goods.

3. The Defendant undertakes to withdraw the Trade Mark Application No. 3311056 dated 15.07.2016 in Class 8 for registration of the Trademark TEXM0 DELUXE in respect of manufacturing Hand Pumps advertised in the Trademark Journal No. 1818- 0 dt. 09.10.2017

pending on the file of the Registrar of Trademarks, Chennai. The defendant also undertake hereby not to assert any right in respect of the expression *TEXM0 DELUXE/ TEXM0* by filing Trademark Applications or using the same or similar sounding expression or its logo for any goods in future. The defendant also undertake to withdraw any Application in respect of *TEXM0 DELUXE* or any other similar sounding marks that have already been filed that is not within the knowledge of the plaintiffs.

4. The defendant shall not make any application for registration of the Trademark *TEXM0/TEXM0 DELUXE* as such or with prefix or suffix in any goods manufactured and sold by the defendant in future.

5. The defendant undertakes not to oppose or initiate any Rectification proceedings against the plaintiffs' Trademark Applications or their Registered Trademarks. "

4. The suit has therefore decreed with respect to the reliefs of 'a' & 'b', namely,

(a) granting permanent injunction, restraining the defendant, by itself, their servants, agents, distributors, or anyone claiming through them from

manufacturing, selling, advertising and offering for sale using the plaintiff's registered Trade Mark TEXMO/TEXMO DELUXE as such or prefix or suffix in any Hand Pumps or in any other goods manufactured and sold by the defendant or its trading style or in any media and use the same in invoices, letter heads and visiting cards or by using any other trade mark which is in any way visually, or phonetically similar to the plaintiffs' registered Trade Mark TEXMO/TEXMO or in any manner infringing the plaintiffs registered Trade Mark Nos. 315049 [SP-I], [SP-II] & 315050 [SP-I], [SP-II] renumbered as 2702778, 2702779, 2702780 and 2702781 respectively; and

(b) granting a permanent injunction, restraining the defendant, by itself, their servants, agents, distributors, or anyone claiming through them from manufacturing, selling, advertising and offering for sale using the Trade Mark TEXMO/TEXMO DELUXE as such or with prefix or suffix in any Hand Pumps or in any other goods manufactured and sold by the defendant and its trading style or in any media and use the same in invoices, letter heads and visiting cards or by using any other trade mark which is in any way visually, or phonetically similar to the plaintiffs' registered Trade Mark TEXMO/TEXMO or in any manner pass off the plaintiffs' goods.

5 . The suit is dismissed with respect to the reliefs of 'c' & 'd', namely,

(c) directing the defendant to surrender to the plaintiffs all the goods, packing materials, cartons, advertisement materials and hoardings, letter-heads, visiting cards, office stationery and all other materials containing/bearing the Trade Mark TEXMO DELUXE or other deceptively similar to the plaintiffs' Trademark TEXMO/TEXMO;

(d) directing the defendant to render an account of profits made by them by the use of the impugned trademark TEXMO DELUXE on the goods referred prayer (a) and (b) and decree the suit for the profits found to have been made by the defendant, after the defendant has rendered accounts.

6. Consequently, connected Applications are also closed. No costs.

16.04.2018

vsg

Speaking/Non Speaking Order

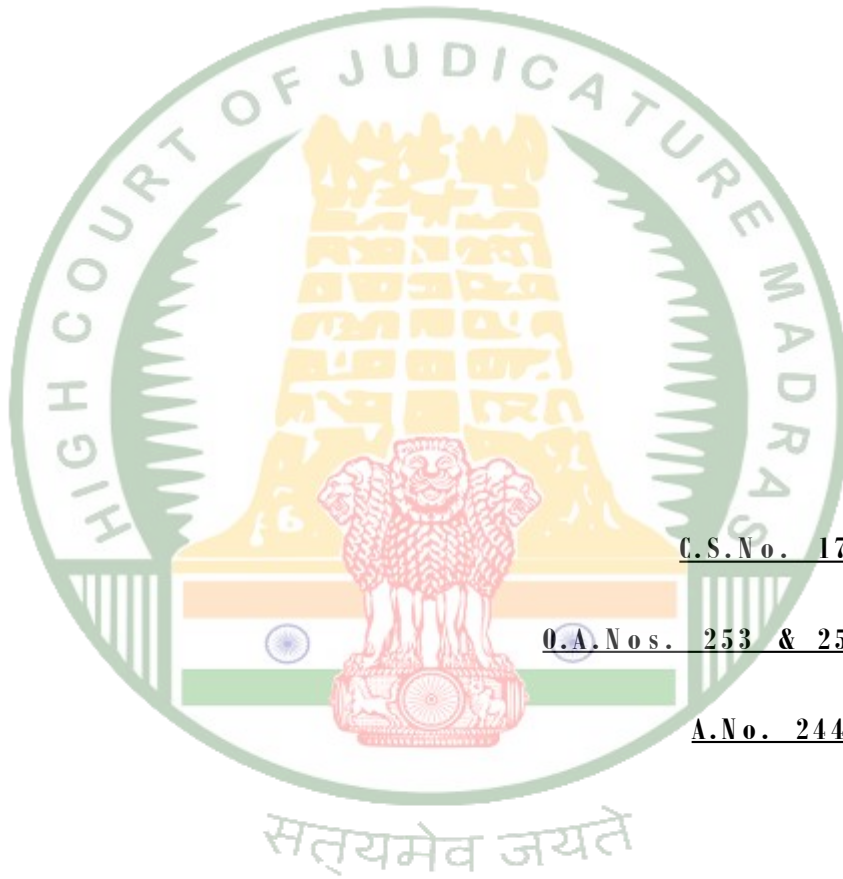
Index: Yes/No

Internet: Yes/No.

WEB COPY

C.V.KARTHIKEYAN, J.

vsg



C.S.No. 176 of 2018

And

O.A.Nos. 253 & 254 of 2018

And

A.No. 2443 of 2018

WEB COPY

16.04.2018