

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.09.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.228 of 2018

&

O.A.Nos. 339 and 341 of 2018

and

A.No.3065 of 2018

Bharathi Consumer Care Products Pvt. Ltd,
No. 42, Bhavani Ellaianman Koil Street,
Otteri, Chennai 600 012.
Rep by its Chairman-cum-Executive Director
Mr.A.Manickavel .. Plaintiff

Vs.

Ganesh Industries,
Q-9, Industrial Area,
Sedam - 585 222
Dist. Kalburgi, Karnataka state. .. Defendant

This Civil Suit is preferred, under Order IV Rule 1 of O.S. Rules and Order VII Rule 1 of CPC read with Sections 27, 28, 29, 134 and 135 of the Trademarks Act, 1999 & Sections 51, 55 and 62 of the Copyright Act, 1957, seeking a permanent injunction restraining the defendant by themselves, their directors, partners, legal representatives, successors in business, assigns, servants, agents, transporters, distributors, printers, stockists, wholesalers, dealers, retailers, advertisers or any one claiming through or under them from infringing plaintiff's registered trademark XXX by manufacturing, distributing, marketing, selling, offering for sale, advertising or in any other manner dealing in detergent powder, detergent cake, washing powder etc., or any other product bearing the deceptively similar trademark MAXX and almost identical package, wrapper, container, carton, label with colour scheme, getup, layout which are similar to plaintiff's registered trade mark XXX along with distinctive trade dress in any manner whatsoever; seeking a permanent injunction restraining the defendant by themselves, their directors, partners, their legal representatives, successors in business, assigns, servants, agents, transporters, distributors, printers, stockists, wholesalers, dealers, retailers, advertisers or any one claiming through or under them from committing acts of copyright infringement by making substantial reproduction of the plaintiff's copyright in the artistic work XXX LABEL by use of identical colour scheme of red, white and yellow with metallic blue background for their MAXX package/wrapper or in any manner whatsoever; seeking a permanent injunction restraining the defendant by themselves, their directors, partners, legal representatives, successors in business, assigns, servants, agents, transporters, distributors, printers, stockists, wholesalers, dealers, retailers, advertisers or any one claiming through or under them from committing acts of passing off and enabling other to pass off by manufacturing, distributing, marketing, selling, offering for sale, advertising or in any other manner dealing in detergent powder, detergent cake, washing powder etc., or any other product bearing the deceptively similar

trademark MAXX and almost identical package, wrapper, container, carton, label with colour scheme, getup, layout which are similar to plaintiff's trade dress & get up in XXX package/wrapper in any manner whatsoever; seeking the defendant be ordered to surrender to the plaintiff for destruction, all containers, pouches, prints, dies, blocks, moulds and plates, screen prints, packing and advertising material and any other material in their possession, bearing the mark MAXX which is a substantial reproduction of the plaintiff's trade dress & get up and copyright in the artistic work XXX package/wrapper; seeking a preliminary decree be passed in favour of the plaintiff directing the Defendant to render account of profits made by use of trademark MAXX label and the identical artistic work therein and final decree be passed in favor of the plaintiff for the amount of profits thus found to have been made by the defendant, after the latter have rendered accounts; seeking the defendant be ordered to pay to the plaintiff a sum of Rs.1,00,000/- as damages for their wrongful and illegal activities by use of trademark MAXX label and artistic work therein and for costs.

For Plaintiffs : Ms.R.Prashanthi
for Mr.Arun C.Mohan

For Defendants : Mr.S.Patrick
for Mr.A.Swaminathan

JUDGMENT

There is a sole plaintiff and a sole defendant in this suit.

2. Sole plaintiff is a Private Limited company. In other words, sole plaintiff is a juristic person and it is represented by its Chairman-cum Executive Director, Mr.A.Manickavel, who has verified and signed the plaint.

3. With regard to sole defendant, Ganesh Industries, this Commercial Division is informed that Mr.Sashikanth Swamy, is a sole proprietor and he is carrying on business in the name and style of 'Ganesh Industries'. This submission is made by learned counsel on both sides and there is no dispute or disagreement on this aspect of the matter.

4. To be noted, Ms.R.Prashanthi, learned counsel on record for sole plaintiff and Mr.S.Patrick, learned counsel representing counsel on record for sole defendant are before this Commercial Division.

5. Both learned counsel submit that parties to this lis i.e., plaintiff and defendant have amicably settled this lis amongst themselves and have reduced the same to writing by way of a 'Memorandum of Compromise' dated 14.09.2018 (hereinafter referred to as 'said MOC' for brevity).

6. To be noted said MOC has been placed before me and it has been duly signed by both parties to this lis and their respective counsel.

7. Both the aforesaid learned counsel submit that the said MOC has been duly signed by both parties in the presence of each other and on that basis, both learned counsel make a prayer to dispense with the presence of the parties for recording said MOC. It is submitted that both parties have some personal inconvenience for being present before this Commercial Division today. Owing to personal inconvenience, the prayer to dispense with their presence is made. To buttress this prayer, it is submitted that parties signed the said MOC in the presence of each other and in the presence of their respective counsel. Further request of aforesaid both learned counsel is that this suit be decreed in terms of said MOC.

8. In the light of the narrative supra, there shall be a compromise decree in this suit in terms of said MOC i.e., Memorandum of Compromise dated 14.09.2018. The said MOC shall form part of compromise decree.

Suit decreed on above terms. No costs. Consequently, all interlocutory applications are closed.

18.09.2018

Index : Yes/No

gpa/kan

M.SUNDAR, J.

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