

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2017

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.S.No.270 of 2014

& A.Nos.4107 of 2014, 2726 of 2014 and 2727 of 2014

& O.A.Nos.311 to 318 of 2014

M/s.Kali Aerated Water Works Pvt. Ltd.,
Rep. by its Managing Director having its
Corporate Office at Super A-6,
Industrial Estate, Guindy, Chennai - 600 032.

... Plaintiff

Vs

M/s. Daily Fresh Fruits India Pvt. Ltd.,
Rep. by authorised representative having its
registered Office at No.2/37, NH-7,
Namakkal Main Road,
Pachal, Namakkal 637 018.

... Defendant

Plaint filed under Order VII Rule 1 of O.S.Rules r/w. Order VII Rule 1
of CPC, praying for judgment and decree as follows:

- A) granting permanent injunction restraining the defendant by itself, its men, its servants or anyone claiming through it from in any manner infringing the plaintiff's Copyright and Registered trademark "BOVONTO" by using the offending trademark "JINTHAA" or any other mark or marks which are in any way identical, similar or deceptively similar or colourable imitation of the plaintiff's registered Trademark "BOVONTO".
- B) Granting permanent injunction restraining the defendant by itself, its

men, its servants or agents or anyone claiming through it from in any manner infringing the plaintiff's registered trademark under No.932498 being the shape, mark configuration and label of the soft drink by using the offending shape, mark, configuration and label as shown as Document the plaint or any other shape, mark, configuration and label which is similar or deceptively similar to that of the plaintiff's registered trademark under Nos.932498.

- C) Granting permanent injunction restraining the defendant by itself, its men, its servants or agents or anyone claiming through it from in any manner infringing the plaintiff's registered trademark under No.933157 being the shape, mark, configuration and label of the soft drink by using the offending shape, mark, configuration and label as shown as document in plaint or any other shape, mark, configuration and label which is similar or deceptively similar to that of the plaintiff's registered trademark under Nos.933157.
- D) Granting permanent injunction restraining the defendant by itself, its men, its servants or agents or anyone claiming through it form in any manner infringing the plaintiff's registered trademark under No.929441 being the shape, mark, configuration and label of the soft drink by using the offending shape, mark, configuration and label as shown as document in plaint or any other shape, mark configuration and label which is similar or deceptively similar to that of the plaintiff's registered trademark under No.929441.
- E) Granting permanent injunction restraining the defendant by itself, its men, its servants or agent or anyone claiming through it from in any manner passing off its mixed flavour as that of the plaintiff's by using the offending trademark "BOVONTO" or any other mark or marks which

are in any way identical, similar or deceptively similar or colourable imitation of the plaintiff's registered trademark "BOVONTO".

- F) Granting permanent injunction restraining the defendant by itself, its men, its servants or agents or anyone claiming through it from in any manner passing off its mixed flavour as that of the plaintiff by using the offending copyright, shape, mark configuration and label of the plaintiff's soft drink registered under No.932498.
- G) Granting permanent injunction restraining the defendant by itself, its men, its servants or agents or anyone claiming through it from in any manner passing off its soft drink as that of the plaintiff by using the offending shape, mark, configuration and label of the plaintiff's soft drink registered under No.933157.
- H) Granting permanent injunction restraining the defendant by itself, its men, its servants or agents or anyone claiming through it from in any manner passing off its soft drink as that of the plaintiff by using the offending shape, mark, configuration and label of the plaintiff's soft drink registered under No.929441.
- I) Directing the defendant to surrender to the plaintiff the entire stock of unused offending trademark "JINTHAAA" that is similar to that of the plaintiff mixed flavour soft drink "BOVONTO" registered under Nos.932498, 933157, 929441 & 929437.
- J) directing the defendant to render a true and faithful account of the profits earned by it through the sale of the offending soft drink bearing the offending trademark "JINTHAAA" similar to the plaintiff's soft drink registered under Nos.932498, 933157, 929441 & 929437.
- K) directing the defendant to pay to the plaintiff the cost of the suit.

For Plaintiff : Mr.R.Gopinath

For Defendant : Mr.A.K.Rajaraman

JUDGMENT

The learned counsel for the defendant would submit that though the defendant is not recognising the right of the plaintiff, they have changed the label used for packaging and they filed a memo, dated 20.03.2017 to that effect. Hence, they submitted that the prayer in the suit becomes infructuous.

2. The learned counsel for the plaintiff would submit that the said memo may be recorded and the suit may be disposed of.

3. The memo filed by the defendant would run thus:

“The defendant hereby submits before this Court that they have changed their label used for packaging. The earlier label used by them which is subject matter of the suit is annexed herewith as annexure-A and the present changed label is annexed herewith as annexure-B. Despite the changes adopted by the defendant, the defendant neither acknowledges nor admits the right of the plaintiff over the label which is subject matter of the suit in any manner whatsoever. This Court may record the memo regarding the change of label by the defendant and may be pleased to pass such further and other orders deems fit to the facts and circumstance of the suit and thus render justice.”

4. In view of the above submissions, the civil suit is dismissed as infructuous. No costs. Consequently, the connected applications are closed.

20.03.2017

Index:Yes/No
pvs

To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

K.KALYANASUNDARAM, J.,

pvs

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