

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.09.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.367 of 2009

and

O.A.Nos.423 & 424 of 2009

M/s.MEGA FOODS PRODUCT MADRAS PVT LTD.,
Represented by its Director, Amit Vaishnav,
Having its Administrative office at No.3-C,
Bijayati Towers, 72, Halls Road,
Kilpauk, Chennai - 600010. .. Plaintiff

Vs.

M/s.ITC Ltd.,
Virginia Home,
No.37, Jawaharlal Nehru Road,
Calcutta,
West Bengal - 700 071 .. Defendant

This Civil Suit is preferred, under Order VII Rule 1 CPC read with Order IV Rule 1 of OS Rules, seeking a permanent injunction restraining the defendant, its servant, Agent or anyone claiming through them by in anyway infringing the plaintiff's registered trademark 'SNACKY' by using the offending identical well known trademark 'SNACKY' or any other mark or marks which are in anyway identical or similar to the Plaintiff's registered trademark its servant, Agent or anyone claiming through them by in anyway infringing the plaintiff's registered trademark 'SNACKY' by using the offending identical well known trademark 'SNACKY' for its food product by manufacturing, selling or offering the sale or advertise the same in any manner whatsoever; seeking a permanent injunction restraining the defendant, its servant, Agent or anyone claiming through them from manufacturing and marketing its food product by using its offending identical well known registered trademark 'SNACKY' as and for the celebrated well known trademark 'SNACKY' of the Plaintiff's company by manufacturing, selling or offering the sale or advertise the same in any manner whatsoever; to direct the defendant to render proper accounts of profits earned by the defendant by selling its products with offending identical well known trademark 'SNACKY' and to pay the Plaintiff the profits earned by such sale and to direct the defendant to surrender to the plaintiff the entire stock of unused food product bearing the offending identical well known registered trademark 'SNACKY' held by them their agents, stockists, dealers and servants and blocks and dyes.

For Plaintiff : Ms.R.Nandhini

For M/s.S.Rajesh

For Defendant : Mr.Arun C.Mohan

For Ms.Brinda Mohan

JUDGMENT

Learned counsel representing counsel on record for sole plaintiff has placed before this Commercial Division a letter dated 07.08.2018 written by the counsel on record for sole plaintiff to the plaintiff. It is submitted that the letter was mailed to the plaintiff by Speed Post with acknowledgment due. Copy of the said letter together with the postal receipt and postal acknowledgment card have been placed before this Commercial Division. To affirm service of the aforesaid letter on the plaintiff, an affidavit of service dated 10.09.2018 has also been filed.

2. The aforesaid letter dated 07.08.2018, reads as follows:

"07th August, 2018

To

M/s.Mega Food Products Madras (P) Ltd.,
Represented by its Managing Director,
D-3, SIDCO Industrial Estate,
Ambattur, Chennai 600 058.

Sir,

Sub: Regarding C.S.No.367/2009 on the file of Hon'ble High Court of Madras and O.R.A.No.98/2009 on the file of Intellectual Property Appellate Board, Chennai

This is with reference to the various emails sent from our office with regard to your instructions on the subject mentioned case. It may be noted that we had sent emails on various dates including 08/02/2017, 28/03/2017, 03/08/2018 and there has been no proper response from your side.

We have been informing you regularly that the subject case is being listed before the Hon'ble High Court of Madras and that we will not be representing your case any further and have already requested you to make alternative arrangements. However there had been no instructions from your side on the same. Despite sending several emails, you have not responded or provided us any instructions. It is seen that you have also not made any alternative arrangements and it looks like that you are not interested in your case anymore.

When your case came up for the hearing on 02/08/2018, we reported "no instructions" in the High Court and the court directed us to send a formal "no instructions" letter to you and has thus adjourned the matter to 10/09/2018. In and by this letter, we hereby inform you that we will not be representing your cases mentioned in the subject and we will not be responsible for any adverse happening to the said cases.

We further request you to collect all the papers with respect to the subject cases and with respect to other matters dealt by our office. Also note that the professional bill for the DRT cases that were conducted by our office has also not been paid till date. Hence kindly make payment of all the outstanding amounts payable & due to us and also come collect back the papers from our office with regard to C.S.no.367/2009 before Hon'ble High Court of Madras and O.R.A.No.98/2009 on the file of Intellectual Property Appellate Board, Chennai.

Kindly be informed that we shall not be representing in your cases anymore and we will not be held liable or responsible for your case any further.

Sd/-

Umamaheswari Ganesh"

3. The letter is self-explanatory. There is no reply or response in spite of the letter being duly served on plaintiff, is plaintiff counsel's say.

4. Learned counsel for plaintiff reports 'no instructions' in the light of the aforesaid letter and no

reply or response to the same. Learned counsel submits that there is no response from the plaintiff to the aforesaid letter, which has been duly served on the plaintiff.

5. In the light of the narrative supra, this suit is dismissed for default/non-prosecution. Consequently connected applications are closed. There shall be no order as to Costs.

10.09.2018

Speaking/Non-Speaking order

Index : Yes/No

vsm/kan

M.SUNDAR, J.

vsm/kan

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10.09.2018