

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.06.2019

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.S.No.949 of 2008

Maya Appliances (Pvt.) Ltd.,
New No.2 (Old No.8),
Boat Club, 1st Avenue,
Chennai - 600 028.
Represented by its
Deputy General Manager
A.Subramanian

Plaintiff

Vs.

1.Urooj Ahmed,
Lords Enterprises (India),
1620-21, Main Bazaar,
Lal kuan, Opp. to Shama Laboratories,
Delhi - 110 006.

2.Proprietor,
Chandra Stores,
43-44, Trunk Road,
Porur, Chennai - 600 116.

Defendants

Plaint filed under Order IV Rule 1 of the Original Side Rules, r/w Order VII, Rule 1 of the Civil Procedure Code, Section 22 of the Design Act, 2000 and Section 135 of the Trade Marks Act, 1999, praying to pass a judgment and decree in favour of the plaintiff;

(a) to grant an order of Permanent injunction restraining the defendants, their servants, agents, employees, representatives or anyone claiming through

or under them, from in any manner infringing the registered design bearing no.198147 comprised in/reproduced on the plaintiff's products.

- (b) to grant an order of Permanent injunction to restrain the defendants, their servants, agents, employees, representatives or anyone claiming through or under them, from in any manner passing off of the defendant's goods as that of the plaintiff's, by selling, advertising, offering to sell, using the plaintiff's trade dress or any mark or product which is identical with or deceptively similar or confusingly similar to the plaintiff's trade dress of the products.
- (c) to direct the defendants to surrender to the plaintiff for destruction all the infringing goods, and associated items such as moulds, dies, articles, packets, cartons, packaging materials, advertising materials etc and all other things used in connection with the manufacture or marketing of the infringing goods.
- (d) to direct the defendants to pay compensation of Rs.2,50,000/- (Rupees Two Lakh Fifty Thousand Only) to the plaintiff by way of damages for the infringement and the loss suffered by the plaintiff.
- (e) to direct the defendants to pay costs of the suit.

For Plaintiff : Mr.Vishnumohan
For Defendants : Mr.V.P.Raman

JUDGMENT

Today, when the matter is called, the learned counsel for the first defendant has filed an affidavit of undertaking, dated 07.06.2019, before this Court, which reads as follows;

"I, Mr.Urooj Ahamed, aged 53, S/o.Late Mohd
Younus, residing at 39/6, Annjal Complex, Block-'B',
Near Street No.2, Main Bawana Road, Near Samaipur

Chowk, Samaipur, Delhi - 110 042 hereby undertake as follows;

1. I am one of the partners of the 1st defendant M/s Lords Enterprises (India) at 1620-21, Main Bazaar, Lal Kuan, Opp to Shama Laboratories, Delhi 110006 and I am competent to provide this undertaking;

2. I state that my firm is the 1st defendant in the subject suit and the 1st defendant shall mean include myself, my entity - Lords Enterprises, my respective heirs, executors, administrators, successors and assigns.

3. I state that the 2nd defendant is an unconnected retailer who has no connection with the design or the 1st defendant and is not a relevant party except for proof of sale. Therefore, I take full responsibility for the claims in the subject suit.

4. I hereby submit to a decree as prayed for in terms of Prayer (i) of para 18 of the Plaint namely:-A perpetual injunction restraining the 1st defendant, their servants, agents, employees, representatives, or any other person claiming under them from in any manner infringing the Registered Design bearing No.198147, comprised in reproduced on the plaintiff's products; and

Prayer (ii) of para 18 of the plaint namely :- A perpetual injunction restraining the 1st defendant their servants, agents, employees, representatives, or

any other person claiming under them from in any manner from passing off his goods as that of the plaintiff's products.

5. I hereby acknowledge the plaintiff's rights over their registered design no.198147. I further undertake not to challenge the validity of the plaintiff's design registration number 198147 at any point of time and under any circumstances.

6. I undertake not to renew our Registered Design Number:215928 and allow the said Registered Design to lapse. I undertake not to file similar Design applications in the future for the same design or any design which is similar to the plaintiff's Registered Design.

7. I undertake to immediately recall and destroy all the goods which bear the 1st defendant Design Registration No.215928 and which are available with the 1st defendant. I also undertake to forthwith recall all products of the 1st defendant which are currently being offered for sale by me through the e-commerce portals and shall immediately destroy them. I further undertake to destroy banners, labels, dyes, blocks, moulds, screen prints, advertising materials, packing materials, marketing collaterals and/or other materials in my possession or under my control and de list all the web links/advertisements displayed by me on the ecommerce portals immediately, and confirm the

same to the plaintiff well before the pronouncement of the final decree. With regard to the products available with the third party resellers, stockists, distributors etc which were purchased from the 1st defendant, I undertake to forthwith send an official communication to them concerning the pending infringement case and the undertaking given by me and consequently demand them to forthwith cease selling and advertising the infringing products in all avenues. I further undertake not to make, sell or offer to sell any goods in the future which are infringing the plaintiff's Registered design No.198147. In case of any breach to the above stated paragraphs, I accept and acknowledge that plaintiff is at the liberty to take any appropriate legal action against entity and myself."

2. The learned counsel for the plaintiff submitted that, the suit may be decreed in terms of the affidavit of undertaking filed by the first defendant. However, the learned counsel for the plaintiff submitted that the first defendant shall forthwith send an official communication to all the resellers, stockists, distributors etc. not to make sell or offer to sell any goods in the future which are infringing the plaintiff's Registered Design No.198147 and forward a copy of the said communication to the plaintiff forthwith.

3. The said affidavit of undertaking filed by the first defendant is recorded. The suit is decreed as prayed for as per the affidavit of undertaking and as sought for by the plaintiff's counsel as stated in paragraph no.2 above. No costs.

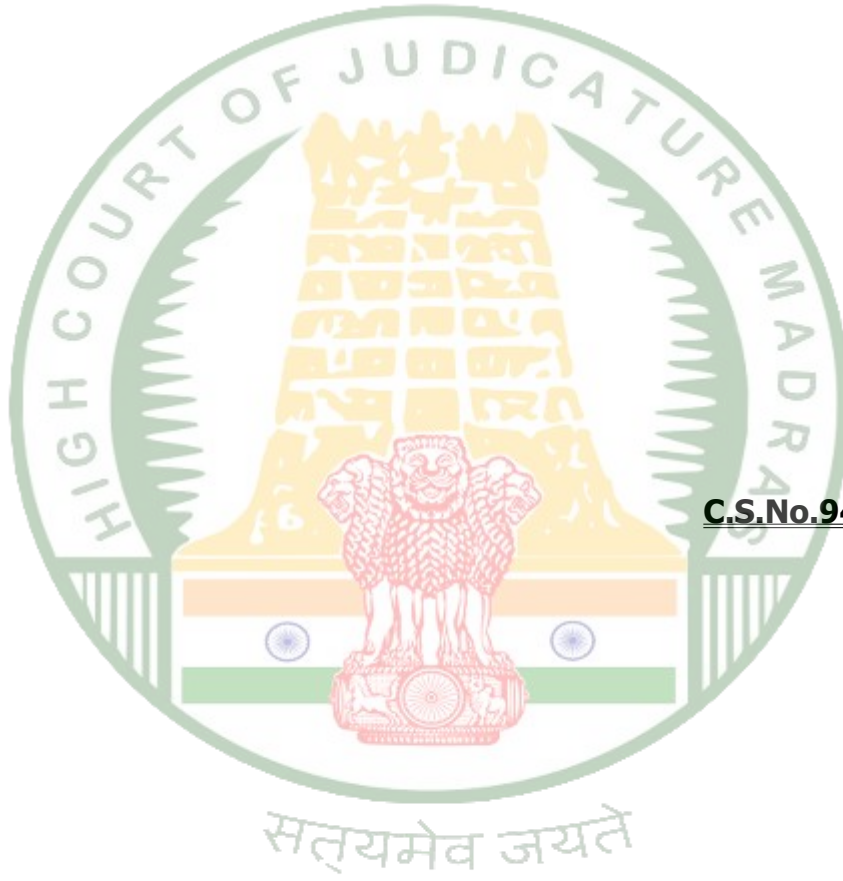
18.06.2019

Speaking order / Non-speaking order
Index : Yes / No
Internet : Yes
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