

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.08.2019

Coram

The Honourable Mr.Justice KRISHNAN RAMASAMY

C.S.No.515 of 2011

M/s.Praba's VCare Health Clinic (P) Limited
Rep. by its Managing Director,
Mrs.E.Carolin Praba,
Old No.62, New No.133, 1st Floor,
G.N.Chetty Road,
T.Nagar,
Chennai – 600 017.

...Plaintiff

Versus

1.Veecare Hospitals,
Rep. by its Partners,
No.106, Pillaiyar Koil Street,
Opp. IOB Staff College,
Annanagar West,
Thirumangalam,
Chennai – 600 040.

2.Veecare Aesthetics,
No.A-13, 2nd Avenue,
Anna Nagar, Chennai – 600 102.

3.M/s.Veecare Mediservices (Chennai) Private Ltd.,
Rep. by its Chairman
Dr.V.Kalanidhi,
Having Office at No.106, Pillaiyar Koil Street,
Jawaharlal Nehru Salai,
Thirumangalam, Anna Nagar, Chennai - 600 040.

(Defendants 2 & 3 impleaded as per order dated 10.04.2012 &
13.07.2012 in Appln.No.89 of 2012)

...Defendants

This suit is filed under Order IV Rule 1 of O.S.Rule r/w. Order VII Rule 1 of C.P.C r/w. Section 134(i) of the Trade Marks Act (47 of 1999) for the following reliefs:

(a) granting a permanent injunction restraining the defendant by itself or its servants, agents, licensees, heirs, assigns or any one claiming through them from in any manner using the mark "Vee Care" or any other deceptively similar trade mark in respect of its hospital or in respect of any other institution or medical or beauty treatment and thereby infringe the plaintiff's registered trademark "VCare" or any other visually, phonetically, or deceptively similar mark to the plaintiff's trade mark;

(b) granting a permanent injunction, restraining the defendant by itself or its servants, agents, licensees, heirs, assigns or any one claiming through them from in any manner passing off their hospital or any other institution involved in medical or beauty treatment by using the mark "Vee Care" or any other identical and deceptively similar trade mark to the plaintiff's name mark and logo "VCare" and from in any manner passing off or attempting to pass off or causing, enabling or assisting others to pass off their business and services as and for the business and products of the plaintiff.

(c) for a preliminary decree in favour of the plaintiff, directing the defendant to render an account of profits made by them by the use of the mark "Vee Care" in relation to its hospital and or any other institution and for a final decree in favour of the plaintiff for the amount of the profits found to have been made by the defendant upon rendition of accounts.

(d) for the cost of the suit.

For Plaintiff : Mr.R.Neethi Kumar

For Defendants : Set *ex parte*
vide order dated 03.07.2019

J U D G M E N T

The present suit was admitted on 02.08.2011 and when the matter was called on 28.06.2019, the learned counsel appeared for the defendants submitted that he has no instructions from his clients. Hence, this Court directed the Registry to print the name of the defendants in the cause list and adjourned the matter to 03.07.2019. Accordingly, on 03.07.2019, the matter was listed with the name of the defendants being printed in the cause list, however, none appeared on behalf of the defendants. Therefore, the defendants were set *ex parte* by this Court and the Registry was directed to list the matter before the learned Additional Master on 12.07.2019, for recording the *ex parte* evidence. Thereafter, the matter was listed before the learned Additional Master on the following dates viz., 12.07.2019, 17.07.2019, 22.07.2019 & 23.07.2019. On the side of the plaintiff, P.W.1, Mr.S.Mareeswaran,

was examined and 21 documents were marked as Ex.P1 to Ex.P21.

2. After the completion of *ex-parte* evidence, today (06.08.2019), this matter was listed before this Commercial Division for final disposal.

3.1. The brief facts of the case reads as follows:

The plaintiff is a Private Limited Company which was incorporated in the year 2004, carrying on the business in Trichology, particularly, the Hair and Scalp Treatment. The plaintiff Company had registered its name as "VCare" under the Trademarks Act, 1999 and subsequently, obtained a registration certificate on 19.07.2004. The plaintiff started their business in the year 1999 as proprietorship concern and subsequently, in the year 2004, it has converted as a Private Limited Company under the name and style of M/s.Praba's VCare Health Clinic (P) Limited. The plaintiff has been using the logo VCare since 2003.

3.2. The plaintiff company has invested huge sums of money to establish various branches all over the parts of Tamil Nadu,

Pondicherry and Andhra Pradesh and for its advertisement, through various medias including television channels viz., Pothigai, Jaya T.V., Gemini T.V.Vijay T.V. and other local channels in Tamil Nadu, Andhra Pradesh, Pondicherry States.

3.3. The plaintiff Company has also established various groups, concerns in the name of "VCare" which are as follows:

1. VCare Medspa
2. VCare Herbal Concepts (P) Ltd.,
3. VCare's Global Institute of Health Sciences
4. VCare Health Network (India) Pvt. Ltd.,
5. VCare Pharcos
6. VCare Analytics & Diagnostics Laboratory
7. VCare Super Speciality Hair Clinic

3.4. The plaintiff Company has established VCare's Global Institute of Health Sciences launching Certificate and Diploma courses in health and beauty sciences and the said institute was inaugurated by the former Governor of Tamil Nadu, Surjith Singh Barnala on 29.09.2007. The said inauguration had been widely

published as news item in all the dailies in English, Tamil, Hindi, Telugu and Urdu.

3.5. While so, the plaintiff came to know that the defendants are running a hospital in the name, Vee Care Hospital. Therefore, immediately, the plaintiff issued a Legal Notice dated 20.06.2009, calling upon the defendants to change the name of their hospital since the trademark "VCare" is the registered trademark of the plaintiff. After the receipt of above notice, the defendants sent a reply dated 02.07.2009, to the plaintiff, wherein, the defendants attempted to plead that there was a difference between the trademarks "VCare" and "Vee Care". Therefore, left with no other option, the plaintiff filed the present suit before this Court for the reliefs stated in the prayer portion of this judgment.

4.1. The learned counsel for plaintiff submitted that the plaintiff is the prior user and sole proprietor of the registered trademark/trade name "VCare". He further submitted that the defendants are using the trade name "Vee Care" which is most deceptively identical/similar to the plaintiff's trademark. He would

also submit that the defendants have no right to adopt the plaintiff's registered trademark "VCare" in any manner whatsoever.

4.2. The learned counsel for plaintiff would argue that the defendants adopted the plaintiff's trademark by simply adding the two letters "ee" and named it as "Vee Care" which is phonetically and alphabetically closely similar to that of the plaintiff's trademark "VCare". He would also argue that the defendants are using the plaintiff's registered trademark/trade name with a *mala fide* intention to create confusion in the minds of the customers/general public and the said *mala fide* act of the defendants would divert the plaintiff's business and customers. He further argued that the defendants deliberately adopted the registered trademark of the plaintiff in order to spoil the goodwill and reputation earned by the plaintiff among the public/customers.

4.3. The learned counsel for plaintiff argued that the defendants are well aware of the fact that the plaintiff started using the trademark "VCare" in the year 2003 and got registered the same in the year 2004. He prayed that the aforesaid *mala fide* acts on the

part of the defendants may be considered as calculated attempts made by the defendants to infringe the plaintiff's registered trademark "VCare". He further prayed that the defendants may be restrained from infringing the said registered trademark of the plaintiff and also from passing off their business, otherwise, the plaintiff would be put to great loss and hardship.

5. Heard the learned counsel for plaintiff and perused the materials available on record.

6.1. On perusing the Proof Affidavit of P.W.1 and also the documents which were marked as Exs.P1 to P21, this Court finds that the plaintiff got registered the trademark, "VCare" in Class 42 under Trade Mark Registration No.1297896 on 19.07.2004, which is clearly evident from Ex.P2, Certificate of Trademark Registration dated 19.07.2004. It is also seen that the plaintiff is the prior user of the trademark "Vcare" since 2003 and they are the registered proprietors of the trademark, "VCare" in 2004.

6.2. There is no doubt, the defendants' offending trademark, "Vee Care" is phonetically and alphabetically, very much similar to that of the plaintiff's trademark which is evident from Ex.P16, Photographs of the Defendants' hospital and the plaintiff had truly invested huge sums of money for the advertisement of their trademark "VCare", which is revealed from a perusal of Ex.P11. The defendants adopted the registered trademark of the plaintiff only with an intention to encash the reputation of the plaintiff's company and therefore, the said act of the defendants would not only amounts to infringement of the plaintiff's registered trademark but also it would amounts to passing off. At last, the plaintiff proved the suit claim beyond doubts.

6.3. Taking note of the facts and circumstances of the case, this Court is inclined to decree the suit as sought for by the plaintiff and on the other hand, considering the offending acts of the defendants, this Court feels that it would be necessary to put costs on the defendants.

KRISHNAN RAMASAMY, J.,

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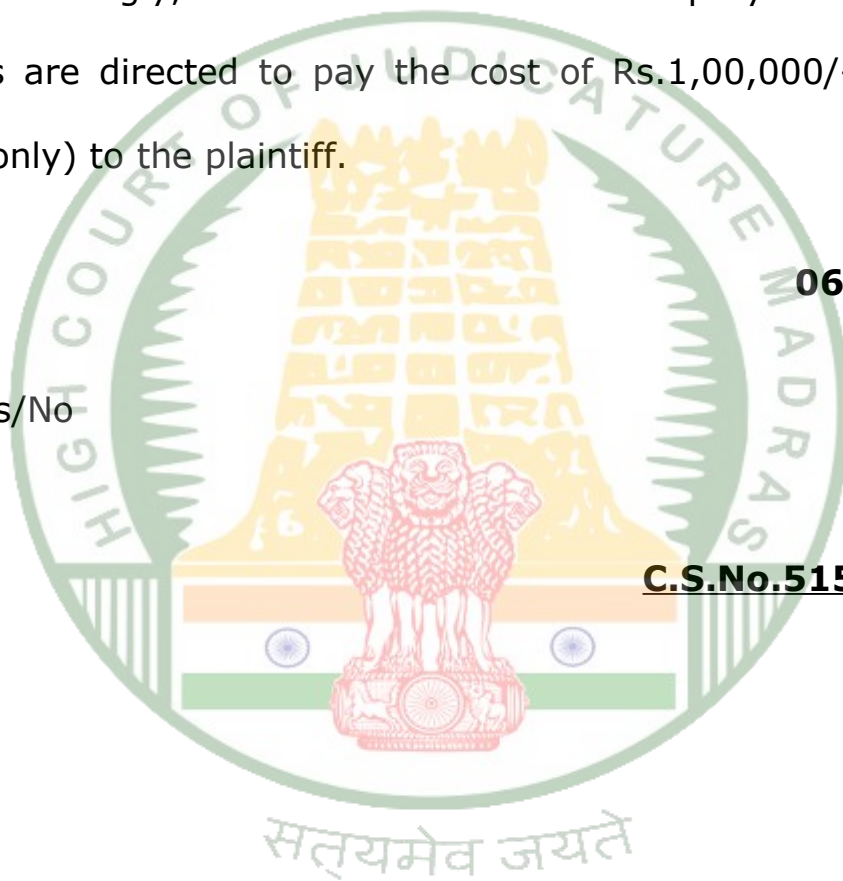
7. Accordingly, this Civil Suit is decreed as prayed for and the defendants are directed to pay the cost of Rs.1,00,000/- (Rupees One Lakh only) to the plaintiff.

06.08.2019

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Index : Yes/No

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