

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2019

CORAM

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.S.No.606 of 2012

M/s. V.N.C. Electrodes,
registered office
No.3, Industrial Estate,
S.Vellalapatti,
Karur 639 004,
Tamil Nadu

City Office
No.10, Soundararajan Street,
T.Nagar, Chennai 600 017,
rep. by its Managing Partner
C.Basker

... Plaintiff

Vs.

1. M/s. Sri Varsha Electrodes,
55, Phase V, Sidco Industrial Estate,
Kakkalur, Thiruvallur- 602 003.

2. M/s. Amar Trading Co.,
151 (155) Broadway,
Chennai 600 108.

... Defendants

Prayer:- This Civil Suit (Commercial) has been filed under Order IV Rule 1 of O.S. Rules and Sections 27(2), Section 134 and 135 of the Trade Marks Act, 1999 and Section 62 of the Copy Rights Act 1957

(a) for a permanent injunction restraining the defendants, their men, relatives, servants, agents or anyone claiming through or under them from in any manner infringing the plaintiff Trademark registered trade mark "VNC", written in a stylised manner with three diagonal stripes along the lettering, registered under No.1742348 in Class 9, using the offending/deceptively similar Trademark "SVE" or any other mark or marks which are similar or in any way deceptively similar to or a colourable imitation of the plaintiff's registered Trademark or any other brand name/mark or otherwise; so long as the Trade Mark Registration granted by the Trade Marks Registry with regard to registered trademark "VNC" Logo under Regd. No.1742348 in Class 9 is valid and subsisting ;

(b) grant of a permanent injunction restraining the defendants, their men, relatives, servants, agents or any one claiming through or under them from in any manner infringing the plaintiff trademark registered trade mark "BESTARC", registered under No.532924 in Class 9, using the offending/deceptively similar Trademark "BLAZEARC" or any other mark or marks which are similar or in any way deceptively similar to or a colourable imitation of the plaintiff's registered Trademark or any other brand name/mark or otherwise; so long

as the Trade Mark Registration granted by the Trade Marks Registry with regard to registered trademark "BESTARC" label under Regd. No.532924 in Class 9 is valid and subsisting;

(c) grant of a permanent injunction restraining the defendants, their men, relatives, servants, agents or anyone claiming through or under them from in any manner infringing the plaintiff trademark registered trade mark "BESTARC", registered under No.1256306 in Class 9, using the offending/deceptively similar Trademark "BLAZEARC" or any other mark or marks which are similar or in any way deceptively similar to or a colourable imitation of the plaintiff's registered Trademark or any other brand name/mark or otherwise; so long as the Trade Mark Registration granted by the Trade Marks Registry with regard to registered Trademark "BESTARC" label under Regd. NO.1256306 in Class 9 is valid and subsisting;

d) Grant of a permanent injunction restraining the defendants, their men, relatives, servants, agents or any one claiming through or under them from in any manner passing off the plaintiff trademark label containing the colour combination similar to that of the plaintiff's trademark application under No.1356795 in Class 9, using the offending carton, Trademark or any other mark or marks which are similar or in any way

deceptively similar to or a colourable imitation of the plaintiff Trademark or any other brand name/mark or otherwise;

(e) Grant of a permanent injunction restraining the defendants, their men, relatives, servants, agents or anyone claiming through or under them from in any manner infringing the copyright pertaining to the artistic work comprised in the carton filed as Material Object NO.1, using the offending carton filed as Material Object NO.2, or any other colour combination/essential features which are similar or in any way deceptively similar or the colourable imitation of the plaintiff's carton;

(f) grant of a permanent injunction restraining the defendants from either by manufacturing or selling or offering for sale or in any manner advertising an identical or deceptively similar carton as that of the plaintiff's carton on welding electrodes, Arc welding electrodes, Automatic and Semi Automatic welding equipments being the goods covered by the plaintiffs registration and also being the goods manufactured and sold by the defendants.

(g) for a decree that the entire stock of the impugned goods in the custody of each of the defendants be seized and kept in the custody of the Hon'ble Court or the custody thereof be

handed over to the plaintiffs and/or their representatives/agents;

(h) Directing the defendants to render the true, correct and faithful account of the sale of the goods under the Trademark of the plaintiff to ascertain the exact amount of damages accrued to the plaintiff;

(i) Directing to the defendants to surrender to the plaintiff the entire stock of unused label of the defendant with the Trademark together with carton, label, brochures, printing blocks, films, floppies, CD's and other materials containing the offending Trademark, colour combination etc., which are deceptively similar to that of the plaintiff.;

(j) for the costs of the suit.

For plaintiffs : Mr. T.K.Ramkumar

For defendant : Mr. K.Shakespear
for D1

: No appearance
for D2

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JUDGEMENT

The plaintiffs have filed the present suit for permanent injunctions.

2. Today, when the matter is called, the learned counsel appearing for the plaintiff filed an affidavit of undertaking dated 06.08.2019 stating that the first defendant, who is the contesting, had filed a counter affidavit stating that the first respondent/first defendant has stopped to sell its product through the impugned carton referred as M.O.3 in the plaint and reverted to use the carton referred as M.O.2 in the plaint. He further submits that the plaintiff is satisfied with the above declaration of the first defendant and has no objection to the first defendant using the trademark "Blazearc" with the colour combination and stylization as contained in the carton filed as Material Object No.2 along with the plaint. Accordingly, the plaintiff seeks a decree in terms of such declaration of the first defendant, giving up the other reliefs sought for in the plaint. The said averment in the affidavit dated 06.08.2019 is recorded.

3. The learned counsel appearing for the plaintiff also submits that the suit may be decreed in terms of the declaration of the first defendant in paragraph 9 of the counter.

4. Accordingly, the admission of the first defendant in paragraph No.9 of the counter dated 23.11.2012 is recorded and the suit is decreed granting a permanent injunction restraining the defendants, their men, relatives, servants, agents, or anyone claiming through or under them from in any manner infringing the registered trade marks of the plaintiff under No.1742348 in Class 9, registered trade mark under No.53294 in Class 9, registered trade mark under No.1256306 in Class 9, registered trade mark under No.1356795 in Class 9, passing off the plaintiff trademark and carton containing a colour combination similar to that of the plaintiff's trademark filed as Material Object No.1, using the offending carton filed as Material Object No.3 along with the plaint or any other mark or marks which are similar or in any way deceptively similar to or a colourable imitation of Material Objection No.1. The said affidavit shall form part of the decree.

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06.08.2019

mrp

Index : Yes/No

Internet : Yes/No

Speaking order/non speaking order

KRISHNAN RAMASAMY, J.,

mrp



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