

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2019

CORAM:

The Hon'ble Mr.Justice Krishnan Ramasamy

C.S.No. 16 of 2015

Mr.A.Manickavel,
Trading as
Bharathi Soap Works,
No.38, Bhavani Ellaianman Koil Street,
Otteri, Chennai – 6000012. ... Plaintiff

Vs.

1. Reva Sree Industries,
VIP Godowns, Vampuguda Village,
Kapra ECIL,
R.R. District,
Hyderabad – 500062
State of Telangana
(Formerly State of Andhra Pradesh)

2. Vallepu Revathi,
trading as Reva Sree Industries,
1-2-108, Ellareddyguda,
Kapra, ECIL Post,
Ranga Reddy District – 500062,
State of Telangana
(Formerly State of Andhra Pradesh) ... Defendants

Prayer :- Plaint filed under Order IV Rule 1 of the Original Side Rules
and Order VII, Rule 1 of C.P.C read with Sections 27, 28, 29, 134 and 135

of the Trade Marks Act, 1999 and Section 51, 54, 55 and 62 of the Copyrights Act, 1957 is praying for :

a. a permanent injunction restraining the Defendants by themselves, their directors, partners, legal representatives, successors in business, assigns, servants, agents, transporters, distributors, printers, stockists, wholesalers, dealers, retailers, advertisers or any one claiming through or under them from infringing plaintiff's registered trademark XXX label/pouch by manufacturing, distributing, marketing, selling, offering for sale, advertising or in any other manner dealing in detergent powder, detergent cake, washing powder etc., or any other product bearing the identical package, wrapper, container, carton, label with colour scheme, getup, layout for its Xan label which is similar to plaintiff's registered trade mark XXX label/pouch or in any manner whatsoever;

b. a permanent injunction restraining the Defendants by themselves, their directors, partners, their legal representatives, successors in business, assigns, servants, agents, transporters, distributors, printers, stockists, wholesalers, dealers, retailers or any one claiming through or under them from committing acts of copyright infringement by making substantial reproduction of the plaintiff's registered copyright in the artistic work XXX LABEL by use of identical colour scheme of red, white and yellow with blue background in their XAN package/wrapper or with any other mark or in any manner whatsoever;

c. a permanent injunction restraining the Defendants by themselves, their directors, partners, legal representatives, successors in business, assigns, servants, agents, transporters, distributors, printers, stockists, wholesalers, dealers, retailers, advertisers or any one claiming through or under them from committing acts of passing off and enabling others to pass off by manufacturing, distributing, marketing, selling, offering for sale, advertising or in any other manner dealing in detergent powder, detergent cake, washing powder etc., or any other product bearing the identical package, wrapper, container, carton, label with colour scheme, getup, layout which are similar to plaintiff's trade dress & get up in XXX package/wrapper in any manner whatsoever;

d. the Defendants be ordered to surrender to the plaintiff for destruction, all containers, pouches, prints, dies, blocks, moulds and plates, screen prints, packing and advertising material and any other material in their possession, bearing the Xan label which is a substantial reproduction of the plaintiff's trade dress & get up and copyright in the artistic work XXX package/wrapper;

e. a preliminary decree be passed in favour of the plaintiff directing the Defendants to render account of profits made by use of an identical artistic work in their XAN label and final decree be passed in favour of the Plaintiff for the amount of profits thus found to have been made by the Defendants, after the latter have rendered accounts;

f. the Defendants be ordered to pay to the Plaintiff a sum of Rs.1,00,000/- (Rupees One Thousand only) as damage for their wrongful and illegal activities by use of an identical artistic work in their Xan label;

g. for costs of the suit.

For Plaintiff : Mr.Prashanth for
Mr.Arun C.Mohan

For Defendants : Set exparte

JUDGMENT

The Plaintiff is a well-reputed manufacturer of superior quality detergent cakes and powder as well as dish washing cakes. The plaintiff's detergent powder and cakes, dish wash bar are sold under the trademark XXX. The products marketed by the plaintiff are of high quality and have earned great reputation and goodwill in the market. During the course of business, the plaintiff adopted a unique, distinct and arbitrary trademark XXX for detergent powders, cakes and dish wash bars in the year 1991. The plaintiff's trademark has earned great reputation and goodwill in the market since its adoption by virtue of its superior quality coupled with economic price. By using the mark XXX in a distinctive manner, the

plaintiff has launched products such as detergent powder, detergent cakes, dish wash bar, cleaning powder, liquid detergents etc. The said brand name XXX has created great demand in the market among the public especially amongst the women.

2. The plaintiff has registered the trade mark XXX wrapper, the details of which are given hereunder:-

<i>Sl.No.</i>	<i>Regn. No.</i>	<i>Date</i>	<i>Class</i>	<i>Goods</i>
1.	1262724	22.01.2004	3	Detergent cakes washing powder, cleaning powder and liquid detergents.
2.	1278973	15.04.2004	3	Cleaning preparations, soaps, scouring preparations, cosmetics, perfumery, toilet cleaning preparations, preparations for laundry use, bleaching preparations, cleaning preparations, polishing preparations and hair lotions.

The above trademarks are duly renewed, are valid and subsisting till date.

In view of the above registrations, the plaintiff has acquired an exclusive right over the above mentioned XXX wrappers with their distinctive, colour scheme and get up and trade dress & get up.

3. The plaintiff is the registered owner of copyright in the artistic works in XXX LABEL under No. A-65424/2003 dated 09.10.2003. The plaintiff has designed the XXX LABEL in a distinctive manner with a colour scheme of red, white and yellow with blue background. The label has been designed by Mr. Manickavel, the plaintiff and the plaintiff is the exclusive owner of the copyright in the artistic work in the said label. The plaintiff submits that his XXX detergent powder label has many artistic features contained in it.

4. The plaintiff states that the XXX detergent powder manufactured by the Plaintiff are sold in a distinctive packaging/label containing the following features:-

- a) The background of the wrapper in blue colour;
- b) The trademark XXX in red colour with white and blue border;
- c) The words 'DETERGENT POWDER' is written in yellow letters with red background below the trademark XXX;
- d) The word 'Triplex' is written in red letters with yellow background above the trademark XXX

- e) The words 'SILVER FOAM' is written above the mark XXX;
- f) Quantity of the detergent powder is written at the bottom right hand side of the label, wherein the measuring unit is written within the number;
- g) Number of tiny star like device in white and yellow colours appear scattered all over the wrapper.

Back Potion

- h) 4 steps of instructions with 4 pictures under the title 'FOR HAND WASH'.

5. While so, in or about October 2014, the plaintiff became aware of the presence of the Defendants' goods under mark "Xan" with identical artistic work in the wrappers for identical product viz. detergent powder. The Defendants are using the identical colour combination, get up and artistic lay out of the individual components for their package/wrapper as that of the plaintiff. The plaintiff states that the Defendants, a recent entrant in the market and who is well aware of the existence of the Plaintiff's detergent powder under the mark XXX in the market and the fact that the Plaintiff's products under the mark XXX enjoys great

reputation, has copied the copyright and trade dress & get up in the artistic work XXX Label as well as infringed upon the Plaintiff's registered trademark subsisting in this visual scheme/trade dress. The Plaintiff, in order to settle the matter amicably caused a cease and desist notice dated 08.10.2014 to the Defendants in the address printed in the Defendants' pouch/wrapper, calling upon the Defendants to refrain from its infringing activities. The notice was returned with an endorsement "Not Known". The Plaintiff upon further investigation became aware that the Defendants are still selling detergent powder under the mark Xan with the identical artistic work and get up and the Defendants' goods are available in the market with the same address printed on the wrapper/pouch. The Plaintiff carried out a search in the Trademarks registry and came to know that the 2nd Defendant has applied for and obtained registration of the mark Xan word *per se* under No.2059249 in class 3. The registration obtained by the Defendants is only for a word mark and not in respect of the label/artistic work in the label. The Plaintiff is aggrieved also by the said word mark Xan as it is deceptively similar to that of the Plaintiff's registered trade mark XXX.

6. The plaintiff states that the Defendants' Xan detergent powder package/wrapper has the following features, which are identical to that of the plaintiff's XXX detergent powder package/wrapper in colour scheme, get up and layout:-

<i>Plaintiff's XXX detergent powder packaging/wrapper</i>	<i>Defendants' XAN detergent powder packaging/wrapper</i>
a) The background of the wrapper is in blue colour	The background of the wrapper is in blue colour
b) The trademark XXX in red and white colour	The mark Xan in red and white colour
c) The words 'DETERGENT powder' is written in yellow letters below the trademark XXX	The words 'DETERGENT powder' is written in yellow letters below the mark Xan
d) The word 'Triplex' is written in red letters with yellow background above the trademark XXX	The word 'Triple Action' is written in red letters with yellow background above the mark Xan
e) The words 'SILVER FOAM' is written above the mark XXX	The words 'ULTRA FOAM' is written above the word Xan
f) Quantity of the detergent powder is written at the bottom right hand side of the label	Quantity of the detergent powder is written at the bottom right hand side of the label
g) Number of tiny star like device appear scattered all over the wrapper.	Number of tiny star like device appear scattered all over the wrapper.

7. The plaintiff is the registered proprietor of the copyright in the artistic work in XXX under No. A-65424/2003 dated 19.10.2003. The plaintiff has designed the XXX detergent powder label in a distinctive manner with a colour scheme of red, white and yellow with blue background. The label has been designed by Mr. Manickavel, sole proprietor of Bharathi Soap Works and the plaintiff is the exclusive owner of the copyright in the artistic work in the said label and was conceived in the year 2000 and first published way back in the year 2001 in respect of wide range of goods including *inter alia* detergent powder, detergent cake, washing powder, dish wash bar. The Plaintiff has sought for the registration of this visual scheme and get-up and has obtained registration by way of Trade Mark No.1262724 and has thereby entitled to all the protections conferred by the Trade Marks Act and the Copyright Act. The plaintiff is extensively using the artistic work XXX since the year 2001 in respect of detergent powder, detergent cakes, washing powder, dish wash bar etc. The Defendants' XAN wrapper/pouch is a substantial reproduction of plaintiff's artistic work in XXX pouch/wrapper. The Defendants have committed infringement of plaintiff's copyright and trademark in XXX label/pouch.

8. The plaintiff states that the Defendants have adopted an almost identical and/or deceptively similar trade dress & get up as that of the plaintiff and copied the colour scheme, getup and layout of the plaintiff's XXX package/wrapper. The Defendants have made a blatant and obvious misrepresentation by the use of an identical package/wrapper to the members of the trade and public in the course of trade. The plaintiff states that the Defendants could not have devised its XAN package/wrapper without having the plaintiff's XXX package/wrapper before him. The detergent powder of both the plaintiff and Defendants are purchased by all sections of society, literate and illiterate, who may not devote time to verify the particulars and differentiate between the plaintiff's and the Defendants' products, which would adversely affect the plaintiff's business and reputation. In any event, the plaintiff's rights in the trade mark and copyright cannot be snatched away by the Defendants. The activity of the Defendants amounts to fraud on the trade and public. The Defendants' XAN pouch/label is an intimation of plaintiff's registered trademark XXX pouch/label.

9. In spite of sending the receipt of the notice issued by the plaintiff, the defendants failed to spot the continuation of the product and manufacturing of the product. Therefore, the plaintiff approached this Court and also obtained the interim order since 2015 and the same is alive as on today. Since after the service of the summons, none appeared on behalf of the defendants. Therefore, this Court, by an order dated 18.04.2018 advised the plaintiff and invited him to let in evidence; the witnesses of the plaintiff to appear before the Additional Master No.I on 13.06.2018 to let in *ex parte* evidence. The learned Additional Master No.I on 06.07.2018 examined the PW1 and marked Exs.P1 to P12.

10. Heard the learned counsel appearing for the plaintiff and perused the averments in the plaint and also the proof affidavit and also several documents filed by the plaintiff in support of their claim. The plaintiff's trademark is XXX and the defendants' trademark is XAN. Now, the issue before this Court is, copying the dress, get-up, colour scheme and design of the plaintiff. This Court, also examined Ex.P11, which is the trademark of the plaintiff and Ex.P12 is the trademark of the defendants.

11. So, by mere comparison, it is very clear that the defendants are copying the artistic work, dress, colour scheme, design and get-up of the plaintiff. In this regard, the plaintiff has filed all the supported documents to establish their case. Therefore, the defendants are infringing the registered trade mark of the plaintiff.

12. Hence, the act of the defendants amounts to infringement of registered trademark of the plaintiff, in terms of Section 29 of the Trademarks Act, 1999. Accordingly, the plaintiff is entitled for the relief as prayed for. Hence, the suit is decreed, as prayed for with a cost of Rs.50,000/- (Rupees Fifty Thousands only).

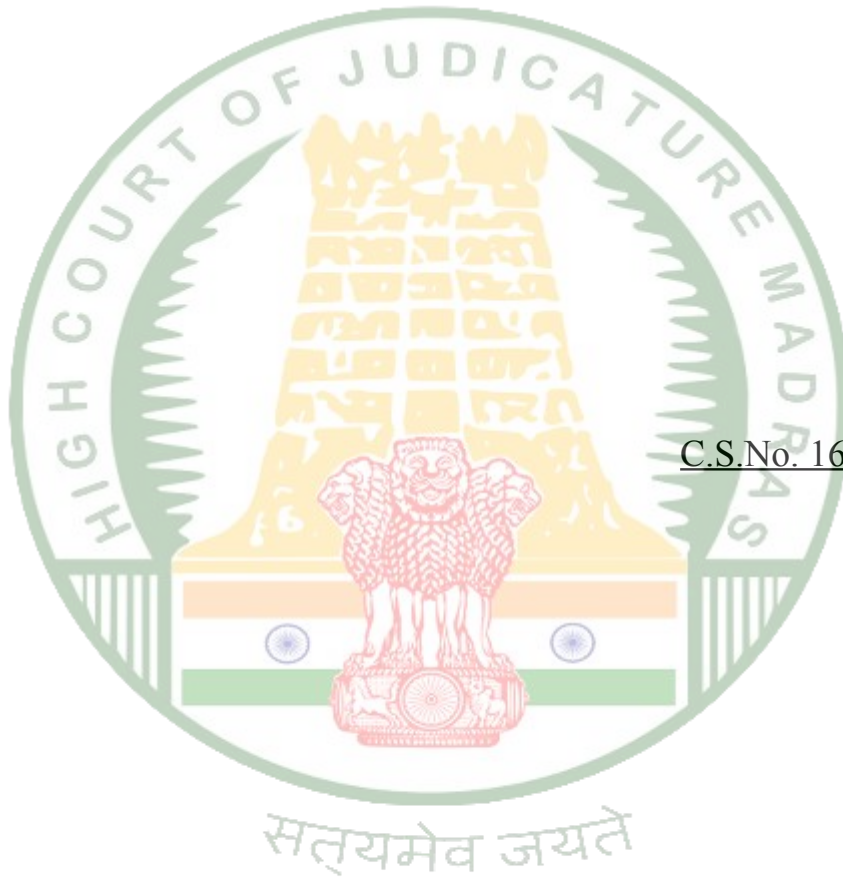
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Krishnan Ramasamy,J.,

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