

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2019

CORAM:  
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

Civil Suit No.248 of 2015  
and  
Application No.2638 of 2019

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1. DART Industries Inc.  
(A Corporation founded under the Laws of Delaware, U.S.A.)  
14901, South Orange Blossom Trail,  
Orlando, Florida 32837,  
U.S.A., rep. By its constituted Attorney,  
Taylor J.Ross
2. TUPPERWARE INDIA PVT. LTD.,  
1A, Udyog Vihar, Sector 18,  
Gurgaon - 122 011, Haryana,  
rep. By its Authorized Signatory,  
Vandita Batta ... Plaintiffs
- vs.
1. K.K.Plastics  
(Kamlesh Jain (Owner)  
224/C, T.H.Road,  
M.R. Nagar,  
Kodungaiyur,  
Chennai 600 118.
2. Bhagyalakshmi Industries,  
O.No.59/6, N.No.100/6,  
Narayan Mudali Street,  
Chennai 600 079.
3. Noordeen Traders,  
No.13/6, Cholan Street,  
Near Oil Mill Bus Stop,  
Ullagaram,  
Chennai 600 091.
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4. Balumurugan Plastics,  
No.1/512, South Nizhar Salai,  
Muthamizh Nagar,  
Chennai 600 110.

... Defendants

Plaint filed under Order IV Rule 1 of O.S. Rules and Order VII Rules 1 and 2 of CPC read with Section 22 of the Designs Act, 2000 for the following reliefs:

(a) A permanent injunction restraining the defendants, their proprietor or partners or directors as the case may be, their sister concerns, assigns in business, distributors, stockists, dealers and agents, from manufacturing, selling, offering for sale, advertising, directly or indirectly in any manner including through websites or other online shopping portals dealing in bottles in any size including 500ml, 750ml and 1 litre, bearing the impugned designs or any other designs, as may be fraudulent or obvious imitation of the Plaintiffs' Designs amounting to infringement of Plaintiffs' Design Registration Nos.221424 and 221425 in any manner whatsoever;

(b) A permanent injunction restraining the Defendants, their proprietors or partners or directors as the case may be, their sister concerns, assigns in business, distributors, stockists, dealers and agents, from manufacturing, selling, offering for sale, advertising, directly or indirectly in any manner including through websites or other online shopping portals dealing in bottles and caps in any size including 500ml, 750ml and 1 litre, bearing the impugned get up or designs, trade dress or any other get up, designs or trade dress as may be fraudulent or obvious imitation of the Plaintiffs' AQUASAFE BOTTLE get up, designs or trade dress amounting to passing off of the Defendants' goods for those of the Plaintiffs in any manner whatsoever;

(c) A decree for delivery up of the infringing goods of the Defendants including their moulds along with mould drawings thereto, dyes, blocks, plates and engraving printed materials such as brochures or other promotional material or any other material bearing or depicting the infringing impugned designs, to an authorized representative of the Plaintiffs' for destruction;

(d) An order for rendition of accounts of profits illegally earned by the Defendants and a decree for an amount so found due or in the alternative,

(e) The Defendant be ordered to pay to the Plaintiff a sum of Rs.20,00,000.00 (Rupees Twenty Lakhs only) towards compensatory and punitive damages towards the illegal activities by the Defendants;

(f) An order for costs of the proceedings.

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For Plaintiffs : Mr.Arun C.Mohan

For Defendants : Mrs.Suba Shiny

### JUDGMENT

This Application is filed seeking to pass a summary judgment by decreeing the Suit in favour of the Plaintiffs in terms of prayer 33(a), (b) and (c) of the Plaint.

2. Mr.Arun C.Mohan, learned counsel on record for the Plaintiffs requested that a summary judgment in the main suit itself may be passed, as the Defendants have no real prospects of successfully defending the claim

and that there is no other compelling reason as to why the claim of the plaintiffs should not be disposed of before recording oral evidence.

3. In support of his aforesaid submission, learned counsel for the Plaintiffs pointed out that all the Defendants have been duly served with suit summons and the details of service of suit summons on the four Defendants are as under:

*'D1 summons served on 25.06.2015*

*D2 summons served on 06.06.2015*

*D3 summons served on 05.06.2015*

*D4 summons served on 02.02.2016'*

4. When the matter was listed on 18.09.2018 under the caption "UNDEFENDED BOARD", none of the Defendants appeared before this Court and no Written Statement was filed. Hence, all the four Defendants were set *ex-parte* and the matter was directed to be listed before the Additional Master-I on 25.09.2018 for recording *ex-parte* evidence.

5. Before the Additional Master-I, when the matter was taken up, Plaintiffs were absent. However, learned counsel for the Plaintiffs requested for passing Summary Judgment as per amended Rules.

6. Thereafter, when the matter was taken up by this Court,

learned counsel on either side submitted that Defendants have been set

exparte and sought time to process the Application for Summary Judgment taken out under Order XIII-A of the amended Code of Civil Procedure. Admittedly, issues have not been framed in this Suit.

7. Learned counsel for the Plaintiffs submitted that the present suit is a "commercial dispute" as specified under the Commercial Courts Act, 2015 and Order XIII-A of the Code of Civil Procedure as applicable to such commercial disputes, empowers this Court to pass summary judgment.

8. According to the learned counsel for the Plaintiffs, the 1st Plaintiff has created unique designs and applied the same to their Bottle and Cap, both of which are individually registered across several jurisdictions, including in India, vide Registration Numbers 221424 (Bottle) and 221425 (Cap), dated 05.09.2008. In April 2009, the 1st Plaintiff introduced the Aquasafe Bottle and Cap designs in India through the 2nd Plaintiff, under the brand "Aquasafe" and the same have gained immense popularity and achieved huge sales turnover. On account of huge investments, extensive promotion and enormous sales made, the distinctive Aquasafe design, trade dress and get-up of the said bottle and cap have acquired distinctiveness and secondary significance amongst members of trade and the general public.

9. Learned counsel for the Plaintiffs went on to submit that the Plaintiffs have already placed on record, the Certificates of Design Registrations, sales and promotional figures, specimen sales invoices and promotional material, as well as orders passed by several Courts in their favour pertaining to their registered bottle and cap designs. Further, it is his case that the photographs of the competing products make it abundantly clear that the Defendants' impugned products are obvious and fraudulent imitations of the Defendants' registered bottle and cap designs and passing off the trade dress and get-up.

10. In reply, learned counsel appearing for the Defendants drawing the attention of this Court to the Written Statement filed by the 3rd Defendant in July 2015, submitted that the 3rd Defendant does not have technical knowledge either about the design or about the registration of the Plaintiffs' trademark and that he had not done any business knowing fully that it is a violation of the Plaintiffs' trademark and that he has no objection for permanent injunction and also any decree, which may be passed by this Court.

11. This Commercial Division is convinced about the submissions made by the learned counsel for the Plaintiffs that the Defendants have no

real prospects of successfully defending the claim. In the light of the above, as the Plaintiffs have got registered design, this Court is of the view that the Plaintiffs would be entitled to permanent injunction against the Defendants, restraining the infringement of design and passing off and trade dress of the Plaintiffs.

12. In the light of the above, Application No.2638 of 2018 is treated as an application under Order XXXVII Rule 3 (6a) of C.P.C. in the light of sub-Rule 3 of Rule 1 of Order XIII-A of amended C.P.C. as amended by the Commercial Courts Act, 2015.

13. In fine, Application No.2638 of 2019 is ordered on the above terms and Suit is decreed as prayed for. No costs.

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Index : Yes/No

Speaking Order : Yes/No

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S.VAIDYANATHAN,J.

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