

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2019

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THE HONOURABLE **MR.JUSTICE KRISHNAN RAMASAMY**

C.S.No.434 of 2015

Bharathi Consumer Care Products Pvt.Ltd.,
No.38, Bhavani Ellaiamman Koil Street,
Otteri, Chennai 600 012.

...Plaintiff

Vs.

Royal Detergent Powder Pvt., Ltd.,
Ground Floor, No.3/9, Sridharan Street,
Ayyavoo Colony, Aminjikarai,
Chennai 600 029.

...Defendant

This Civil Suit is preferred under Order IV Rule 1 of O.S.Rules and Order VII Rule 1 of CPC read with Sections 27, 28, 29, 134 and 135 of the Trademarks Act 1999 prays for judgment and decree for A.a permanent injunction restraining the defendant by themselves, their directors, their men, 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 trademarks 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 deceptively similar trademark ROYAL MAGIC which are

similar to plaintiff's registered trademarks in any manner whatsoever; B) a permanent injunction restraining the defendant by themselves, their directors, their men, 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 deceptively similar trademark ROYAL MAGIC and package, wrapper, container, carton, label with colour scheme, getup, layout which are similar to plaintiff's trade mark MAGIC in any manner whatsoever; C) the defendant 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 mark ROYAL MAGIC which is an imitation of the plaintiff's mark MAGIC. D) a preliminary decree be passed in favour of the plaintiff directing the defendant to render account of profits made by use of trademark ROYAL MAGIC label therein and final decree be passed in favour of the plaintiff for the amount of profits thus found to have been made by the defendant, after the latter have rendered accounts; E) the defendant be ordered to pay to the plaintiff a sum of Rs.1,00,000/- as damages for their wrongful and illegal activities by use of trademark ROYAL MAGIC label; F) for costs of the suit; and G) for such further and other reliefs as this Court may deem fit and proper in the circumstances of the case and thus render justice.

For Plaintiff : Mr.R.Prashanthi

For Defendant : No appearance

JUDGMENT

The suit has been filed against the defendant for infringing the registered trademark of the plaintiff namely MAGIC with an intention to cause confusion and deception among the trade and public.

2. The suit summons against sole defendant was completed by the order of this Court on 14.10.2015. However when this matter came up before this Court on 24.01.2018, this Court sets the sole defendant exparte, due to non appearance of the defendant. This Court heard the submissions of the plaintiff and this Court proceeded to pass the following decree based on the submissions made by the plaintiff.

3. The plaintiff is a well reputed manufacturer of superior quality detergent cakes, detergent powder as well as dish washing cakes. The plaintiff's detergent powder and cakes, and dish wash bar are sold under various trademarks including trademarks in which distinctive and dominant

part is the mark MAGIC. During the course of business, the plaintiff adopted a unique, distinct and arbitrary trademark MAGIC for detergent powders, cakes and dish wash bars in the year 1995 and used the same with numerous prefixes and suffixes. Further, the plaintiff 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 MAGIC 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 MAGIC has created great demand in the market among the public.

4. The plaintiff registered its trademark MAGIC under different mark viz., Blue Magic Label, New Magic Green Label, New Magic Blue Label, Wonder Magic Label, Super Magic Label. The plaintiff also narrated about the details of the turnover at paragraph no.7 of the plaint.

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5. During January 2015, the plaintiff became aware of the defendant use of a deceptively similar mark ROYAL MAGIC for identical products viz., detergent powder and soaps. According to the plaintiff, the

defendant is a recent entrant in the market and who is well aware of the existence of the plaintiff's detergent cakes and other products bearing the mark MAGIC in the market. Therefore, the plaintiff in order to settle the matter amicably caused a cease and desist notice on 06.01.2015. However, there was no reply from the defendant and hence, another cease and desist notice was sent to the defendant on 03.02.2015 calling upon the defendant to refrain from its infringing activities. However, there was no reply from the defendant for the above said two legal notices issued by the plaintiff.

6. Therefore, according to the plaintiff, the intention of the defendant is to mislead the trade and public and to pass off their product in order to earn illicit profit and unfairly capitalize on the plaintiff's hard earned reputation and goodwill. Further the act of the defendant is solely aimed at misrepresenting to the public and thereby trading upon the goodwill and reputation enjoyed by the plaintiff. An ordinary customer with imperfect recollection, would not make out any difference between the plaintiff's and the defendant's products. The defendant has adopted an imitative mark with a deliberate, malafide intention to cause confusion and deception amongst the trade and public. The plaintiff would submit that the

defendant would not have arrived with such a mark without keeping in the mind the plaintiff's mark. Therefore, the defendant has no valid reason whatsoever to adopt and use the deceptively similar mark ROYAL MAGIC. The products sold by the plaintiff and the defendant are identical products. The class of customers are identical including literate, semi-literate, and illiterate persons.

7. The plaintiff's and the defendant's products would be sold in the same shops, over the same counters and to the same class of customers. Therefore, the plaintiff filed the present suit and prayed for decree as prayed in the plaint.

8. Heard the learned counsel for the plaintiff. This Court has also given its consideration to the averments made in the plaint and plaintiff's proof affidavit and also perused the documents in Ex.P1 to P16.

9. MAGIC is the registered trademark of the plaintiff. The said word MAGIC has been registered under different name Blue magic label, New magic green label, New Magic Blue label, Wonder Magic label, Super

Magic Label. The plaintiff has also obtained legal usage certificates, which have been marked as Ex.P3, P4, P5, P6 and P7. On perusal of these certificates, it is made clear that the plaintiff registered the trade name MAGIC under different strings in respect of the detergent powder, detergent cake, washing powder etc., in class 3. Further the trademarks viz., ROYAL MAGIC, though it is deceptive nature, these works get distinctiveness for usage of these words in respect of the plaintiff's product under Class 3.

10. When that being the case, the defendant used the same word in respect of the goods falling under class 3 with respect to the detergent powder, detergent cake, washing powder etc., with an intention to adopt an imitative mark of the plaintiff and to pass off the goods as if the defendant's goods and the plaintiff's goods one and the same. This will create confusion among the public. Therefore, this Court is of the view that it would be appropriate to restrain the defendant from using the word MAGIC as trademark in respect of the goods as traded by the plaintiff.

11. This Court has satisfied with the reasons stated. Accordingly, the suit is decreed as prayed for. This Court is also inclined to award damage for a sum of Rs.1,00,000/- as prayed in the plaint with costs.

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List of Exhibits:

No witnesses examined.

Plaintiff side Documents:

Ex.P1- The original Board Resolution in favour of plaintiff for deposing before Court.

Ex.P2- Copy of the certificate of incorporation issued by ROC (compared with original and returned)

Ex.P3-Original Legal use certificate for the trademark MAGIC label under No.1549646 in class 3.

Ex.P4-Original Legal use certificate for the trademark MAGIC label under No.1549643 in class 3.

Ex.P5-Original Legal use certificate for the trademark MAGIC label under No.1549642 in class 3.

Ex.P6-Original Legal use certificate for the trademark MAGIC label under No.1549644 in class 3.

Ex.P7-Original Legal use certificate for the trademark MAGIC label under No.1549641 in class 3.

Ex.P8-copy of the Deed of Assignment from Bharathi Soap Works to Bharathi Consumer Care Products Pvt. Ltd (compared with original and returned).

Ex.P9-series (25 nos) are copies of commercial Tax Bills/way bills for sale of MAGIC detergent cake.

Ex.P10-series (91 nos) are copies of invoices proving sale of MAGIC detergent cake.

Ex.P11-Series (18 nos) are copies of advertisement issued by the plaintiff for the MAGIC detergent cake in newspaper, invoices for advertisement in TV Commercials and retailers price list.

Ex.P12-series (89 nos.) are copies of invoices from printers for purchasing wrappers for MAGIC label.

Ex.P13- office copy of Cease and Desist notice dated 06.01.2015 issued by plaintiff to defendant along with postal acknowledgement card.

Ex.P14-office copy of Cease and Desist notice dated 03.02.2015 issued by plaintiff to defendant along with postal acknowledgement card.

Ex.P15-copy of specimen of plaintiff's MAGIC label.

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