

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.07.2019

Coram

The Honourable Mr.Justice KRISHNAN RAMASAMY

**C.S.No.446 of 2015
and O.A.Nos.582 & 583 of 2015**

Hatsun Agro Product Ltd.,
Having registered Office at,
No.1/20-A, Rajiv Gandhi Salai (OMR),
Karapakkam, Chennai – 600 097.
And also carrying on its business at,
Old No.AD-83/New No.AD13,
Anna Nagar, Opp.IOB Towers Branch,
Chennai – 600 040.

...Plaintiff

Versus

Arogya Foods,
28, Magamagam Kulam Melkarai,
Kumbakonam – 612 001.

...Defendant

This suit is filed under Order VII Rule 1 of C.P.C r/w. Order IV Rule 1 of Hight Court O.S.Rules and Sections 27, 28, 29, 134 & 135 of the Trade Marks Act, 1999 for the following reliefs:

(a) For permanent injunction restraining the defendant by itself, its agents, servants or any one claiming through it from in any manner infringing the plaintiffs' registered Trademark AROKYA as described in the Schedule hereunder by using the offending Trademark AROGYA or any other mark, label or device which is identical or deceptively similar to or a colourable imitation of the plaintiff's trademark AROKYA;

(b) For permanent injunction restraining the defendant, by itself, its servants or agents or anyone claiming through it from in any manner passing off its products as that of the plaintiff by using the offending trademark AROGYA or any other trademark which is similar or deceptively

similar to that of the plaintiff's trademark AROKYA either by manufacturing or selling or offering for sale or in any way advertising the same.

(c) Directing the defendant to surrender to the plaintiff entire goods with the offending labels, stock of unused offending labels together with the blocks and dyes, name boards, sign-boards, stationery, promotional materials, etc., for destruction.

(d) Directing the defendant to render true and faithful account of the profits earned by it using the offending trademark AROGYA and pay such profits to the plaintiff as damages;

(e) Directing the defendant to pay to the plaintiff the cost of the suit.

For Plaintiffs : Mr.Ashish Jainlunia
for M/s.Surana & Surana
For Defendant : Set *ex parte*
vide order dated 02.07.2019

J U D G M E N T

The present suit has been admitted on 08.06.2015, and the suit summon was served on the sole defendant but when the matter was called on 02.07.2019, none appeared on behalf of the defendant. Hence, the sole defendant was set *ex parte* by this Court, thereafter, when the matter was listed before the learned Additional Master on 15.07.2019, the plaintiffs filed the Proof Affidavit and on the side of the plaintiffs, only one witness was examined viz., P.W.1, Mr.P.Sivasakthivel, Officer-Legal of the plaintiff Company and 23 documents were marked viz., Ex.P1 to Ex.P23.

2. Today(17.07.2019), when the matter is taken up for final disposal, the learned counsel for plaintiff is present.

3. The plaintiff is a private sector company in the food Industry for the past four decades, involved in the manufacture and marketing of various foods and dairy products. The plaintiff's products are being exported to 43 countries including Africa, Middle East and other East Asian countries. Originally, an innovative entrepreneur R.G.Chandramohan founded an enterprise under the name "Chandramohan Company" in 1970 which was later changed as "Hatsun Foods Pvt. Ltd.," in 1986. Thereafter, in the year 1998, the name of the plaintiff Company was changed into "Hatsun Agro Products Limited" and thereby, the plaintiff Company started the Dairy Business in India and holds various quality standard certifications, including the prestigious ISO 15000, ISO 9001 and ISO 22000.

4. The plaintiff has adopted the distinctive trademark "AROKYA" for milk and dairy products since more than two decades and is using the same continuously without any break. The dairy products of the plaintiff Company, particularly, Milk varieties under the trademark "AROKYA" earned good reputation and patronage among the public. The plaintiff's eight varieties of Milk under the said trademark "AROKYA" are extensively

marketed throughout the South India, including Tamilnadu, Karnataka, Andhra Pradesh, etc.,

5. The plaintiff filed various applications in appropriate classes under the Trademarks Act and obtained registration in respect of the trademark "AROKYA" which are as follows:

S.No.	Trademark	Class	Filing Date	Number	Status
1	AROKYA FRESH CREAMY MILK	29	14/06/1995	669001	Registered
2	AROKYA MILK	29	13/02/2006	1421082	Registered
3	AROKYA MILK	29	13/02/2006	1421080	Registered
4	AROKYA MILK	29	13/02/2006	1421081	Registered
5	AROKYA (LABEL)	32	25/11/2005	1402211	Registered
6	AROKYA	29	25/11/2005	1402212	Advertised
7	AROKYA (LABEL)	29	25/11/2005	1402205	Registered
8	AROKYA	32	25/11/2005	1402206	Registered

WEB COPY

6. The plaintiff has carried out effective advertisement campaign through Medias viz., Television, Radio, Magazines, Newspapers, Pamphlets, Internet, etc., The plaintiff has a vast establishment of manufacturing units which follows various legal norms prescribed by the food safety authorities both Central and State Governments to maintain

high standard of quality and hygiene and to protect the consumers' safety. The plaintiff's trademark "AROKYA" has been recognized by the public to denote and connote the products of the plaintiff and the said trademark has come to be distinctive of the plaintiff alone. The trademark "AROKYA" has acquired a secondary meaning and refer to plaintiff. The plaintiff has a record of successful enforcements of its rights in the trademark "AROKYA" and as such, the Courts have recognized the trademark as being a well known trademark.

7. In the said circumstances, during the last week of May 2015, the plaintiff came to know that the defendant is using the mark "AROGYA" in respect of same class of goods i.e., dairy products. The defendant deliberately adopted the trademark "AROGYA" by changing the letter 'K' with the letter 'G', which is trivial and inconsequential. The defendant is violating the plaintiff's intellectual property rights in respect of their mark "AROKYA". Hence, the aforesaid *mala fide* act of defendant would amounts to infringement of plaintiff's trademark "AROKYA". The usage of identical/deceptively similar trademark by the defendant would create deception and confusion in the minds of the general public.

8.1. The learned counsel for plaintiff submitted that the defendant literally copied the plaintiff's registered Trademark, "AROKYA" by merely replacing the letter 'K' by 'G', only with a *mala fide* intention to spoil the

image of the plaintiff Company. He would also submit that the use of an identical/deceptively similar trademark by the defendant is likely to create a chaos in the minds of the consumers. He further submitted that the defendant has adopted the offending trademark "AROGYA" to pass off their goods as that of the plaintiff's.

8.2. The learned counsel would contend that the defendant has no right to use the offending trademark "AROGYA". He further contended that the plaintiff is the prior user of the distinctive trademark, "AROKYA" because they started using the said trademark since 1998. He also argued that by infringing the trademark of the plaintiff, the defendant is attempting to ruin the good will and reputation earned by the plaintiff Company. He therefore prayed that the defendant may be restrained from using the offending trademark, "AROGYA", otherwise, the plaintiff would be put to irreparable loss and hardship.

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

10.1. On perusing the Proof Affidavit filed by P.W.1 and also the documents which were marked as Exs.P1 to P23, this Court finds that the plaintiff registered the trademark, "AROKYA", which is clearly evident from Exs.P12 to 17, Certificate of Registration of the trademark "AROKYA"

logo in Class 29 under Nos.1421082, 1421080, 1421081 & 1402211, 1402205, 1402206, dated 13.02.2016 & 25.11.2005 respectively. It is also seen that the plaintiff is the prior user of the trademark "AROKYA" since 1997. Apart from that the plaintiff Company holds various quality standard certifications including the prestigious ISO 15000, ISO 9001 and ISO 22000, which is made clear from a reading of Exs.P2, 3 & 8. The plaintiff has huge network of marketing which is also evident from Ex.P18.

10.2. It is crystal clear that the plaintiff's registered trademark is "AROKYA" and the defendant had adopted the said registered trademark of the plaintiff by simply replacing the letter 'K' with the letter 'G' and named it as "AROGYA". It is seen that the defendant's offending trademark, "AROGYA" is phonetically and deceptively similar to that of the plaintiff's trademark. It is also clearly evident that the defendant had adopted the registered trademark of the plaintiff only with a *mala fide* intention to spoil the goodwill and reputation earned by the plaintiff's company among the consumers/general public and therefore, the same would not only amounts to infringement of the plaintiff's registered trademark but also it would amounts to passing off. There is no doubt, the plaintiff proved the suit claim against the defendant.

10.3. 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

KRISHNAN RAMASAMY, J.,

mrr

other hand, considering the offending acts of the defendant, this Court feels that it would be necessary to put costs on the defendant.

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

17.07.2019

mrr

Index : Yes/No

C.S.No.446 of 2015

सत्यमेव जयते

WEB COPY