

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2019

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.285 of 2013

ITC Limited,
ITC Centre,
4th Floor, 760, Anna Salai,
Chennai – 600 002.

Represented by its Constituted Attorney,
S.Satyanathan

... Plaintiff

Vs.

1.Ganesh Flour Mills,
88, Burtolla Street,
Kolkata – 700 007.

2.Ganesh Grains Limited,
174, Cittraranjan Avenue,
Kolkata – 700 007.

... Defendants

Plaint filed under Order VII Rule 1 C.P.C. read with Order IV Rule 1 of the High Court Original Side Rules praying for:

(a) A decree of permanent injunction restraining the defendants, their directors, employees, officers, servants, agents and all others acting for and on their behalf from making, selling, distributing, advertising, exporting, offering for sale, and in any other manner, directly or indirectly, dealing in any product including Atta in the impugned labels 1 and 2 and/or packaging,

including packets, sachets, labels and containers, as a colourable imitation and substantial reproduction amounting to an infringement of the plaintiff's trademark registered under No.1106809 in Class 30;

(b) A decree of permanent injunction restraining the defendant, its officers, employees, servants and agents, from manufacturing, selling, offering for sale, advertising and directly or indirectly dealing in any product including Atta in the impugned label 1 or impugned label 2 and/or in packaging, including packets, sachets, labels and containers, as are a colourable imitation and substantial reproduction of the packaging/label of the plaintiff's AASHIRVAAD Shudh Chakki Atta, AASHIRVAAD Superior MP Atta and AASHIRVAAD Select Superior Sharbati Atta which amounts to an infringement of the plaintiff's copyright therein;

(c) A decree of permanent injunction restraining the defendant, its officers, employees, servants and agents, from manufacturing, selling, offering for sale, advertising and directly or indirectly dealing in any product including Atta in the impugned label 1 or impugned label 2 and/or in packaging, including packets, sachets, labels and containers, as are a colourable imitation and substantial reproduction of the packaging/label of the plaintiff's AASHIRVAAD Shudh Chakki Atta, AASHIRVAAD Superior MP Atta and AASHIRVAAD Select Superior Sharbati Atta as is likely to

lead to passing off the product(s) of the defendant as and for that of the plaintiff's.

(d) To direct the defendants to pay to the plaintiff's as compensatory and punitive damages a sum of Rs.8,05,000/- for the acts of the trademark infringement, copyright infringement and passing off committed by them;

(e) To grant order of delivery up of any brochures/printed material and/or any material which infringes plaintiff's registered trademark and the copyright in the packaging/labels of the plaintiff's AASHIRVAAD Shudh Chakki Atta, AASHIRVAAD Superior MP Atta and AASHIRVAAD Select Superior Sharbati Atta;

(f) To direct the defendant for rendition of accounts in respect of their alleged activities especially sale and promotion of their products under impugned label 1 and/or in impugned label 2 and/or in packaging, including packets, sachets, labels and containers, as are a colourable imitation and substantial reproduction of the packaging/label of the plaintiff's AASHIRVAAD Shudh Chakki Atta and AASHIRVAAD Superior MP Atta;

(g) Costs and such other relief as this Hon'ble Court may deem fit, in the circumstances of the case, in the interests of justice and equity.

For Plaintiff	: Mr.P.S.Ramesh, Senior Counsel for Mr.M.S.Bharath
For Defendant	: Set ex-parte vide order dated 07.12.2016

J U D G M E N T

The suit has been filed for permanent injunction and such other reliefs more fully described in the prayer portion of this judgment.

2. The averments set out in the plaint, in gist and kernel are as follows:-

i) The plaintiff commenced its Foods Business in the year, 2001 with the launch of its product, called "KITCHENS OF INDIA", ready to eat Indian gourmet dishes. In the year 2002, the plaintiff launched its confectionery products under the brand names, "Mint-O" and "CANDYMAN" and atta product, under the brand name, "AASHIRVAAD". In just over a decade, the Foods Business of the plaintiff has grown to significant size under many distinctive brand names like AASHIRVAAD, SUNFEAST, BINGO, KITCHENS OF INDIA, MINT-O, CANDYMAN and YIPPEE! With enviable strong distribution reach, a rapidly growing market share and a solid market standing.

ii) The plaintiff adopted the distinctive trademark, "AASHIRVAAD" in the year 2001, and as mentioned above, the plaintiff entered the branded Atta market in India with the launch of

AASHIRVAAD Atta, sometime in May, 2002, and it is available all over India, and is also exported to United States of America, Australia, Singapore and Canada. As per Nielsen, an independent and reputed market Research Agency, the plaintiff's product, AASHIRVAAD Atta is India's leading branded Atta with a market share of approximately 41% by value sales and 35.1% volume sales, as of 2012. As on date, the plaintiff sells its product, AASHIRVAAD Atta in four different variants, as given below:-

- a) Aashirvaad Shudh Chakki Atta,
- b) Aashirvaad Superior MP Atta,
- c) Aashirvaad Select Superior Sharbati Atta, and
- d) Aashirvaad Atta with multi grains.

iii) The plaintiff had launched its product, AASHIRVAAD Shudh Chakki Atta (known as AASHIRVAAD Whole Wheat Atta till 2012), AASHIRVAAD Superior MP Atta (known as AASHIRVAAD Whole Wheat Atta till 2010 and AASHIRVAAD Whole Wheat Atta Superior MP Wheat till 2012) and AASHIRVAAD Select Superior Sharbati Atta in the year 2002 and AASHIRVAAD Atta with multigrains in the year 2010, in a unique packaging/labels with distinctive trade dress. The trade dress of AASHIRVAAD Shudh

Chakki Atta, AASHIRVAAD Select Superior Sharbati Atta and AASHIRVAAD Superior MP Atta underwent minor changes in the years 2010 and 2012, during which period, the position of variant names was changed and certain additional devices were added. In spite of these changes, the leading, prominent and identifying features of the plaintiff's AASHIRVAAD Atta package remained the same.

iv) The plaintiff has launched its Atta products, under various brand names, viz., i) AASHIRVAAD Whole Wheat Atta, ii) AASHIRVAAD Whole Wheat Atta Superior MP Wheat, iii) AASHIRVAAD Shudh Chakki Atta, iv) AASHIRVAAD Superior MP Atta and v) AASHIRVAAD Select Superior Sharbati Atta, in various distinctive features and trade dresses.

v) Most of the essential features of the AASHIRVAAD Atta labels have remained unchanged since the launch of the AASHIRVAAD brand in 2002. Since the adoption of the mark AASHIRVAAD in the year 2001, the plaintiff has been continuously and consistently using the unique and distinctive trade dress with respect to its AASHIRVAAD Shudh Chakki Atta Package,

AASHIRVAAD Superior MP Atta Package and AASHIRVAAD Select Superior Sharbati Atta Pakage in India as well as in countries such as Australia, Singapore, Canada and United States of America. They gained very good reputation and goodwill, they had turnover, they also incurred expenses in advertisement and they also obtained following Registrations, which are as follows:-

Registration No.	Mark	Class	Status
1087266		30	Filed on 14/03/2002 Registered valid till 14/03/2022
1092701		30	Filed on 05/04/2002 Registered Valid till 05/04/2002
1320218		29 & 30	Filed on 11/11/2004 Registered valid till 11/11/2014

Registration No.	Mark	Class	Status
1106809		30	Filed on 24/05/2002 Registered valid till 24/05/2022

vi) The defendant No.1 is known to be selling Atta under the brand "GANESH" for the last several years in many labels, which are not of a concern of the plaintiff. In the year 2013, defendant No.1 appears to have commenced using a new label for their wheat flour products which is identical in all features to the plaintiff's AASHIRVAAD label. Soon after, the plaintiff gained knowledge in March 2013, that the defendants are selling, marketing and manufacturing Atta and other allied products under the name "GANESH" with trade dress identical to that of plaintiff's mark "AASHIRVAAD", it collected product samples. The plaintiff received the information, which confirmed the involvement of the defendants in infringing.

vii) The plaintiff upon visiting the website of the defendants viz., www.ganeshfoods.com to its utter dismay and shock found that

the defendants have also copied the trade dress/packaging of the plaintiff's AASHIRVAAD Select Superior Sharbati Atta. The defendants label is shown as follows:-



It is hereinafter referred to as "the impugned label 2". The defendants' impugned label 2 is a colourable imitation and substantial reproduction of the trade dress/packaging/label of the plaintiff's AASHIRVAAD Select Superior Sharbati Atta. Therefore, the plaintiff, having no other option, has filed the present suit, for the aforesaid relief.

3. The defendants were set ex-parte vide order dated 07.12.2016 and the suit was directed to be placed before the learned Additional Master for recording ex-parte evidence. Before the learned Additional Master, on behalf of the plaintiff one Suresh Chand, was examined as P.W.1 and Exs.P1 to P21 were marked and original material objects marked as MO1 to MO8.

4. It has already been set out supra that as many as 21 exhibits, namely Exs.P1 to P21 have been marked and the details of the 28 exhibits are as follows:

Sl. No.	Exhibits	Description
1	Ex.P1	The authorization letter.
2	Ex.P2	Photocopy of letter dated 07.06.2012 from Nielsent (India) Private Limited.
3	Ex.P3	Duplicate copy of letter dated 07.06.2012 from Nielsen (India) Private Limited.
4	Ex.P4	Original confirmatory deed of assignment dated 04.03.2013 between Mc Cann Erickson India Ltd., Anil Thomas and plaintiff.
5	Ex.P5	Photocopies of invoices evidencing sale of plaintiff's AASHIRVAAD Atta in Canada, Singapore and Australia dated 07.09.2012 to 25.01.2013.
6	Ex.P6	Photocopies of Invoices evidencing sale of plaintiff's AASHIRVAAD Atta in USA dated 15.03.2013.
7	Ex.P7	Photocopies of print advertisements of plaintiff's AASHIRVAAD Atta in English, Tamil and other languages from 2002-2013 are collectively marked.
8	Ex.P8	The original covering letters issued by The Agency Source, New Delhi in March 2017 confirming the authenticity of the copy of the print advertisements of the plaintiff's AASHIRVAAD Atta in English, Tamil and other languages along with annexures are collectively marked.
9	Ex.P9	Photocopies of Multiple Newspaper articles on the plaintiff's brand AASHIRVAAD Atta pertaining to the years 2002-2012 are collectively marked.
10	Ex.P10	The original covering letters issued by The Agency Source, New Delhi in March 2017 confirming the authenticity of the copy of the multiple newspaper articles on the plaintiff's brand AASHIRVAAD Atta along with annexures are collectively marked.
11	Ex.P11	Photographs of the hoardings containing the plaintiff's brand AASHIRVAAD Atta are collectively marked.
12	Ex.P12	The photocopies of the legal use certificates of the

Sl. No.	Exhibits	Description
		plaintiff's Trademark Registration Nos.1087266, 1092701, 1106809 & 1320218 are collectively marked.
13	Ex.P13	Four original trade mark legal use certificates in respect of the suit trademarks being Nos.1087266, 1092701, 1106809 & 1320218 dated 07.03.2017 are collectively marked.
14	Ex.P14	Photocopies of Invoices evidencing sale of plaintiff's AASHIRVAAD Atta in Chennai between 2006-2013 are collectively marked.
15	Ex.P15	The original invoice dated 15.04.2013 bearing Bill No.6272 dated 15.04.2013 proving sale of the plaintiff's AASHIRVAAD Atta in Chennai and a copy of the said bills are collectively marked.
16	Ex.P16	The copies of the old labels used by the defendants are collectively marked.
17	Ex.P17	The copy of impugned Label 1 ("Premium Chakki Atta") as found on the defendants website and as identified in paragraph 31 of the plaint is marked.
18	Ex.P18	Impugned label 2 package of the defendant is marked.
19	Ex.P19	Advertisements of defendant's products in Times of India, Calcutta Times dated 28 th July 2013, The Telegraph dated 28 th July 2013, The Times of India dated 30 th June 2013 and Bartman dated 29 th June 2013 products sold by the defendant's in labels whose use was restrained by this Hon'ble Court vide order dated 22.04.2013 indicating the packaging date to be July 2013 with bills and copies of defendants' website www.ganeshfoods.com bearing advertisement of their products bearing the label whose use has been restrained by.
20	Ex.P20	The certified copy of the affidavit in support of application of Manish Mimani filed on behalf of the defendants dated 04.06.2013.
21	Ex.P21	The certified copy of order passed by the Hon'ble Bombay High Court in Commercial IP (L) No.1465/2013 dated 03.12.2018.

5. Heard the learned counsel for the plaintiff and also gone through the averments in the plaint and the proof affidavit and also perused the Exs.P.1 to P.21.

6. On perusal of Ex.P1, it is evident about the nature of business run by the plaintiff in the name of "AASHIRVAAD" and despite, they also filed legal use certificate to show that the mark has been registered. Exs.P5 to P11 filed to prove that the plaintiff is making lot of investments and selling the product in the name of "AASHIRVAAD". Ex.P12 and P13, filed to show that registrations of the plaintiff's trademark. Ex.P14 and P15, are the invoices of the plaintiff. Ex.P16, a copy of the old labels to show that at the relevant time, the defendants adopted their own label. Ex.P17 filed to show that recently defendants have adopted an identical label as that of the plaintiff to sell his goods. Ex.P18 impugned label 2 package of the defendants is filed. Ex.P19 is filed to show that defendants have also advertised for selling the goods with labels identical to the plaintiff. Ex.P20 is affidavit filed by the defendant at the interlocutory stage to show turnover by selling. Ex.P21 is the certified copy of order passed by the Hon'ble Bombay High Court.

Particularly Exs.P17 and P18, the label used by the defendants is identical and it may create a confusion in the mind of customer and the colour combination is also almost identical and background of the packing is also identical and in fact trade dress, getup, layout and colour combination are similar to that of the plaintiff. In fact it is nothing but the clear label of the plaintiff. The defendants remained ex-parte. After filing the application to vacate the ex-parte order, the injunction was made absolute, he remained ex-parte at interlocutory stage, he also filed an application to vacate the injunction and also filed an affidavit showing turnover as document Ex.P20. From the above documents, it is clear that the plaintiff has proved that the defendants are adopting the similar label and is definitely infringing the copyright of the plaintiff. Accordingly, plaintiff proved the claim and entitled to decree.

7. As far as damages is concerned, it is the case of the plaintiff that even after the interim order has been made absolute, the defendants have marked the product in the same label and violated the orders.

N.SATHISH KUMAR,J.

8. In view of the same, this Court is of the view that the suit is decreed as prayed for, with punitive damages of Rs.5 lakhs and with costs.

01.11.2019

AT

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