

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 11TH DAY OF DECEMBER 2019

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

O.A.Nos.339 and 340 of 2019

in

C.S.No.229 of 2019

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.
Rep. by its Authorised Signatory ...Applicant/Plaintiff

-Versus-

A R Dairy Foods Private Limited,
Having its Registered Office at
10/5C, Madurai Road,
Begampur Post
Dindigul-624 002. ...Respondent/ Defendant

O.A.No.339 of 2019:

Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction, restraining the defendant by itself, its agents, servants, distributors or any one claiming through it from using in any manner whatsoever upon and in relation to their business the 'AROKYA' trade marks, artwork, colour schemes and trade dress and/or deceptive variations thereof so as to passing off or enable others to indulge in the act of passing off its goods or business as that of the Plaintiff's or in some way convey a connection with the Plaintiff as described in the Schedule-I to the Plaint.

O.A.No.340 of 2019:

Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction, restraining the Respondent by itself, its agents, servants, distributors or any one claiming through it from using in any manner whatsoever upon and in relation to their business the "AROKYA" trademark by exposing for sale or using them or copying/reproducing or causing reproduction of the same in any packaging or literature or any colourable imitation or substantial reproduction thereof in any manner whatever so as to infringing or causing infringement of the Plaintiff's trademark as described in Schedule-II to the Plaint.

These Applications coming on this day before this Court for hearing, the Court made the following order:

Heard the learned counsel for the applicant and the learned counsel for the respondent.

2. The learned counsel for the applicant submits that the applicant is engaged in dairy products and one of the market leaders in the field of milk processing industries for the past 4 decades. According to the applicant it has established Dairies in various state of South India. The products of the plaintiff are marketed under trade name 'Arokya'. The trademark adopted by the plaintiff/applicant is unique, distinct and exclusively in usage by the applicant/plaintiff for the past 30 years since the incorporation of applicant company on 04.03.1986. The trademarks were registered since 1994 and some of the

applications for trade mark are pending with the Registrar of Trademark.

3. The learned counsel appearing for the applicant pointed out the unique logo for packaging of its milk products and the uniqueness of the said logo is captured by the following features:

- i. WAVY diagonal partition.
- ii. Green field with two coconut trees, the device of tiled house, lady feeding cow and sky with clouds on the top right hand side of the label.
- iii. White background for toned milk, blue for standardized milk, saffron for full cream milk, red for toned milk is used on the left side of the divide.
- iv. Splash of milk device with 'AROKYA' in unique style depicted.

Alleging that the registered trademark of the applicant is subjected to infringement by the respondent in order to deceive gullible public to purchase the respondent's products believing it to be a product of the applicant/plaintiff seeks interim injunction pending suit

4. To impress upon the Court regarding the said allegation, the device and design colour scheme adopted by the defendant in their product, which has been marketed in the name of 'RAAJ' produced before this Court to appreciate the submissions.

5. Counter affidavit filed by the learned counsel for the respondent. In the counter it is stated that they are marketing their products in the trade name Raaj Milk. The trademark Raaj Milk registered vide order dated 04.01.2013 for the goods and service for manufacturing and trading milk and milk products. The trademark of the plaintiff/applicant is entirely different from the trademark of the defendant and the allegation of infringement of the trademark and passing off the plaintiff's products is untenable and the application is not maintainable.

6. The respondent states in his counter that the product of the applicant "Arokya" is neither distinctive nor capable of distinguishing the product of one manufacturer from another. Further, the defendant's get up and layout are completely different from the applicant's get up and layout and there is no ground for any action for the respondent's label, design or get up. It is further alleged that in order to scuttle the trade competition the applicant has come out with the suit and interlocutory applications for injunction under the guise of trademark infringement. It is alleged in the counter that in order to establish monopoly in the trade, the applicant has come out with the frivolous suit and interlocutory application. The comparison between the plaintiff package and the defendant

package and the comment of the respondent is also stated in the counter.

7. According to the respondent, the applicant is not consistent in their product, design and package. They are frequently changing the get up of their product, colour and design. The field design of the applicants product and the respondent product also entirely different, mere presence of cow in the field design will not indicate the similarity in the product or the package. Contending that they could not be monopoly with the colour, it is stated that the application is liable to be dismissed.

8. Normally in case of trademark infringement and passing off to avoid irreparable monetary loss and damage to reputation, the Courts used to grant interim order unless and until there is a substantial difference in the product, design and mark. This Court finds that this is one such cases where no similarity could be seen in the products which will be sufficient to impress this Court. There is no evidence to infer attempt to infringe the trademark of the applicant or to pass off the goods of the respondent as that of the applicant. There is more dissimilarity rather than similarity in the package design, get up and colour scheme. The trade name also totally different and neither visually nor phonetically similar.

9. In such circumstances, this Court finds no merit in these applications. Hence these applications for interim injunction are dismissed.

Sd./-G.J.J
11/12/2019

//Certified to be true copy//
Dated at Madras this the day of 2019.

jj 26/12/2019
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COURT OFFICER(O.S.)



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