IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.08.2019

Coram

The Honourable Mr.Justice KRISHNAN RAMASAMY

C.S.(A)No.328 of 2016
and O.A.No.469 of 2016

Titan Company Ltd.,
Represented by its Executive Administration,
Mr.Srinivasan
No.21, Trio Hi-Spaces,
1st Floor, Raja Street,
T.Nagar, chennai 600 017. ...Plaintiff

Versus

Eye Plus Opticals
Gani Building, Fort Maidan
Palakkad – 678 001. ...Defendant

This Civil Suit is filed under Order IV Rule 1 of O.S.Rules r/w Sections 134 of the Trade Mark Act 1999 , prayed (a) for the grant of permanent injunction restraining the defendant, its servants or agents or anyone claiming through it from in any manner infringing the registered trademarks, bearing Nos. 1) 1486186 & 2) 1631635 of the plaintiff;

(b) for surrender to the plaintiff for destruction of defendant's

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cartons; packing materials: visual aides; catalouges; pricelists; literatures and publicity materials bearing the trademark of the plaintiff;

(c) directing the defendant to render true accounts of the eyewear sold under the plaintiff's trademark and the defendant be further directed to pay to the plaintiff such amount found due and payable on such accounts being taken;

(d) costs of the suit.

For Plaintiff : Mr.S.P. Chockalingam
For Defendant : Set ex parte
vide order dated 02.08.2019

JUDGMENT

The present Civil Suit has been filed by the plaintiffs, seeking for the relief, as stated in the prayer portion of this judgment.

2. The learned counsel for the plaintiff submitted that the plaintiff is formerly known as "Titan Industries Limited" and subsequently, the name got changed to "Titan Company Limited". The Plaintiff is a manufacturer of watches and horological instruments, and

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it had forayed into Eyewear segment in the year 2007. The optical products manufactured by the plaintiff are marketed and sold under the brand name 'Titan Eyeplus / Titan Eye'.

2.1 The learned counsel for the plaintiff further submitted that the plaintiff is in technical collaboration with Sankara Nethralaya, India's Premier Eye Care Institute, which offers World class optical retail experience through products which showcase the best in contemporary design and style, coupled with guaranteed optical expertise. The learned counsel further submitted that the plaintiff offer its wide range of stylish and contemporary eyewear through its exclusive 'Titan Eyeplus / Titan Eye + stores'. The plaintiff in its 'Titan Eyeplus / Titan Eye +' stores offers a range of more than 1,000 stylish products to help the customers look best. The products sold through plaintiff's stores are best in the market and proves to the satisfaction of every customer, who enters its stores.

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2.2 The plaintiff's counsel further submitted that the plaintiff has given wide publicity of their specialized 'Titan Eyeplus / Titan Eye +' optical stores both in Newsprint and in Electronic media. The publicity is not restricted only in media, but advertisements are being carried out through presentations at fairs and exhibitions. For advertisement alone, the plaintiff is spending substantial amount of money every year. Due to the plaintiff's heralded standardization and in sync with its corporate principles of quality and trust, coupled with various aspects, such as transparency in pricing, style and contemporary design in the eyewear segment is generating huge turnover year after year and he has also furnished the details of the sales figures of 'Titan Eyeplus' products in the last few preceding years, which are mentioned hereunder:

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SI.No.	Year Wise	Sales figures (Rs. In Lakhs)
1.	2007 - 2008	1020.4
2.	2008 - 2009	3334.2
3.	2009 - 2010	7459.3
4.	2010 - 2011	11813.2
5.	2011 - 2012	17608.1
6.	2012 - 2013	22807.9
7.	2013 - 2014	29146.0
8.	2014 - 2015	36105.4
9.	2015 - 2016	42511.9

2.3 The plaintiff's counsel further stated that the plaintiff is selling quality products and providing good services. The plaintiff's trademark 'Titan Eyeplus / Titan Eye +' have become popular brand in the market and trade and has also acquired tremendous goodwill and reputation throughout India. By virtue of publicity; existence of knowledge about the plaintiff's mark among the substantial segment of population and for a considerable duration and among the vast extent of area, plaintiff's trademark 'Titan Eyeplus' has become a well-known trade mark.

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2.4 The learned for the plaintiff further submitted that the plaintiff in order to gain statutory protection for its trademarks 'Titan Eyeplus / Titan Eye +' has applied for its registration under the IV schedule of the Trade Marks Act, 1999. The plaintiff's applications for registration have been accepted and the Trademark Registry has accorded registration. The said registrations are valid and subsisting till date and he has also furnished the details of plaintiff' trademark registration, which are mentioned hereunder:

SI. No	Registration No.	Date of Registration	Class
1.	1486186	11.09.2006	9
2.	1631635	17.02.2007	35
3.	1486201	11.09.2006	9

The copy of the plaintiff's trademark registration certificates bearing No.1486186 and No.1631635 are marked as Ex.P3 and Ex.P4 respectively.

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2.5 The learned counsel for the plaintiff contended that the plaintiff come to know that the defendant is marketing and offering for sale eyewear in the name and style of 'Eye Plus'. Further, the defendant is running a showroom in Palakad, where in its signage, it has conspicuously displayed 'Eyeplus'. Further, the defendant in its invoices, advertisements and publicity materials prominently displaying the tradename 'Eyeplus'. The defendant is rampantly advertising about its 'Eyeplus' store in all the Newspapers, and thereby promoting sale of its products. The defendant's infringing materials are marked as Ex.P5. The plaintiff has never authorised or permitted the defendant to use its trademark; nor has consented to use its trademark by the defendant and therefore, the defendant's use of the name similar to plaintiff's trademark is a blatant dishonest.

2.6 The plaintiff's counsel further contended that the defendant's use of plaintiff's registered trademark is causing confusion in the minds of customers. The plaintiff's customers and dealers are deceived into

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wondering whether the defendant's goods under the trademark 'Eye Plus' have emanated from the plaintiff or have been traded by the plaintiff or that the plaintiff is in some way associated with the defendant.

2.7 The learned counsel further submitted that the plaintiff in order to put an end to the infringement, had caused a legal notice dated 05.01.2016 to the defendant calling upon it to cease and desist from using plaintiff's registered trademark. The copy of the legal notice is marked as Ex.P6. The defendant had also received the notice and through its lawyer had sent a reply, dated 06.02.2016 refusing to comply with the demands of the plaintiff. The copy of the reply to legal notice is marked as Ex.P7 and hence the plaintiff filed the present suit.

3. Heard the learned counsel for plaintiff and perused the material available on record. As far as defendant is concerned, it is seen from the records that the suit summon was served on the sole defendant through substituted service by effecting paper publication. However,

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the defendant had not entered appearance either in person or through counsel. Therefore, the sole defendant was set *ex parte* by this Court vide order dated 02.08.2019, and the matter was directed to be listed before the learned Additional Master – III, for recording ex parte evidence. On the side of the plaintiff, R.Karthikeyan, the Manager of the plaintiff's firm examined himself as P.W.1, and 7 documents were marked viz., Exs.P1 to P7.

4. This Court also gone through the pleadings and documents filed along with the plaint and also the proof affidavit filed by PW1. On perusal of Ex.P.3 and P.4 / Certificates of registration of trademark, this Court finds that the plaintiff is the registered proprietor of the trade mark 'Titan Eyeplus / Titan Eye +'. On the perusal of the turnover for the year ending 2015 – 2016 through the above sales figure which *per se* shows they have achieved a turnover and has also attained permanent reputation and goodwill amongst the public. Further, they have also spent substantial amount for the purpose of advertisement and therefore,

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this Court is of the view that the plaintiff has achieved tremendous goodwill and reputation amongst the public, and in any means, the use of the word 'Eye Plus' by the defendant for the sale of its product will severely affect the reputation of the plaintiff. Further, this Court is of the view that the defendant has adopted the word 'Eye Plus' only to encase the goodwill of the plaintiff and to sell their product and to encase the profit.

5. Thus, by virtue of Ex.P.3 and P.4, Registration Certificates of the plaintiff's trademark "'Titan Eyeplus / Titan Eye +'", it is clear that the plaintiff is the registered proprietor of the said trademark, and they have the exclusive right to use the trade mark in respect of their product. **In view of the exclusive right to use the word, '**'Titan Eyeplus / Titan Eye +'**' by the plaintiff, the adoption of the mark, '**'Titan Eyeplus'**', by the defendant is clearly amounts to infringement of trademark of the plaintiff.** Hence, the plaintiff is entitled to the relief as prayed in the suit.

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6. In the result, this suit is decreed with costs. Consequently, connected Applications is closed.

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