

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.11.2019

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.840 of 2016

1. Mr.A.D.Padmasingh Isaac,
Trading as Aachi Spices and Foods,
Old No.4, New No.181/1, 6th Avenue,
Thangam Colony, Anna Nagar,
Chennai - 600 040.

2. M/s.Aachi Masala Foods (P) Ltd.,
Old No.4, New No.181/1, 6th Avenue,
Thangam Colony, Anna Nagar,
Chennai - 600 040.
Represented by its Director
Mr.Aswin Pandian

.. Plaintiffs

Vs.

Aache Department Store,
MIG 767, New Housing Store,
Near New Bus Stand,
Eswari Nagar,
Medical College Road,
Thanjavur - 613 007.

.. Defendant

Civil Suit filed under Order IV Rule 1 of Original Side Rules read with
Order VII Rule 1 of Code of Civil Procedure read with sections 27(2), 29, 134
and 135 of the Trademarks Act, 1999 for the following reliefs :

[a] granting a permanent injunction restraining the defendant, by itself, its servants, agents, distributors, or anyone claiming through him from manufacturing, selling, advertising and offering the sale using same or similar or identical Trade Mark AACHE/AACHI or any other similar Trademark or in any media and use the same in invoices, letter heads and visiting cards by using any other trademark which is in any way visually or phonetically similar to the 1st plaintiff's Trademark AACHI and use the mark in invoices, letter heads and visiting cards or any other trade literature or by using any other Trademark which is in any way visually or phonetically similar to the plaintiff's registered Trademark Nos.838786, 922594, 922596, 976559, 1116254, 1318494, 1318495, 1334479, 1479158, 1479159, 1555564, 1557660,, 1564085, 1567065, 1567066, 1567068, 1581011, 1595537, 1595538, 1595539, 1595540, 1595542, 1595543, 1595544, 1595545, 1604348, 1702840, 1702848, 1715718, 1720889 & 1843529 or in any manner infringe the 1st plaintiff's registered trademark.

[b] granting a permanent injunction, restraining the defendant by itself, its servants, agents, distributors, or anyone claiming through him from manufacturing, selling, advertising and offering for sale using the mark AACHE or any other similar Trademark or in any media and use the same in invoices , letter heads and visiting cards or by using any other trade mark which is in any

way visually or deceptively or phonetically similar to the plaintiffs' Trademark AACHI or use the mark in invoices, letter heads and visiting cards or any other trade literature or by using any other Trademark which is in any way visually, or phonetically similar to the plaintiffs' Trademark AACHI or in any manner pass off the plaintiff's goods;

[c] directing the defendant to surrender to the plaintiff's all the packing material, cartons, advertisement materials and hoardings, letter-heads, visiting cards, office stationery and all other materials containing/bearing the name AACHE DEPARTMENT STORE or other visually and phonetically similar trade mark used in the pouches and packets;

[d] directing the defendant to render an account of profits made by them by the use of the impugned Trademark AACHE DEPARTMENT STORE and decree the suit for the profits found to have been made by the defendant, after the defendant has rendered accounts;

[e] directing the defendant to pay to the plaintiffs the costs of the suit.

For Plaintiffs : Ms.Gradys Daniel

For defendant : Set exparte

J U D G M E N T

This suit has been filed for permanent injunction restraining the defendant and his men from using the trade mark of the plaintiff and for passing off and for other reliefs.

2. The brief facts of the plaintiffs' case is as follows :

The plaintiff's trademark AACHI is synonymous with a variety of spices, condiments, food products and ready to eat preparations marketed under the name. The Trademark AACHI has created for itself an indelible mark in the market with respect of food preparations. The trademark AACHI also stands for a quality preparation that always carries with itself a unique blend of spices to create the unique south Indian taste and flavour. The trademark AACHI was first applied for and registered in the name of the first plaintiff in the year 1999. Since then 105 applications have been filed for the Trademark AACHI in respect of various goods that have been manufactured and marketed by the AACHI group of Companies. At present there are 51 registrations of the Trademark AACHI in

various word, label and stylized marks. In October 2016, the plaintiffs came across the defendant's store bearing the name AACHE DEPARTMENT STORE which is a blatant infringement of the plaintiffs' registered trademark AACHI. The use of the mark AACHE DEPARTMENT STORE is bound to create confusion and deception in the market. Hence, the suit.

3. Despite service of notice to the defendant and the name printed in the cause list, none appeared for the defendant and hence, the defendant has been set exparte.

4. The Deputy General Manager – Legal & Statutory of the second plaintiff was examined as P.W.1 and Ex.P1 to Ex.P.18 were marked.

P.W.1 – Mr.B.Gnanasambandam

<i>S.No.</i>	<i>Date</i>	<i>Description of documents</i>	<i>Exhibit</i>
1.	11.11.2019	Original Authorization Letter	P-1
2.	--	Copy of list of products manufactured and marketed by the plaintiffs bearing the trademark AACHI	P-2
3.	--	Copy of the Certificate of incorporation of Aachi Masala Goods P Ltd.	P-3
4.	10.07.2006	Copy of the Certificate of Commercial Tax	P-4

S.No.	Date	Description of documents	Exhibit
		Registration of Aachi Masala & Foods (P) Ltd.	
5.	01.12.2006	Copy of the Deed of Assignment between Abishek Enterprises and Aachi Masala Foods Pvt. Ltd.	P-5
6.	01.12.2006	Copy of Deed of Assignment between Naveen Products and Aachi Masala Foods Pvt. Ltd.	P-6
7.	31.03.2007	Copy of the Dissolution Deed between Mrs.Rani Pandian and Mr.A.D.Padmasingh Isaac dissolving the partnership firm, Naveen Products	P-7
8.	--	Copy of Certificate of Commercial Tax Registration and Central Sales Tax of Aachi Spices & Foods	P-8
9.	30.03.2007	Copy of the Deed of Assignment between Aachi Masala Foods Pvt Ltd. and Mr.A.D.Padmasingh Isaac Trading as Aachi Spices and Foods	P-9
10.	01.04.2007	Copy of the Trademark License user Agreement between Mr.A.D.Padmasingh Isaac Trading as Aachi Spices and Foods and Aachi Masala Foods Pvt. Ltd.	P-10
11.	17.03.2010	Copy of the certificate of incorporation of Aachi Spices and Foods P Ltd.	P-11
12.	06.03.2010	Copy of the Memorandum of Association of Aachi Spices and Foods P Ltd.	P-12
13.	21.04.2010	Copy of the Trademark License user Agreement between Mr.A.D.Padmasingh Isaac and Aachi Spices and Foods Pvt. Ltd.	P-13
14.	21.04.2010	Copy of the Trade Mark License User agreement between Mr.A.D.Padmasingh Isaac and Aachi Masala Foods P Ltd.	P-14
15.	--	Copy of plaintiffs advertisement in RITZ Magazine	P-15
16.	--	Copy of the legal use certificate and registration of trademark Nos. 838786, 922594, 922596, 976559, 1116254, 1318494, 1318495, 1334479, 1479158, 1479159, 1555564, 1557660,, 1564085, 1567065,	P-16

<i>S.No.</i>	<i>Date</i>	<i>Description of documents</i>	<i>Exhibit</i>
		1567066, 1567068, 1581011, 1595537, 1595538, 1595539, 1595540, 1595542, 1595543, 1595544, 1595545, 1604348, 1702840, 1702848, 1715718, 1720889 & 1843529	
17.	--	Copy of Registration Certificates of mark AACHI in various countries around the world	P-17
18.	--	Copy of defendant's Name Board Aache Department Store	P-18

5. P.W.1 in his evidence has spoken about the reputation and also goodwill of the plaintiff. Ex.P.2 is filed to prove the list of products manufactured by the plaintiff bearing the trademark AACHI. Ex.P.4 is filed to show that they have obtained registration under Commercial Tax. Ex.P.5 to Ex.P.7 have been filed to prove incorporation and resolutions of the company. Ex.P.10 is the Trade Mark License User Agreement of the plaintiff. Ex.P.16 is the legal use certificate and registration of the trademark of the plaintiff. Ex.P.16 clearly prove that the plaintiff has got registered the trademark in their name. Ex.P.17 has been filed to prove the trademark registration certificates of the plaintiffs products in various countries across the world. Ex.P.18 is the copy of the defendant's name Board. Ex.P.18 clearly indicate that the word 'AACHE' is used by the defendant in the name and the same in fact will lead to confusion in the minds of public.

6. From the above documents and the evidence of P.W.1, it is clear that the plaintiffs have gained wide reputation by using the trade mark 'AACHI' and the defendant adopting deceptively similar mark 'AACHE DEPARTMENTAL STORE' will lead to confusion in the minds of the public. All these facts clearly establish the fact that the plaintiff has proved their claim. The evidence of P.W.1 remains unchallenged. Hence, the plaintiffs are entitled to a decree as prayed for.

7. Accordingly, the suit is decreed as prayed for with cost.

19.11.2019

vrc

Index : Yes/No

Internet : Yes/No

Speaking/Non-Speaking Order

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C.S.No.840 of 2016

N.SATHISH KUMAR, J.

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C.S.No.840 of 2016

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19.11.2019