

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.10.2019

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.S.NO.288 of 2019 and
O.A.No.449 and 450 of 2019 and
A.No.3294, 3295 and 4404 of 2019 of 2019

Mi Lifestyle Marketting Global Pvt Limited
Represented by its Managing director,
Office at 25, 2nd floor, Lanco House,
G.N.Chetty Road, T.Nagar,
Chennai 600 017.

... Plaintiff

Vs.

1. Amazon Seller Services Private Limited
(aazon in)
Having office at Brigade Gateway,
8th floor, 26/1, Dr.Rajkumar Road,
Malleshwaram (W),
Bangalore 560 055
Karnataka, India.

Also at

Ground Floor, Eros Corporate Tower,
Nehru Place, New Delhi 110 019.

2. Ms. Sandhya Jain
Residing at No.72/127,
Bhairav Path, Patel Marg Mansarovar,
Jaipur 302029.

... Defendants

PRAYER Civil Suit filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 and 2 of the Code of Civil Procedure read with Section 27, 134 and 135 of the Trademarks Act, 1999 and Section 7 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, No.4 of 2016 to grant a decree and judgment for

a) a permanent injunction restraining the defendants, by itself, their servants, agents, distributors, or anyone claiming through them from committing illegal and unauthorized sale, advertising, offering for sale or displaying the counterfeit products using the plaintiff's registered Trademarks " ON & ON" and " Elements Wellness " in the 1st defendant's website or in its mobile application, or in any manner infringing the plaintiff's registered Trademarks No.2721130, 2678311, 2678309 respectively.

b) a permanent injunction restraining the defendants, by itself, its servants, agents, distributors from committing illegal and unauthorized sale, advertising, offering for sale or displaying the counterfeit products using the plaintiff's registered Trademarks " ON & ON" and "Elements Wellness " in the 1st defendant's website or in its mobile application, in any manner passing off the plaintiff's Trademarks " ON & ON " and " Elements Wellness".

c) directing the 1st defendant to take down or block or remove or delist all the third parties/unknown entities that infringe the plaintiff's

products under its Trademarks " ON & ON " and " Elements Wellness".

d) directing the 1st defendant to furnish the details of the sellers/unknown entities who are infringing the plaintiff's registered Trade Marks " ON & ON " and " Elements Wellness".

e) Directing the defendants to render an account of profits made by them by the use of the plaintiff's Trade,arl " ON & ON " and " Elements Wellness" in their course of business and decree the suit for the profits found to have been made by the defendants, after the defendants have rendered accounts

f) directing the defendants to pa the costs of the suit to the plaintiff.

For Plaintiff : Mr.P.R.Vandana

For Defendants : Mr.M.S.Bharath (for D1)

JUDGMENT

The suit has been filed seeking decree and judgment against the defendants for

a) a permanent injunction restraining the defendants, by itself, their servants, agents, distributors, or anyone claiming through them from committing illegal and unauthorized sale, advertising, offering for sale or

displaying the counterfeit products using the plaintiff's registered Trademarks " ON & ON" and " Elements Wellness " in the 1st defendant's website or in its mobile application, or in any manner infringing the plaintiff's registered Trademarks No.2721130, 2678311, 2678309 respectively.

b) a permanent injunction restraining the defendants, by itself, its servants, agents, distributors from committing illegal and unauthorized sale, advertising, offering for sale or displaying the counterfeit products using the plaintiff's registered Trademarks " ON & ON" and "Elements Wellness " in the 1st defendant's website or in its mobile application, in any manner passing off the plaintiff's Trademarks " ON & ON " and " Elements Wellness".

c) directing the 1st defendant to take down or block or remove or delist all the third parties/unknown entities that infringe the plaintiff's products under its Trademarks " ON & ON " and " Elements Wellness".

d) directing the 1st defendant to furnish the details of the sellers/unknown entities who are infringing the plaintiff's registered Trade Marks " ON & ON " and " Elements Wellness".

e) Directing the defendants to render an account of profits made by them by the use of the plaintiff's Trade,arl " ON & ON " and " Elements Wellness" in their course of business and decree the suit for the profits found to have been made by the defendants, after the defendants have rendered

accounts

f) directing the defendants to pay the costs of the suit to the plaintiff.

2. The main grievance of the plaintiff is that, their products have been marketed under URL of the first defendant. They have also filed a memo of links, listing the URL, to be removed from the first defendant's website.

3. The learned counsel appearing for the first defendant submitted that the list of URL given by the plaintiff has been removed from the link and the same has not been disputed by the plaintiff.

4. At this juncture, it is brought to the notice of this court to the orders passed by this court in C.S.No.493/2018 dated 29.01.2019 , which is similar in nature of the instant suit, in which it has been held thus:

" 11. ... The power of the Commercial Division to pass summary judgment is adumbrated in Order XIII-A of amended " The Code of Civil Procedure 1908 " (CPC for brevity) as amended by " The commercial Courts Act, 2015 " (said Act for brevity).

12. A perusal of Order XIII-A of amended CPC as amended by the said Act reveals that grounds to pass summary judgment by Commercial Division have been adumbrated in Rule 3 therein. Rule 3 reads as follows.

3. Grounds for summary judgment-. The Court may give a summary judgment against a plaintiff or defendant on a claim if it considers that -

a. the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim as the case may be, and

b. there is no other compelling reason why the claim should not be disposed of before recording of oral evidence".

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13. A perusal of Rule 3 reveals that summary judgment cant be passed by this Commercial Division, when the plaintiff has no real prospect of succeeding on the claim or when the defendant has no

real prospect of successfully defending the claim and that there is no other compelling reasons as to why suit should not be disposed of before recording oral evidence. "

5. Inview of the fact that the list of URL was already removed and in the light of the above said order passed by this court, trial of the suit will not arise, since the plaintiff has no real prospect of succeeding on the claim with regard to the prayers 'a', 'b', 'e', 'f' and 'g' of paragraph No.34. However, there is no impediment to this court in passing a summary judgment in terms of the prayer "c" and "d" as contained in paragraph No.35 of the plaint.

6. In the result,

(a) Prayer ' c ' and ' d ' alone are decreed as prayed for by the plaintiff. If the first defendant used the URL of the plaintiff in future, the same shall be brought to the notice of the first defendant by way of e-mail by the plaintiff and the first defendant shall immediately remove the URL.

(b) With regard to the prayers "a" , "b", "e" , "f" and "g" are concerned, the civil suit is dismissed.

7. With the above observations, the suit is disposed of. No costs.

The connected original applications and applications are closed.

04.10.2019

Index: Yes/No
Internet: Yes/No
Speaking/Non Speaking order
mst

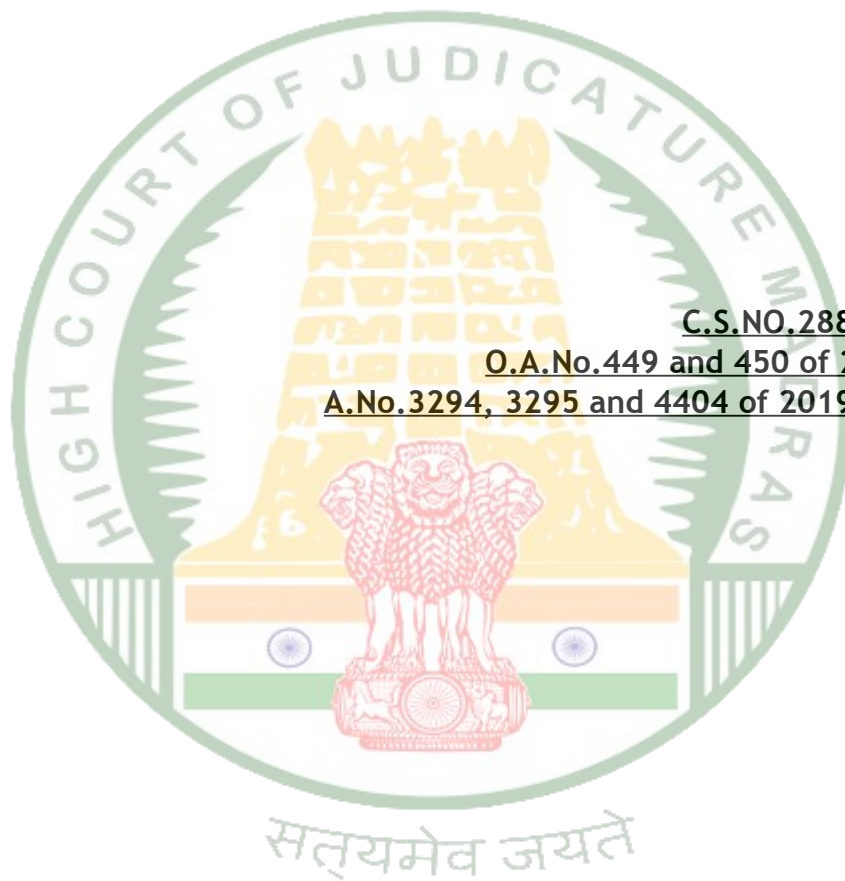


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