

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2019

CORAM:

The Hon'ble Mr.Justice Krishnan Ramasamy

C.S.No.100 of 2018

and

O.A.No.141 of 2018

Bdreamz Global Solutions Pvt.Ltd.,
Represented by its Director
S.Selvamanikandan,
No.8, 11th Main Road,
Vijayanagar, Velachery
Chennai – 600 042

Also at:

31/11, Govintharaj Street,
West Tambaram,
Chennai – 600 045.

Plaintiff

Vs

1. JivanNesha Global Solutions Pvt.Ltd.,
No.7/2, 6, 3rd Seaward Road,
Valmiki Nagar,
Thiruvannamiyur,
Chennai – 600 041.

2. Besant Technologies Pvt. Ltd.,
No.7/2, 6, 3rd Seaward Road,
Valmiki Nagar,
Thiruvannamiyur,
Chennai – 600 041.

3. Sampath Kumar

4. Vimala

.. Defendants

Prayer :-

Plaint filed under Order VII, Rule 1 & 2 of C.P.C., and Order IV Rule 1 of O.S.Rules, praying (i) for a permanent injunction restraining the defendants, its men, agents, men acting under them or claiming under them or through them, from in any manner passing off their “Besant Technologies” as that of the plaintiff's by using the offending trademark “Besant Technologies” which is similar and identical to that of the plaintiff's established trademark “Besant Technologies” or by using any other trademark which is similar or deceptively similar to that of the plaintiff either by manufacturing or selling or offering for sale or in any manner advertising the same for pharmaceutical product/drug.

(ii) for directing the defendants to render a true and faithful account of the profits earned by them through sale where the offending trademark “Besant Technologies” and directing payment of such profits to the plaintiff by way of damages to that extent.

For Plaintiff : M/s.K.Mahesh and others

For Defendants : M/s.Suresh Kumar

JUDGMENT

Mr.K.Mahesh, the learned counsel appearing for the plaintiff has submitted that the plaintiff is a Private Limited Company, registered under the Companies Act, and is carrying on business of imparting computer education. The plaintiff-Company registered the Besant Technologies as a domain name with GoDaddy.com.LLC and www.besanttech.com and the same were registered on 26.06.2011 and the proof of the same is marked as Ex.P.2. Subsequently, the domain name was renewed in the year 2012 and also web hosting of “Besant Technologies” was made on 16.01.2012. The proof of the same is marked as Ex.P.4.

2. The learned counsel further submitted that, initially, one Rajagopal and Selvamanikandan started a Partnership firm on 18.07.2013 (Ex.P6) in the name and style of “Besant Technologies” and the same was registered as Partnership firm on 19.07.2013 with the Registrar of firms (Ex.P8). They entered into a lease deed on 18.07.2013 (Ex.P7) with the landlord for the premises at Velachery, wherein, they commenced their business operations.

The firm is the owner of the mark “Besant Technologies” which has been using the mark from the date of conceptualizing. Thereby, it is crystal clear that they are prior user of the mark BESANT TECHNOLOGIES & LOGO and proprietors of this trade mark having used it for several years.

3. The learned counsel further submitted that, subsequently, a Company in the name of BDreamz Global Solutions Pvt. Ltd., the plaintiff herein, was incorporated on 12.10.2015 (Ex.P11) under the Companies Act. Pursuant to the incorporation of the Company, a Deed of Assignment, dated 20.03.2016 (Ex.P13) was entered into between the firm and the plaintiff with regard to the use of the mark ‘Besant Technologies’ by the plaintiff. Pursuant to the deed of assignment, plaintiff continues to be the user as its subsequent proprietor till date. The plaintiff have familiarized/marketed the said trade mark very diligently by expending huge advertisement costs resulting in the Company record a good turnover.

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4. Under such circumstances, the third defendant herein, Mr.Sampath Kumar, who is a close relative of the Director Selvamanikandan of the plaintiff

company, had approached plaintiff for becoming a Franchisee at Chennai and at Bangalore. He had evinced interest through exchange of emails on various dates (Ex.P14, P15, and P17). The plaintiff accepted the proposal on good faith and passed on all trade secrets, viz., the trade enquiries received by plaintiff to the 3rd and 4th defendants.

5. It is further submitted that the third defendant and his wife i.e., the fourth defendant started a Company, being the first defendant company at Chennai and commenced operations in Chennai and also at Bangalore by inducting students. The defendants also sent a list of intake of students vide email dated 21.10.2016 (Ex.P14) to the plaintiff. Further, the 3rd and 4th defendants also prepared and sent a format of invoice to be raised through email, dated 25.10.2016 (Ex.P15) to the plaintiff. After exchange of correspondences through emails and personal discussions held between October 2016 and January 2017, a draft Franchise agreement was forwarded to the first defendant through its Director, Sampath Kumar on 25.02.2017 (Ex.P16).

6. It is further submitted that on behalf of the 1st defendant, it was the 3rd and 4th defendants, who were interacting with the plaintiff and there were detailed discussions about the defendants being a Franchisee. On various dates, through emails they have acknowledged the ownership of the plaintiff in the mark “BESANT TECHNOLOGIES & LOGO” and the proprietorship of the mark of the plaintiff and the copyright in the software services, in various communications.

7. It is submitted that, in spite of several reminders, the defendants 3 and 4 did not choose to enter into the franchise agreement and was evading reply. However, after negotiating with the plaintiff for being a franchisee, the defendants 3 and 4 changed their position and stated that, they wanted to have an agency arrangement with the plaintiff and forwarded an agency agreement on 09.03.2017 (Ex.P18). It was made clear that by the plaintiff the plaintiff was not interested in such agreement.

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8. Therefore, the learned counsel submitted that the plaintiff filed an application for registration of the mark “Besant Technologies” before the Trade Mark Authority, Chennai vide an application No.3516839 dated 29.03.2017 (Ex.P20), pursuant to which, the plaintiff received a legal notice from the first defendant dated 16.08.2017 (Ex.P21) threatening with legal action for infringement of trade mark and passing off. However, it is pertinent to point out that the said legal notice was vague, bereft of any material facts. Furthermore, after the issuance of the above said legal notice dated 16.08.2017 without awaiting any reply from the plaintiff, the first defendant had chosen to file an opposition dated 18.08.2017 (Ex.P22) with the Trade Mark Registry against the application dated 29.03.2017 filed by the plaintiff and also filed an application No.3618232 dated 22.08.2017 (Ex.P23) for registration of the very same mark “BESANT TECHNOLOGIES & LOGO” falsely claiming that they are prior user from June, 2016.

9. The learned counsel submitted that the plaintiff caused a detailed legal reply notice dated 26.08.2017 (Ex.P25) denying all the untenable averments of the defendants and made it clear with all facts to substantiate that

the plaintiff is the prior user of the trademark “BESANT TECHNOLOGIES & LOGO”. Under the said circumstance, the defendants 3 and 4 have deliberately formed a new Company in the name and style of Besant Technologies Private Limited. Hence, the plaintiff filed an application before the Registrar of Companies at Chennai on 07.10.2017 (Ex.P28) wherein, the defendants 3 and 4 had filed reply dated 09.11.2017 (Ex.P29) and the Plaintiff filed their rejoinder dated 30.11.2017 (Ex.P30). The said application filed by the plaintiff was rejected by the Registrar of Companies, by an order dated 19.01.2018 (Ex.P32) due to non-registration of the said Trade Mark in the name of “Besant Technologies” which is still pending before the Registrar of Trade Mark at Chennai.

10. The learned counsel submitted that, it is under these circumstances, the plaintiff filed a suit for the illegal adoption of offending mark by the defendants with dishonest intention. The learned counsel submitted that the defendants offending name and mark is clear slavish imitation of the plaintiff's mark, which is virtually identical and that the defendants are infringing the plaintiff's trademark and thereby passing off.

Therefore, the plaintiff has filed the present suit for the relief of permanent injunction restraining the defendants, its men, agents, men acting under them or claiming under them or through them, from in any manner passing off their “Besant Technologies” as that of the plaintiff's by using the offending trademark “Besant Technologies” which is similar and identical to that of the plaintiff's established trademark “Besant Technologies”.

11. It is seen that soon after the admission of the suit, the suit summons were served on the defendants on 23.03.2018. Since none appeared on behalf of the defendants, they were set ex parte by this Court, vide order dated 19.02.2018 and the suit was directed to be placed before the learned Additional Master I for taking ex parte evidence. Before the learned Master, the Director of the plaintiff's Company, by name Mr.Selvamanikandan, was examined as P.W.1. and Exs.P.1 to P.32 were marked.

12. Thus, on perusal of the pleadings and documents and the evidence of P.W.1 and the submissions made by the learned counsel appearing for the plaintiff, this Court is of the view that the plaintiff is the owner of the mark

“Besant Technologies” which has been using the mark from the date of conceptualizing. Further, it is proved by virtue of deed of assignment, dated 20.03.2016, marked as Ex.P.13, that the mark “Besant Technologies” was assigned to the plaintiff. Further the plaintiff marked Exs.P1 to P12 and P14 to P32 and hence, the plaintiff has proved the claim against the defendants. Accordingly, the suit is decreed as prayed for. No costs. Consequently, connected Application is closed.

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Krishnan Ramasamy,J.,
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