

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.09.2019

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.308 of 2019 &

O.A.Nos.503 to 505 of 2019

M/s.Kaleeswari Refinery Private Limited,
Represented by its Manager (Legal),
Mr.A.Saravanan
No.53, Rajasekaran Street,
Opp. Kalyani Hospital, Radhakrishnan Salai,
Mylapore, Chennai – 600 004.

.. Plaintiff

Vs.

M/s.Syn Agro Products,
No.87, Bharadidasan Salai,
Alangudi Taluk, Pudukkottai,
Tamilnadu 622 301.

.. Defendant

Civil Suit filed under Order IV Rule 1 of Original Side Rules read with
Order VII Rule 1 CPC read with Sections 134 & 135 of Trade Marks Act praying
for the following judgment and decree :

i) For a permanent injunction to restrain the defendant, their men, agents,
associate and /or assignees or any person claiming rights from them from
infringing the plaintiff's reputed and well known registered Trade Mark "Deepam"
by using the offending Trade Mark "Maha Deepam" or any mark or word
deceptively similar to the aforesaid Trade Mark of the plaintiff's for any edible oil

marketed by the defendant, their men, agents, associates and/or assignees or any person, claiming rights from the defendant.

ii) For a permanent injunction to restrain the defendant, its men, agents, associates and/or assignees or any person claiming rights from therein from passing-off their inferior product, as that of the plaintiff's "Deepam" Lamp oil by using the offending words "Maha Dheepam" or any other words or mark and offending packing material and pouch deceptively similar to the plaintiff's trade mark "Dheepam" and Trade dress for "Dheepam".

iii) For a permanent injunction to restrain the defendants, their men, agents, associates and/or assignees or any person claiming rights from them from passing -off their inferior "Maha Dheepam" lamp oil as that of the plaintiff's "Dheepam" lamp oil with the offending "Maha Dheepam" label and container bearing the same colour scheme, get up, layout, trade dress, design, shape and configuration as that of the plaintiffs aforesaid "Dheepam" label.

iv) Direct the defendant their men, agents, assignees, dealers and/or retailers, distributor to surrender to the plaintiff all offending "Maha Dheepam", bottle/container/packing materials label, advertising materials hoarding, letter heads office stationary and all other goods containing/bearing offending mark/label "Maha Dheepam" with distinct color scheme, get up or any other mark visually or phonetically similar to the plaintiff's well known trademark "Dheepam" label and bottle/container for destruction by an order of this Court;

v) to pay for the costs of the suit;

For Plaintiff : Mr.Vijayan Subramanian

For defendant : No appearance

J U D G M E N T

The suit has been filed for the following reliefs :

i) For a permanent injunction to restrain the defendant, their men, agents, associate and /or assignees or any person claiming rights from them from infringing the plaintiff's reputed and well known registered Trade Mark "Deepam" by using the offending Trade Mark "Maha Deepam" or any mark or word deceptively similar to the aforesaid Trade Mark of the plaintiff's for any edible oil marketed by the defendant, their men, agents, associates and/or assignees or any person, claiming rights from the defendant.

ii) For a permanent injunction to restrain the defendant, its men, agents, associates and/or assignees or any person claiming rights from therein from passing-off their inferior product, as that of the plaintiff's "Deepam" Lamp oil by using the offending words "Maha Dheepam" or any other words or mark and offending packing material and pouch deceptively similar to the plaintiff's trade mark "Dheepam" and Trade dress for "Dheepam".

iii) For a permanent injunction to restrain the defendants, their men, agents, associates and/or assignees or any person claiming rights from them from passing -off their inferior “Maha Dheepam” lamp oil as that of the plaintiff’s “Dheepam” lamp oil with the offending “Maha Dheepam” label and container bearing the same colour scheme, get up, layout, trade dress, design, shape and configuration as that of the plaintiffs aforesaid “Dheepam” label.

iv) Direct the defendant their men, agents, assignees, dealers and/or retailers, distributor to surrender to the plaintiff all offending “Maha Dheepam”, bottle/container/packing materials label, advertising materials hoarding, letter heads office stationary and all other goods containing/bearing offending mark/label “Maha Dheepam” with distinct color scheme, get up or any other mark visually or phonetically similar to the plaintiff’s well known trademark “Dheepam” label and bottle/container for destruction by an order of this Court;

v) for costs.

It is the case of the plaintiff that the plaintiff is the market leader in various edible oil business and in April, 2009, the plaintiff launched unique lamp oil with the blend of 5 oils namely refined castor Oil, sesame Oil, coconut oil, refined mahua oil and refined Rice Brand Oil. The plaintiff has been marketing the said lamp oil with its reputed brand “Dheepam” and in respect of which the plaintiff has the registration under Trade Marks Act, 1999. The defendant has used the

offending trade mark “Maha Dheepam” and offending label by imitating plaintiff's getup, colour scheme and trade dress for marketing lamp oil with the aforesaid offending works as trade mark/label. The unauthorised usage of the label and packing materials closely resembling the plaintiff's label has been intended to cause confusion in the minds of retails and consumers at large. Hence, the suit.

3. Though notice was served on the defendant and their name printed in the cause list, the has not chosen either to appear in person or through counsel. Therefore, the defendant was set *ex parte* by this Court on 19.07.2019

4. On the side of the plaintiff, P.W.1, the Manager – Legal of the plaintiff company was examined and Exs. P1 to P8 were marked.

S.No.	Date	Description of documents	Exhibit
1.	23.04.2012	Form TM-1 Application No.2320404 for registration of trade mark 'Dheepam' in Class 4 – Work Mark	P-1
2.	07.05.2012	Certificate of Registration of Design No.245127 issued in favour of plaintiff	P-2
3.	11.06.2018	Trademark Registration Certificate of the Mark “Dheepam”	P-3
4.	19.11.2018	Legal Usage Certificate for the mark “Dheepam”	P-4
5.	26.03.2019	Legal notice sent by the plaintiff to defendant	P-5
6.	--	Lable of Defendant's “Maha Dheepam”	P-6
7.	--	Table showing “Dheepam” Lable and “Maha Dheepam”	P-7
8.	06.07.2018	Copy of the Board Resolution passed by the plaintiff	P-8

5. Heard the learned counsel for the plaintiff and perused the records.

6. Ex.P.3 indicate the registration of Trade Mark in the name of the plaintiff. Ex.P.4 is registration certificate in favour of the Plaintiff. Ex.P.7 is the comparison chart showing the plaintiff's name and the defendant, the same indicate that the defendant was using the similar name, feature, design, configuration and art work to that of the plaintiff. The plaintiff are using their trade mark and has gained considerable reputation and goodwill not only in India but also in the international market. The evidence adduced on the side of the plaintiff remain unchallenged. When there is infringement of the registered trade mark by the defendant, the plaintiff is certainly entitled to the reliefs sought for in the plaint.

11. Accordingly, the suit is decreed as prayed for with costs. Consequently, connected applications are closed.

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03.09.2019

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Index : Yes/No
Internet : Yes/No

Speaking/Non-Speaking Order

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N.SATHISH KUMAR, J.

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