

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2019

CORAM:

The Hon'ble Mr.Justice KRISHNAN RAMASAMY

C.S.No. 130 of 2018
and
O.A.Nos.196 & 197 of 2018
and
Application No.1756 of 2018

M/s.R.K.Ganapathi Chettiar,
Represented by its Partner N.Sampath
138, Muthur Road, Kangayam,
Erode - 638 701, Tamil Nadu.

.. Plaintiff

Vs

Haji Najmudeen,
78/2, Sevenwells Street, Sevenwells,
Chennai - 600 001, India.

.. Defendant

Prayer : Plaint Order VII Rule 1 of C.P.C r/w. Order IV Rule 1 and Sections 27, 28, 29, 134 and 135 of the Trade Marks Act, 1999 and Sections 51, 55 and 62 of the Copyright Act, 1957 of the Code of Civil Procedure, praying

a) A permanent injunction restraining the Defendant, all his principal officers, staff, men, agent, servants, successors, assigns in business, representatives and any other person from infringing the trademark by using the artistic work and colour combination of yellow

and dark red as registered by the Plaintiff having Trademark Registration No.463167, or any other word/words/logo/artistic work/design/device that are identical or deceptively similar to the said registered Trademark of the Plaintiff in class 29 in respect of ghee, and thereby restraining the Defendant from claiming any right through or under the Respondent from in any manner infringing the registered trademark of the Plaintiff.

b) A permanent injunction restraining the Defendant, all his principal officers, staff, men, agents, servants, successors, assigns in business, representatives and any other person from passing off his/their goods by using the artistic work and colour combination of yellow and dark red as registered by the Plaintiff having Trademark Registration No.463167, or any other word/words/logo/artistic work/design/device that are identical or deceptively similar to the said Registered Trademark of the Plaintiff in class 29 in respect of ghee, and thereby restraining the Defendant in any manner from passing off.

c) A permanent injunction restraining the Defendant, all his principal officers, staff, men, agents, servants, successors, assigns in business, representatives and any other person from infringing the registered copyright by using the artistic work and colour combination of yellow and dark red as registered by the Plaintiff having Copyright Registration No.A-53066/95, or any other logo/artistic work/design/device that are identical or deceptively similar to the said registered copyright of the Plaintiff, and thereby restraining the Defendant from in any manner infringing the registered copyright of the Plaintiff.

d) That the defendant be ordered and directed to pay to Plaintiff a sum of Rs.5,00,000/- (Rupees Five Lakhs only) by way of damages.

e) A preliminary Decree be passed in favour of the Plaintiff directing the Defendant to render a true and faithful accounts of all profit made by him, using the Plaintiff's said Trademark and Copyrighted work and a final decree be passed in favour of the Plaintiff for the amount of profit thus found to have been made by the Defendant, together with interest, after the Defendant has rendered accounts.

f) That the Defendant be directed to deliver-up to the Plaintiff for destruction, all labels, all other print materials, stickers, signage, visiting cards, letter heads, catalogues, pamphlets, brochures, all other advertising and promotional material, all stationary, and such other material used for infringing and passing off.

g) for the costs of the suit

For Plaintiff : Mr.Ramesh Ganapathy

For Defendant : set exparte

JUDGMENT

The plaintiff is a registered partnership firm having its address at 138, Muthur Road, Kangayam, Erode - 638 701, Tamil Nadu. The plaintiff firm was established in the year 1935 and comprehensively evolved into a leading manufacturer and exporter of quality butter, ghee and diary products in India as well as in Abroad. The plaintiff after submits that the

“RKG” trademark is nothing but their partnership firm name “R.K.Ganapathi Chettiar”. Hence “RKG” is not only the brand name but also their trade name. Further the plaintiff contended that the trademark “RKG” was coined and adopted by the plaintiff on 01.01.1935 and has been using the trademark “RKG” openly, extensively, exclusively and continuously since 01.01.1935 for manufacturing, trading and exporting butter, ghee and dairy products.

2. Further the plaintiff submits that they holds an AGMARK quality certification for its product Ghee trading under the trademark “RKG”. The plaintiff further submits that they have also registered “RKG” under different style, get up and under various classes. The plaintiff also narrated with regard to the particulars of the trademark obtained for the word under different style and get-up in Paragraph No.7. Further he also stated in the Paragraph No.7 of the plaint about the pending registration of the trade mark under various classes not only in India but also outside the country. Therefore, the plaintiff contended that his product is not only popular in India and the same is very popular through out the World. Apart from registering the trade name “RKG” with the Trademark

Registry, the plaintiff also registered the “RKG” and obtained the copyright for its Registration No. A-53066/95. Therefore, the plaintiff submit that the mark “RKG” due to its extensive and exclusive usage garnered enormous amount of Goodwill and reputation among the trade circle and general public. The plaintiff also submit that due to the wide publicity and sales promotional work carried on under the said Trademark, general public associate any product with the mark “RKG” only with plaintiff and no one else. Therefore, plaintiff contended that it has obtained the trademark “RKG” as the secondary meaning in the Ghee trade circle. The plaintiff also narrated annual sales turnover achieved from domestic and export in Paragraph No.13 of the plaint. For the Financial Year 2016-2017, plaintiff have achieved Rs.244.10 crores towards domestic turnover and a sum of Rs.61.57 crores towards export turnover.

3. It is submitted that, when this is so, the Defendant herein is manufacturing and trading/selling similar ghee product as that of the Plaintiff's in Malaysia and in other various market under the trademark “ALIF” by adopting the similar identical trade dress as such of the

plaintiff's in respect of similar goods falling under Class 29, leading to imitation of Plaintiff's unique distinctive mark leading to deceptive similarity, confusion and deception and thus amounts to violation of the plaintiff's prior adopted and registered Trademark "RKG" & Plaintiff's copyright. The Defendant has also copied the packaging style, size, shape of product's pack, device, heading, colour combination, total image and overall appearance of the plaintiff's product bearing the trademark "RKG". Therefore, the adoption and use of the impugned copyright and trade dress by the defendant will amount to passing off and infringement of copyright.

4. It is submitted that, the act of defendant selling same goods in deceptively similar/identical trade mark appearance of the impugned product clearly showcases the ulterior motive and malafide intention on the part of the defendant and their fraudulent motive to encroach the goodwill and reputation of that of the plaintiff and to lead consumers to draw a trade connection between the plaintiff and the defendant. The defendant was and has always been aware of the plaintiff's registered trademark "RKG" while he adopted the impugned trademark and hence,

the adoption and use of the defendant's trademark & trade dress is thus dishonest. Nevertheless, the defendant wants to reap the benefits of the goodwill and reputation generated by the plaintiff in respect of said Trademark & Copyright in particular its logo along with colour combination of yellow & red on the ghee packing.

5. It is submitted that, by the acts of the Defendant, customers and dealers will be deceived into wondering whether the defendant's goods under the impugned mark & trade dress have emanated from plaintiff or have been manufactured and / or marketed by plaintiff or that the defendant is in some way associated with plaintiff. Any adverse publicity or public opinion which might be generated from the defendant's goods is bound to spoil the impeccable reputation and goodwill which plaintiff's have painstakingly created in our trademark.

6. From the facts narrated above. It is evident that the defendant has with a deliberate intention of causing unlawful loss to the plaintiff making unlawful gain unto them, is infringing and also passing off their goods by using the identical deceptive similar trademark & trade dress to that of the plaintiff's said trademark, copyright & trade dress.

7. This Court after the admission of the Suit, the suit summons against the defendant was served on 09.04.2019 and thereafter the defendant was set exparte by this Court, by an order dated 18.06.2019. Thereafter on behalf of the plaintiff PW-1 was examined and Exs. P1 to P21 have been marked.

8. Heard the counsel appearing for the plaintiff. This Court also perused averments in the plaintiff's proof affidavit and also gone through the documents Exs. P1 to P21. On the perusal of these documents, this Court find that the plaintiff is the Proprietor of the trade mark "RKG" and also obtained the registration with the Registrar of Trademark. Further the plaintiff also obtained the copyright registration for trademark "RKG" along with the colour scheme, getup and the design. Now the issue before this Court is whether the defendant is copying the colour scheme, getup etc., and sold it in Malaysia. The plaintiff filed Ex.P2 which is the comparison of plaintiff's and defendant's products and by way of Ex.P9 the plaintiff also marked xerox copy of the invoice for purchasing the infringing product dated 04.04.2017. On the comparison

of the plaintiff and defendant product, it appears the defendant is copying the colour scheme, design and getup of the plaintiff. This is not only amounts to infringement of trademark and trade dress of the plaintiff but also infringement of the copyright of the plaintiff, which was registered with the Copyright Board and obtained certificate for its colour scheme, getup and trade dress. Hence, the plaintiff is entitled for the relief as prayed for.

9. Accordingly, plaintiff is entitled for the relief as prayed for and the suit is decreed as prayed for with cost of Rs.50,000/-. Consequently, connected applications are closed.

09.07.2019

Pns

List of Witnesses and Exhibits on the side of the Plaintiff:-

S.Bhasker (P.W.1)

Exhibits:-

1. Ex.P1 is the Xerox copy of the Trade Mark Registration details dated 23.07.2001 to 08.12.2017.

2. Ex.P2 is the Xerox copy of the image comparison of Plaintiff's and Defendants's product.

3. Ex.P3 is the Xerox copy of the Copyright Registration Certificate dated 11.09.1995.

4. Ex.P4 is the Xerox copy of the Reconstitution Deed of partnership dated 01.04.2016.

5. Ex.P5 is the Xerox copy of the Extract from the Register of Partnership Firm dated 21.07.2016.

6. Ex.P6 is the Xerox copy of the Plaintiff's Trade Mark details in foreign countries dated 01.08.2011 to 07.11.2017.

7. Ex.P7 is the Xerox copy of the Certificate issued by Chartered Accountant of Plaintiff for their product's sales turn over (both domestic and international) dated 31.08.2017.

8. Ex.P8 is the Xerox copy of the Advertisement and Sales Promotion expenses of the Plaintiff's product (from the year 2000 to 2016) dated 07.09.2017.

9. Ex.P9 is the Xerox copy of the Invoice for purchasing the Infringing product dated 04.04.2017.

10. Ex.P10 is the Xerox copy of the VAT Registration Certificate dated 12.01.2017.

11. Ex.P11 is the Xerox copy of the FSSAI Certificate dated 30.03.2015.

12. Ex.P12 is the Xerox copy of the PAN card of the Plaintiff's company dated 26.07.1957.

13. Ex.P13 is the Xerox copy of the Certificate issued by the department of Central Excise dated 08.04.2005.

14.Ex.P14 is the Xerox copy of the Import and Export Certificate issued by Ministry of Commerce dated 18.02.2005.

15. Ex.P15 is the Xerox copy of the Approval to process milk products issued by Export Inspection Agency, Chennai dated 05.04.2016.

16. Ex.P16 is the Xerox copy of the Certificate of approval issued by Export Inspection Council of India for Plaintiff's product dated 28.03.2016.

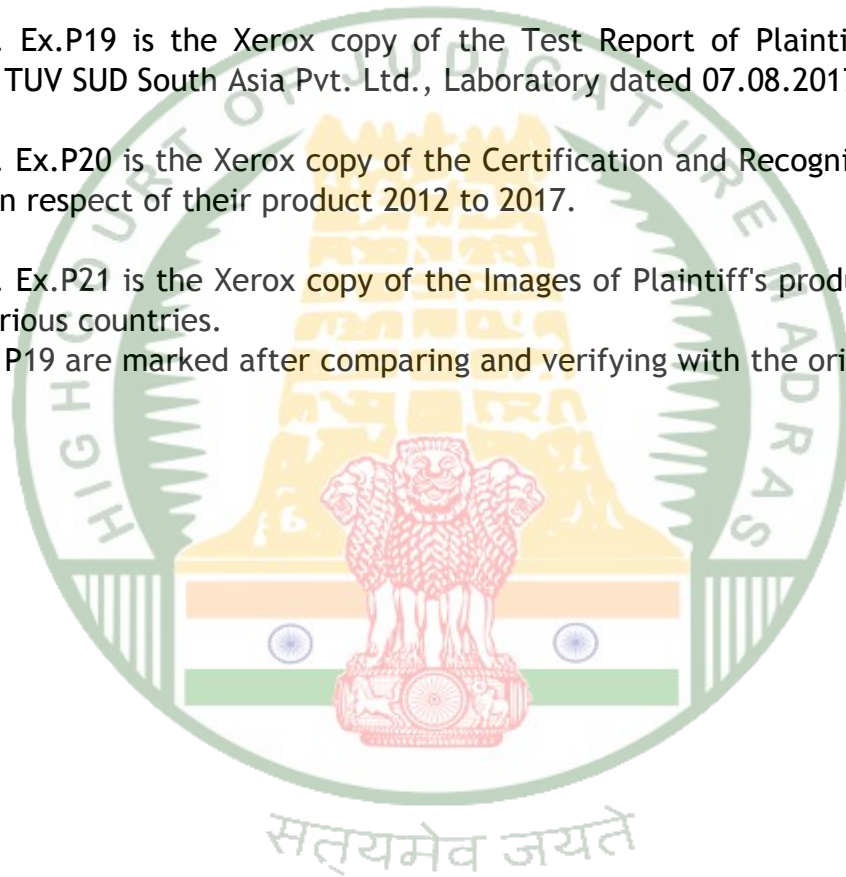
17. Ex.P17 is the Xerox copy of the Export invoice of Plaintiff's product dated 14.07.2017 to 21.08.2017.

18. Ex.P18 is the Xerox copy of the Halal Certificate dated 22.12.2009 to 22.10.2016.

19. Ex.P19 is the Xerox copy of the Test Report of Plaintiff's product issued by TUV SUD South Asia Pvt. Ltd., Laboratory dated 07.08.2017.

20. Ex.P20 is the Xerox copy of the Certification and Recognition for the Plaintiff in respect of their product 2012 to 2017.

21. Ex.P21 is the Xerox copy of the Images of Plaintiff's product kept for sale in various countries.
(Ex.P1 to P19 are marked after comparing and verifying with the originals).



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KRISHNAN RAMASAMY, J.
Pns



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