

C.S.No.226 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.10.2019

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.226 of 2018 &

A.No.3085 of 2019

Tirumala Milk Products Private Limited,
No.12, 1st Floor, 7th Cross Street,
Senthil Nagar, Chennai – 600 099
Represented by its
Manager (Legal), S.Mukundh

... Plaintiff

Vs

1. Thirumalaivasa Milk Products Limited,
No.5, 2nd Street,
Sri Ayyappa Nagar, Kolathur,
Chennai – 600 099.

2. Danda Brahmanandam,
1399, 4th Street, Golden Colony,
Mogappair West, Chennai – 600 050.

3. Danda Brahmanandam Danda Srinivas,
1399, 4th Street, Golden Colony,
Mogappair West, Chennai – 600 050.

4. Harish Milk and Milk Products,
#8, Shop 8/2. Shri Sayi Garden Layout,
T.C. Palya Main Road, Near Anandapura Circle,
Bangalore – 560 016.

... Defendants

Civil Suit filed under Order IV Rule 1 of Original Side Rules of Madras High Court read with Order VII Rule 1 of CPC read with Sections 134 and 135 of Trade Marks Act, 1999 and Section 2 of the Copyright Act, 1957 for the following judgment and decree :

a. Pass and pronounce a decree of permanent injunction against infringement of plaintiff's registered trademark by restraining the defendants or their assigns, successors-in-interest, licensees, franchisees, sister concerns, representatives, servants, distributors, agents, family members, employees, etc. and/or entity acting for or on behalf of them from using plaintiffs' trade mark 'Thirumala'/ 'Thirumala Milk', components thereof, or any other mark(s) deceptively similar thereto singularly or in conjunction with any other words or monogram/logo, as a trade mark, service mark, corporate name, trade name, trading style, domain name, website address, electronic mail identity or in any other manner whatsoever; on or in relation to or any product or dairy business including advertising, business papers, etc.;

b. Pass and pronounce a decree of permanent injunction restraining the defendants or their assigns, successors-in-interest, licensees, franchisees, sister concerns, representatives, servants, distributors, agents, family members, employees, etc. and/or entity acting for or on behalf of them from infringing the artistic copyright of the plaintiff in the old packaging, particularly the device of

round globe, the unique image of Lord Venkateswara in its unique arrangement and layout of the old packaging or any other work substantially similar thereto or in any other manner whatsoever;

c. Pass and pronounce a decree of permanent injunction against the defendants or their assigns, successors-in-interest, licensees, franchisees, sister concerns, representatives, servants, distributors, agents, family members, employees, etc. and/or entity acting for or on behalf of them from passing off their business or milk and dairy products as or for the products of the plaintiff by restraining them from using plaintiff's trade mark 'Thirumala'/ 'Thirumala Milk', impugned branding of any other mark(s) deceptively similar thereto singularly or in conjunction with any other words or monogram/logo, as a trade mark, service mark, corporate name, trade name, trading style, domain name, website address electronic mail identity or in any other manner whatsoever, on or in relation to or any product, service/business including advertising, business papers, etc;

d. Pass and pronounce a decree of permanent injunction restraining the defendants or their assigns, successors-in-interest, licensees, franchisees, sister concerns, representatives, servants, distributors, agents, family members, employees, etc. and/or entity acting for or on behalf of them from passing off the trade dress, get up, color scheme, arrangement and layout of the round globe device, unique image/device of Lord Venkateshwara comprising the Old

packaging or any other trade dress deceptively similar thereto in any manner whatsoever;

e. Pass and pronounce a decree of permanent injunction restraining the defendants or their assigns, successors-in-interest, licensees, franchisees, sister concerns, representatives, servants, distributors, agents, family members, employees, etc. and/or entity acting for or on behalf of them from indulging in acts of unfair competition by use of the impugned Branding or any other mark(s) or any other mark/trade dress deceptively similar thereto, or perpetrating confusion and deception regarding the source of the defendants' products verbally or in written or in any other manner whatsoever;

f. Pass and pronounce a decree directing the defendants and/or their representatives, officers, etc. to deliver up to plaintiff for the purpose of destruction/erasure all infringing materials including but not limited to product packaging consisting of impugned Branding, plaintiff's registered trademark, catalogues, pamphlets, brochures, billboards, stationary, business cards, bill books, vouchers, letterheads, signage, reprographic material, labels or any other material bearing the corporate name 'Thirumalaivasa' and/or any other mark deceptively similar to plaintiff's trademark 'Thirumala' / 'Thirumala Milk' used upon or in relation to manufacturing, marketing, selling, promoting and/or advertising defendants' products or dairy business;

g. Pass a preliminary decree for rendition of account directing defendant No.1 to produce before the Court or any person nominated/designated/appointed by this Court all accounts in general and invoices and sales figures/revenues in particular from the date of infringement/ passing off of the plaintiff's trademark 'Thirumala'/Thirumala Milk' and old packaging of the plaintiff's products sold under said trademark and upon such enquiry to pay such profits earned by the defendants as may be found to be due and payable to the plaintiff on such account being taken;

h. Pass and pronounce a final money decree in favour of plaintiff for payment of damages in the sum of INR 1,00,00,000/- (Rupees One Crore only) or any such higher sum as may be determined/ascertained pursuant to the rendition of accounts.

i. Pass and pronounce an order directing the defendants to pay the plaintiff for costs of the proceedings.

For Plaintiff : Mr.Cyril Amarchand Mangaldas

For defendants : Mr.Rajesh Ramanathan

J U D G M E N T

When the matter was taken up today, the learned counsel for the plaintiff and the defendants submitted that the parties have entered into Joint

Memorandum of Compromise and they have settled the matter as per the Joint Memorandum of Compromise executed by the parties. The learned counsel has also produced Joint Memorandum of Compromise entered between parties. The learned counsel further submitted that the suit may be decreed in terms of the Joint Memorandum of Compromise.

2. In view of the same, this suit is decreed in terms of the Joint Memorandum of Compromise and the Joint Memorandum of Compromise shall form part of the decree. Consequently, the connected application is closed. No cost.

04.10.2019

vrc

Index : Yes/No

Internet : Yes/No

Speaking/Non-Speaking Order

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N.SATHISH KUMAR, J.

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