

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 11.12.2019

Pronounced on: 13.12.2019

Coram::

The Honourable Dr.Justice G.Jayachandran

C.S.No.421 of 2019
& O.A.No.662 of 2019

M/s.British Clean,
A Partnership Firm represented by Samiullah Owais,
Son of Syed Kamil, having Office at No.4, Moores Road,
Buhari Building, Chennai – 600 006. ... Plaintiff

/versus/

1. M/s.Blue Click Automation India,
New No.377, Old No.180, Avvai Shanmugam Road,
Gopalapuram, Chennai – 600 086.
2. Devji Bachu Gandhi,
residing at New No.377, Old No.180, Avvai Shanmugam Road,
Gopalapuram, Chennai – 600 086.
3. Lalji Bachu Gandhi,
residing at New No.377, Old No.180,
Avvai Shanmugam Road,
Gopalapuram, Chennai – 600 086. ... Defendants

Prayer:-

Plaint filed under Order IV Rule 1 of Original Side Rules read with Sections 2(1)(c) XVII Read with 1st proviso of Section of Commercial Courts, Commercial Appellate Court, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (Act 4 of 2016)

read with Sections 28, 29, 134, 135 of the Trade Marks Act 1999 and Sections 51, 55, 62 of the Copyrights Act 1957 & Order VII Rule 1 of C.P.C.

a). A permanent injunction restraining the defendants, by itself, its partners, men, servants, agents, distributors, stockiest, representatives or any one claiming through or under them from in any manner infringing the plaintiff's registered trademarks "*British Fragrances*" under No.172719 in Class 3 and other registered trademarks by using a deceptively similar trademark "*British Fragrances*" or any other trademark deceptively similar to the plaintiff's registered trademark or in any other manner whatsoever;

b). A permanent injunction restraining the defendants, by itself, its partners, men, servants, agents, distributors, stockiest, representatives or any one claiming through or under them from in any manner committing acts of copyright infringement by using, in the course of trade, labels/artistic works which are a substantial reproduction of plaintiff's registered copyright in colour scheme, get up and layout for their "*British Fragrances*" for any cleaning products or in any other manner whatsoever';

c). A permanent injunction restraining the defendants, by itself, its partners, men, servants, agents, distributors, stockiest, representatives or any one claiming through or under them from in any manner passing off and/or enabling others to pass off the Defendant's products under the trademark "*British Fragrances*" as and for the

plaintiffs' product by manufacturing, selling or offering to sell, distributing, displaying, printing, stocking, using, advertising their products with a trademark and/or label or artistic work that is identical in colour scheme, get up and layout with that of the plaintiff's "British Fragrances" trademark or artistic work or in any other manner whatsoever;

d). the defendants be ordered to surrender to plaintiffs for destruction of all products, labels, cartons, dyes, blocks, moulds, screen prints, packing materials and other materials bearing the trademark "British Fragrances" label or any marks deceptively similar to plaintiffs' trademarks and artistic work "British Fragrances" label.

e). A preliminary decree be passed in favour of the Plaintiff's directing the defendants to render account of profits made by use of trademark and copyright in the artistic work "British Fragrances" label and a final decree be passed in favour of the Plaintiff's for the amount of profits thus found to have been made by the Defendants after the latter have rendered accounts;

f). for costs of the suit and pass order.

For Plaintiff : Mr.C.Umashankar

For Defendants : Exparte

J U D G M E N T

The brief facts narrated in the plaint:-

The plaintiff is a partnership firm having its registered office at Chennai. The plaintiff firm is dealing in manufacturing of cleaning products in various categories under the name and style of "*British Fragrances*" and also supplying to various customers and renowned Hotels in and around Chennai as well as all over the India. The plaintiff have number of regular customers and had established name and good will among the customers. In the year 2005, one of the partner of the plaintiff firm by name Mr.M.Mohamed Basheer started the business in the manufacturing Fragrances products under the style of "*British Fragrances*". The said Mohamed Basheer applied for registration of Trademark and Tradename "*British Fragrances*" on 16.02.2009. After that, he developed the said business and set up Fragrances Globe Chemicals which was manufacturing air freshener liquids. Later, with other partners, the firm British Clean was established. On 10.06.2015, the said Mr.Mohamed Basheer sold his concern "*British Fragrances*" to "*British Clean*". Thus, the brand name, good will and trade mark of "*British Fragrances*" were transferred to "*British Clean*" (plaintiff herein).

2. The 1st defendant/Blue Click Automation India managed by the defendants 2 and 3 herein were purchasing the "*British Fragrances*" products, from the plaintiff since June 2015. After June 2016, the plaintiff stopped supplying the products to the defendants. While so, on 13.04.2018 one of the customers by name Mr.Sharath of M/s.Shree Akshara Bhavan, Patheon Road, Egmore, contacted the plaintiff over phone and informed to the plaintiff that, he is using the product of the plaintiff for quite some time which was being supplied by the 1st Defendant/Blue Click Automation India and several complaints that the standard of the goods is not up to the mark received. The said Mr.Sharath of M/s Shree Akshara Bhavan further informed the plaintiff that, the 2nd and 3rd defendants are blaming the manufactures viz., the plaintiff. The plaintiff sent his marketing manger to M/s.Shree Akshra Bhavan to verify. It was found that the defendants are supplying products in the name of "*British Clean*" and the 5 litres plastic can of cleaning powder supplied by the defendants under the name of "*British Fragrances*" was found to be a spurious product not manufactured or supplied by the plaintiff.

3. The plaintiff trademark is being misused by the defendants.

In the label which was pasted in the backside of plastic can container, the following address "manufactured by British Fragrances" under branch R&d No.4/1, EK Guru Street, Periamet, Chennai – 600 003 and it was also printed as www.britishfragrances.com on the container.

4. The plaintiff contends that the defendants have intentionally used the plaintiff's predecessor's address of the plaintiff in the label to misused the cheat the customers and general public as if the product which they were supplied is the product of the plaintiff's.

5. The Plaintiff has reputed customers like Apollo, Fortis Malr, MIOT, Global Health City, SRM etc. If the defendants supply spurious product by infringing the market of the plaintiff, it will hamper and malign the goodwill of the plaintiff. On investigation, it was found that the defendants are illegally manufacturing the cleaning products and marketing the same, carrying the plaintiff's registered trademark. Hence, Police complaint against the defendants was lodged on 19.07.2018 before the Royapettah Police Station, Chennai – 600 014 and First Information Report has been registered against the defendants for

offences under Section 103-A of Trademarks Act read with 420 of I.P.C. The defendants were arrested and offending materials used for infringing trademark of the plaintiff were seized from the godown of the defendants.

6. The Learned Counsel for the plaintiff has further stated that, the action of the defendants infringing the trademark of the plaintiff and artistic work. They passing off their inferior products in the name of plaintiff's company. It has caused loss of reputation and goodwill. Hence, sought for the following reliefs.

a). *A permanent injunction restraining the defendants, by itself, its partners, men, servants, agents, distributors, stockiest, representatives or any one claiming through or under them from in any manner infringing the plaintiff's registered trademarks "British Fragrances" under No.172719 in Class 3 and other registered trademarks by using a deceptively similar trademark "British Fragrances" or any other trademark deceptively similar to the plaintiff's registered trademark or in any other manner whatsoever;*

b). *A permanent injunction restraining the defendants, by itself, its partners, men, servants, agents, distributors, stockiest, representatives or any one claiming through or under them from in any manner committing acts of copyright infringement by using, in the course of trade, labels/artistic works which are a substantial*

reproduction of plaintiff's registered copyright in colour scheme, get up and layout for their "British Fragrances" for any cleaning products or in any other manner whatsoever';

c). A permanent injunction restraining the defendants, by itself, its partners, men, servants, agents, distributors, stockiest, representatives or any one claiming through or under them from in any manner passing off and/or enabling others to pass off the Defendant's products under the trademark "British Fragrances" as and for the plaintiffs' product by manufacturing, selling or offering to sell, distributing, displaying, printing, stocking, using, advertising their products with a trademark and/or label or artistic work that is identical in colour scheme, get up and layout with that of the plaintiff's "British Fragrances" trademark or artistic work or in any other manner whatsoever;

d). the defendants be ordered to surrender to plaintiffs for destruction of all products, labels, cartons, dyes, blocks, moulds, screen prints, packing materials and other materials bearing the trademark "British Fragrances" label or any marks deceptively similar to plaintiffs' trademarks and artistic work "British Fragrances" label.

e). A preliminary decree be passed in favour of the Plaintiff's directing the defendants to render account of profits made by use of trademark and copyright in the artistic work "British Fragrances" label and a final decree be passed in favour of the Plaintiff's for the amount of profits thus found to have been made by the Defendants after the latter have rendered accounts;

f). for costs of the suit and

g). pass such further or other reliefs as this Hon'ble Court may deem fit and necessary in the circumstances of the case and thereby under justice.

7. Notice send to the defendants returned unserved with an endorsement 'vacated'. Further, substitute service through paper publication in 'Tamil Daily' was ordered and same was effected.

8. On 18.09.2019, this Court, set the defendants *exparte* and directed the Master-II to record the evidence. Accordingly, one by name Samiulla Owais is examined as P.W.1 and marked 23 Exhibits. The plaintiff's proof affidavit of P.W.1 and exhibits were marked in the course of Trial perused.

9. The following documents proved the plaintiff's ownership over the trade mark 'British Fragrances' and 'British Clean.'

S.No.	Exhibits	Description of documents
1.	Ex.P.3	Notarized copy of Registration of British Fragrances, dated 10.01.2007.
2.	Ex.P.7	Notarized copy of the Registration of British Clean dated 02.09.2014.
3.	Ex.P.9	Notarized copy of Sale of Brand Name and Trade Mark of British Fragrances to British Clean dated 10.06.2015.
4.	Ex.P.17	Original FIR dated 19.07.2018.

10. Apart from these documents, the other documents

indicates that the plaintiff is in the business of manufacturing and marketing cleaning products under the "British Fragrances". The defendants have infringed the trademark descriptively by selling the inferior products using the Trademark of the plaintiff/British Clean.

11. Since it is proved that, the defendants are engaged in infringing the plaintiff's trademarks and passing off their products as that of the product of the plaintiff/British Clean, the suit deserve to be allowed.

12. In the result, the Suit is decreed as prayed for. With costs. Consequently, the connected application is closed.

13.12.2019

Index :Yes/No
Internet :Yes/No
Speaking Order/Non-speaking order

bsm

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List of Witness examined on the side of the Plaintiff:-

1.Mr.Samiullah Owais – P.W.1

List of Witness examined on the side of the Defendants :-

Nil

List of the Exhibits marked on the side of the Plaintiff:-

Sl.Nos.	Exhibits	Description of documents
1.	Ex.P.1	Notarized copy of list of invoices given by British clean to Hotels.
2.	Ex.P.2	Notarized copy of list of invoices given by British clean to Hotels.
3.	Ex.P.3	Notarized copy of Registration of British Fragrances dated 10.01.2007.
4.	Ex.P.4	Notarized copy of rental Agreement of British Fragrances dated 06.04.2005.
5.	Ex.P.5	Web copy of Application for Trademark for the name "Name British Fragrances" dated 05.03.2009
6.	Ex.P.6	Notarized copy of lease agreement of EK Guru Street address (Globe Chemicals) dated 01.07.2011.
7.	Ex.P.7	Notarized copy of certificate of Registration of British Clean dated 02.09.2014.
8.	Ex.P.8	Notarized copy of Partnership deed of British Clean dated 02.05.2014.
9.	Ex.P.9	Notarized copy of Sale of Brand name and Trade Mark of British Fragrances to British Clean dated 10.06.2015.
10.	Ex.P.10	Web Copy of payment follow up E-mail sent by the British clean to Click dated 19.07.2016.
11.	Ex.P.11	Web Copy of E-mail from Blue Click asking to stop supply of material and to collect the payment dated 19.07.2016.
12.	Ex.P.12	Original Invocie given to Shree Akshara Bhavan dated 26.09.2017.
13.	Ex.P.13	Original invoice given to Shree Akshara Bhavan dated 10.11.2017.
14.	Ex.P.14	Original invoice given to Shree Akshara Bhavan dated 28.02.2018

15	Ex.P.15	Notarized copy of the letter from Shree Akshara Bhavan dated 16.04.2018.
16.	Ex.P.16	Copy of Complaint letter to the Deputy Commissioner of Police.
17.	Ex.P.17	Original FIR dated 19.07.2018
18.	Ex.P.18	Certified Copy of Bail order in M.P.No.4228 of 2018, dated 02.01.2019.
19.	Ex.P.19.	Web Copy of Application for Trademark in the word mark category for the name "British Fragrances" dated 18.08.2018.
20.	Ex.P.20	Web Copy of Application for Trademark in the device mark category for the Logo British Fragrances, dated 18.08.2018.
21.	Ex.P.21	Original Test Report dated 04.02.2019
22	Ex.P.22	Original British Clean Brochure Old (May 2014 to January 2019)
23.	Ex.P.23	Original British Clean Brochure – New with rebranding to fight duplicate products (January 2019 onwards).

List of the Exhibits marked on the side of the Defendants:-

Nil

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Dr.G.Jayachandran,J.

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Pre-delivery judgment in
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