

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.09.2019

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.668 of 2014 &

O.A.Nos.826 to 828 of 2014 & A.Nos.6452 of 2014

M/s.Hutsun Agro Product Limited,
1/20-A, Rajiv Gandhi Salai (OMR),
Karapakkam, Chennai – 600 097
and also carrying on its business at
O.d No.AD-83/New No.AD13,
Anna Nagar, Opp.IOB Towers Branch,
Chennai – 600 040.

.. Plaintiff

Vs.

M/s.TVS Refineries,
No.120, Pudur High Road,
Woraiyur, Tiruchirapalli – 620 003
No.570/2, Kovai Road,
Vellimalai, Olalayam Post – 638 111.

.. Defendant

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

a) For a permanent injunction restraining the defendant, their men, agents, servants or any one claiming through them from in any manner infringing the plaintiff's registered Trade Mark "Arokya" by using the offending Trade Mark "Arokya" or any other

Trade Mark or device which is identical or deceptively similar to or a colourable imitation to that of the plaintiff's registered trade mark and Trade Mark Label "Arokya".

b) For a permanent injunction restraining the defendant, their men, agents, servants, or any one claiming through them from in any manner passing off the goods of the defendant as that of the plaintiff's by using the offending trade mark 'Arokya' label together with traders colour scheme, getup, layout of the plaintiff's trade mark 'Arokya' or any other Trade Mark Label / device which is similar / deceptively similar to that of the plaintiff's registered trade mark 'Arokya'.

c) For a permanent injunction restraining the defendant, their men, agents, servants or any one claiming through them from in any manner infringing the plaintiff's copyright over the artistic work in the trade mark label 'Arokya' by using the offending trade mark label 'Arokya' or any other trade mark label which is identical or colourable reproduction of the plaintiff's artistic work in the trade mark label Arokya.

d) Directing the defendants to surrender to the plaintiff the entire stocks, bags with the infringing trademark label "Arokya" and unused infringing Trade Mark label together with blocks and dies for destruction.

3) Directing the defendant to render a true and faithful accounts of the profits earned by them through the sale of their products bearing the infringing label which is similar or deceptively similar to the plaintiff's Trade Mark and copyrighted label "Arokya" and directing the payment of such profits to the plaintiff.

f) Directing the defendant to pay to the plaintiff the cost of the suit.

For Plaintiff : Mr.Aashish Jain Lunia

For defendant : Mr.Abdul Rahman
for M/s.Nathen & Associates

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.

2. Despite several opportunities given to the defendant, they have not cross examined P.W.1. Hence, the defendant has been set exparte.

3. Heard the learned counsel for the plaintiff.

4. The case of the plaintiff is that the plaintiff is doing business in dairy products from the year 1993 under the name 'Hatsun Dairy Pvt. Ltd. and thereafter the name was changed to 'Hatsun Agro Products Ltd. in the year 1998. The plaintiff has vast product range and each of the plaintiff's product is marketed under distinctive trade mark, 'Arun' in respect of ice creams, 'Arokya' for milk and dairy products. They have obtained registration in respect of the same and holds various quality standard certifications including ISO. They have gained considerable reputation and goodwill for their products under their distinctive trade mark 'Arokya'. The defendant started using the trade mark of the plaintiff 'Arokya' and the defendant has no manner of any right, title or interest whatsoever to adopt identical and similar trademark of the plaintiff. Therefore, the plaintiff issued legal notice to the defendant on 26.07.2010. If the defendant continue to use the trade mark label of the plaintiff, the same will mislead the public and the plaintiff would be put to huge loss and hardship. Hence, the suit.

5. On the side of the plaintiff, P.W.1, the Officer – Legal of the plaintiff company was examined and Exs. P1 to P24 were marked.

<i>S.No.</i>	<i>Date</i>	<i>Description of documents</i>	<i>Exhibit</i>
1.	05.08.2011	Authorisation letter from the plaintiff company to represent the plaintiff in the suit	P-1
2.	04.03.1986	Copy of Incorporation Certificate of the Company	P-2
3.	2008	Copy of Certificate of Quality Management system ISO 90001:2008	P-3
4.	2005	Copy of Food Safety Systems Certificate 22000:2005	P-4

S.No.	Date	Description of documents	Exhibit
5.	2004	Copy of Certificate of Environmental Management Standard ISO 14001	P-5
6.	2005	Copy of Certificate of Food Safety Management ISO 22000	P-6
7.	2008	Copy of Certificate of Quality ISO 9001:2008	P-7
8.	2005	Copy of Quality Certificate ISO 22000	P-8
9.	Nil	Copy of Certificate by BIS	P-9
10.	11.04.2012	Copy of Certificate by Food Safety and Standard Authority of India	P-10
11.	26.02.2014	Copy of Chartered Accountant's Certificate for Sales Turnover and Advertisement Expenses	P-11
12.	13.02.2006	Copy of Certificate of registration of the Trade Mark "Arokya" in class 29 under No.1421082	P-12
13.	13.02.2006	Copy of Certificate of Registration of the Trade Mark "Arokya" in Class 29 under No.1421080	P-13
14.	13.02.2006	Copy of Certificate of Registration of the Trade Mark "Arokya" in Class 29 under No.1421081	P-14
15.	25.11.2005	Copy of Certificate of Registration of the Trademark "Arokya" Logo n Class 29 under No.1402211	P-15
16.	25.11.2005	Copy of Certificate of Registration of the Trademark "Arokya" Logo n Class 29 under No.1402205	P-16
17.	25.11.2005	Copy of Certificate of Registration of the Trademark "Arokya" Logo n Class 29 under No.1402206	P-17
18.	Nil	Copy of list of Distribution Channels of the Plaintiff's product 'Arokya'	P-18
19.	Nil	Copy of advertisements in various Medias	P-19
20.	Nil	Copy of Plaintiff	P-20
21.	Nil	Copy of Defendant Pouch	P-21
22.	11.03.2014	Copy of Paper publication in Mookambika Market Reviews dated 05.06.2014 at Page No.2	P-22
23.	26.07.2010	Copy of Legal notice	P-23

<i>S.No.</i>	<i>Date</i>	<i>Description of documents</i>	<i>Exhibit</i>
24.	14.10.2006	Copy of Trademark Registration certificate of defendant	P-24

6. A perusal of Ex.P.8 and Ex.P.9 clearly indicate that the plaintiff had obtained quality certificate from the concerned authorities. Ex.P.12, Ex.P.13, Ex.P.14, Ex.P.15, Ex.P.16, Ex.P.17 are true copies of the certificate of registration Trademark 'Arokya' logo of the plaintiff. All these facts clearly indicate that the plaintiff is the owner of the Trademark 'Arokya'. The plaintiff through their trade mark has gained considerable reputation and goodwill among the public. 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.

7. Accordingly, the suit is decreed as prayed for with costs with regard to prayers 'a' to 'd' and with regard to prayer 'e' the suit is dismissed. Consequently, the connected applications are closed.

सत्यमेव जयते

04.09.2019

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Index : Yes/No

Internet : Yes/No

Speaking/Non-Speaking Order

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