

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.11.2019

Coram

The Honourable Mr.Justice N.SATHISH KUMAR

C.S.No.786 of 2014

Hastun Agro Product Ltd.,
Having registered office at,
No.1/20-A, Rajiv Gandhi Salai (OMR)
Karapakkam, Chennai – 600 097
and also carrying on its business at
Old No.AD-83/New No.AD13,
Anna Nagar, Opp. IOB Towers Branch,
Chennai – 600 040.

...Plaintiff

Versus

Arokiya Sweets,
No.599, Velachery Main Road,
East Tambaram,
Selaiyur, Chennai.

...Defendant

This Civil Suit is filed under Order VII Rule 1 of C.P.C read with Order IV Rule 1 of High Court O.S Rules and Sections 134 and 135 of the Trade Marks Act, 1999 prayed for (a) granting permanent injunction restraining the defendant above named by

itself, its servants or agents or anyone claiming through it from in any manner infringing the plaintiff's registered trademark by using the trademark 'AROKIYA SWEETS' or any other mark, which is in anyway identical or similar or a colourable imitation of the plaintiff's trademark 'AROKIYA';

(b) granting permanent injunction restraining the defendant by itself, its servants or agents or anyone claiming through it from in any manner infringing the copyright vested with the plaintiff in respect of the trademark labels annexed hereto as Annexure-I;

(c) granting permanent injunction restraining the defendant by itself, its servants or anyone claiming through it from in any manner passing off its products bearing the offending trademark 'AROKIYA SWEETS' or any other Trade Mark Label or device which is similar or deceptively similar to that of the plaintiff's registered trade mark 'AROKIYA' either by manufacturing or selling or offending for sale or in any way advertising the same;

(d) directing the defendant to surrender to the plaintiff entire goods with the offending labels, stock of unused offending labels together with the blocks and dyes, name boards, sign-boards etc., for destruction;

(e) directing the defendant to render a faithful account of the profits earned by it through the sale of the offending products bearing the offending trademark and direct 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 Lunja
For Defendant : set ex parte
vide order dated 26.09.2019

J U D G M E N T

The suit has been filed for the following reliefs:

(a) granting permanent injunction restraining the defendant above named by itself, its servants or agents or anyone claiming through it from in any manner infringing the plaintiff's registered trademark by using the trademark 'AROKIYA SWEETS' or any other mark, which is in anyway identical or similar or a colourable imitation of the plaintiff's trademark 'AROKIYA';

(b) granting permanent injunction restraining the defendant by itself, its servants or agents or anyone claiming through it from in any manner infringing the copyright vested with the plaintiff in respect of the trademark labels annexed hereto as Annexure-I;

(c) granting permanent injunction restraining the defendant by itself, its servants or anyone claiming through it from in any

manner passing off its products bearing the offending trademark 'AROKIYA SWEETS' or any other Trade Mark Label or device which is similar or deceptively similar to that of the plaintiff's registered trade mark 'AROKIYA' either by manufacturing or selling or offending for sale or in any way advertising the same;

(d) directing the defendant to surrender to the plaintiff entire goods with the offending labels, stock of unused offending labels together with the blocks and dyes, name boards, sign-boards etc., for destruction;

(e) directing the defendant to render a faithful account of the profits earned by it through the sale of the offending products bearing the offending trademark and direct payment of such profits to the plaintiff;

(f) directing the defendant to pay to the plaintiff the cost of the suit.

2. The case of the plaintiff is that the plaintiff is the Proprietor of the trademark 'AROKYA'. The plaintiff's trademark 'AROKYA' has gained goodwill and reputation amongst the public. The plaintiff

has been established in its field of business with a turnover running to crores within a span of nearly two decades. The plaintiff has not only established its business in Tamilnadu but also it has expanded its huge network of marketing in the whole south India. The plaintiff has also obtained various registration certificates for the trademark 'AROKYA' in the appropriate classes under the Trademarks Act, 1999. While being so, during the third week of August 2014, the plaintiff came to know about the defendant's adoption and use of the trademark 'AROKIYA SWEETS' and subsequently, the defendant continue to carry on the illegal act. Hence the suit.

3. Despite paper publication effected there was no representation on behalf of the defendant. Hence, the defendant was set ex parte.

4. On the side of the plaintiff, the Authorised representative of the plaintiff Company examined as P.W.1 and the following documents were marked as Exs.P1 to P22.

<i>Exhibit</i>	<i>Date</i>	<i>Description of documents</i>
Ex-P1	05.08.2011	The photocopy of the Authorisation letter from plaintiff Company to represent the plaintiff in the suit
Ex-P2	04.03.1986	The photo copy of the Incorporation certificate of the Company
Ex-P3	2005	The photocopy of the Quality Certificate ISO 22000
Ex-P4	2008	The photocopy of the certificate of quantity ISO 9001
Ex-P5	2005	The photocopy of the Food Safety Management ISO 220
Ex-P6	2004	The photocopy of the certificate of Management Standard ISO 14001
Ex-P7	2005	The photocopy of the Foods Safety Systems Certificate 22000;2005
Ex-P8	2008	The photocopy of the Quality Management System ISO 9001;2008
Ex-P9	-	The photocopy of the Certificate by BIS
Ex-P10	11.04.2012	The photocopy of the Certificate by Food Safety and Standard Authority of India
Ex-P11	-	The photocopy of the advertisements in various Medias
Ex-P12	26.02.2014	The photocopy of the Chartered Accountant's Certificate for sales turnover and advertisement expenses.
Ex-P13	-	The photocopy of list of distribution channels of the plaintiff's product

<i>Exhibit</i>	<i>Date</i>	<i>Description of documents</i>
		“Arokya”
Ex-P14	13.02.2006	The photocopy of the Certificate of Registration of the Trademark “Arokya” in class 29 under No.1421082
Ex-P15	13.02.2006	The photocopy of the Certificate of Registration of the Trademark “Arokya” in class 29 under No.1421080
Ex-16	13.02.2006	The photocopy of the Certificate of Registration of the Trademark “Arokya” in class 29 under No.1421081
Ex-17	25.11.2005	The photocopy of the Certificate of Registration of the Trademark “Arokya” in class 29 under No.1402205
Ex-18	25.11.2005	The photocopy of the Certificate of Registration of the Trademark “Arokya” in Tamil in class 32 under No.1402211.
Ex-19	25.11.2005	The photocopy of the Certificate of Registration of the Trademark “Arokya” in Tamil in class 32 under No.1402206.
Ex-20	-	The photocopy of the Pouches
Ex-21	-	Company photos
Ex-22	19.08.2014	The photocopy of the defendant company bill.

5. P.W.1 in his evidence has spoken about the nature of business and reputation gained by the plaintiff. Exs.P1 to P9 proves that the plaintiff has obtained the certificate from the various authorities to run their business. Ex.P11, advertisement in

various channels proves the nature of list of distribution channel of the plaintiff product 'AROKYA'. Exs.P14 to P19 are the registration certificates which proves the registration of plaintiff's trademark 'AROKYA' and their logo. Ex.P22 is the bill of the defendant Company filed by the plaintiff to prove that the defendant is also marketing their product under the trade name 'AROKIYA SWEETS' which is not only identical but also visually and phonetically similar to that of the plaintiff trademark 'AROKYA'. Evidence of P.W.1 and documents adduced remain unchallenged and the documents clearly proves the infringement.

6. From the above documents, the plaintiff has proved his claim. Accordingly, the suit is decreed as prayed for.

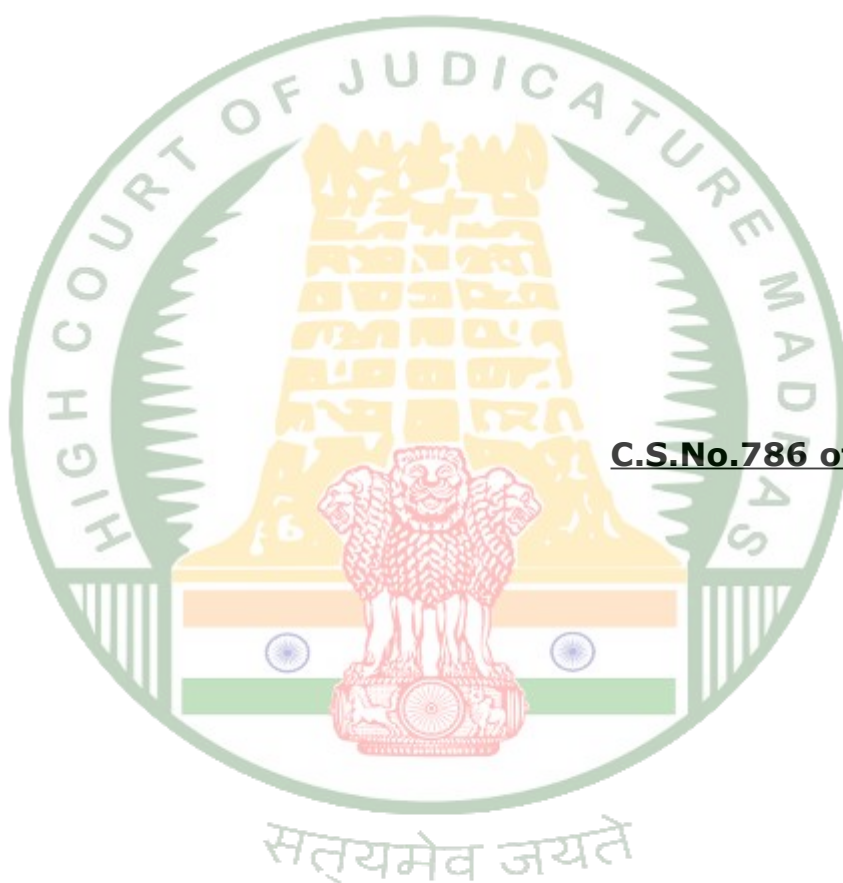
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