

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2019

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.S.No.835 of 2014

M/s.Syed Ibramsha Cottage Industries,
No.68, Thomas Colony,
Near SS Colony Police Station,
Madurai – 625 010.

Represented by its Partned A.Salauddin

... Plaintiff

Vs.

1.M/s.Jayanthi Agencies,
No.9/1, Lane No.2,
Longly Road,
Shevapet,
Salem – 636 002
Tamil Nadu

Represented by Proprietor R.Jayanthi

2.M/s.Abbhani Traders,
Near M.P.Public School,
Mahavir Conj,
Pipilya Mandi District,
Mandsaur – 458 001
Madhya Pradesh.

... Defendants

Plaint filed under Order VII Rule 1 C.P.C. read with Order IV
Rule 1 of the High Court Original Side Rules praying for:

(a) A perpetual injunction restraining the
defendants by themselves or their men, partners,
proprietors, stockiest, dealers, servants, agents,

franchisees, successors in interest, licensees, assignees, representatives or any of them from in any manner infringing the plaintiff's registered trademark label, trade dress identical colour scheme, artistic work, layout, get up and lettering style in the "ANIL BRAND" label by use of the same or any identical colour scheme, artistic work, trade dress, layout, get up and lettering style in a deceptively similar label "GOLD WINNER" or otherwise or by use of identical or deceptively similar trading style and/or artistic work or in any other manner whatsoever;

(b) A perpetual injunction restraining the defendants by themselves or their men, partners, proprietors, stockiest, dealers, servants, agents, franchisees, successors in interest, licensees, assignees, representatives or any of them from in any manner infringing the plaintiff's copyright over the artistic work, identical colour scheme, layout, get up and lettering style, trade dress in the label "ANIL BRAND" by use of the same or any mark deceptively similar to that of the plaintiff's artistic work or by use of identical or deceptively similar trading style and/or artistic work in any other manner whatsoever;

(c) The defendants be ordered to surrender to the plaintiff for destruction all name boards, packing materials, printer bills, cartons, sachets, labels and other materials bearing the trademark "GOLD WINNER" along with artwork which is identical with and/or deceptively similar to that of the plaintiff's registered trademark

label "ANIL BRAND";

(d) The defendants be ordered to prepare and submit an account of profits made by them by the unlawful use of the trademark label of the plaintiff and there after to pass a final decree upon ascertaining the accounts, in favour of the plaintiff and against the defendants;

(e) For the costs of the suit; and

(f) Grant such other relief or reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Plaintiff : M/s.K.Rajasekaran

For defendants : Set ex-parte
vide order dated 11.07.2019

JUDGMENT

The suit have been filed by the plaintiff for the relief of perpetual injunction and such other reliefs more fully described in the prayer portion of this judgment.

2. Learned counsel submits that the suit has been instituted against the defendants for the reliefs of infringement of trademark and copyright of the plaintiff's mark "ANIL BRAND" and also sought relief of surrender of infringed goods and accounts and

profits made by the defendants through the unlawful use of plaintiff's trademark and copyright.

3. Learned counsel further submits that the defendant had adopted the word "GOLD WINNER" as their trademark which is entirely similar to the plaintiff's registered trademark of "ANIL BRAND" bearing 1173696 under Clause 16. The adoption of the plaintiff's trademark namely trade dress, label, color scheme identical to the art work and layout are similar to the plaintiff's trademark which shows that defendant's malafide intention to enrich unlawfully by adapting the plaintiff's trademark "ANIL BRAND".

4. It is further submitted that originally the plaintiff predecessors adopted the trademark "ANIL BRAND" on 20.03.2000 with characteristic, artistic work with unique color combination and design and subsequently on various dates the plaintiff firm applied for trademark "ANIL BRAND" with trademark registry and got obtained registration and the registration is still existing and in subsistence. The copyright with regard to the "ANIL BRAND" label has also been registered with the Registrar of copyright bearing No.A-109429/2014.

5. Learned counsel further submitted that the proprietor of the first defendant Mrs.Jayanthi who is the wife of the earlier imitated and pirated J.Rajendra Kumar. It would show that the defendants are habitual offenders of imitating the other registered trademarks in particular complete reproduction of trade dress. Because of the defendants continuous unlawful act they have unjustly enriched the reputation of the plaintiff which the plaintiff built for over decades.

6. Learned counsel for the plaintiff has also submitted that the plaintiff has taken enormous efforts to promote their trademark "ANIL BRAND" in respect of slate, pencils for more than a decade the reputation accrued and the goodwill ensured with the plaintiff over the trademark "ANIL BRAND" is of a high magnitude. In the following table of sales turnover for the period of 2001 to 2014:

SL.No.	Year	Sales Turnover (Rs.)
1	2000-2001	5955325.85
2	2001-2002	8223166.95
3	2002-2003	8828239.75
4	2003-2004	9522771.30
5	2004-2005	10635227.90
6	2005-2006	10873301.40
7	2006-2007	8931746.80

SL.No.	Year	Sales Turnover (Rs.)
8	2007-2008	10871732.45
9	2008-2009	10395070.50
10	2009-2010	9249570.40
11	2010-2011	2359005.25
12	2011-2012	1524433.75
13	2012-2013	3477276.00
14	2013-2014	8237562.96
	Total	109084431.30

7. It is further submitted that the defendants have been surreptitiously selling his goods. They are adopting the entire artistic combination of color scheme and trade dress that amount to infringement of plaintiff's right over its registered trademark and copyright of "ANIL BRAND". With no other option, the plaintiff has approached this Court.

8. After the admission of the suit, the suit summons was served on the defendants on 12.02.2015. In spite of the service of the suit summons, the defendant failed to appear before this Court. Therefore, the defendants are set ex-parte vide order dated 11.07.2019 and the suit was directed to be placed before the learned Additional Master for recording ex-parte evidence. Before the learned Additional Master, on behalf of the plaintiff one

Mr.A.Salaudeen, was examined as P.W.1 and Exs.P1 to P23 were marked.

9. It has already been set out supra that as many as 23 exhibits, namely Exs.P1 to P23 have been marked and the details of the 23 exhibits are as follows:

S.No.	Exhibits	Description of Documents
1	P1	The photocopy of trademark application under No.1173696 Class 16 dated 10.02.2003.
2	P2	The true copy (attested photocopy) of advertisement of trademark in trademark Journal No.9999-5 dated 14.11.2003. (marked after comparing and verifying with the original).
3	P3	The true copy (attested photocopy) certificate of registration of trademark ANIL BRAND under No.1173696 in Class 16 dated 19.03.2009. (marked after comparing and verifying with the original).
4	P4	The photocopy of legal notice to M/s.Gurudev Agencies, Salem.
5	P5	The true copy (attested photocopy) of reply notice dated 28.12.2009 received from M/s.Gurudev Agencies, Salem. (marked after comparing and verifying with the original).
6	P6	The true copy (attested photocopy) of letter dated 28.12.2008 received from M/s.Gurudev Agencies, Salem. (marked after comparing and verifying with the original).
7	P7	The true copy (attested photocopy) of letter dated 02.01.2010 received from M/s.Gurudev Agencies, Salem. (marked after comparing and verifying with the original).
8	P8	The true copy (attested photocopy) of Deed of Partnership dated 15.02.2010. (marked after comparing and verifying with the

S.No.	Exhibits	Description of Documents
		original).
9	P9	The photocopy of deed of assignment dated 23.03.2010.
10	P10	The photocopy of application on Form TM-24 to record plaintiff as subsequent proprietor and status of Registered Trademark No.1173696 dated 15.05.2010.
11	P11	The photocopy of legal notice dated 28.10.2013 from the plaintiff to the 1 st defendant.
12	P12	The photocopy of reply notice dated 13.11.2013 from the 1 st defendant.
13	P13	The photocopy of legal notice dated 17.03.2014 from the plaintiff to the 2 nd defendant.
14	P14	The photocopy of status from website of India Post showing that the article has been delivered to the 2 nd defendant dated 22.03.2014.
15	P15	The true copy of certificate dated 26.03.2014 of Registration of copyright under number A-109420/2014.
16	P16	The true copy (attested photocopy) of Chartered Accountant's certificate dated 15.04.2014. (marked after comparing and verifying with the original).
17	P17	The photocopy of order of the Registrar of Trademarks allowing Form TM-24 dated 23.04.2014.
18	P18	The photocopy of Trademark Application Nos.2590228, 2603096, 2609563 in class 16 filed by the 1 st defendant dated 02.09.2014.
19	P19	The true copy (attested photocopy) of visiting card of M/s.Gurudev Agencies. (marked after comparing and verifying with the original).
20	P20	The original photograph showing name boards of the 1 st defendant and M/s.Gurudev Agencies.
21	P21	The original carton carrying plaintiff's trademark.
22	P22	The original carton carrying defendant's trademark.

S.No.	Exhibits	Description of Documents
23	P23	The photocopies of invoices dated 06.06.2014, 09.07.2014 and 31.07.2014 of the 1 st defendant.

10. Heard the learned counsel for the plaintiff and also gone through the averments in the plaint and the proof affidavit and also perused the Ex.P.1 to P.23.

11. On a perusal of the documents, this Court found that the certificate of registration of trademark of the plaintiff namely "ANIL BRAND" got registered under trademark Registry, which is marked as Ex.P3. Further, the plaintiff also filed their photo copy of the name board and the same is marked as Ex.P.21 and the defendants photo copy of the name board as Ex.P.22. On perusal of Exs.P.21 and P.22, it is seen that the defendant is not only copying the trademark of the plaintiff 'ANIL BRAND' but also copying the artistic work, identical colour scheme, layout, get up and lettering style and trade dress. Therefore, this Court find that the defendant's copying the plaintiff's trademark 'ANIL BRAND' will amount to infringement of the trademark, as stated in Section 29 of the Trademarks Act. Accordingly, the plaintiff proved the claim.

Therefore, the plaintiff is entitled to the decree as prayed for.

12. Learned counsel for plaintiff requests this Commercial Division to consider imposing compensatory costs/exemplary costs on defendant in the light of conduct of the defendant which has been referred to supra. Reference to Section 35-A 'The Code of Civil Procedure, 1908' ('C.P.C.' for brevity) as amended by 'The Commercial Courts Act, 2015' ('said Act' for brevity) was also made. Section 35-A provides for compensatory costs in respect of false or vexatious defences. In the considered view of this Commercial Division will qualify as a vexatious defence (within the meaning of Section 35-A of amended CPC as amended by said Act) as it is a vexatious manner of defending a suit. Be that as it may, in the light of the trajectory and in the light of the defendant's approach to this suit, this Commercial Division is convinced that it is appropriate to impose compensatory costs of Rs.50,000/- (Rupees Fifty Thousand only) on the defendants.

13. Plaintiff will obviously be entitled to costs as the plaintiff has incurred substantial expenditure in carrying this suit to its logical end.

14. Suit is decreed with costs and compensatory costs as set out supra. Consequently, connected applications are closed.

16.08.2019

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KRISHNAN RAMASAMY,J.

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