

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.S.No.550 of 2019

Hatsun Agro Product Ltd.,
Having registered office at
No.1/20-A, Rajiv Gandhi Salai (OMR)
Karapakkam, Chennai - 600097.

And also carrying on its business at -

Old No.AD-83/New No.AD13,
Anna Nagar, Opp.: IOB Towers Branch,
Chennai - 600040.

Represented by its Authorized Signatory

... Plaintiff

Vs.

A.Z.Arogya Milk,
Proprietor - Mr.Nasirahmad K.Jagirdar,
Ayush Petrol Pump,
Parik Parci Adda,
Near Gunnapur Road,
Vijayapur - 586101,
Karnataka.

... Defendant

Plaint under Order VII Rule 1 CPC read with Order IV Rule 1 of
High Court O.S. Rules and Sections 134 and 135 of the Trademarks Act,
1999 and Section 7 of the Commercial Courts Act, 2015 praying as follows :-

(a) For Permanent Injunction restraining the defendant by itself, its
agents, servants, distributors or any one claiming through it from using in

any manner whatsoever upon and in relation to their business the "AROKYA" trademark by exposing for sale or using them or copying/reproducing or causing reproduction of the same in any packaging or literature or any colourable imitation or substantial reproduction thereof in any manner whatsoever so as to infringing or causing infringement of the Plaintiff's trademark as described in the Schedule to the Plaint.

(b) for permanent injunction restraining the defendant by itself, its agents, servants, distributors or any one claiming through it from using in any manner whatsoever upon and in relation to their business the 'AROKYA' trade marks, artwork, colour schemes and trade dress and/or deceptive variations thereof so as to passing off or enable others to indulge in the act of passing off its goods or business as that of the plaintiff's or in some way convey a connection with the plaintiff as described in the Schedule to the Plaint.

(c) directing the defendant to surrender to the plaintiff the entire products with the offending labels, stocks with offending labels together with the blocks and dies, name boards, sign boards etc. for destruction.

(d) directing the defendant to render true and faithful accounts of the profits earned by them through the sale of the offending milk products bearing the offending trademark label and directing payment of such profits to the plaintiff.

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

For Plaintiff : Mr.Aashish Jain Lunia
and Mr.Prashant Alai for
M/s. Surana & Surana

For Defendant : Set exparte

JUDGMENT

The plaintiff is the registered proprietor of the trademark "AROKYA". The suit is filed alleging that the defendant with intention to deceit the public and cause damage to the reputation of the plaintiff, indulged in infringement of the trademark and passing off by imitating the trademark of the plaintiff "AROKYA" with identical name "AZ AROGYA".

2. According to the plaintiff, they had obtained registration for their trademark from the Registrar of Trademarks as under :-

S.NO.	TRADEMARK	CLASS	NUMBER	STATUS	TYPE OF MARK
1.	AROKYA FRESH CREAMY MILK	29	669001	Registered	Device
2.	AROKYA (label)	29	1402205	Registered	Word
3.	AROKYA (Tamil)	29	1402212	Advertised	Device
4.	AROKYA Milk (Malayalam)	29	1421080	Registered	Word
5.	AROKYA Milk (Telugu)	29	1421081	Registered	Word
6.	AROKYA Milk	29	1421082	Registered	Word
7.	AROKYA	29	2469516	Registered	Word

8.	AROKYA	29	2574529	Registered	Device
9.	AROKYA MILK	29	2791526	Registered	Device
10.	AROKYA MILK	29	2791527	Registered	Device
11.	AROKYA MILK	29	2791528	Registered	Device
12.	AROKYA MILK	29	2791529	Registered	Device
13.	AROKYA	29	2871351	Registered	Device
14.	AROKYA CURD	29	3989206	Pending	Device
15.	AROKYA CURD	29	3989207	Pending	Device
16.	AROKYA CURD	29	3989208	Pending	Device
17.	AROKYA CURD	29	3989209	Registered	Device
18.	AROKYA DOUBLE TONED MILK	29	4026601	Pending	Device
19.	AROKYA TONED MILK	29	4026602	Pending	Device
20.	AROKYA STANDARDISED MILK	29	4026603	Pending	Device
21.	AROKYA FULL CREAM MILK	29	4026604	Pending	Device
22.	AROKYA	30	2467714	Registered	Word
23.	AROKYA	30	2574530	Pending	Device
24.	AROKYA	30	2871352	Pending	Device
25.	AROKYA	31	2467715	Registered	Word
26.	AROKYA	31	2574531	Registered	Device
27.	AROKYA	31	2871353	Registered	Device
28.	AROKYA	32	1402206	Registered	Word
29.	AROKYA	32	1402211	Registered	Word
30.	AROKYA	32	2467716	Registered	Word
31.	AROKYA	32	2574532	Registered	Device
32.	AROKYA	32	2871354	Registered	Device

3. Whereas, the defendant has damaged the goodwill of the plaintiff by adopting the trade mark "AZ AROGYA" which is identical and deceptively similar to the trademark of the plaintiff "AROKYA". Hence, sought for the following relief :-

(a) For Permanent Injunction restraining the defendant by itself, its agents, servants, distributors or any one claiming through it from using in any manner whatsoever upon and in relation to their business the "AROKYA" trademark by exposing for sale or using them or copying/reproducing or causing reproduction of the same in any packaging or literature or any colourable imitation or substantial reproduction thereof in any manner whatsoever so as to infringing or causing infringement of the Plaintiff's trademark as described in the Schedule to the Plaint.

(b) for permanent injunction restraining the defendant by itself, its agents, servants, distributors or any one claiming through it from using in any manner whatsoever upon and in relation to their business the 'AROKYA' trade marks, artwork, colour schemes and trade dress and/or deceptive variations thereof so as to passing off or enable others

to indulge in the act of passing off its goods or business as that of the plaintiff's or in some way convey a connection with the plaintiff as described in the Schedule to the Plaint.

(c) directing the defendant to surrender to the plaintiff the entire products with the offending labels, stocks with offending labels together with the blocks and dies, name boards, sign boards etc. for destruction.

(d) directing the defendant to render true and faithful accounts of the profits earned by them through the sale of the offending milk products bearing the offending trademark label and directing payment of such profits to the plaintiff.

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

4. Based on the AOS filed by the learned counsel, this Court has set the defendant *exparte* on 11.11.2019. Thereafter, *exparte* evidence has been recorded by the learned Master. Before the Master, PW1 was examined on the side of the plaintiff and 58 documents were marked.

5. A perusal of the plaint averment and the proof affidavit along with exhibits marked, this Court, finds that the plaintiff Company is the owner of the registered trademark "AROKYA" for the products which fall under Class 29, 30, 31 and 32. Registration certificates are marked as Ex.P24 to P55 proves the said fact. The photocopy of the defendant's product package is marked as Ex.P57. The plaintiff has issued a legal notice which is marked as Ex.P58 to the defendant to cease and desist from infringing the trademark. Despite the notice, the defendant neither replied nor stopped marking its product as of the product of the plaintiff.

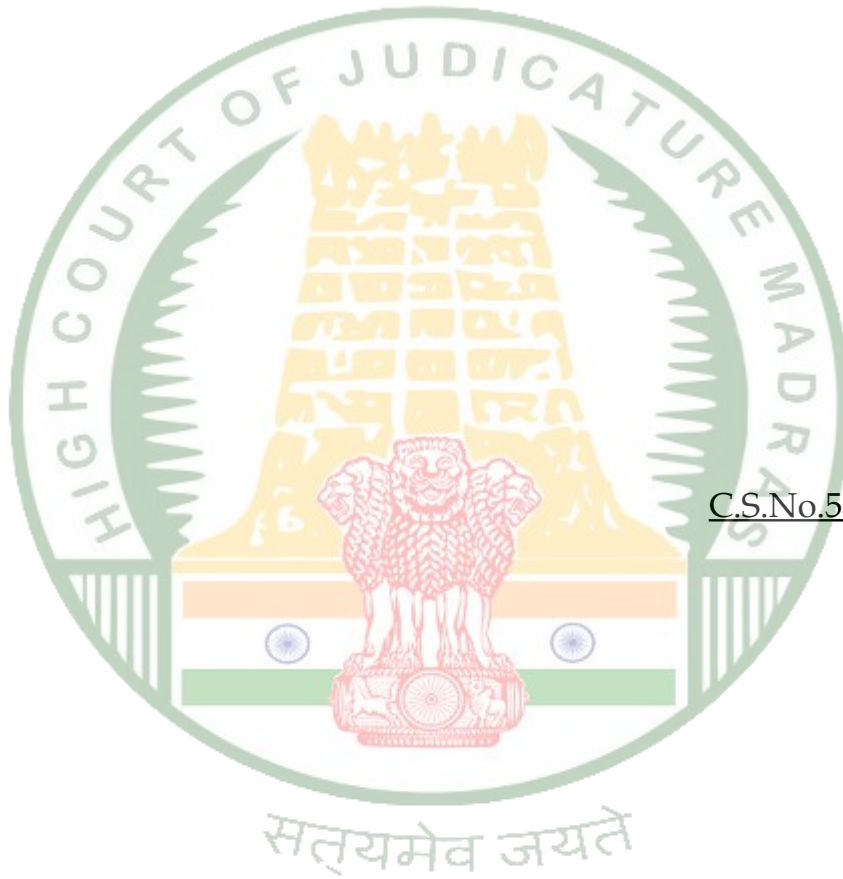
6. On comparing the registered trademark of the plaintiff with that of the mark found on the product of the defendant, this Court, finds that it is deceptively similar and identical also. The public will be misled by the colour and scheme of the defendant's product and it is easily get passed off as it is the product of the plaintiff. Therefore, this Court, finds that the suit has to be allowed as prayed for. Accordingly, the suit is allowed. With costs.

11.12.2019

Index : Yes / No
Internet : Yes / No
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Dr.G.JAYACHANDRAN,J.

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