

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2019

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.S.No.912 of 2017

- 1.A.D.Padmasingh Isaac
Trading as Aachi Spices and Foods,
Old No.4, New No.181/1,
6th Avenue, Thangam Colony,
Anna Nagar,
Chennai – 600 040.
 - 2.M/s.Aachi Masala Foods (P) Ltd.,
Old No.4, New No.181/1,
6th Avenue, Thangam Colony,
Anna Nagar,
Chennai – 600 040
Represented by its Director,
Ashwin Pandian.
 - 3.M/s.Heavenly Foods Pvt. Ltd.,
Plot No.1926, 34th Street,
I Block, Ishwarya Colony,
Anna Nagar West,
Chennai – 600 040.
Represented by its Director,
Shiny Ashwin.
- ... Plaintiffs

Vs.

Aachi Fast Food,
Mohd. Ali,
Proprietor
Shop No.24/B, 200 Feet Road,
15th Cross Street, Senthil Nagar,
Kolathur, Chennai – 600 099.

... Defendant

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) granting a permanent injunction, restraining the defendant, by himself, his servants, agents, distributors, or anyone claiming through him from manufacturing, selling, advertising and offering for sale using the name Aachi Fast Food or any other similar Trademark name or similar sounding expression in any media and use the same in name board, invoices, letter heads and visiting cards or by using any other trademark/name which is in any way visually or deceptively or phonetically similar to the 1st plaintiff's trade mark/name AACHI/AACHI CHETINAD RESTAURANT/AACHI KITCHEN and use the same in pouches, packets or use the mark in invoices, letters heads and visiting cards or part of their Hotel/Restaurant name any other trade literature or Menu card by using any other trademark which is in any way visually, or phonetically similar to the plaintiffs' registered trademark Nos.838786, 1116254, 1479159, 1715718 or in any manner infringing the 1st plaintiff's registered trademark referred herein.

(b) granting a permanent injunction restraining the defendant by itself, its agents or servants or anyone claiming through or under him any business marketing, selling advertising using in trade literature, menu cards, invoices, name boards, website, internet advertisements

the mark/name Aachi Fast Food in relation to the Restaurant or with respect to or any other food preparation or on any any other business the impugned trademark/name which is in any manner deceptively or phonetically confusingly similar to the plaintiff's Trademark/name AACHI/AACHI CHETINAD RESTAURANT/AACHI KITCHEN or in any other manner pass off their hotel, business or goods as and for that of the plaintiff's.

(c) directing the defendant to surrender to the plaintiff's all the packing material, cartons, advertisement materials and hoardings, letter-heads, visiting cards, office stationery and all other materials containing/bearing the name Aachi Fast Food or other identical trade mark used in the pouches and packets bearing the word AACHI/AACHI HOTEL/AACHI CHETINAD RESTAURANT/AACHI KITCHEN.

(d) directing the defendant to render an account of profits made by them by the use of the impugned trademark Aachi Fast Food on the service referred and decree the suit for the profits found to have been made by the defendants, after the defendants have rendered accounts:

(e) directing the defendant to pay to the plaintiffs the costs to the suit, and

(f) pass such further or other orders, as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Plaintiffs : Ms.C.Daniel & Gladys Daniel

For Defendant : Set ex-parte
vide order dated 02.07.2019

J U D G M E N T

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

2. The first plaintiff is the proprietor of the trademark Aachi, he continues to use the trademark Aachi through his licensees Aachi Spices and Foods Private Limited and the second plaintiff. The third plaintiff is the licensee of the first plaintiff's registered trademarks Aachi Kitchen and Aachi Chettinad Restaurant.

3. Learned counsel submits that the plaintiffs have also diversified their business activities and started manufacturing and marketing various kinds of consumer goods, within a short span of 17 years. The plaintiffs have now become one of the leading manufacturers of packages masalas, because of the efforts undertaken by the plaintiffs in promoting and advertising their products

through various mediums, their market share in these products have risen considerably. The plaintiffs have put in enormous effort, hard work and money towards advertising their products Aachi in all forms of media such as radio, newspapers, hoardings, magazines and television networks. The plaintiffs have also received many prestigious awards for the quality of products and customer service.

4. The trademark Aachi was first applied for and registered in the name of first plaintiff trading as Naveen Products. Since then 202 applications have been filed for the trademark Aachi in respect of various goods that have been manufactured and marketed by the Aachi group of companies. At present, there are 127 registrations of the trademark Aachi in various word, label and stylized marks.

5. In order to distinguish its various items of products from others adopted the trademark Aachi for all its products and services. The expression Aachi has become very popular because of its continuous and substantial usage of this mark over a decade. This trademark has become very popular and is a very valuable intellectual property of the first plaintiff. No one can use the said expression Aachi for spices and masalas and other goods or services

for which the first plaintiff is using the mark. The mark is unique and distinctive of the plaintiffs goods and no one has used the trademark Aachi for masala preparations and its allied preparations prior to the first plaintiff.

6. The subject matter of this proceeding is in respect of 'Aachi' word mark. This word mark as a whole has been used by the plaintiffs since 1995 and has become a well known trademark of the plaintiffs. The plaintiffs have honestly adopted the mark and have put in enormous amount of hard work and labour and invested huge sums of money, for advertisement and sales promotional expenses. Because of the efforts made by the plaintiffs, the trade and the public, associate the mark with the plaintiffs and none else. The trademark of the plaintiffs as used is registered.

7. The plaintiffs have been using this mark Aachi with respect to almost all the masala preparations from the commencement of its business. As a result of the efforts undertaken by the plaintiffs its turnover has been increasing, substantially every year.

8. The growth of Aachi could not be contained in the Indian territory. The products spread to several countries around the world. The first plaintiff was keen to secure statutory protection of the mark in other jurisdictions. With this goal in sight as on date 27 applications have been filed and 21 registrations have been secured in UAE, Australia, France, Singapore, USA, UK, Nigeria, Malaysia, Bahrain, New Zealand, Switzerland, Saudi Arabia and China.

9. On acquiring enormous goodwill and reputation, the first plaintiff with a view to protecting his intellectual property, particularly with respect to his trademark applied for the registration of this word mark Aachi on 29.01.1999, in Class 30. The registrar of trademarks in consideration of the substantial use and reputation granted registration for the trademark "Aachi" under Registration No.838786. Since then the first plaintiff has become an exclusive owner of this word mark 'Aachi'.

10. The first plaintiff obtained Registration of the trademark Aachi Chettinad Restaurant under No.1116254 on 03.07.2002 and also obtained registration for the mark Aachi Kitchen under No.1715718 and also obtained registration of the mark Aachi in

tamil vide Registration No.1479159 and the registration is valid and subsisting.

11. Learned counsel also submits that huge sums of monies are being spent every financial year by the plaintiffs towards advertisement expenditure and learned counsel for plaintiff submits that a tabular column giving the turnover as well as the advertisement expenditure (financial year wise) has been set out in Paragraph 7 of the plaint. Tabular column in paragraph 7 of the plaint reads as follows:

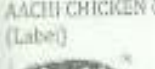
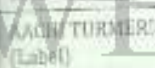
<i>S.No.</i>	<i>YEAR</i>	<i>TURNOVER (in Rs)</i>	<i>ADVERTISING EXPENDITURE (in Rs)</i>
1.	1995-1996	3,96,420.00	9,893.00
2.	1996-1997	4,37,568.00	4,691.00
3.	1997-1998	5,10,755.00	352.00
4.	1998-1999	14,68,159.00	15,820.00
5.	1999-2000	20,27,457.00	16,775.00
6.	2000-2001	52,03,979.00	57,676.00
7.	2001-2002	64,12,491.00	2,13,512.00
8.	2002-2003	1,69,44,334.00	6,62,290.00
9.	2003-2004	9,00,05,884.00	19,63,479.00
10.	2004-2005	24,46,95,540.00	1,13,28,450.00
11.	2005-2006	79,47,99,230.00	4,63,96,880.00
12.	2006-2007	1,36,54,50,781.00	5,68,45,817.00
13.	2007-2008	2,07,85,55,508.00	7,87,06,261.00

<i>S.No.</i>	<i>YEAR</i>	<i>TURNOVER (in Rs)</i>	<i>ADVERTISING EXPENDITURE (in Rs)</i>
14.	2008-2009	4,14,12,42,106.00	9,40,86,979.00
15.	2009-2010	4,73,98,26,852.00	10,76,86,530.00
16.	2010-2011	6,40,40,50,524.00	11,63,97,497.00
17.	2011-2012	7,59,35,14,309.00	12,42,15,050.00
18.	2012-2013	8,82,91,64,390.00	13,72,06,476.00
19.	2013-2014	11,27,06,92,876.00	19,57,87,446.00
20.	2014-2015	13,20,61,70,537.00	21,00,17,044.00

12. The first plaintiff is using the trademark Aachi Kitchen with respect to restaurant business through his licensee the third plaintiff herein. The first plaintiff has sole proprietary right over this mark, and any unauthorized use of the same mark or similar trademark would amount to infringement. Apart from the above mentioned application, plaintiffs on the date of filing the plaint, had as many as 127 registrations, enumeration of which has been set out in paragraph 10 in a Tabular Column and the same reads as follows:

TRADEMARK	APPLN. NO.	DATE	CLASS	STATUS
AACHI (Word)	838786	29-01-1999	30	Registered
AACHI (Word)	922593	04-05-2000	03	Registered
AACHI (Word)	922594	04-05-2000	29	Registered

4.	AACHI (Word)	922595	04-05-2000	32	Registered
5.	AACHI (Word)	922596	04-05-2000	03	Registered
6.	AACHI (Word)	976559	12-12-2000	30	Registered
7.	AACHI APPALAMS (Label) 	1318494	01-11-2004	30	Registered
8.	AACHI MASALA KULAMBU CHILLY POWDER (Label) 	1318495	01-11-2004	30	Registered
9.	AACHI READY-TO EAT SEER FISH KULAMBU (Label) Neai Meen Kulambu in Tamil	1340324	23-02-2005	29	Registered
10.	AACHI PRAWN KULAMBU (Label) (Erra Kulambu)	1340325	23-02-2005	24	Registered
11.	AACHI MASALA SAMBAR POWDER (Label)	1373735	05-08-2005	3-	Registered
12.	AACHI (Word)	1458527	01-06-2006	42	Registered
13.	AACHI (Label) in TAMIL & ENGLISH	1479159	17-08-2006	30	Registered
14.	AACHI (Word)	1555564	03-05-2007	29	Registered
15.	AACHI GINGELLY OIL (Label) 	1557660	11-05-2007	29	Registered
16.	AACHI (Word)	1564085	31-05-2007	05	Registered
17.	AACHI (Word)	1567065	11-06-2007	31	Registered
18.	AACHI (Word per)	1567066	11-06-2007	27	Registered
19.	AACHI (Word)	1567067	11-06-2007	34	Registered
20.	AACHI (Word)	1567068	11-06-2007	21	Registered
21.	AACHI Badam Drink (Label)	1581011	18-07-2007	29	Registered

					
22.		1595536	28-08-2007	21	Registered
23.		1595537	28-08-2007	30	Registered
24.		1595538	28-08-2007	09	Registered
25.		1595539	28-08-2007	29	Registered
26.		1595540	28-08-2007	03	Registered
27.		1595541	28-08-2007	42	Registered
28.		1595542	28-08-2007	32	Registered
29.		1595543	28-08-2007	34	Registered
30.		1595544	28-08-2007	31	Registered
31.		1595545	28-08-2007	27	Registered
32.		1604348	21-09-2007	30	Registered
33.					
34.		1702840	24-06-2008	39	Registered
35.					

34.	AACHI CHEMBA PUTTU POWDER (Label) 	1702848	24-06-2008	30	Registered
35.	AACHI KITCHEN (Word)	1715718	30-07-2008	42	Registered
36.	AACHI Chicken Masala (Label) 	1720889	13-08-2008	30	Registered
37.	AACHI RASAM POWDER (Label) 	1720890	13-08-2008	30	Registered
38.	AACHI MASALA CHICKEN 65 (Label) 	1720892	13-08-2008	30	Registered
39.	AACHI Turmeric Powder (Label) 	1731901	15-09-2008	30	Registered
40.		1731902	15-09-2008	05	Registered
41.	AACHI (Label) (Oval Shape) 	1731903	15-09-2008	03	Registered
42.	AACHI ASAFOETIDA (Label) 	1731904	15-09-2008	30	Registered

43.	AACHI DIARICE (Label)	1731905	15-09-2008	30	Registered
					
44.	AACHI SAMBAR POWDER (Label)	1731906	15-09-2008	30	Registered
					
45.	AACHI CHICKEN MASALA (Label)	1731907	15-09-2008	30	Registered
					
46.		1731911	15-09-2008	42	Registered
47.		1731912	15-09-2008	34	Registered
48.		1731913	15-09-2008	32	Registered
49.		1731914	15-09-2008	31	Registered
50.		1731915	15-09-2008	30	Registered
51.		1731916	15-09-2008	29	Registered
52.		1731917	15-09-2008	27	Registered
53.		1731918	15-09-2008	05	Registered

54.		1731919	15-09-2008	03	registered
55.		1731920	15-09-2008	21	Registered
56.		1731921	15-09-2008	27	Registered
57.		1731937	15-09-2008	32	Registered
58.		1731938	15-09-2008	31	Registered
59.		1731939	15-09-2008	30	Registered
60.		1731941	15-09-2008	27	Registered
61.	AACHI MASALA MUTTON MASALA (Label) 	1731953	15-09-2008	30	Registered
62.	AACHI MASALA RASAM POWDER (Label) 	1731954	15-09-2008	30	Registered
63.	AACHI IDLY DHOSAI MAAVU (Word) (In Tamil)	1843529	24-07-2009	30	Registered
64.	AACHI TOMATO SOUP (Label)	1895723	15-12-2009	29	Registered
65.	AACHI BADAM DRINK (Label)	1895724	15-12-2009	29	Registered
66.	AACHI - MULTI GRAIN IDLY Break Fast Mix (Label)	2965621	18-05-2015	30	Registered

					
57.	AACHI - MULTI GRAIN DOSA - Break Fast (Label)	2965622	18-05-2015	30	Registered
	 	2965624	18-05-2015	41	Registered
	AACHI FRIED CELEKRN MIX (Label) 	2965625	18-05-2015	30	Registered
	AACHI JALEBI MIX (Label) 	2965626	18-05-2015	30	Registered
	AACHI DIET IDLY (Label)	2965627	18-05-2015	30	Registered

					
72.	AACHI Chudam Kabab / 65 Masala (label)	3352398	02-09-2016	30	Registered
					
73.	AACHI Lemon Rice Powder (label)	3352399	02-09-2016	30	Registered
					
74.	AACHI Gobi Manchurian Masala (label)	3352400	02-09-2016	30	Registered
					
75.	AACHI BIRYANI MASALA (label)	3352401	02-09-2016	30	Registered
					
76.	AACHI FISH CURRY MASALA (label)	3352402	02-09-2016	30	Registered
					
77.	AACHI FISH FRY MASALA (label)	3352403	02-09-2016	30	Registered
					
78.	AACHI IDLY CURRY POWDER	3352405	02-09-2016	30	Registered

	(Label)					
79	PRISPOO Kara Bhooschi - AACHI (Label)		3352406	02-09-2016	30	Registered
80	PRISPOO Ribbon Pakoda - AACHI (Label)		3352407	02-09-2016	30	Registered
81	PRISPOO Mischu - AACHI (Label)		3352408	02-09-2016	30	Registered
82	PRISPOO Gampudi - AACHI (Label)		3352409	02-09-2016	30	Registered
83	PRISPOO Crum & Onion - AACHI (Label)		3352410	02-09-2016	30	Registered
84	PRISPOO Kera Sey - AACHI (Label)		3352411	02-09-2016	30	Registered
85	PRISPOO Crunchy Corn Sticks		3352412	02-09-2016	30	Registered

	AACHI (Label) 				
86.	FRISPOO Crunchy Corn Sticks - AACHI (Label) 	3352413	01-09-2016	30	Registered
87.		3370938	26-09-2016	01	Registered
88.		3370945	26-09-2016	10	Registered
89.		3370946	26-09-2016	11	Registered
90.		3370947	26-09-2016	12	Registered
91.		3370948	26-09-2016	13	Registered
92.		3370949	26-09-2016	14	Registered
93.		3370950	26-09-2016	15	Registered
94.		3370952	26-09-2016	17	Registered
95.		3370968	26-09-2016	39	Registered
96.		3370969	26-09-2016	40	Registered
97.		3370971	26-09-2016	42	Registered

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98.	Aachi	3370972	26-09-2016	43	Registered
99.	Aachi	3370973	26-09-2016	44	Registered
100.	Aachi	3370974	26-09-2016	45	Registered
101.	AACHI (Word)	3370975	26-09-2016	01	Registered
102.	AACHI (Word)	3370976	26-09-2016	02	Registered
103.	AACHI (Word)	3370977	26-09-2016	03	Registered
104.	AACHI (Word)	3370978	26-09-2016	04	Registered
105.	AACHI (Word)	3370979	26-09-2016	05	Registered
106.	AACHI (Word)	3370980	26-09-2016	06	Registered
107.	AACHI (Word)	3370981	26-09-2016	07	Registered
108.	AACHI (Word)	3370982	26-09-2016	08	Registered
109.	AACHI (Word)	3370983	26-09-2016	09	Registered
110.	AACHI (Word)	3370984	26-09-2016	10	Registered
111.	AACHI (Word)	3370985	26-09-2016	11	Registered
112.	AACHI (Word)	3370986	26-09-2016	12	Registered
113.	AACHI (Word)	3370987	26-09-2016	13	Registered
114.	AACHI (Word)	3370988	26-09-2016	14	Registered
115.	AACHI (Word)	3370989	26-09-2016	15	Registered
116.	AACHI (Word)	3370990	26-09-2016	16	Registered
117.	AACHI (Word)	3370991	26-09-2016	17	Registered
118.	AACHI (Word)	3370992	26-09-2016	18	Registered
119.	AACHI (Word)	3370993	26-09-2016	19	Registered
120.	AACHI (Word)	3370994	26-09-2016	20	Registered
121.	AACHI (Word)	3370995	26-09-2016	21	Registered
122.	AACHI (Word)	3370996	26-09-2016	22	Registered
123.	AACHI (Word)	3370997	26-09-2016	23	Registered
124.	AACHI (Word)	3370998	26-09-2016	24	Registered
125.	AACHI (Word)	3370999	26-09-2016	25	Registered
126.	AACHI (Word)	3371000	26-09-2016	26	Registered
127.	AACHI (Word)	3371001	26-09-2016	27	Registered
128.	AACHI (Word)	3371002	26-09-2016	28	Registered
129.	AACHI (Word)	3371003	26-09-2016	29	Registered
130.	AACHI (Word)	3371004	26-09-2016	30	Registered
131.	AACHI (Word)	3371005	26-09-2016	31	Registered
132.	AACHI (Word)	3371006	26-09-2016	32	Registered
133.	AACHI (Word)	3371007	26-09-2016	33	Registered
134.	AACHI (Word)	3371008	26-09-2016	34	Registered
135.	AACHI (Word)	3371009	26-09-2016	35	Registered
136.	AACHI (Word)	3371010	26-09-2016	36	Registered
137.	AACHI (Word)	3371011	26-09-2016	37	Registered
138.	AACHI (Word)	3371012	26-09-2016	38	Registered
139.	AACHI (Word)	3371013	26-09-2016	39	Registered
140.	AACHI (Word)	3371014	26-09-2016	40	Registered
141.	AACHI (Word)	3371015	26-09-2016	41	Registered
142.	AACHI (Word)	3371016	26-09-2016	42	Registered
143.	AACHI (Word)	3371017	26-09-2016	43	Registered
144.	AACHI (Word)	3371018	26-09-2016	44	Registered
145.	AACHI (Word)	3371019	26-09-2016	45	Registered

13. After the admission of the suit, the suit summons was served on the sole defendant on 03.07.2018. In spite of the service

of the suit summons, the defendant failed to appear before this Court. Therefore, the sole defendant was set ex-parte vide order dated 02.07.2019 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.B.Gnanasambandam, was examined as P.W.1 and Exs.P1 to P26 were marked.

14. It has already been set out supra that as many as 26 exhibits, namely Exs.P1 to P26 have been marked and the details of the 26 exhibits are as follows:

S.No.	Exhibits	Description of Documents
1	P1	The original Authorisation Letter dated
2	P2	The Attested photocopy of list of products manufactured and marketed by the plaintiffs bearing the trademark AACHI
3	P3	The photocopy of certificate of Incorporation of Aachi Masala foods (p) Ltd dated 30.06.2006. (Marked and compared with original)
4	P4	The photocpy of Deed of Assignment between Abishek Enterprises and Aachi Masala Foods (p) Ltd dated 01.12.2006. (Marked and compared with original)
5	P5	The photocopy of Dissolution Deed between Mrs.Rani Pandian and the Mr.A.D.Padmasingh Issac dissolving the partnership firm, Naveen products dated 31.03.2007.(Marked and compared with original)
6	P6	The Attested photocopy of Deed of Assignment between Naveen Products and

S.No.	Exhibits	Description of Documents
		Aachi Masala Foods Pvt.Ltd dated 01.12.2006
7	P7	The photocopy of Certificate of Commercial Tax Registration and Central Sales Tax of Aachi spices and foods dated 28.12.2006 and 03.01.2007.(Marked and compared with original)
8	P8	The Attested photocopy of Deed of Assignment between Aachi Masala Foods Pvt. Ltd and Mr.A.D.Padmasingh Issac trading as Aachi Spices and Foods dated 30.03.2007.
9	P9	The photocopy of Certificate Commercial Tax Registration of Aachi Masala and Foods (p) Ltd dated 10.07.2006. (Marked and compared with original)
10	P10	The Attested photocopy of License user Agreement between Mr.A.D.Padmasingh Issac Trading as Aachi Spices and Foods and Aachi Masala Foods(p) Ltd dated 01.04.2007. (Marked and compared with original)
11	P11	The Attested photocopy of Certificate of Incorporation of Aachi Spices and foods(p) Ltd dated 17.03.2010. (Marked and compared with original)
12	P12	The photocopy of Memorandum of Association of Aachi Spices and Foods (p) Ltd dated 06.03.2010. (Marked and compared with original)
13	P13	The photocopy of License user Agreement between Mr.A.D.Padmasingh Issac Trading as Aachi Spices and Foods (p) Ltd dated 21.04.2010. (Marked and compared with original)
14	P14	The photocopy of License user Agreement between Mr.A.D.Padmasingh Issac Trading as Aachi Masala Foods (p) Ltd dated 21.04.2010. (Marked and compared with original)
15	P15	The Computer generated copy of Certificate of Incorporation of M/s.Heavenly Foods(p) Ltd., and Memorandum and Articles of Association dated 01.04.2014.
16	P16	The photocopy of License user Agreement between Mr.A.D.Padmasingh Issac Trading as Aachi Spices and Foods and Heavenly

S.No.	Exhibits	Description of Documents
		Foods(p) Ltd., dated 11.08.2014.(Marked and compared with original)
17	P17	The Computer generated copy of Sale of details report along with certificate u/s 65B Evidence Act, 1872, 2014-2017.(Marked and compared with original)
18	P18	The photocopy of Registration certificate of the mark Aachi in various countries around the world.(Marked and compared with original)
19	P19	The photocopy of Legal use certificate of Trademark No.838786 in Class 30 dated 29.01.1999. (Marked and compared with original)
20	P20	The photocopy of Legal use certificate of Trademark No.1116254 in Class 30 dated 30.07.2002.(Marked and compared with original)
21	P21	The photocopy of Legal use certificate of Trademark No.1715718 in Class 43 dated 30.07.2008. (Marked and compared with original)
22	P22	The photocopy of Legal use certificate of Trademark No.1479159 in Class 30 dated 17.08.2006. (Marked and compared with original)
23	P23	Computer generated copy of the order passed by Trademark Trial and Appellate Board, United States Patent and Trademark Office dated 13.09.2016.
24	P24	Attested photocopy the Aachi Kitchen's Name Board & Aachi Kitchen's Menu Card.
25	P25	The defendant Name Board Aachi Fast Food-Photo.
26	P26	The computer generated copy Address proof of the defendant.

15. 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.26.

16. On perusal of Exs.P.1 to P.26, this Court is of the view that the trademark, 'Aachi' of the plaintiff is a registered trademark. The plaintiff also filed photograph of the trademark, along with trademark legal user certificate. On perusal of the certificate, this Court found that the plaintiff's trademark is registered trademark and accordingly, plaintiffs are the proprietor of the trademark 'Aachi'. The defendant is carrying on the business in the name and style, 'Aachi Fast Foods'. The trademark 'Aachi' is a registered trademark of the plaintiff. The defendant is copying the whole trademark of the plaintiff as part of its trade name. Further, the plaintiff also filed their name board and the same is marked as Ex.P.24 and the defendant's name board as Ex.P.25. On perusal of Exs.P.24 and P.25, it is seen that the defendant is not only copying the trademark of the plaintiff 'Aachi' but also copying the colour scheme. Therefore, this Court found that the defendant's copying the plaintiff's trademark 'Aachi' 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.

17. Learned counsel for plaintiffs 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. Learned counsel also pointed out that the defendant has compelled plaintiffs to carry this matter for a substantial time in this Court, expending money, energy and effort. 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 instant case, defendant pursuing the trademark registration applications on the teeth of opposition, but evading conventional modes of service, compelling substituted service and not appearing before this Court even after service being effected through substituted service, 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.1 lakh (Rupees One Lakh only) on the defendant.

18. Plaintiffs will obviously be entitled to costs as the plaintiffs have incurred substantial expenditure in carrying this suit to its logical end.

19. Suit is decreed with costs and compensatory costs as set out supra.

AT

24.07.2019



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C.S.No.912 of 2017

KRISHNAN RAMASAMY,J.

AT



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