

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:05.09.2019

Coram

The Hon'ble Mr. Justice **N.SATHISH KUMAR**

C.S.(Comm).No.699 of 2018

&

O.A.Nos.944 to 946 of 2018

&

A.No.7853 of 2018

Taiyo Feed Mill Private Limited,
No.17A, South Mada Street,
Kolathur, Chennai,
Tamil Nadu – 600 099.
Rep by its Director R.S.Prabakar.

...Plaintiff

Vs.

1.Hakita Feeds Private Limited,
Flat No.1, Old No.56, New No.6,
2nd Main Road, Ganga Nagar,
Kodambakkam, Chennai,
Tamil Nadu – 600 024.

2.M.R.Aquatech,
B-63, Ashoka Market,
Bhubaneshwar, Odisha – 751 009.

...Defendants

Plaint filed under Order IV Rule 1 of O.S.Rules and Order VII

Rule 1 of CPC r/w Sections 27, 134 and 135 of the Trademarks Act, 1999, Sections 51, 54, 55 and 62 of the Copyright Act, 1957 & Proviso 1 to Section 7 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 praying for

(a) a permanent injunction restraining the defendants, themselves, their partners, successors-in-business, servants, agents, distributors, dealers, stockists, wholesalers, retailers, shop keepers, representatives, assigns and all other persons claiming through them from manufacturing, selling and distributing, advertising fish food using the HINI Pro trademark which is almost identical/deceptively similar to the plaintiff's AINI trademark amounting to infringement of the plaintiff's registered trademark AINI in any manner whatsoever;

(b) a permanent injunction restraining the defendants, themselves, their partners, successors-in-business, servants, agents, distributors, dealers, stockists, wholesalers, retailers, shop keepers, representatives, assigns and all other persons claiming through from in any manner infringing the copyright of the plaintiff by use of HINI-Pro, HINI-Pro label, or any other artistic works which are deceptively similar to plaintiff's copyrighted artistic works in AINI label or any other manner whatsoever; and

(c) a permanent injunction restraining the defendants, themselves, their partners, successors-in-business, servants, agents, distributors, dealers, stockists, wholesalers, retailers, shop keepers, representatives, assigns and all other persons claiming through or under them from committing acts of passing off and enabling others to pass off by manufacturing, distributing, marketing, selling, offering for sale, advertising or in any other manner dealing in fish food or any other product bearing the deceptively similar mark HINI-Pro which is

confusingly similar to plaintiff's mark AINI, using any similar label, get-up, or packaging, which in any manner whatsoever would be considered to be similar to the plaintiff's label, get up or packaging;

(d) the defendants be ordered to pay to the plaintiff a sum of Rs.10,00,000/- as damages for committing acts of infringement of trademark and copyright and passing off;

(e) the defendants be ordered to surrender to the plaintiffs for destruction all goods advertisement materials, packing materials, cartons, wrappers, labels in respect of fish food and other allied/cognate goods containing the offending mark/label or any other mark/label similar to plaintiff's trademark/labels AINI;

(f) a preliminary decree be passed in favour of the plaintiff directing the defendants to render true and faithful account of profits earned by them by use of offending label/trademark for fish food or other allied an cognate goods and a final decree be passed in favour of the plaintiff for the amount of profits thus found to have been made by the defendants after the latter have rendered accounts;

For Plaintiff

.. Mr.Arun C.Mohan

For Defendants

.. Mr.T.Paranthaman (for D.1)

D.2 set exparte

ORDER

The affidavit has been filed by the first defendant wherein he has stated that he is not using the trademark of the plaintiff and also undertaken not to use the trademark. In view of the undertaking, no further trial is required as far as the first defendant is concerned. Accordingly, the suit is decreed as against the first defendant and there shall be an order of permanent injunction restraining the defendants from

(i) manufacturing, selling and distributing, advertising fish food using the HINI Pro trademark which is almost identical/deceptively similar to the plaintiff's AINI trademark amounting to infringement of the plaintiff's registered trademark AINI in any manner whatsoever;

(ii) infringing the copyright of the plaintiff by use of HINI-Pro, HINI-Pro label, or any other artistic works which are deceptively similar to plaintiff's copyrighted artistic works in AINI label or any other manner whatsoever; and

(iii) committing acts of passing off and enabling others to pass off by manufacturing, distributing, marketing, selling, offering for sale, advertising or in any other manner dealing in fish food or any other product bearing the deceptively similar mark HINI-Pro which is confusingly similar to plaintiff's mark AINI, using any similar label, get-up, or packaging, which in any manner whatsoever would be considered to be similar to the plaintiff's label, get up or packaging;

2. In respect of prayers (d) to (f), no relief has been granted.

3. The second defendant is set exparte. The interim injunction is made absolute against the second defendant. The first defendant has filed an affidavit that they have not infringed the trademark of the plaintiff. The first defendant has also given an undertaking that they will not use the trademark.

4. In view of the same, the second defendant has remained exparte and the suit is decreed in view of the undertaking of the first defendant from using trade mark of the plaintiff any more and decreed in respect of prayers (a) to (c) alone.

5. In the result, I am of the view that the suit could be decreed to the limited extent by granting permanent injunction restraining the defendants from

(i) manufacturing, selling and distributing, advertising fish food using the HINI Pro trademark which is almost identical/deceptively similar to the plaintiff's AINI trademark amounting to infringement of the plaintiff's registered trademark AINI in any manner whatsoever;

(ii) infringing the copyright of the plaintiff by use of HINI-Pro, HINI-Pro label, or any other artistic works which are deceptively similar to plaintiff's copyrighted artistic

works in AINI label or any other manner whatsoever; and

(iii) committing acts of passing off and enabling others to pass off by manufacturing, distributing, marketing, selling, offering for sale, advertising or in any other manner dealing in fish food or any other product bearing the deceptively similar mark HINI-Pro which is confusingly similar to plaintiff's mark AINI, using any similar label, get-up, or packaging, which in any manner whatsoever would be considered to be similar to the plaintiff's label, get up or packaging;

5.The other claims of plaintiff are dismissed. No costs.
Consequently, the connected applications are closed.

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Index: Yes/No

Internet: Yes/No

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