

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 7TH DAY OF JULY 2021

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

O.A. Nos.706 to 708 of 2020

in

C.S. No.379 of 2020

Mr.K.Mangudithangaraj,
Trading as Poonam Enterprises,
No.921, Hig Block,
1st Main Road, TNHB Nagar,
Velachery, Chennai – 600 042.

... Applicant/Plaintiff
(in all the applications)

-Versus-

1.Mrs.Thirumalsamy Shanthi,
Trading as Punitham Food Products,
1, Kovalan Nagar,
6th Cross Street, Pallikaranai,
Chennai – 600 100.

2.Mr.Karnan,
No.3, Kovalan Nagar, 6th Street,
Pallikaranai, Chennai – 600 100.

... Respondents/Defendants
(in all the applications)

O.A. No.706 of 2020:-

Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction restraining the Respondents, their men, agents, servants or any one claiming through them from in any manner infringing the Applicant's registered trademark label POONAM registered under No.959991 in class 29 as plaint document No 1 hereto by using the

offending trademark label which is identical or deceptively similar to or a colourable imitation of the Applicant's registered trademark or by using any other mark, label or device which is identical or deceptively similar or a colourable imitation of the Applicant's registered trademark, pending disposal of the suit.

O.A.No.707 of 2020:-

Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction restraining the Respondents, their men, agents, servants or anyone claiming through them from in any manner infringing the Applicant's Copyright over the artistic work in the trade mark label POONAM by using the offending trade mark label or trade dress or any other trade mark label or trade dress, which is identical or substantial reproduction of the Respondents artistic work in the trade mark label and trade dress POONAM.

O.A.No.708 of 2020:-

Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction restraining the Respondents, their men, agents, servants or anyone claiming through them from in any manner passing off their goods as that of the Applicant's by using the offending trademark "PUNITHAM" or any other device or label or trade dress which is identical or deceptively similar to that of the Applicant's trademark label

and trade dress POONAM, either by manufacturing or offering for sale of the products under the offending trademark label and trade dress or in any manner advertising the products, under the offending trademark, trade dress and artistic work.

These Applications coming on this day before this court for hearing in the presence of Mr.C.Karunakara Rao, Advocate for the applicant in all the Original applications, and Mr.V.Vivek, Advocate for the respondents in all the Original applications and upon reading the order herein dated 22.06.2021, it is ordered:-

That the order of interim injunction granted in pursuance of the order dated 16.12.2020 made in O.A.Nos. 706 to 708 of 2020 restraining the respondents therein, their men, agents, servants or any one claiming through them from in any manner (a) infringing the Applicant's registered trademark label POONAM registered under No.959991 in class 29 as plaint document No 1 hereto by using the offending trademark label which is identical or deceptively similar to or a colourable imitation of the Applicant's registered trademark or by using any other mark, label or device which is identical or deceptively similar or a colourable imitation of the Applicant's registered trademark, (b) infringing the Applicant's Copyright over the artistic work in the trade mark label POONAM by using the offending trade mark label or trade dress or any other trade mark label or trade dress, which is identical or substantial reproduction of the Respondents artistic work in the trade mark label and trade dress POONAM and (c) passing off their goods as that of the Applicant's by using the offending trademark "PUNITHAM" or any other device or label or trade dress which is identical or deceptively similar to that

of the Applicant's trademark label and trade dress POONAM, either by manufacturing or offering for sale of the products under the offending trademark label and trade dress or in any manner advertising the products, under the offending trademark, trade dress and artistic work be and are hereby made absolute.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
7th DAY OF JULY 2021.

Sd/-

ASSISTANT REGISTRAR (Comm.Cases)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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EVK
20.07.2021

O.A. Nos.706 to 708 of 2020
in
C.S. No.379 of 2020

ORDER :-
DATED : 07.07.2021

THE HON'BLE DR.JUSTICE
G.JAYACHANDRAN

FOR APPROVAL: 20/7/2021

APPROVED ON: 23/07/2021

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THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

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2.Mr.Karnan,
No.3, Kovalan Nagar, 6th Street,
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... Respondents/Defendants
(in all the applications)

O.A. No.706 of 2020:-

Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction restraining the Respondents, their men, agents, servants or any one claiming through them from in any manner infringing the Applicant's registered trademark label POONAM registered under No.959991 in class 29 as plaint document No 1 hereto by using the

offending trademark label which is identical or deceptively similar to or a colourable imitation of the Applicant's registered trademark or by using any other mark, label or device which is identical or deceptively similar or a colourable imitation of the Applicant's registered trademark, pending disposal of the suit.

O.A.No.707 of 2020:-

Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction restraining the Respondents, their men, agents, servants or anyone claiming through them from in any manner infringing the Applicant's Copyright over the artistic work in the trade mark label POONAM by using the offending trade mark label or trade dress or any other trade mark label or trade dress, which is identical or substantial reproduction of the Respondents artistic work in the trade mark label and trade dress POONAM.

O.A.No.708 of 2020:-

Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction restraining the Respondents, their men, agents, servants or anyone claiming through them from in any manner passing off their goods as that of the Applicant's by using the offending trademark "PUNITHAM" or any other device or label or trade dress which is identical or deceptively similar to that of the Applicant's trademark label

and trade dress POONAM, either by manufacturing or offering for sale of the products under the offending trademark label and trade dress or in any manner advertising the products, under the offending trademark, trade dress and artistic work.

This Application coming on this day before this court for hearing, the court made the following order:-

These three applications are filed seeking injunction restraining the respondents from infringing the applicant's registered trademark label POONAM and the artistic design of the plaintiff's copyright for the said trademark.

2. This Court, after prima facie satisfaction of the infringement of the plaintiff's trademark, has granted interim injunction on 16.12.2020.

3. The respondents/defendants has filed counter stating that their trademark PUNITHAM is a registered trademark since 1995 and there is no infringement of the mark or design or their artistic work of the plaintiff. Further, the learned counsel for the respondents would also submit that after the interim order passed by this Court, the defendants have changed their design on the defendants' product.

4. Considering the rival submissions made by the learned counsels and the pleadings, it is made clear that the plaintiff has registered the trademark POONAM under class 29 for milk and milk products. The name

POONAM described under capital letter in red colour between oval design with cashew figure on the top. The design of the defendants' product is in imitation of colour and display of that of the plaintiff.

5. Since the design and display of the artistic design altered by the defendants after the interim order of this Court, it is suffice to make the interim order absolute restraining the respondents from using the colour and design of the plaintiff which is more or less visually similar. If the defendants choose to use its registered trademark PUNITHAM with different design and colour, the same shall not be found fault. It is also brought to the notice of this Court that the plaintiff has already moved the IPAB raising objections and rectification petition for the trademark PUNITHAM of the respondents and same is pending.

6. In the light of the fact that the IPAB has been abolished. The plaintiff is at liberty to take appropriate alternate steps. In the result, the interim order granted in these three applications are made absolute.

Sd./-G.J.J.

07/07/2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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