

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**RESERVED ON: 14.10.2020**

**PRONOUNCED ON: 29.10.2020**

CORAM:

**THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN**

**C.S.No.580 of 2011**

1. Wipro Enterprises Limited  
having its registered office at  
Doddakannelli  
Sarjapur Road, Bangalore – 560 035.  
and Branch Office at  
111, Anna Salai,  
Guindy, Chennai – 600 032  
Represented by its Sr. Manager (Legal & Indirect Taxes)  
Mr.Vishal Mittal  
(Amended as per order dated 18.10.2016 in A.No. 3715 of 2014)
  2. Wipro Chandrika Limited  
Doddakannelli  
Sarjapur Road, Bangalore – 560 035,  
Represented by its Authorised Signatory  
Mr.Vishal Mittal
- ... Plaintiffs

**Vs**

1. Kerala Khadi & Village Industries  
No.11/1814, Gandhigriham,  
Cherootty Road, Kozhikode – 673 032.

2. K&K Chemicals  
Mattuvay, Calicut – 673 573

... Defendants

**PRAYER:-** This Civil Suit is filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of CPC., read with Sections 27(2), 29, 134 and 135 of Trade Marks Act, 1999 praying for the following reliefs:

(a) for a permanent injunction restraining the defendants, by itself, its servants, agents, distributors or anyone claiming through them from manufacturing, selling, advertising and offering for sale using the registered Trade Mark CHANDRIKA upon soaps or toiletry preparations or any goods or in any media and use the same in invoices letter heads and visiting cards or by using any other trade mark with prefix or suffix with the expression CHANDRIKA or any other similar sounding expression which is in any way visually, phonetically or deceptively similar to the plaintiffs Registered Trademark Nos: 304121, 210561, 210560, 395616, 503956, 503957, 359925, 454994, 1615601, 1576992 soaps;

(b) granting a permanent injunction, restraining the defendants by themselves, their servants, agents, men, or anyone claiming through them

from manufacturing, marketing, distributing, offering or advertising for sale soaps or any toiletry preparations of all kinds using the Trademark CHANDRIKA in the course of their business and pass off their soaps of all kinds and toiletry preparations using the plaintiffs Trademark CHANDRIKA or enable others to pass off by using deceptive marks;

(c) directing the defendants to surrender to the plaintiffs all the soaps, packing materials, cartons, advertisement materials and hoardings, letter-heads, visiting cards, office stationery and all other materials containing/bearing the Trademark CHANDRIKA and other deceptively similar Trademarks in respect of soaps;

(d) for a preliminary decree in favour of the plaintiffs, directing the defendants to render an account of profits made by them by the use of the Trademark CHANDRIKA on the goods referred and for a final decree in favour of the plaintiff for the amount of the profits found to have been made by the defendants, after the defendants have rendered accounts; and

(e) directing the defendants to pay to the plaintiffs the costs to the

suit.

For Plaintiffs : Ms. Gladys Daniel

### JUDGEMENT

The suit had been filed taking advantage of Sections 27(2), 29, 134 and 135 of the Trade Marks Act, 1999 read with relevant provisions of the Original Side Rules and the Code of Civil Procedure seeking a Judgement and Decree against the defendants for permanent injunction restraining them from manufacturing, selling, advertising or offering for sale their products of soaps and toiletry provisions under the Registered Trade Mark CHANDRIKA and also from passing off their products as if they are the products of the plaintiffs and for consequential reliefs of surrendering to the plaintiffs all materials under the name CHANDRIKA and for preliminary decree for accounts and for costs of the suit.

2. The first plaintiff Wipro Enterprises Limited is a Company incorporated under the Companies Act 1956 carrying on business for almost 60 years in manufacture and sale of a wide range of retail consumer products including talc, toilet soaps, hair care soaps, baby care products, face wash, fairness creams and lighting products. They marketed their soaps and other products under the Trade mark CHANDRIKA.

3. The second plaintiff Wipro Chandrika Limited is also a company incorporated under the provisions of the Companies Act 1956 and is a subsidiary of the first plaintiff. The second plaintiff has the following registrations with respect to the Trademark CHANDRIKA:-

| Application Number | Trade Mark                      | Class | Status     |
|--------------------|---------------------------------|-------|------------|
| 1033046            | CHANDRIKA sandal soap           | 3     | Registered |
| 365028             | CHANDRIKA                       | 3     | Registered |
| 359925             | CHANDRIKA Ayurvedic Soap Carton | 3     | Registered |
| 304121             | CHANDRIKA Toilet Soap Carton    | 3     | Registered |
| 454994             | CHANDRIKA                       | 3     | Registered |
| 210561             | CHANDRIKA Ayurvedic Soap Carton |       |            |
| 210560             | CHANDRIKA Ayurvedic Soap Carton | 3     | Registered |

4. The second plaintiff has also obtained the following registration:-

| Application Number | Trade mark           | Class | Status |
|--------------------|----------------------|-------|--------|
| 1615601            | CHANDRIKA<br>FOREVER | 3,5   | REGD   |
| 1576992            | CHANDRIKA            | 5     | REGD   |

5. The plaintiffs have had a turn over of Rs. 505.246 Millions in the financial year 2010-2011 and had also spent a sum of Rs.155.41 Million towards advertisements expenses in the financial year 2010-2011. The registration of the plaintiffs and their packaging is given below:-



6. The defendants have used the plaintiffs Trademark CHANDRIKA for their own product, namely, soaps. The defendants have marketed their products in the packaging as shown below:-



7. Claiming that the Trademark of the plaintiffs have been directly infringed and that the defendants are also passing off their products as if they are the products of the plaintiffs, the suit had been filed.

8. The suit summon was issued to the defendants and service was completed on 24.01.2017. The defendants did not appear. They were set ex-parte on 16.08.2019. The plaintiffs were then called upon to adduce oral and documentary evidence. The plaintiffs examined as PW-1 S. Raghavan and marked Exs. P-1 to P-19. These documents included the deeds of assignment of the Trademark in favour of the plaintiffs and also the copies of the registration certificates of the plaintiffs' Trademark. Since copies of the documents were alone marked, the plaintiffs were directed to produce the legal usage certificates. On permission being granted by the Court, the plaintiffs examined as PW.2, V.G.T.Raj. Through the said witness Exs. P-20 and P-22 were marked. Ex.P-20 (series) were the certified copy of the legal use certificates of the entries in the Register of Trademarks relating to the Trademark Nos. 359925 and 304121 in class -3 and Ex. P21 (series) were the certified copies of the legal use certificates of the entries in the Register of Trademarks relating to Trademark No. 1576992 in class -5 and Ex.P22 (series) were the certified

copies of the legal use certificates of the entries in the Register of Trademarks relating to Trademark No. 1615601.

9. Heard Ms. Gladys Daniel, learned counsel for the plaintiffs.

10. The learned counsel for the plaintiffs pointed out that the plaintiffs have established registration of the Trademark CHANDRIKA and I have also produced as documents the certified copies of the entries into the Register of Trademarks relating to the Trademark Nos. 359925 and 304121 in class -3 and Trademark No. 1576992 in class -5 and Trademark No. 1615601 in class – 99. The learned counsel further stated that the defendants have been in the similar kind of business trading in bar soaps under the very same name CHANDRIKA which name has been registered in the name of the plaintiffs.

11. The learned counsel also pointed out the turn over of the plaintiffs and the promotional expenses incurred and stated that the defendants have deliberately encroached on the reputation and goodwill built up by the plaintiffs.

**12.** It is also seen from the records that interim injunction was granted and thereafter notice was also directed on the defendants. The suit summon was also directed to be served on the defendants. The service was completed on 24.01.2017. The defendants did not appear before the Court. They had been set ex-parte on 16.08.2019. They are not interested in participating in the judicial proceedings.

**13.** In view of the overwhelming oral and documentary evidence to prove registration of the Trademark CHANDRIKA and to prove the usage of the plaintiffs of the Trademark CHANDRIKA, I hold that the defendants, who are in a similar line of business cannot be permitted to infringe the registered Trademark of the plaintiff by marketing their soaps under the name CHANDRIKA. I hold that the suit will naturally have to be decreed as prayed for with costs.

**14.** Accordingly, the suit is decreed as prayed for, with costs.

**15.** The plaintiffs are entitled for costs of the suit in accordance with

the amended Section 35 of the Code of Civil Procedure.

**16.** The Registry is delegated and directed by this Court to determine the costs and the plaintiffs are permitted to file their Bill of Costs relating to (1) fees and expenses of the witnesses; (2) legal fees and expenses; and (3) any other expenses incurred in connection with the proceedings.

**17.** On the filing of the Bill of Costs, the Registry may determine the quantum of the costs.

**18.** In the result, the suit is decreed as prayed for, with costs.

29.10.2020

Index:Yes/No

Web:Yes/No

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Speaking/Non Speaking Order

1. List of Witnesses Examined on the side of the Plaintiffs:-

1. P.W.1 – Mr.S.Raghavan

2. P.W.2 – Mr. V.G.T.Raj

2. List of Exhibits Marked on the side of the Plaintiffs:-

1. Ex.P1 = the photocopy of the Power of Attorney;

2. Ex.P2 = the photocopy of the Memorandum and Articles

of Association of Wipro Chandrika Limited dated 08.03.1982;

3. Ex.P3 = the photocopy of the certificate of Registration Form No. D1 Tamil Nadu General Sales Tax Act, 1959 TNGST No. 0903833/03-04 dated 30.06.2003;
4. Ex.P4 = the photocopy of the Assignment Deed for Assignment of Trademarks by M/s. S.V. Products to Wipro Chandrika Limited, M/s. Lal Products to Wipro Chandrika Limited and M/s. Chandrika Products to Wipro Chandrika Limited dated 9<sup>th</sup> June 2004;
5. Ex.P5 = the photocopy of the Trade Mark License User Agreement between Wipro Chandrika and Wipro Limited dated 10.06.2004;
6. Ex.P6 = the photocopy of the legal use certificate of Trade Mark Nos. 210560, 210561, 359925, 304121 dated 10.08.2007;
7. Ex.P7 = the computer printout of the letter with Form TM 24 dated 18.03.2004 of the Trademark Registry related to Trademark Nos. 210560, 210561, 359925, 395616, 304121, 454994, 503956 and 503957 dated 01.06.2004
8. Ex.P8 = the computer printout of the Form TM 23 related to Trademark Nos. 210560, 210561, 359925, 304121, 454994, 395616, 503956 and 503957B;
9. Ex.P9 = the photocopy of the Registration Certificate of Trademark No.1576992 dated 24.03.2009;
- 10.Ex.P10 = the photocopy of the Registration Certificate of Trademark No. 1615601 dated 31.03.2009;
11. Ex.P11 = the photocopy of the Certificate of Registration Commercial Tax Department Tamil Nadu

Value Added Tax Act, 2006 No. (TIN) 3319903833,  
dated 01.01.2007;

12. Ex.P12 = the photocopy of the certificate of registration  
Central Sales Tax GST No. 793805 dated 01.04.1994;

13. Ex.P13 = the photocopy of the Advertisement of the  
mark soap CHANDRIKA in the Malayalam Magazine –  
Vanitha fortnightly;

14. Ex.P14 = the original plaintiffs' Carton label  
CHANDRIKA;

15. Ex.P15 = the photocopy of the Journal No. 985 at Page  
Nos. 369 & 370 advertising the Trade Mark No. 395616  
dated 16.06.1990;

16. Ex.P16 = the photocopy of the Journal No. 1115 at  
Page No. 2294 advertising the Trade Mark No. 503956  
dated 16.11.1995;

17. Ex.P17 = the photocopy of the Journal No.1000 Mega  
12 page 1912 advertising the Trade Mark No. 454994  
01.02.1991;

18. Ex.P18 = the photocopy of the Journal No.1182 Vol  
LIV Page 1205 advertising the Trade Mark No. 503957B  
dated 01.09.1998;

19. Ex.P19 =the photocopy of the defendants product  
bearing the Trademark CHANDRIKA;

**C.V.KARTHIKEYAN, J.**

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20. Ex.P20 (series 5 sheets) = the certified copies of the

Legal use Certificates entries in Register of Trade marks relating to Trade mark Nos. 359925 & 304121 in class -3 issue dated 22.07.2020;

21. Ex.P21 (series 2 nos.) = the certified copies of the Legal use certificates entries in Register of Trade marks relating to Trade Mark No. 1576992 in class -5 issue dated 22.07.2020;

22. Ex.P22 (series 2 nos.)= the certified copies of the legal use certificates entries in Register of Trade marks relating to Trade Mark No. 1615601 in class – 99 issue dated 22.07.2020.

3. List of Witnesses Examined on the side of the defendants:-  
Nil
4. List of Exhibits Marked on the side of the defendants:-  
Nil

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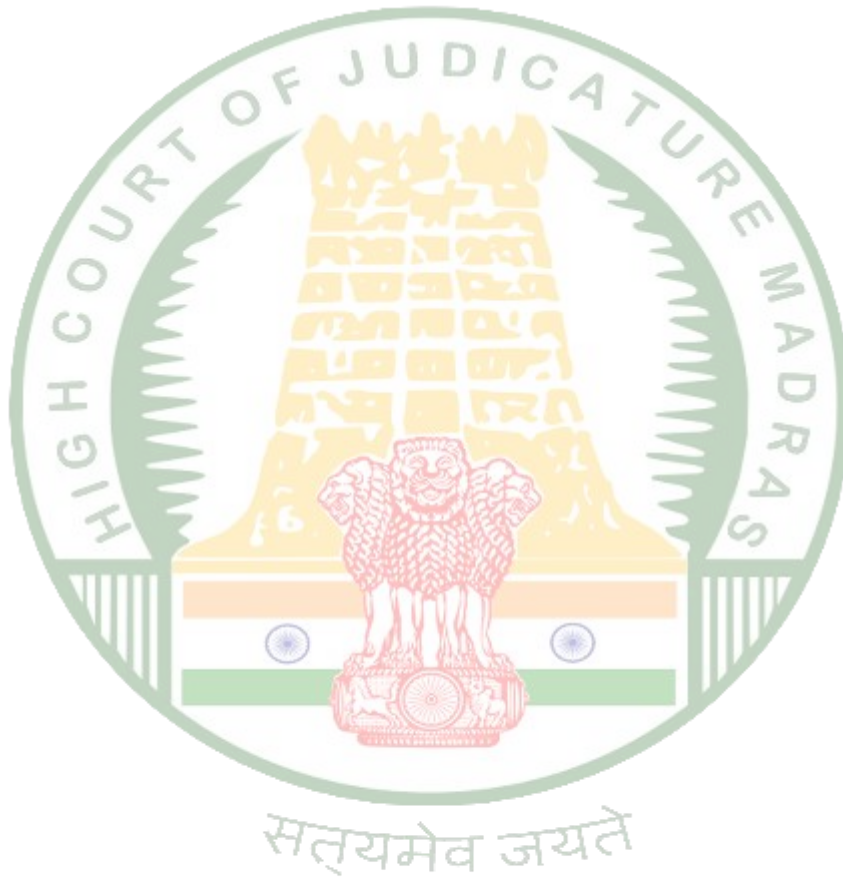
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**Pre-Delivery Judgement in**

**C.S.No.580 of 2011**



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