

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.01.2020

PRONOUNCED ON : 28.01.2020
CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Civil Suit No.302 of 2018

M/s.DIABLISS CONSUMERS PRODUCTS PVT. LTD.,
Shripuram,
1/283, Shripuram Street,
Thoraipakkam,
Chennai – 600 097.
Rep. By its Managing Director,
VR.Ramanathan ...

Plaintiff

Vs

1.M/s.DIA HEALTH FOODS PVT. LTD.,
C-19, Focal Point,
Phase 1, Ludhiana – 141 010.
State of Punjab.

2.M/s.OVERRRA FOODS CENTRE,
957/3,Bhai Daya Singh Nagar,
Barewal Road,
Ludhiana,
State of Punjab
Rep. By its Partner Mr.Davinder Singh

3.Mr.Davinder Singh,
C-19 Focal Point Phase I,
Ludhiana,
Punjab – 141 010.

...

Defendants

Prayer:- This Civil Suit is filed under OrderVII Rule 1 and Order XXXIII Rule 1 C.P.C., R/w Section 55 of the Code of the Copy Right Act, 1957 for the following reliefs:-

"a)Grant a decree for permanent injunction restraining the defendants their men, servants, agents, distributors or anyone claiming under them from in any manner infringing the copyright of the plaintiff in the artistic design marked 'A'



affixed herein for their products of sugar/print sugar or any other product, by selling, reproducing, advertising or offering for sale their goods with the pouches/packaging with the infringing design marked "B" or any other visually, phonetically or deceptively similar to plaintiff's

artistic design marked "A" herein and to direct the defendants to pay cost of the suit. "

For Plaintiff

:Ms.AL.Gandhimathi

For Defendants

:Set Exparte

JUDGMENT

The case of the plaintiff is that, it is a company incorporated under the Indian Companies Act, involved in manufacturing, sale of consumer goods and food products. The plaintiff is carrying on business with the trade mark Diabliss. It is also trading various other food products such as Diabliss Sugar, Diabliss Herbal Lemon Tea, Diabliss Mixed Fruit Jam, etc. It has created artistic design for the pouch "Diabliss Diabetic Friendly sugar". The said artistic design was made for the plaintiff by M/s.Fifth Estate Communications Pvt., Ltd. The plaintiff placed orders for printing flexible packing pouches with M/s.Darshan Flexibles Pvt., Ltd., Mysore and Print Cylinders were made for the said design and the pouches were printed and delivered to the plaintiff from July 2015 onwards.

2.The first defendant entered into an agreement with the plaintiff as a Distributor, on 10.10.2016, for the products of the plaintiff and by the same,

got access to the pouches of various products of the plaintiff and started marketing products on his own by using the name and artistic design of the plaintiff. This fact came to the notice of the plaintiff, during the Food Exhibition arranged in New Delhi at Pragati Maidan between March 13, 2018 and March 17 2018, when the plaintiff booked stall for its products inclusive of Diabliss sugar.

3.It appears that on behalf of the second defendant, complaints have been made to the Indian Trade Promotion Organization who was to conduct the said exhibition claiming that the artistic design of Diabliss was that of the second defendant and the plaintiff was contemplating to display products with the said artistic design in the trade fair and that it would amount to violation of Patent/Trade Mark/Copy Right Act. On receipt of the notice, the plaintiff came to know that the artistic design with sugar cane, stems, leaves and flowers contained in the pack of "Diabliss Diabetic Friendly Sugar" which is nothing but replica of the plaintiff artistic design and the same has been copied by the second defendant.

4.Alleging that the first defendant who was the agent for marketing the product of the plaintiff in North India had with ulterior motive and object copied the artistic design of the plaintiff and marketing the sugar under the

name of Diabeat with the same artistic design comprising of sugarcane, stems, leaves and flowers in the background, attempting to capture the plaintiff's market. The present suit is filed.

5. On behalf of the plaintiff, evidence was recorded. One VR.Ramanathan, the Managing Director of the plaintiff company was examined as P.W.1 and 15 documents were marked. The defendants have not contested the matter and hence, they are set exparte.

6. From the evidence produced by the plaintiff, this Court finds that the plaintiff is the owner of the Diabliss design and been using it since 2015. The first defendant had entered into agreement vide Ex.P.3 on 10.10.2016 for marketing the product of the plaintiff. Thereafter, there had been a default in payment and series of email communications have emanated between them from October 2016 to June 2017. The email copies were marked as Ex.P.4 series. The notice issued by the second defendant to the plaintiff and the reply show that the use of artistic design by the plaintiff is prior in point of time and the plaintiff had engaged M/s.Darshan Flexibles Pvt. Ltd., for manufacturing the package material and the artistic design was made by M/s.Fifth Estate Communications Pvt. Ltd. These facts are proved by the plaintiff through Exs.P.9 and P.11. The pouch of the plaintiff and the pouch

of the defendants are marked as Ex.P.14 and Ex.P.15 to prove that the plaintiff's product with artistic design and style in Diabliss has been copied by the defendants except by changing the name as Diabeat. The background, colour, design and get up are identically similar.

7.In the said circumstances, this Court finds that the plaintiff has proved its case and entitle for the relief prayed. Accordingly, the suit is decreed as prayed for with costs.

28.01.2020

jbm

Index: Yes/No

Speaking order/non speaking order

List of witnesses examined on the side of the plaintiff :-

P.W.1 – VR.Ramanathan

List of witness examined on the side of the defendants :-

nil

List of exhibits marked on the side of the plaintiff :-

1.Ex.P.1 is the original Board of Resolution dated 01.11.2019

2.Ex.P.2 is the original design created by the plaintiff June, 2015.

3.Ex.P.3 is the xerox copy of the agreement between the Diabliss Consumer

Products Pvt. Ltd., dated 10.10.2016 (Marked After comparing and verifying with the original).

4.Ex.P.4 is the extract E-mail communications between the plaintiff and Mr.Davinder Singh October, 2016 to June, 2017.

5.Ex.P.5 is the online copy of the Trademark application of M/s.Overra Foods dated 26.10.2017.

6.Ex.P.6 is the copy of the notice issued on behalf of M/s.Overra Foods to the plaintiff through email dated 11.03.2018.

7.Ex.P.7 is the copy of the reply email by the plaintiff dated 12.03.2018.

8.Ex.P.8 is the e-mail printout letter issued by the ITPO to the plaintiff along with the legal notice dated 13.03.2018.

9.Ex.P.9 is the office copy reply notice to the ITPO by the plaintiff dated 12.03.2018.

10.Ex.P.10 is the copy fo the certificate by the M/s.Fifth Estate Communication Pvt. Ltd., dated 12.03.2018

11.Ex.P.11 is the original certificate by the Darshan Flexibles Pvt Ltd., Mysore dated 13.03.2018.

12.Ex.P.12 is the copy of the reply given by the plaintiff to the Police complaint dated 14.03.2018

13.Ex.P.13 is the copy of the Invoices of the plaintiff for sales in Chennai

14.Ex.P.14 is the original plaintiff's pouch

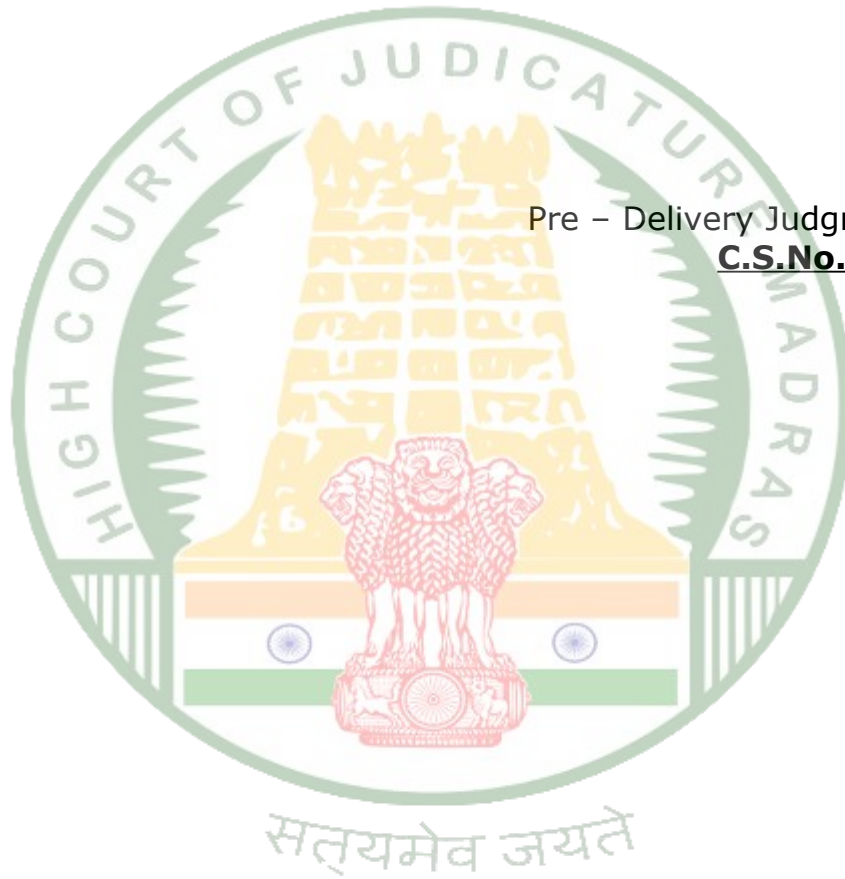
15.Ex.P.15 is the original defendant's pouch.

List of exhibits marked on the side of the defendants:-

nil

G.JAYACHANDRAN.J.,

jbm



Pre – Delivery Judgment made in
C.S.No.302 of 2018

WEB COPY

28.01.2020