

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.11.2020

CORAM:

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

C.S.No.224 of 2020

and

O.A.Nos.408 & 409 of 2020

and

A.No.2042 of 2020

1.Aqua Pump Industries,
rep by its Managing Partner
Mr.Ramaswamy Kumaravelu
Thudiyalur post, Coimbatore – 641 034
Having their branch office at
New No.10, Old No.26
Errabalu Chetty Street, Parrys Corner
Chennai – 600 001.

2.Aqua Sub Engineering
Rep by its Managing Partner
Mr.Ramaswamy Kumaravelu
Thudiyalur post, Coimbatore – 641 034
Having their branch office at
New No.10, Old No.26
Errabalu Chetty Street, Parrys Corner
Chennai – 600 001.

.. Plaintiffs

/versus/

1.Chaganbhai P.Raiyani

Proprietor

Raiyaraj Electricals

Survey No.234,

Shajanand Industrial Estate,

Murlidhar Weight Bridge Street,

Aji Ring Road, N.H.8-B,

Nr.Kothariya Chokdi,

Rajkot – 360 002, Gujarat.

2.Hiren C.Raiyani

Proprietor

Surya Tech Pump

Shade A/2, Plot No.6,

Maruti Industrial Estate,

Near Shivshakti Garage,

Kothariya, Rajkot – 360 022,

Gujarat.

.. Defendants

This Civil Suit is filed under and Order IV Rule 1 of the O.S Rules and Order VII Rule 1 of the Code of Civil Procedure read with sections 27, 134 and 135 of the Trade Marks Act, 1999 & Proviso 1 of Section 7 of the Commercial Courts, Commercial Division and Commercial Appellate prayed for a Judgment and Decree:-

a).granting a permanent injunction, restraining the defendants, by itself, its servants, agents, distributors, or anyone claiming through them from using, advertising and offering for sale using the Trade Mark TEXMO/SUPER TEXMO as such or prefix or suffix in any pumps and motors or in any other goods manufactured and sold by the defendants or

its trading style or in any media and use the same in invoices, letter heads and visiting cards or by using any other trade mark which is in any way visually, or phonetically similar to the plaintiffs' registered Trade Mark TEXMO or in any manner infringing the plaintiffs registered trade mark Nos.315049 (SP-1), (SP-II) & 315050 (SP-1), (SP-II) renumbered as 2702778, 2702779, 2702780 & 2702781 respectively.

b).granting a permanent injunction, restraining the defendants, by itself, its servants, agents, or anyone claiming through them from using, advertising and offering for sale using the Trade Mark TEXMO/SUPER TEXMO as such or with prefix or suffix in any Pumps and Motors or in any other goods manufactured and sold by the defendants and its trading style or in any media and use the same in invoices, letter heads and visiting cards or by using any other trade mark which is in any way visually or phonetically similar to the plaintiffs Trade Mark TEXMO or in any manner pass off the plaintiffs' goods.

c).directing the defendants to surrender to the plaintiffs all the packing material, cartons, advertisement materials and hoardings, letter-heads, visiting cards, office stationery and all other materials containing / bearing the Trade Mark 'SUPER TEXMO' or other deceptively similar to the Plaintiffs' Trademark TEXMO.

d).directing the defendants to render an account of profits made by them by the use of the impugned trademark 'SUPER TEXMO' on the goods Pumps and Motors and decree the suit for the profits found to have been made by the defendants, after the defendants have rendered accounts.

e).directing the defendants to pay to the plaintiffs the costs to the suit.

For Plaintiffs : Ms.Gladys Daniel

For Defendants : Mr.S.Ezil Raj

JUDGMENT

A Memorandum of Compromise entered into between the Plaintiffs and the Defendants had been forwarded to the Registry. This Memorandum of Compromise dated 25.09.2020 had been executed at Rajkot, Gujarat. The Memorandum of Compromise has also therefore been notarized by a Notary at Rajkot.

2.It has also been signed by the learned counsels for the plaintiffs and the defendants. The Managing Partner of the Plaintiffs and the Proprietors of the 1st and 2nd defendants have also signed and the photograph of the said proprietors have also been affixed in the Memorandum of Compromise.

3.The terms of the Memorandum of Compromise are as follows:

“3.The defendants undertakes to withdraw the Trade Mark SUPER TEXMO under Application No.4209223 dated 18.06.2019 in Class 7 and any other marks pending or registered which is not within the knowledge of the Plaintiffs.

4.The Defendants undertakes hereby not to assert any right in respect of the expression TEXMO/SUPER TEXMO by filing Trademark Applications or using the same or similar sounding expression or its logo for any goods in future.

5.The Defendants also undertake to withdraw any Application in respect of TEXMO/SUPER TEXMO or any other similar sounding marks that have already been filed that is not within the knowledge of the Plaintiffs.

6.The Defendants shall not make any application for registration of the Trademark or use the trademark TEXMO/SUPER TEXMO as such or with prefix or suffix in any goods manufactured and sold by the Defendants in future.

7.The Plaintiffs have no objection to the use of the trademark SUPER LAXMI.

8.The Defendants undertakes not to oppose or initiate any Rectification proceedings against the Plaintiffs' Trademark Applications or their Registered Trademarks.

In view of the decree for permanent injunction the Plaintiffs have given up the reliefs contained in prayers c,d & e in para 21 of the suit including cost of the suit.

Dated at Rajkot on this the 25th day of September 2020.”

3.Since both the parties have agreed to the terms of the Memorandum of Compromise, the same is recorded and the suit is decreed accordingly. No order as to costs. Consequently, connected Applications are closed. The Memorandum of Compromise shall form part of the decree.

03.11.2020

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Internet : Yes / No

Index : Yes / No

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