

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.02.2020

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.S.No.517 of 2019

Hatsun Agro Product Ltd.,
Having registered office at
No.1/20-A, Rajiv Gandhi Salai (OMR),
Karapakkam, Chennai-600 097.

And also carrying on its business at:-
Old No. AD-83/New No.AD13,
Anna Nagar, Opp: IOB Towers Branch,
Chennai-600 040

Represented by Authorized Signatory ... Plaintiff

/versus/

KAMADENU DAIRY FARMS,
No.501, Ragul Gandhi Nagar,
Vettavalam Main Road,
Endal Village,
Tiruvannamalai-606 604.

.. Defendant

This Civil Suit is filed under Order IV Rule 1 Original Side Rules read with Order VII Rule 1 of CPC and under Sections 134 and 135 of the Trademarks Act, 1999 and Section 7 of the Commercial Courts Act, 2015 prayed for (a) For permanent Injunction restraining the defendant by itself, its agents, servants, distributors or any one claiming through it from using in any manner whatsoever upon and in relation to their business the “AROKYA”

trademark by exposing for sale or using them or copying/reproducing or causing reproduction of the same in any packaging or literature or any colourable imitation or substantial reproduction thereof in any manner whatsoever so as to infringing or causing infringement of the plaintiff's trademark as described in the Schedule to the Plaint; (b) For permanent Injunction restraining the defendant by itself, its agents, servants, distributors or any one claiming through it from using in any manner whatsoever upon and in relation to their business the "AROKYA" trademarks, artwork, colour schemes and trade dress and / or deceptive variations thereof so as to passing off or enable others to indulge in the act of passing off its goods or business as that of the Plaintiff's or in some way convey a connection with the Plaintiff as described in the Schedule to the Plaint; (c) Directing the Defendant to surrender to the Plaintiff the entire products with the offending labels, stocks with offending labels together with the blocks and dies, name boards, sign boards etc. for destruction; (d) Directing the Defendant to render true and faithful accounts of the profits earned by them through the sale of the offending milk products bearing the offending trademark label and directing payment of such profits to the Plaintiff; (e) Directing the Defendant to pay to the Plaintiff the cost of the suit.

For plaintiff : Mr.Aashish Jain Cunia
for M/s.Surana & surana

For Defendant : No appearance

JUDGMENT

The suit is filed under the Trademarks Act alleging that the plaintiff's registered trademark "AROKYA" is infringed by the defendant who is marketing its product under the name "AROGIYAM MILK".

2. According to the plaintiff, they adopted the unique trademark for their milk and milk products. Under the registered trademark "AROKYA", they manufacture Dairy products like ice creams, dairy whitener, skimmed milk powder, AGMARK Certified Ghee, Cooking Butter, Milk, varieties of curd, paneer and butter milk. They are in the trade since 1970, enjoying good reputation and patronage in the trade and general public. While so, their popular brand "AROKYA" has been imitated and infringed by the defendant for passing off the products as that of the plaintiff. Hence sought for the following relief:-

(a) For permanent Injunction restraining the defendant by itself, its agents, servants, distributors or any one claiming through it from using in

any manner whatsoever upon and in relation to their business the “AROKYA” trademark by exposing for sale or using them or copying/reproducing or causing reproduction of the same in any packaging or literature or any colourable imitation or substantial reproduction thereof in any manner whatsoever so as to infringing or causing infringement of the plaintiff’s trademark as described in the Schedule to the Plaint.

(b) For permanent Injunction restraining the defendant by itself, its agents, servants, distributors or any one claiming through it from using in any manner whatsoever upon and in relation to their business the “AROKYA” trademarks, artwork, colour schemes and trade dress and / or deceptive variations thereof so as to passing off or enable others to indulge in the act of passing off its goods or business as that of the Plaintiff’s or in some way convey a connection with the Plaintiff as described in the Schedule to the Plaint.

(c) Directing the Defendant to surrender to the Plaintiff the entire products with the offending labels, stocks with offending labels together with the blocks and dies, name boards, sign boards etc. for destruction.

(d) Directing the Defendant to render true and faithful accounts of the profits earned by them through the sale of the offending milk

products bearing the offending trademark label and directing payment of such profits to the Plaintiff.

(e) Directing the Defendant to pay to the Plaintiff the cost of the suit.

3. The defendant, who has entered appearance, has not filed the written statement within the time prescribed, hence set ex-parte. Pending suit, this Court, at the instance of the plaintiff, has appointed an Advocate Commissioner to visit the defendant's premises. The Advocate Commissioner on 30.11.2019 had inspected the defendant premises and has submitted his report indicating that the defendants are producing milk products under the name of "AROGIYAM MILK".

4. The defendant failed to file the written statement. So was set ex-parte. The evidence on plaintiff side was recorded by the Additional Master. B.Muthunathan, Legal Officer attached to the plaintiff's company has filed proof affidavit and marked 58 Exhibits.

5. Perusal of the plaint and the deposition along with the exhibits indicates that the plaintiff's company involved in manufacturing dairy products under the various brands such as 'ARUN', 'HATSUN', 'AROKYA', DAIRY

INGREDIENTS', 'SANTOSA', 'HATSUN DAIRY', 'OYALO' etc. The manufacturing units of the plaintiff has obtained ISO certificates, which are marked as Ex.P-2 to Ex.P-4. The plaintiff has substantially presence in the market and to prove it the statement of annual turn-over and the promotional expenses reflected in Ex.P-12 to Ex.P-18 are marked. Ex.P-24 to Ex.P-55 are the copies of the trademark registration obtained by the plaintiff for the various products, which proves that the name "AROKYA" has been used by the plaintiff as the trademark for their products including milk.

6. The defendant milk product in the bottle, which has been seized by the Advocate Commissioner during the inspection indicates that they are labelled with phonetically similar name of the plaintiff "AROKYA". Exhibit P-57 is the photocopy of the defendant's product, which proves that the defendant is using the name "AROGIYAM MILK", which is the phonetically similar to the trademark of the plaintiff and passing it off deceptively as if it is the product of the plaintiff.

7. Through clinching evidence, the plaintiff has proved the case against the defendant in respect of infringement and passing off. Hence, this Court pass decree as below:-

(i) Injunction restraining the defendant from using the registered trademark of the plaintiff “AROKYA” or in any other name phonetically similar to that of “AROKYA” in their product, which shall amount to colourable imitation or substantial reproduction.

(ii) The defendant is restrained by way of injunction from in any manner using the plaintiff's trademark “AROKYA” and pass off the defendant's product as that of the plaintiff's product.

(iii) The defendant is directed to surrender the impugned infringed products, which are in the possession. A preliminary decree is passed regarding rendition of true and faithful accounts of the profits.

(iv) It is for the plaintiff to work out his remedy for damages.

8. Accordingly, the suit is allowed with costs.

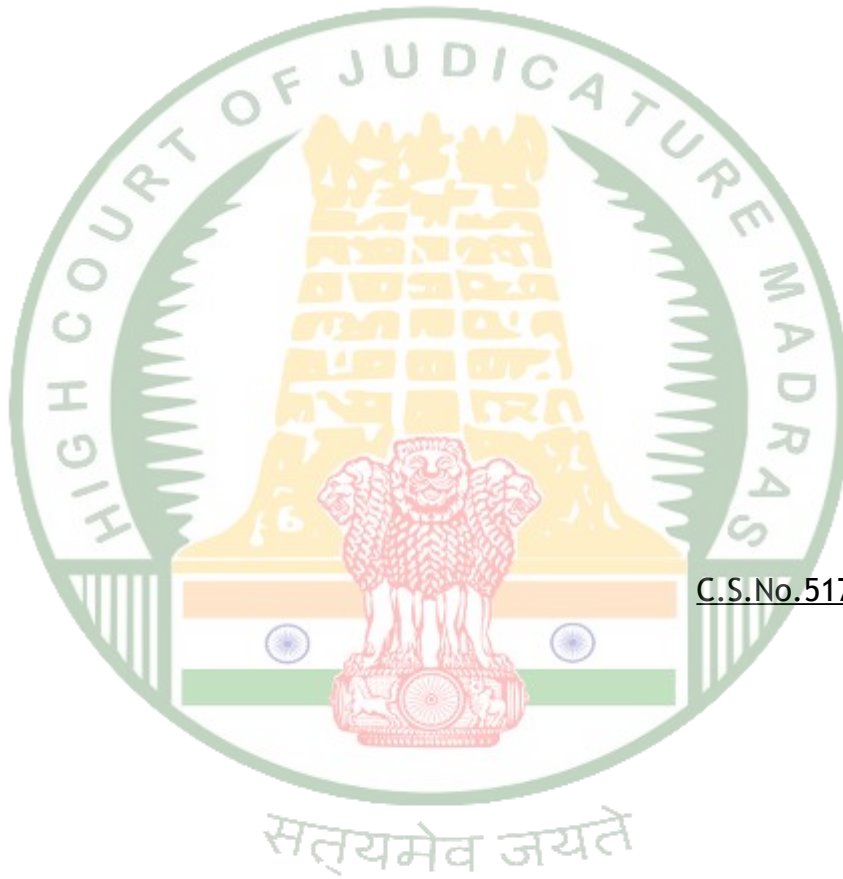
19.02.2020

Speaking Order / Non-Speaking Order
Index : yes/no

rpl

Dr.G.JAYACHANDRAN,J.

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