

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.01.2020

Coram::

The Honourable Dr.Justice G.Jayachandran

C.S.No.709 of 2019
& O.A.Nos.1111 & 1112 of 2019

TTK Prestige Ltd.,
Having its registered office at:
Plot No.38, SIPCOT Industrial Complex,
Hosur, Tamil Nadu – 635 126,
and having its branch office at:
First Floor, 91 Santhome High Road,
Represented by its power of attorney holder,
Mr.G.Ramesh Babu. ... Plaintiff

/versus/

Mr. Ayyavu,
Sole Proprietor of Ayyavu Home Appliances,
New No.18, Srivari Flats,
Krishnappa Street, Mettupalayam,
West Mambalam, Chennai – 600 033. ... Defendant

Prayer: Complaint is filed under Order IV Rule 1, Original Side Rules read Order VII Rules 1 & 2 of C.P.C., read with Section 134 of the Trademarks Act, read with proviso 1 to Section 7 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Court Act, 2015:-

a. Permanent injunction restraining the defendant, its partners, assigns in business, dealers, stockists, sister concerns, distributors or any person acting on the defendant's behalf from manufacturing,

advertising, selling, offering for sale, dealing in any manner with the pressure cooker or any other related product under the trade mark PRESTIGE and/or its logo and/or any other trade mark that may be identical/deceptively similar to the trade mark PRESTIGE and/or its logo amounting to infringement of registered trade marks;

b. Permanent injunction restraining the defendant, its partners, assigns in business, dealers, stockists, sister concerns, distributors or any person acting on the defendant's behalf from manufacturing, advertising, selling, offering for sale, dealing in any manner with the pressure cooker or any other related product under the trade mark PRESTIGE and/or its logo and/or any other trade mark that may be identical/deceptively similar to the trade mark PRESTIGE and/or its logo so as to pass off or enable others to pass off the defendant's products as and for the products of the plaintiff or in any other manner whatsoever;

c. A mandatory injunction directing the defendant to deliver up all the infringing pressure cooker bearing the plaintiff's trade mark PRESTIGE including moulds, whether pre-form moulds, blow moulds or any other moulds, if any along with mould drawing, CAD/CAM drawings, part drawings or any graphical representations thereto and engraving printed materials such as labels, brochures, packaging or other promotional material or any other material bearing the or depicting the infringing pressure cooker, to an authorized representative of the plaintiff's for destruction.

d. A preliminary decree be passed in favour of the plaintiff directing the defendant to render account of profits made by use of the trademarks "PRESTIGE".

e. Directing the defendant to pay to the plaintiff a sum of Rs.10,00,000/- as damages for the illegal acts committed by the defendant.

For Plaintiff : Mr.Arun C. Mohan

For Defendant : Party-in-Person

ORDER

This is a suit filed for infringement of trademark and passing off alleged to have been committed by the defendant herein.

2. The case of the plaintiff is that, the defendant herein with modification to the plaintiff's product (Prestige Pressure Cooker) is selling it under the trade name "STRAINO". The package though indicates the content (cooker) is manufactured by the defendant under the name "STRAINO", the content (cooker) inside the package has the plaintiff trade mark "PRESTIGE" and its logo embossed over different part of the cooker. Thus, by making modification in the plaintiff's product, the

defendant is marketing the product under different name "STRAININO".

3. Private notice was ordered to be served on the defendant.

On receipt of the notice, the defendant appeared and submitted himself to decree, with an undertaking that, he will not use the pressure cookers manufactured by the plaintiff and affixed his tradename on the plaintiff's product and cause infringement of trademarks or passing off.

4. This Court, on 10.01.2020 appointed an Advocate Commissioner to inspect the defendant's premises and take inventory and file a report before this Court on 13.01.2020. Accordingly, Ms.S.Sadhana, Advocate Commissioner, visited the premises of the respondent/defendant and identified the following items which are mentioned below:-

SL.Nos.	Products	Number of items
1.	Pressure Cooker (5.5Litre)	3 (Straino Imprinted)
2.	Pressure Cooker (8 Litre)	1 (Straino Imprinted)
3.	Gasket (5 Litre)	7
4.	Gasket (8 Litre)	1
5.	Metallic Safety Plug	13
6	Cooker Weight (23mm)	2
7.	Pressure Indicator	23

5. Today (i.e.,13.01.2020), the defendant/Mr.Ayyavu, is present before this Court and has given an undertaking letter that he will not hereafter sell the plaintiff's product under his tradename and he has also handed over all the products listed above to the Advocate Commissioner for producing it before the Court.

6. The Learned Counsel for the plaintiff would submit that, in view of the subsequent development occurred after filing the suit and the undertaking given by the defendant, appropriate order may be passed in the suit itself. In the light of the submissions made by the defendant, this Court is of the view that the suit itself can be disposed of with the following relief to the plaintiff.

(i). There shall be a permanent injunction restraining the defendant, its partners, assigns in business, dealers, stockists, sister concerns, distributors or any person acting on the defendant's behalf from manufacturing, advertising, selling, offering for sale, dealing in any manner with the pressure cooker or any other related product under the trade mark PRESTIGE and/or its logo and/or any other trade mark that may be identical/deceptively similar to the trade mark PRESTIGE and/or

its logo amounting to infringement of registered trade marks and;

(ii). There shall be a permanent injunction restraining the defendant, its partners, assigns in business, dealers, stockists, sister concerns, distributors or any person acting on the defendant's behalf from manufacturing, advertising, selling, offering for sale, dealing in any manner with the pressure cooker or any other related product under the trade mark PRESTIGE and/or its logo and/or any other trade mark that may be identical/deceptively similar to the trade mark PRESTIGE and/or its logo so as to pass off or enable others to pass off the defendant's products as and for the products of the plaintiff or in any other manner whatsoever;

7. Since the defendant has already handed over all infringing pressure cooker, bearing the plaintiff's trademark affixed with the defendant's tradename, there shall be no order regarding the relief sought in paragraph "C" & "D" of the plaint.

8. Since the defendant has substantially submitted by the decree, there shall be no costs or damages as claimed by the plaintiff. With the above observations, the suit is Partly decreed. No costs. Consequently, connected Applications are closed.

13.01.2020

Index : Yes/No
Speaking Order/Non-speaking order
bsm

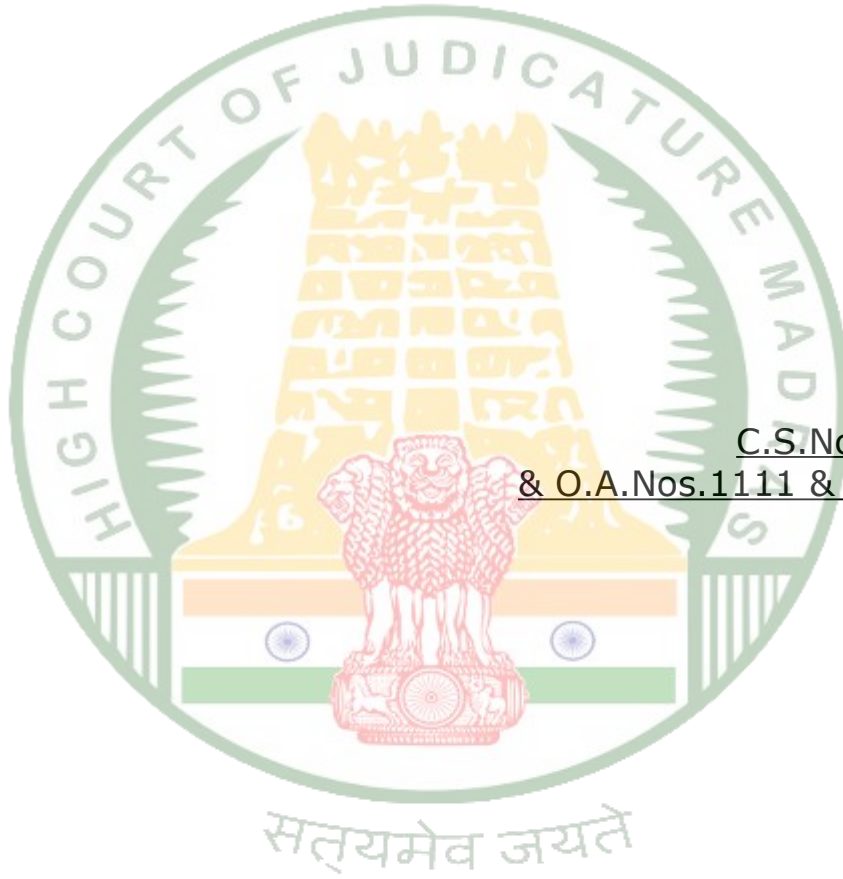


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Dr.G.Jayachandran,J.

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