



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 8TH DAY OF JULY, 2021

THE HON'BLE MR. JUSTICE R. SUBRAMANIAN

C.S. No.715 of 1998

Mr. R. BALASUBRAMANIAN,
trading as MAKESAH KUMAR MILLS,
17/65, Kumarappapuram 2nd st.,
Rayappapuram Extension,
Tiruppur - 641 602.

..Plaintiff

Vs.

1. SHANTI HOSTERY,
14, Nithyadhan Mukerjee Road,
Howrah – 711 101.

2. Mr. Sankaar,
5/1, Yutham,
A.T.R. Oshline,
Salkiya, Howrah.

3. My Choice,
14, Nityadhan Mukherjee Road,
(5th Floor), Samabaika Hat,
Howrah – 711 101.

4. R.R. Roy,
1, Mahendranath Roy Lane,
Howrah - 711 101.

5. R.K.Traders,
14, Nityadhan Mukherjee Road,
(5th Floor), Howrah - 711 101.

6. Ashok Kumar Daga,
14, Nityadhan Mukherjee Road,



(5th Floor), Howrah - 711 101.

7. Sunita Hosier,
13, Nityadhan Mukherjee Road,
(4th Floor), Howrah - 711 101.

8. S.R.S. Biswajit Saha,
14, Nityadhan Mukherjee Road,
Samayikahat (4th floor)
Howrah - 711 101.

9. Prodip Chandraroy Nihar Ranjan Roy
20, Alipur Road,
P.O.Nimta, Calcutta - 49

10. S.R.S. & Sons,
14, Nityadhan Mukherjee Road,
Samabiyaka Hat (4th Floor)
Howrah – 711 101.

11. K.C.Jain,
14, Nityadhan Mukerjee Road,
(5th floor), Howrah - 711 101.

12. Balaji,
14, Nityadhan Mukerjee Road,
5th floor, Howrah - 711 101.

13. D. Banik,
14, Nityadhan Mukerjee Road,
5th floor, Howrah - 711 101.

... Defendants

Civil Suit praying that this Hon'ble Court be pleased to pass prayers for
a Judgement and Decree:

(a) granting permanent injunction restraining the defendants
themselves, their servants or agents or anyone claiming through them from
in any manner infringing the plaintiff's well established trade mark M-K-M



GARRY AMERICAN CASUALS by using the offending trade mark M-K-M GARRY AMERICAN CASUALS or any other mark or marks which are deceptively similar to or a colourable imitation of the plaintiff's well established Trade mark M-K-M GARRY AMERICAN CASUALS;

b) granting permanent injunction restraining the defendants by themselves, their servants or agents or anyone claiming through them from in any manner infringing the Plaintiff's Copyright over the artistic work M-K-M GARRY AMERICAN CASUALS by using the offending artistic work "M-K-M GARRY AMERICAN CASUALS" or any other work or works which are deceptively similar to or a colourable imitation of the Plaintiff's Copyright over the artistic work M-K-M GARRY AMERICAN CASUALS;

c) granting permanent injunction restraining the defendants themselves, their servants or agents or anyone claiming through them from in any manner passing off of their hosiery products including T.Shirts bearing the offending trade mark and artistic work M-K-M GARRY AMERICAN CASUALS as and for the Plaintiffs' hosiery products including T.shirts bearing the well established trade mark and copyright over the artistic work M-K-M GARRY AMERICAN CASUALS, either by selling or offering for sale or in any manner advertising the same;



d) directing the defendants to render true and faithful accounts of the profits earned by them by using the offending trade mark and artistic work M-K-M GARRY AMERICAN CASUALS and directing the payment of such profits to the Plaintiffs by way of damages; and

e) directing the defendants to surrender to the Plaintiffs the entire stock of unused hosiery products including T.shirts bearing the offending “M-K-M GARRY AMERICAN CASUALS” trade mark label together with the blocks and dyes for destruction.

This Civil Suit coming on this day before this court for hearing the plaintiff and the defendants herein not appearing in person or by advocate and upon reading the plaint filed herein and this court is of the view that since the lead counsel for the plaintiff is no more and the other counsel was serving on the bench of the Intellectual Property Appellate Board, this court had by order dated 28/04/2021 directed notice to be issued to the plaintiff accordingly, a notice is issued and the same was served on the plaintiff on 05/06/2021 and despite such service the plaintiff has not chosen to enter appearance to prosecute the suit and, it is ordered as follows:-



for non-prosecution.

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2. That there shall be no costs of this suit.

WITNESS THE HON'BLE JUSTICE MR. SANJIB BANERJEE, THE
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 8TH
DAY OF JULY, 2021.

Sd./-

ASSISTANT REGISTRAR (COMM. CASES)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies
of the Orders/Judgments/Decrees in this format.



VF-15.07.2021

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C.S. No.715 of 1998

ORDER :-

DATED: 08.07.2021

THE HON'BLE MR. JUSTICE
R. SUBRAMANIAN

FOR APPROVAL: 16/07/2021

APPROVED ON: 19/07/2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 08.07.2021

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.S.No.715 of 1998

R.Balasubramanian

...Plaintiff

.Vs.

1.Shanthi Hosiery,
14, Nithyadhan Mukerjee Road,
Howrah – 711 101.

2.Sankaar,

3.My Choice,
14, Nityadhan Mukherjee Road,
(5th Floor), Samabaika Hat,
Howrah – 711 101.

4.R.R.Roy

5.R.K.Traders,
14, Nityadhan Mukherjee Road,
(5th Floor), Howrah - 711 101.

6.Ashok Kumar Daga,
14, Nityadhan Mukherjee Road,
(5th Floor), Howrah - 711 101.

7.Sunita Hosiery,
13, Nityadhan Mukherjee Road,
(4th Floor), Howrah - 711 101.

8.S.R.S.Biswajit Saha



9.Prodip Chandraroy Nihar Ranjan Roy

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10.S.R.S. & Sons,
14, Nityadhan Mukherjee Road,
Samabiyaka Hat (4th Floor)
Howrah – 711 101.

11.K.C.Jain

12.Balaji

13.D.Banik

... Defendants

Plaint filed under Order VII Rule 1 of Civil Procedure Code and under Sections 105 and 106 of the Trade and Merchandise Marks Act, 1958 and Sections 55 and 62 of the Copyright Act, 1957 praying for a judgment and decree :

a) granting permanent injunction restraining the defendants themselves, their servants or agents or anyone claiming through them from in any manner infringing the plaintiff's well established trade mark M-K-M GARRY AMERICAN CASUALS by suing the offending trade mark M-K-M GARRY AMERICAN CASUALS or any other mark or marks which are deceptively similar to or a colourable imitation of the plaintiff's well established trade mark M-K-M GARRY AMERICAN CASUALS;

b) granting permanent injunction restraining the defendants by themselves, their servants or agents or anyone claiming through them from in any manner infringing the plaintiff's copyright over the artistic work M-K-M GARRY AMERICAN CASUALS by using the offending artistic work “M-K-M GARRY AMERICAN CASUALS” or any other work or works



which are deceptively similar to or a colourable imitation of the plaintiff's copyright over the artistic work M-K-M GARRY AMERICAN CASUALS;

c) granting permanent injunction restraining the defendants themselves, their servants or agents or anyone claiming through them from in any manner passing off of their hosiery products including T.Shirts bearing the offending trade mark and artistic work M-K-M GARRY AMERICAN CASUALS as and for the plaintiffs' hosiery products including T.shirts bearing the well established trade mark and copyright over the artistic work M-K-M GARRY AMERICAN CASUALS, either by selling or offering for sale or in any manner advertising the same;

d) directing the defendants to render true and faithful accounts of the profits earned by them by using the offending trade mark and artistic work M-K-M GARRY AMERICAN CASUALS and directing the payment of such profits to the plaintiffs by way of damages and

e) directing the defendants to surrender to the plaintiffs the entire stock of unused hosiery products including T.shirts bearing the offending “M-K-M GARRY AMERICAN CASUALS” trade mark label together with the blocks and dyes for destruction and

f) for costs of the suit.

For Plaintiff : No appearance

For Defendant : No appearance



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J U D G M E N T

The suit has been filed by the plaintiff for a decree and judgment:

a) granting permanent injunction restraining the defendants themselves, their servants or agents or anyone claiming through them from in any manner infringing the plaintiff's well established trade mark M-K-M GARRY AMERICAN CASUALS by suing the offending trade mark M-K-M GARRY AMERICAN CASUALS or any other mark or marks which are deceptively similar to or a colourable imitation of the plaintiff's well established trade mark M-K-M GARRY AMERICAN CASUALS;

b) granting permanent injunction restraining the defendants by themselves, their servants or agents or anyone claiming through them from in any manner infringing the plaintiff's copyright over the artistic work M-K-M GARRY AMERICAN CASUALS by using the offending artistic work "M-K-M GARRY AMERICAN CASUALS" or any other work or works which are deceptively similar to or a colourable imitation of the plaintiff's copyright over the artistic work M-K-M GARRY AMERICAN CASUALS;

c) granting permanent injunction restraining the defendants themselves, their servants or agents or anyone claiming through them from



in any manner passing off of their hosiery products including T.Shirts bearing the offending trade mark and artistic work M-K-M GARRY AMERICAN CASUALS as and for the plaintiffs' hosiery products including T.shirts bearing the well established trade mark and copyright over the artistic work M-K-M GARRY AMERICAN CASUALS, either by selling or offering for sale or in any manner advertising the same;

d) directing the defendants to render true and faithful accounts of the profits earned by them by using the offending trade mark and artistic work M-K-M GARRY AMERICAN CASUALS and directing the payment of such profits to the plaintiffs by way of damages and

e) directing the defendants to surrender to the plaintiffs the entire stock of unused hosiery products including T.shirts bearing the offending “M-K-M GARRY AMERICAN CASUALS” trade mark label together with the blocks and dyes for destruction and

f) for costs of the suit.

2. Since the lead counsel for the plaintiff is no more and the other

counsel was serving the on the bench of the Intellectual Property Appellate



Board, I had by order dated 28.04.2021 directed notice to be issued to the plaintiff. Accordingly a notice is issued and the same was served on the plaintiff on 05.06.2021. Despite such service the plaintiff has not chosen to enter appearance to prosecute the suit.

3. The suit is therefore dismissed for non-prosecution. No costs.

Sd./- R.S.M.J.,

08.07.2021

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

List of Exhibits marked on the side of the plaintiff : Nil

List of the witnesses examined on the side of the defendants: Nil

List of Exhibits marked on the side of the defendants: Nil

Sd./- R.S.M.J.,

08.07.2021

// Certified to be true copy//

Dated at Madras this day of 2021.

Court Officer(O.S.)

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