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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 28TH DAY OF JUNE 2021

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

C.S.No.903 of 2000

Murali K.Gwalini,  
Proprietor  
M/s.New India Sales Corporation  
103, Nungambakkam High Road,  
Chennai – 600 034.

...Plaintiff

.Vs.

M/s.Kids Mart (India) Pvt. Ltd.,  
G.109, Spencer Plaza Phase II  
769, Annasalai,  
Chennai – 600 002.

... Defendant

Civil suit praying that this Hon'ble Court be pleased to pass a  
judgment and decree in favour of the plaintiff:-

a) for a permanent injunction restraining the defendants their men,  
agents, servants or anyone claiming through them from in any manner  
passing off their business and products as and for that of the plaintiff's trade  
and business by using the offending trade mark “Just Kidding” and/ or any  
other mark which is similar or deceptively similar to the plaintiff's trade  
mark “Just Born” and/ or “Just Kids” either as a trade mark or trading style  
in any of its manufacturing activities price lists, name tags, calenders, name  
boards, sign Brands, packing materials or complimentary items,  
advertisements in news papers, magazines, Television, hoarding etc.



b) for a permanent injunction restraining the defendants, their men, agents, servants, or any one claiming through them from in any manner infringing the plaintiff's registered copy right and trade mark Just Born and/or "Just Kids" or with identical, lettering style as adopted by the plaintiff or by using any other style of writing which may be calculated to deceive the general public and the trade.

c) for a permanent injunction restraining the defendants, their men, agents, servants or any one claiming through them from in any manner passing off the plaintiff's registered Trade mark and Copy right "Just Born" and/or Just Kids and/or with identical, lettering style as adopted by the plaintiff or by using any other style of writing which may be calculated to deceive the general public and the trade.

d) directing the defendants to render a true and faithful accounts of the business using the Offending trade mark and directing the defendants to pay the profits made by them to the plaintiff's damages.

e) directing the defendants to pay to the plaintiff a sum of Rs.500 being the liquidated damages to the plaintiff.

f) directing the defendant to surrender all their cartons packing materials, letter heads, invoices, compliments bearing the offending Trade Mark Just Born and/or "Just Kids" for destruction and

g) for costs of the suit.



**WEB COPY** This Civil suit coming on this day before this court for hearing and the plaintiff and the defendant herein not appearing in person or by advocate and upon reading the plaint filed herein, and this court having observed that the suit is one for passing off which falls within the definition of commercial dispute under Section 2(1) (C) (xvii) of the Commercial Courts Act, 2015, therefore the jurisdiction is decided to the effect that this is a commercial dispute and the Commercial Division takes cognizance of the suit, and there has been no appearance for the plaintiff on earlier occasions, viz., 28.04.2021 and 21.06.2021, the suit was directed to be listed under the caption “for dismissal” today, even today none appears for the plaintiff. it is ordered as follows:-

That the Suit in C.S.No. 903 of 2000, be and is hereby dismissed for non-prosecution.

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

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,  
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE  
28<sup>th</sup> DAY OF JUNE 2021.

Sd./-

ASSISTANT REGISTRAR (COMM.CASES)

//Certified to be true copy//

Dated at Madras this the       day of       2021.

COURT OFFICER(O.S.)



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C.S.No.903 of 2000

ORDER :-  
DATED:28.06.2021

THE HON'BLE MR. JUSTICE  
R.SUBRAMANIAN

FOR APPROVAL: 13.07.2021

APPROVED ON: 13.07.2021



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**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 28.06.2021**

**CORAM**

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN**

**C.S.No.903 of 2000**

Murali K.Gwalini,  
Proprietor  
M/s.New India Sales Corporation  
103, Nungambakkam High Road,  
Chennai – 600 034.

...Plaintiff

.Vs.

M/s.Kids Mart (India) Pvt. Ltd.,  
G.109, Spencer Plaza Phase II  
769, Annasalai,  
Chennai – 600 002.

... Defendant

Plaint filed under Sections 105 and 106 of Trade and Merchandise Marks Act, 1958 under Section 55 and 62(2) of the Copy Rights Act, 1957 and Order VII Rule 1 of the Code of Civil Procedure read with Order IV(1) of the Original Side Rules praying :

a) for a permanent injunction restraining the defendants their men, agents, servants or anyone claiming through them from in any manner passing off their business and products as and for that of the plaintiff's trade and business by using the offending trade mark “Just Kidding” and/ or any other mark which is similar or deceptively similar to the plaintiff's trade mark “Just Born” and/ or “Just Kids” either as a trade mark or trading style in any of its manufacturing activities price lists, name tags, calenders, name boards, sign Brands, packing materials or complimentary items,



advertisements in news papers, magazines, Television, hoarding etc.

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b) for a permanent injunction restraining the defendants, their men, agents, servants, or any one claiming through them from in any manner infringing the plaintiff's registered copy right and trade mark Just Born and/or "Just Kids" or with identical, lettering style as adopted by the plaintiff or by using any other style of writing which may be calculated to deceive the general public and the trade.

c) for a permanent injunction restraining the defendants, their men, agents, servants or any one claiming through them from in any manner passing off the plaintiff's registered Trade mark and Copy right "Just Born" and/or Just Kids and/or with identical, lettering style as adopted by the plaintiff or by using any other style of writing which may be calculated to deceive the general public and the trade.

d) directing the defendants to render a true and faithful accounts of the business using the Offending trade mark and directing the defendants to pay the profits made by them to the plaintiff's damages.

e) directing the defendants to pay to the plaintiff a sum of Rs.500 being the liquidated damages to the plaintiff.

f) directing the defendant to surrender all their cartons packing materials, letter heads, invoices, compliments bearing the offending Trade Mark Just Born and/or "Just Kids" for destruction and

g) for costs of the suit.

For Plaintiff : No appearance

For Defendants : No appearance

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The suit has been filed by the plaintiff seeking

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a) for a permanent injunction restraining the defendants their men, agents, servants or anyone claiming through them from in any manner passing off their business and products as and for that of the plaintiff's trade and business by using the offending trade mark "Just Kidding" and/ or any other mark which is similar or deceptively similar to the plaintiff's trade mark "Just Born" and/ or "Just Kids" either as a trade mark or trading style in any of its manufacturing activities price lists, name tags, calenders, name boards, sign Brands, packing materials or complimentary items, advertisements in news papers, magazines, Television, hoarding etc.

b) for a permanent injunction restraining the defendants, their men, agents, servants, or any one claiming through them from in any manner infringing the plaintiff's registered copy right and trade mark Just Born and/or "Just Kids" or with identical, lettering style as adopted by the plaintiff or by using any other style of writing which may be calculated to deceive the general public and the trade.

c) for a permanent injunction restraining the defendants, their men, agents, servants or any one claiming through them from in any manner passing off the plaintiff's registered Trade mark and Copy right "Just Born" and/or Just Kids and/or with identical, lettering style as adopted by the plaintiff or by using any other style of writing which may be calculated to



deceiver the general public and the trade.

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d) directing the defendants to render a true and faithful accounts of the business using the Offending trade mark and directing the defendants to pay the profits made by them to the plaintiff's damages.

e) directing the defendants to pay to the plaintiff a sum of Rs.500 being the liquidated damages to the plaintiff.

f) directing the defendant to surrender all their cartons packing materials, letter heads, invoices, compliments bearing the offending Trade Mark Just Born and/or “Just Kids” for destruction and

g) for costs of the suit.

2. Since there has been no appearance for the plaintiff on earlier occasions, viz., 28.04.2021 and 21.06.2021, the suit was directed to be listed under the caption “for dismissal” today. Even today none appears for the plaintiff. Hence, the suit is **dismissed for non-prosecution**. No costs.

Sd./-(R.S.M.J.)  
**28.06.2021**

//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.

**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.)  
28.06.2021**

//Certified to be true copy//  
Dated at Madras this the       day of       2021.

**COURT OFFICER(O.S.)**

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