

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 19.03.2021

PRONOUNCED ON: 01.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

O.A.Nos. 29, 30 & 31 of 2021

IN

C.S.No. 14 of 2021

N.Ranga Rao & Sons Private Ltd.,
PB No. 52, Vani Vilasa Road, Mysore – 570 004
and whose branch office is at
T.S. 109, Block No.3, Poomagal,
5th Street, Ekkaduthangal, Chennai – 600 097.

... Applicant/plaintiff in all O.A.Nos.

Vs.

ITC Limited
Virginia House,
37, J.L. Nehru Road, Kolkata – 700 071
and also at
69, Chamiers Road, Chennai – 600 018

... Respondent/Defendant in all O.A.Nos.

PRAYER IN O.A.No.29/2021: This application filed under Order XIV Rule 8 of O.S Rules read with Order XXXIX Rules 1 & 2 and Section 151 CPC, to pass an order of interim injunction restraining the respondent by

itself, its men, servants, agents, assigns, successors, or any one claiming through it from in any manner infringing the Applicant's registered Trade Mark CYCLE BRAND THREE IN ONE label, morefully specified in SCHEDULE A in the Judges Summons, by using the impugned packaging label containing identical colour scheme/colour combination of orange and yellow, morefully specified in SCHEDULE B in the Judges Summons or any other mark/label that contains colour scheme/colour combination which is in anyway identical, deceptively similar to or a colourable imitation of the Applicant's registered Trade Mark CYCLE BRAND THREE IN ONE label, either by manufacturing or selling or offering for sale or in any manner advertising the same, pending disposal of the suit.

PRAYER IN O.A.No.30/2021: This application filed under Order XIV Rule 8 of O.S Rules read with Order XXXIX Rules 1 & 2 and Section 151 CPC, to pass an order of interim injunction restraining the respondent by itself, its men, servants, agents, assigns, successors, or any one claiming through it from in any manner infringing the Applicant's Copyright in the distinctive colour scheme/colour combination of orange and yellow, morefully specified contained in SCHEDULE C in the Judges Summons, by using the impugned packaging label containing identical colour scheme/colour combination, which has an over all similarity to and is a colourable imitation of the Applicant's colour combination/colour scheme as used in their CYCLE BRAND THREE IN ONE label, either by manufacturing or selling or offering for sale or in any manner advertising the same, pending disposal of the suit.

PRAYER IN O.A.No.31/2021: This application filed under Order XIV Rule 8 of O.S Rules read with Order XXXIX Rules 1 & 2 and Section 151 CPC, to pass an order of interim injunction restraining the respondent by itself, its men, servants, agents, assigns, successors, or any one claiming through it from in any manner passing off its products, by using the offending packaging label containing the colour scheme/colour combination of orange and yellow, more fully specified in SCHEDULE B in the Judges Summons, which is almost identical to the Applicant's prior adopted and reputed colour combination/colour scheme of orange and yellow, morefully contained in SCHEDULE C in the Judges Summons, or by using any deceptively similar colour combination in the course of its business or in any manner whatsoever, pending disposal of the suit.

SCHEDULE A, B & C in all O.A.Nos.:



For Applicant/Plaintiff : Mr. Satish Parasaran
Senior Counsel
for Mr. Rajesh Ramanathan

For Respondent/Defendant: Mr. Arun C. Mohan

COMMON ORDER

These three applications have been filed by the plaintiff in the suit seeking an order of interim injunction restraining the defendant from infringing the registered Trademark CYCLE BRAND THREE IN ONE label and for an order of interim injunction restraining the defendant from infringing the Copyright in the distinctive colour scheme/colour combination of orange and yellow of the plaintiff and for an order of interim injunction restraining the defendant from passing off their products by using the offending package material containing the colour scheme / colour combination of orange and yellow.

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2. The suit had been filed by N.Ranga Rao & Sons Private Limited, a company incorporated under the Companies Act, 2013 taking advantage of Sections 27, 28, 29, 134 and 135 of the Trademarks Act, 1999

and Sections 51, 55 and 62 of the Copyright Act, 1957 seeking a Judgment and Decree against the defendant, ITC Limited, a Company incorporated under the Companies Act, 1956 for permanent injunction restraining the defendant from infringing the registered Trademark of the plaintiff CYCLE BRAND THREE IN ONE label with respect to incense sticks / agarbathis and for a permanent injunction restraining the defendant from infringing the Copyright of the plaintiff in the distinctive colour scheme / colour combination of orange and yellow by using identical colour scheme / colour combination and for a permanent injunction restraining the defendant from passing off their products by using the offending package material containing the colour scheme / colour combination of orange and yellow and for consequent reliefs to render accounts and to surrender the offending labels and promotional materials and for costs of the suit.

3. The plaintiff has been engaged in the business of manufacturing and selling incense sticks / Agarbathies since 1948. They were initially established as a proprietary concern and later transformed into a partnership firm and later, incorporated as a private limited company. They have adopted several Trademarks including CYCLE, CYCLE

BRAND with the device of a cycle, CYCLE BRAND THREE IN ONE, WOODS, LIA, HERITAGE, RHYTHM, etc., which according to them they have been using openly and continuously for the products ranging from agarbathies to pooja related products including safety matches. In this suit, the plaintiff is primarily concerned with the specific colour combination of orange and yellow which they have conceived and have adopted and have been using for the products under the Trademark CYCLE BRAND THREE IN ONE. The plaintiff has also obtained statutory protection by obtaining registration under the Trademarks Act and also under the Copyright Act. Details of the same have been given in the plaint and documents substantiating the same have also been filed along with the plaint.

4. The plaintiff also claims that they have business interests across the country and all over the world and their brand namely, CYCLE BRAND THREE IN ONE, with its distinctive colour combination / colour scheme of orange and yellow has been always identified with the plaintiff. They have also filed copies of sales invoices and copies of promotional materials and bills for promotional expenses as documents along with the plaint. The plaintiff's colour combination of orange and yellow is given below:-



5. The plaintiff claims that the popularity of their colour scheme / colour combination of orange and yellow had been established by way of surveys and the plaintiff claims that their product has been categorised as a most easily recognizable brand by the trade and public across the country.

6. In the month of July 2020, the plaintiff came across the defendant using their distinctive colour combination /colour scheme of orange fading into yellow in more or less the same proportion in their advertisement posters and images which were also prominently promoted in the social networking pages of the defendant. The plaintiff claims that the

defendant had adopted the substantial colour combination / colour scheme with intention to encroach upon the good will and reputation of the plaintiff. It is to be noted that the defendant also market the same products agarbathies under the name MANGALDEEP. The colour combination and the colour scheme of the defendant is shown below:-



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7. The plaintiff caused a notice dated 23.07.2020 to be issued calling upon the defendant to cease and desist from using the colour scheme

and colour combination of orange and yellow. The defendant issued a reply dated 17.08.2020 wherein they have admitted to using the said colour combination/colour scheme but stated that their mark MANGALDEEP is different from the mark of the plaintiff, CYCLE BRAND THREE IN ONE and therefore, claimed that there was no possibility of confusion either in the minds of the customers or in the minds of traders.

8. These applications came up for consideration in the first instance on 21.01.2021 wherein, quite strangely, Mr.M.S.Bharat, a learned counsel stated that he had filed vakalt on behalf of the defendant. However, vakalat was not filed. Caveat was not filed. Mr.M.S.Bharat was led by Mr.P.S.Raman, learned Senior Counsel. The applications were moved on behalf of the plaintiff by Mr.Satish Parasaran, learned Senior Counsel.

9. This Court extended an open invitation to both the counsels on record and to the learned Senior Counsels to examine the colour combinations of the products of the plaintiff and the defendant and thereafter advance further arguments. The packaging materials of the respective agarbathies were also requested to be produced. The proforma

packets of the two agarbathies were produced on 25.01.2021. Further arguments were advanced by the learned Senior Counsel for the defendant stated that to large extent, the grievance of the plaintiff had been addressed and the defendant had taken a long step towards changing the colour scheme in the offending materials pointed out by the plaintiff.

10. It is to be also noted that the defendant had stated that their colour combination had been wrongly reflected in online sales websites like Amazon and such other platforms and they had taken effective steps to promote their distinctive colour scheme, namely rust colour with an unique impression of a chakra and therefore stated there could be no confusion between the promotional materials of the defendant and the promotional materials of the plaintiff.

11. The issue had therefore been resolved to a large extent as it was found that the colour combination of the products of the defendant in the online sales websites did not reflect the actual colour combination as found in the original packets. The only aspect which remained for resolution was for similar correctional photographs to be embedded in the

Face Book pages of the defendant. It was stated that the Face Book pages are more like a window leading to further pages in which the defendant had projected various poojas which are normally performed.

12. Mr.Satish Parasaran, learned Senior Counsel pointed out that in these pages, the defendant continued to project the offending colour combination of orange and yellow, whereas the actual colour combination of the defendant was rust in colour with an impression chakra.

13. Mr.Arun C. Mohan, learned counsel, who had actually filed vakalat on behalf of the defendant however stated that the defendant was reluctant to project their actual colour combination in the Face Book pages and was also reluctant to project their unique chakra images in the Face Book page.

14. The issue then boiled down from a point of law to addressing it from a view point of commonsense.

15. The Court had extensive discussion with Mr. Arun C. Mohan but the learned counsel reiterated that the defendant would like to retain the offending colour combination of orange and yellow even in the Face Book pages.

16. The colour combination of the defendant now projected in online 'e' Commerce Websites as follows:-



17. A glance at the same reveals that the defendant have indeed conceived an unique colour combination much different from that of the plaintiff and had also conceived an impression of a chakra embedded on the image.

18. The reasons for the stubbornness of the defendant not to project this unique colour combination in their Face Book pages could not be understood or fathomed by this Court. It would only be to their advantage if they were to project this particular colour combination with its impression of a chakra in all their promotional pages including Face Book pages. There is no advantage gained by having a split identity. Rather it would only work to their disadvantage.

19. As stated, the confrontational litigation has stretched to such an extent that the officials of the defendant company appear not to appreciate the uniqueness of their own colour combination with the impression of an embedded chakra and have rather focused themselves on denying every averment of the plaintiff. It is with much pain that it is recorded that this stand of the defendant is actually to their own detriment. Using a colour combination of orange and yellow would be a direct infringement on the established copyright of that particular colour combination which vests with the plaintiff. The officials, who have instructed the learned counsel for the defendant appear to be more intent on

rejecting their own unique colour combination rather than in appreciating its uniqueness which is evident and in projecting it in all their promotional pages including the Face Book pages.

20. In view of the obstinate stand taken by the defendant, I hold that an order of interim injunction has to necessarily follow. The defendant had themselves realised that they were infringing on the colour combination of the plaintiff and had therefore changed or rather adopted their own colour combination which they are now using in their packets in the Online e-commerce websites. They however refuse to bring about such a change in the Face Book pages.

21. Naturally, injunction is the only answer and it is hoped that the defendant would heed to sense and sensibility and not harp on pride and prejudice. The officials, who instruct the learned counsel for the defendant appear to be more keen on destroying the unique image created for promoting their products by diluting it, for reasons best known to them, by bringing it closer to the colour combination of the plaintiff and consciously abandoning their own colour combination. The defendant will naturally

have to face the consequences of an injunction.

22. The other aspect whether the two colour combination are similar is an issue for trial. Whether the plaintiff would extend reliefs sought by including all other colour combinations is an hypothetical issue as on date.

23. The relief sought in the plaint is clear. The plaintiff seeks to protect their orange and yellow colour combination. The defendant had been using the same in the e-commerce websites, rather, the images did not correctly project their own colour combination. They reverted back to their actual colour combination. It is however found that the offending colour combination is still found in the Face Book pages of the defendant. The defendant had refused to revert back to their actual unique colour combination with an image of an embedded Chakra.

24. I shall relegate the parties to trial on this issue. After arguments had concluded, the learned counsel for the defendant filed

written arguments and also a series of Judgments. I have consciously not referred to them. The defendant had realised that images in the online websites did not project their unique colour combination which is distinct from that adopted by the plaintiff. They changed the images. For reasons best known to them they have taken a conscious decision to abandon their own unique colour combination in the Face Book pages. They will be given an opportunity to explain this stand when trial opens.

25. In the result: (1) There shall be an order of interim injunction in O.A.Nos. 30 & 31 of 2021 restraining the defendant from using the colour combination of orange and yellow in the Face Book pages. Naturally the attempt of the defendant to pass off their products through the promotional pages in the Face Book are also enjoined. O.A.Nos. 30 & 31 are allowed with the above observation. No order as to costs; (ii) With respect to O.A.No. 29 of 2021, the name of the product of the defendant is MANGALDEEP and the name of the product of the plaintiff is CYCLE BRAND THREE IN ONE label. The names will not cause any confusion and therefore, I am not inclined to grant the relief sought in O.A.No. 29 of 2021 and accordingly, it is dismissed. No order as to costs.

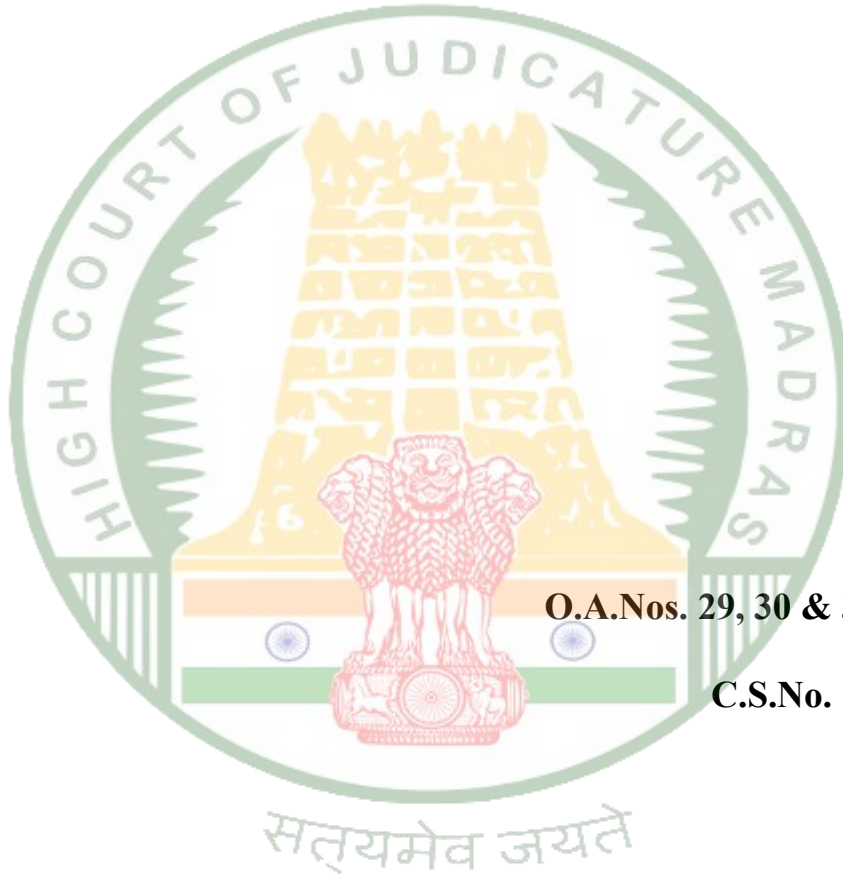
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C.V.KARTHIKEYAN. J.

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