



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 04TH DAY OF OCTOBER 2021

THE HON'BLE MR. JUSTICE R. SUBRAMANIAN

C.S.No. 236 of 2007

* Health & Glow Private Limited,
Having Registered office at
Site No.32/5, 2nd Floor, Ganapa Towers,
Hosur Main Road, NGR Layout,
Roopena Agrahara,
Bangalore – 560 058,
Karnataka, India.
Rep by its Authorised Signatory

... Plaintiff

(Amended as per order dated 25/08/2021
in Appln.No. 2923 of 2021)

-Vs-

1. Dhiren Krishna Paul,
Trading as
Health and Glow Clinic,
BA-43, Salt Lake City, Sector – 1,
Kolkata – 700 064.
2. Dr. PB's Health & Glow Clinic Private Limited,
BA-43, Salt Lake City, Sector – 1,
Kolkata – 700 064.

... Defendants

Civil suit praying that this Hon'ble Court be pleased to pass a
judgment and decree in favour of the Plaintiff for the following reliefs;



a) A permanent injunction restraining the Defendants, their principal officers, servants, agents, their assigns in business, dealers, stockists and others associated with them from using the words “HEALTH & GLOW” or any other mark, name, logo, monogram or label that is or may be identical with or deceptively similar to the registered 1) HEALTH & GLOW and / or 2) HEALTH AND GLOW (DEVICE) trademarks of the Plaintiff, or to market, sell, offer for sale, license, advertise, directly or indirectly deal in any goods and / or services online or offline amounting to the infringement of the Plaintiff's registered trademark Nos.802306, 1315016 and 1315017 in classes 3 and 3 & 5 respectively;

b) A permanent injunction restraining the Defendants, their principal officers, servants, agents, their assigns in business, dealers, stockists and others associated with them from using as a domain name / website address, marketing, selling, offering for sale, licensing, advertising, either directly or indirectly dealing in any goods and / or services bearing / using the words “HEALTH & GLOW” or any other mark, name, logo, monogram or label that is or may be identical with or deceptively similar to the HEALTH & GLOW / HEALTH AND GLOW (DEVICE) trademarks of the Plaintiff, as may cause or be likely to cause confusion or deception amounting to passing off of the Defendants' goods and services as those of the plaintiff.



WEB COPY

c) A permanent injunction restraining the defendants, their principal officers, servants, agents, their assigns in business, dealers, stockists and others associated with them from reproducing, using as signage or otherwise, printing, publishing or distributing any label, printed matter, stationery or packaging which is a colourable imitation or substantial reproduction of the plaintiff's "HEALTH & GLOW" label as depicted in paragraph 13 of this plaint, amounting to infringement of Plaintiff's copyright thereto.

d) A decree for delivery up to the plaintiff for destruction of all packaging, labels, block, dyes, stickers, signage, advertising materials, all types of stationary and brochures and all other infringing materials of the Defendants bearing the words "HEALTH & GLOW,

e) A preliminary decree in favour of the plaintiff directing the defendants to render account of profits made through use of the HEALTH & GLOW mark and a final decree thereafter be passed in favour of the plaintiff for the amount of profits that have been found to be made by the defendants after it had rendered accounts, and

f) Decree for damages to the tune of Rs.25,00,000/- to be passed in favour of the plaintiff and against the defendants. Award costs for the suit.



WEB COPY

This Civil Suit coming on this day before this court for hearing in the presence of Mr.N.C. Vishal for Mr.Pravin Anand, Advocates for the plaintiff herein and the defendants herein, not appearing in person or by advocate and the said defendants herein, having been set exparte and upon reading the Complaint filed herein in C.S.No. 236 of 2007 and the other exhibits therein referred to and upon perusing the evidence adduced therein and, **it is ordered and decreed as follows:-**

That (a) Dhiren Krishna Paul, trading as Health and Glow Clinic and (2) Dr. PB's Health & Glow Clinic Private Limited, the defendants herein, their principal officers, servants, agents, their assigns in business, dealers, stockists and other associated with them, be and are hereby restrained by an order of permanent injunction from (a) using the words “HEALTH & GLOW” or any other mark, name, logo, monogram or label that is or may be identical with or deceptively similar to the registered 1) HEALTH & GLOW and / or 2) HEALTH AND GLOW (DEVICE) trademarks of the Plaintiff, or to market, sell, offer for sale, license, advertise, directly or indirectly deal in any goods and / or services online or offline amounting to the infringement of the Plaintiff's registered trademark Nos.802306, 1315016 and 1315017 in classes 3 and 3 & 5 respectively and (b) using as a domain name / website address, marketing, selling, offering for sale, licensing, advertising, either directly or indirectly dealing in any goods and /



or services bearing / using the words “HEALTH & GLOW” or any other mark, name, logo, monogram or label that is or may be identical with or deceptively similar to the HEALTH & GLOW / HEALTH AND GLOW (DEVICE) trademarks of the Plaintiff, as may cause or be likely to cause confusion or deception amounting to passing off of the Defendants' goods and services as those of the plaintiff and (c) reproducing, using as signage or otherwise, printing, publishing or distributing any label, printed matter, stationery or packaging which is a colourable imitation or substantial reproduction of the plaintiff's “HEALTH & GLOW” label as depicted in paragraph 13 of this plaint, amounting to infringement of Plaintiff's copyright thereto.

2. That an order for delivery up to the plaintiff for destruction of all packaging, labels, block, dyes, stickers, signage, advertising materials, all types of stationary and brochures and all other infringing materials of the Defendants bearing the words “HEALTH & GLOW.

3. That the defendants herein, be and are hereby directed to render account of profits made through use of the HEALTH & GLOW mark and do pay in favour of the plaintiff for the amount of profits that have been found to be made by the defendants after it had rendered accounts.



4. That the defendants herein, do pay to the plaintiff herein, a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) as damages in favour of the plaintiff and against the defendants herein.

5. That the defendants herein, do pay to the plaintiff herein the costs of this suit, as and when taxed by the taxing officer of this Court and noted in the margin thereof.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
04TH DAY OF OCTOBER 2021.

Sd/-

ASSISTANT REGISTRAR (Comm.Cases)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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



ED
WEB COPY 03.01.2022

7

C.S.No. 236 of 2007

DECREE:

DATED : 04/10/2021

THE HON'BLE MR. JUSTICE
R. SUBRAMANIAN

FOR APPROVAL : 11/01/2022

APPROVED ON : 24/01/2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.S.No.236 of 2007

Health & Glow Private Limited,
having registered Office at:
Site No.32/5, 2nd Floor, Ganapa Towers,
Hosur Main Road, NGR Layout,
Roopena Agrahara, Bangalore – 560058,
Karnataka, India rep by its
Authorised Signatory.
(Amended as per order dated 25.08.2021 in
Appln.No.2923 of 2021)

...Plaintiff

Vs.

1.Dhiren Krishna Paul,
trading as Health and Glow Clinic,
BA-43, Salt Lake City, Sector – 1,
Kolkata – 700 064.

2.Dr.PB's Health & Glow Clinic Private Limited,
BA-43, Salt Lake City, Sector – 1,
Kolkata – 700 064.

...Defendants

Prayer: Complaint filed under Order VII Rule 1 of C.P.C., r/w. Order IV Rule 1 of the Original Side rules and also Sections 29, 134 and 135 of the Trademarks Act, 1999 and Sections 17, 51 and 55 of the Copyright Act, 1957, praying as follows:-

a) a permanent injunction restraining the Defendants, their principal officers, servants, agents, their assigns in business, dealers, stockists and others associated with them from using the words “HEALTH



& GLOW” or any other mark, name, logo, monogram or label that is or may be identical with or deceptively similar to the registered 1) HEALTH & GLOW and / or 2) HEALTH AND GLOW (DEVICE) trademarks of the Plaintiff, or to market, sell, offer for sale, license, advertise, directly or indirectly deal in any goods any / or services online or offline amounting to the infringement of the Plaintiff's registered trademark Nos.802306, 1315016 and 1315017 in classes 3 and 3 & 5 respectively;

b) a permanent injunction restraining the Defendants, their principal officers, servants, agents, their assigns in business, dealers, stockists and others associated with them from using as a domain name / website address, marketing, selling, offering for sale, licensing, advertising, either directly or indirectly dealing in any goods and / or services bearing / using the words “HEALTH & GLOW” or any other mark, name, logo, monogram or label that is or may be identical with or deceptively similar to the HEALTH & GLOW / HEALTH AND GLOW (DEVICE) trademarks of the Plaintiff, as may cause or be likely to cause confusion or deception amounting to passing off of the Defendants' goods and services as those of the plaintiff.

c) a permanent injunction restraining the defendants, their principal officers, servants, agents, their assigns in business, dealers, stockists and others associated with them from reproducing, using as signage or otherwise, printing, publishing or distributing any label, printed matter, stationery or packaging which is a colourable imitation or substantial reproduction of the plaintiff's “HEALTH & GLOW” label as depicted in paragraph 13 of this plaint, amounting to infringement of Plaintiff's copyright thereto.

d) a decree for delivery up to the plaintiff for destruction of all packaging, labels, block, dyes, stickers, signage, advertising materials, all



types of stationary and brochures and all other infringing materials of the Defendants bearing the words “HEALTH & GLOW,

e) a preliminary decree in favour of the plaintiff directing the defendants to render account of profits made through use of the HEALTH & GLOW mark and a final decree thereafter be passed in favour of the plaintiff for the amount of profits that have been found to be made by the defendants after it had rendered accounts, and

f) decree for damages to the tune of Rs.25,00,000/- to be passed in favour of the plaintiff and against the defendants. Award costs for the suit and to pass such further or other order or to grant such other relief as the nature and circumstance of the case may require, that this Hon'ble Court deems fit and proper.

For Plaintiff : Mr.N.C.Vishal for

Mr.Pravin Anand

For Defendants : Set exparte

J U D G M E N T

The suit is one for infringement of a trademark “HEALTH & GLOW”. The plaintiff prays for injunctive reliefs relating to use of the mark “HEALTH & GLOW”, mandatory injunction seeking destruction of packing material, labels etc., accounts and profits, damages to the tune of Rs.25,00,000/- and for costs.

2.According to the plaintiff, it is the registered proprietor of the

trademark “HEALTH & GLOW”. It is stated that the device mark was



registered with Registration No.8023206, while the label mark with the dancing figure was registered in Trademark Nos.1315016 & 1315017 in Class 3 and 5 of the schedule. Claiming that the defendants are carrying on business with the name “Health & Glow Clinic” and “Dr.PB's Health and Glow Clinic Private Limited” and such action of the defendants would amount to infringement of the trademark of the plaintiff, the plaintiff has come forward with the above suit.

3.Though served, the defendants have not chosen to appear either in person or through counsel. Hence, the defendants were set exparte and the matter was referred to the learned Additional Master for recording of evidence.

4.Before the learned Additional Master one Mr.J.Madhusudhan, has been examined as P.W.1 and Exs.P1 to P40 have been marked. The said Madhusudhan filed a proof affidavit reitrating averments contained in the plaint. From the proof affidavit, it is seen that the plaintiff has been using the trademark “Health & Glow”, since 31.03.1999 and the turnover of the plaintiff has been on steady increase. The turnover, which was about Rs.7,25,23,463/- as on 31.03.1999 has swelled to Rs.366,59,41,000/- as on



WEB COPY

5.It is also seen from the proof affidavit that the plaintiff has spent huge sums for advertisement and popularisation of the mark “HEALTH & GLOW”. For the year ending 31.03.2019, the plaintiff had spent Rs.6,70,23,000/- towards advertisement. The plaintiff has also got a registered trademark and it carries on business in various cities across the country in the same trade name. The plaintiff has produced the trademark registration certificates and the legal user certificates as Exs.P12 to P31. It is also seen that apart from Clause 3 and 5, the plaintiff has got registration under Class 35 and 44 of the schedule to the Trademarks Act also.

6.From the above evidence, it is clear that the plaintiff is entitled to protection of its trademark and for accounting as well as damages. The evidence that is placed on record would demonstrate that the plaintiff is the registered proprietor of the trademark and the user of the names “Health & Glow Clinic” and “Dr.PB's Health & Glow Clinic Private Limited” by the defendants would definitely amount to infringement of the trademark of the plaintiff.

7.In view of the above, this suit is decreed as prayed for with

**List of witness examined on the side of the plaintiff:**

WEB COPY

Mr.J.Madhusudhan (PW1)

List of documents filed on the side of the plaintiff:

S.No	Description of Documents	Exhibits
1	The Board Resolution authorising Mr.J.Madhusudhan to depose on behalf of the plaintiff dated 23.09.2016.	Ex.P1
2	The print of Fresh Incorporation certificate of the plaintiff consequent to change of name dated 13.06.2018.	Ex.P2
3	The photocopy of Business Transfer Agreement between Health & Glow Retailing Pvt. Ltd., and Food World Supermarkets Pvt. Ltd., dated 29.12.2014.	Ex.P3
4	The photocopy of Deed of Assignment of Trademarks between Health & Glow Retailing Pvt. Ltd., and Food World Supermarkets Pvt. Ltd., dated 09.01.2015.	Ex.P4
5	The original annual report for the year 1998 dated 24.03.1998.	Ex.P5
6	The photocopy of the annual report for the year 2001 dated 24.08.2001.	Ex.P6
7	The photocopy of the annual report for the year 2003 dated 24.09.2003.	Ex.P7
8	The photocopy of the annual report for the year 2004 dated 24.07.2004.	Ex.P8
9	The photocopy of the annual report for the year 2005 dated 25.08.2005.	Ex.P9
10	The photocopy of the annual report for the year 2006 dated 22.11.2006.	Ex.P10
11	The plaintiff's certificate certifying the turnover details and advertisement cost dated 13.10.2020.	Ex.P11
12	The Trademark certificate for use in Legal Proceedings for the mark "HEALTH & GLOW" under No.1315016 in Class 03 & 05 with renewal certificate dated 04.12.2018.	Ex.P12
13	The Trademark certificate for use in Legal Proceedings for the mark "HEALTH & GLOW" under No.1315017 in Class 03 & 05 with renewal certificate dated 04.12.2018.	Ex.P13
14	The Trademark certificate for use in Legal Proceedings for the mark "HEALTH & GLOW" under No.1420632 in Class 42 dated 16.02.2006.	Ex.P14
15	The Trademark certificate for use in Legal Proceedings for the mark	Ex.P15



S.No	Description of Documents	Exhibits
	"HEALTH & GLOW" under No.2680703 in Class 35 dated 02.11.2008.	
16	The Trademark certificate for use in Legal Proceedings for the mark "HEALTH & GLOW" under No.2680704 in Class 44 dated 02.11.2018.	Ex.P16
17	The Trademark certificate for use in Legal Proceedings for the mark "HEALTH & GLOW" under No.2680705 in Class 35 dated 02.11.2018.	Ex.P17
18	The Trademark certificate for use in Legal Proceedings for the mark "HEALTH & GLOW" under No.2680706 in Class 44 dated 02.11.2008.	Ex.P18
19	The Trademark Registration certificate for the mark "Glow" under No.2939257 in Class 16 dated 09.04.2015.	Ex.P19
20	The Trademark Registration certificate for the mark "Glow" under No.2939258 in Class 35 dated 09.04.2015.	Ex.P20
21	The Trademark Registration certificate for the mark "Glow" under No.2939259 in Class 09 dated 09.04.2015.	Ex.P21
22	The Trademark Registration certificate for the mark HEALTH & GLOW under No.3279428 in Class 35 dated 08.06.2016.	Ex.P22
23	The Trademark Registration certificate for the mark HEALTH & GLOW BOTANIC under No.3940766 in Class 35 dated 10.09.2018.	Ex.P23
24	The Trademark Registration certificate for the mark HEALTH & GLOW BOTANIC under No.3940765 in Class 35 dated 10.09.2018.	Ex.P24
25	The Trademark Registration certificate for the mark HEALTH & GLOW <i>the beauty destination of India</i> under No.4058878 in Class 35 dated 17.01.2019.	Ex.P25
26	The Trademark Registration certificate for the mark HEALTH & GLOW <i>the beauty destination of India</i> under No.4058877 in Class 5 dated 17.01.2019.	Ex.P26
27	The Trademark Registration Certificate for the mark h&g under No.3940772 in Class 3 dated 10.09.2018.	Ex.P27
28	The Trademark Registration Certificate for the mark h&g under No.3940774 in Class 35 dated 10.09.2018.	Ex.P28
29	The Trademark Registration Certificate for the mark h&g under No.3940775 in Class 44 dated 10.09.2018.	Ex.P29
30	The Trademark Registration Certificate for the mark health & glow under No.4191621 in Class 44 dated 30.05.2019.	Ex.P30
31	The Trademark Registration Certificate for the mark health & glow under No.4191623 in Class 5 dated 30.05.2019.	Ex.P31
32	The Extract of the plaintiff's website and screenshots of the plaintiff's	Ex.P32



S.No	Description of Documents	Exhibits
	mobile application.	
33	The orders passed by the Hon'ble Delhi High Court in C.S(Comm) No.1171 of 2018 dated 09.10.2018 and 07.12.2018.	Ex.P33
34	The orders passed by this Hon'ble Court in C.S.No.315 of 2020 dated 11.11.2020.	Ex.P34
35	The Advertisement in Trademark Journal No.1334 suppl. (1), of Defendants "HEALTH & GLOW" Label dated 15.09.2005.	Ex.P35
36	The Investigation of Mr.Phiroze Edulji, Advocate, Kolkata dated 04.03.2007.	Ex.P36
37	The Internet extract regarding the poor service of the defendants https://www.complaintboard.in/complaints-reviews/h-amp-g-clinic-gk-i-new-delhi-166031.html dated 30.07.2021.	Ex.P37
38	The internet extract regarding the poor service and dishonest trade practice of the defendant https://www.consumercomplaints.in/hg-clinic-b102453 dated 30.07.2021.	Ex.P38
39	The Web page from defendant's web site www.healthandglowclinic.com dated 19.03.2007.	Ex.P39
40	The affidavit under Section 65 A&B of the Evidence Act, 1872 dated 22.09.2021.	Ex.P40

List of witness and documents filed on the side of the defendants:

Nil

Sd./- R.S.M.J.
04.10.2021

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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