

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.03.2021

Pronounced on : 01.04.2021

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

C.S.No.444 of 2003

Ashique Exports (P) Ltd.,
Rep.by its Managing Director
Mr.P.C.Tahir,
F-1, Touchstone Apartments,
No.10, Vasu Street, Kilpauk,
Chennai – 600 010.

... Plaintiff

Vs.

Safaana Cosmetics & Perfumes
Rep.by its Partner Mr.Naseer Khan,
Palachira – 695 143.
Thiruvananthapuram District, Kerala.

... Defendant

Prayer:- This suit filed under Order IV Rule 1 of O.S Rules read with Sections 105 & 106 of the Trade and Merchandise Marks Act, 1958 and Sections 55 & 62 of the Copyright Act, 1957 prayed for a Judgment and Decree against the Defendant:-

a).Granting permanent injunction, restraining the defendant, by themselves, their servants or agents or anyone claiming through them from in any manner infringing the plaintiff's copyright in the artistic work with 'TVA' and 'TVA International Lime Beauty Soap’ on the

wrapper together with the peculiar colour scheme and two tone coloured lettering and get up and write up or any other representation or words which are in any manner identical and deceptively similar with the copyright in the artistic work of the plaintiff's label.

b).Granting permanent injunction restraining the defendant by themselves, their servants or agents or anyone claiming through them from in any manner passing off their toilet soap bearing the offending trade mark artistic work 'ISIE' together with identical and / or deceptively similar colour scheme, get up and write up as and for the celebrated bathing soap of the plaintiff bearing the trademark 'IVA' and 'IVA International Lime' together with peculiar colour scheme, get up and write up either by manufacturing or selling of, offering for sale or in any manner advertising the same.

c).Directing the defendant to surrender to the plaintiff the entire stock of unused offending ISIE bathing soap wrappers together with blocks and dyes for destruction.

d).Directing the defendant to render a true and faithful account of the profits earned by them through the sale of the offending bath soap bearing the offending trademark and artistic work 'ISIE' carton and directing payment of such profits to the plaintiff for the passing off committed by the defendant.

e).Directing the defendant to pay to the plaintiff the cost of the suit.

For Plaintiff : Mr. Perumbulavil Radhakrishnan

For Defendant : set ex-parte

JUDGMENT

The plaintiff, Ashique Exports Private Limited, is a Company registered under the Companies Act, 1956. They manufacture and market among other products, soaps and detergents. They have adopted the mark 'IVA' in respect of bathing bar soaps manufactured and marketed by them.

2.The following is a pictorial representation of the label in which the soaps are marketed by the plaintiff.



3.The plaintiff has also advertised their products. It is evident from Exs.P3 and P4. Ex.P5 the certified statement of advertisement expenses. It is seen that for the year 2002 – 2003, they had spent Rs.76,700/- towards Press Advertisements, Rs.5,000/- towards T.V.Advertisements and Rs.6,46,178/- towards poster expenses and Rs.20,125/- towards Modelling Charges. It is evident that they have extensively advertised their products. Ex.P6 is the certificate of Annual Turnover of the plaintiff for the financial year 2002 – 2003 has also been filed along with the plaint. The plaintiff had a turnover with specific reference to IVA brand soap to a sum of Rs.2,24,49,600/-. It is thus seen that the plaintiff has gained goodwill and reputation in the market.

4.The plaintiff has filed this suit owing to the infringement by the defendant of the copyright of the plaintiff of the colour scheme and trade dressage of the packagings of the plaintiff's product.

5.The following is a pictorial representation of the label in which the soaps are marketed by the Defendant:-



6.The defendant had been served on 17.08.2010. There was a representation that the defendant Company is not functioning. On 02.09.2010, it was noted by a learned Single Judge of this Court that written statement has not been filed by the defendant. It was noted that the company itself was not in existence. The learned counsel for the defendant also reported no instructions. On 02.09.2010, the defendant was called absent and set ex-parte.

7.The plaintiff was then invited to tender evidence. The plaintiff examined Mr.Jins M.J, Executive of the plaintiff company as PW-1 and

marked Exs.P1 to P7. Ex.P1 is the original of the Minutes of Meeting of the Board of Directors dated 20.09.2010. Ex.P2 is a Pro-forma of the plaintiff's label. Ex.P3 is the Advertisement Poster of the plaintiff's product (Iva International Lime Beauty Soap). Ex.P4 is another poster of the plaintiff's products (Iva International Lime Beauty Soap). Ex.P5 dated 14.06.2003 is a certified statement of advertisement expenses incurred by the plaintiff. Ex.P6 is the certified Annual Return of the plaintiff again dated 14.06.2003. Ex.P7 is a Pro-forma of the defendant's label.

8.Heard Mr.Perumbulavil Radhakrishnan, learned counsel for the plaintiff.

9.The learned counsel for the plaintiff pointed out the exhibits marked and drew specific comparison between Ex.P2, the plaintiff's label and Ex.P7, the defendant's label and pointed out that both resemble exactly the same and that there is every confusion arising in the minds of the general public owing to the similarities between the two labels. They both have the same hue of green and yellow in the writings and both have images of half cut lime. The learned counsel stated that it is very

clear that the defendants have encroached and infringed on the copyright of the plaintiff. The learned counsel stated that the defendant was passing off their products as if they are the products of the plaintiff.

10.I have carefully considered the pleadings and the documents filed.

11.The plaintiff has also advertised their products. It is evident from Exs.P3 and P4. Ex.P5 the certified statement of advertisement expenses. It is seen that for the year 2002 – 2003, they had spent Rs.76,700/- towards Press Advertisements, Rs.5,000/- towards T.V.Advertisements and Rs.6,46,178/- towards poster expenses and Rs.20,125/- towards Modelling Charges. It is evident that they have extensively advertised their products. Ex.P6 is the certificate of Annual Turnover of the plaintiff for the financial year 2002 – 2003 has also been filed along with the plaint. The plaintiff had a turnover with specific reference to IVA brand soap to a sum of Rs.2,24,49,600/-. It is thus seen that the plaintiff has gained goodwill and reputation in the market.

12.It is clear that the defendant had encroached upon the plaintiff's colour scheme and copyright. It would only be appropriate that the plaintiff's copyright is protected.

13.In view of the above reasons, there shall be a decree as prayed for. The suit is decreed as prayed with costs.

14.Insofar as the costs are concerned, in view of the fact that the Defendant has shown scant regard for the sanctity of the judicial proceedings by deliberately avoiding appearance, I hold that the plaintiff is entitled to costs as determined under the amended Section 35 of the Code of Civil Procedure as applicable to the Commercial Division of the High Court.

15.The Registry is delegated by the Court to determine the costs as per the Bill of Costs submitted by the plaintiff in accordance with Section 35 of C.P.C., as amended by the Commercial Courts Act, 2015. The plaintiff is specifically entitled to the fees and expenses of the witness, the legal fees and expenses incurred and for any other expenses

incurred in connection with the judicial proceedings and also for recovery of the actual Court Fees paid into Court.

01.04.2021

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Index : Yes / No

Internet : Yes / No

Speaking order : Yes / No



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List of Witness in C.S.No.444 of 2003

P.W.1 – Mr.Jins M.J.

List of Exhibits:

1. Ex.P1 : Original of the Minutes of Meeting of the Board of Directors dated 20.09.2010.
2. Ex.P2 : Pro-forma of the plaintiff's label.
3. Ex.P3 : Advertisement Poster of the plaintiff's product (Iva International Lime Beauty Soap).
4. Ex.P4 : Poster of the plaintiff's products (Iva International Lime Beauty Soap).
5. Ex.P5 : Certified statement of advertisement expenses incurred by the plaintiff.
6. Ex.P6 : Certified Annual Return of the plaintiff.
7. Ex.P7 : Pro-forma of the defendant's label.

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C.V.KARTHIKEYAN, J.,

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Pre-Delivery Judgment made in

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