

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 28th DAY OF SEPTEMBER 2021

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

C.S. No.970 of 2005

M/s. Veppolodai Chemicals,
Rep by its Partner Mr.Michael Motha,
No.13-A/1, Pillayar Koil Street,
Meenakshipuram West,
Tuticorin 628 002,
Tamil Nadu.

: Plaintiff

-Versus-

Indus Diet Specialite (P) Ltd,
Corporate House,
1887, Phase V,
Mohalla, Chandigarh 160 059.

: Defendant

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

(a) granting a permanent injunction, restraining the Defendant, by themselves, their servants, agents, distributors, or anyone claiming through them from manufacturing, selling, offering and advertising for sale using the Trade Mark SPRINKLE upon the goods or in relation to goods or in the course of any media and use the same in Invoices, letter heads and visiting cards or any other trade literature or by using any other Trade Mark which is in any way visually, phonetically or deceptively similar to the Plaintiffs

Registered Trade Marks SPRINKLE or in any manner infringing the Plaintiffs Registered Trade Mark No.592204.

(b) granting a permanent injunction, restraining the Defendant, by themselves, their servants, agents, men or anyone claiming through them from manufacturing, marketing, distributing, offering or advertising for sale double fortified salts using the Trade Mark SPRINKLES or similar sounding names in the course of their business and pass off their different kinds of goods referred using the Trade Mark SPRINKLE or with additions either as prefix or suffix in relation to their goods or enable others to pass off.

(c) Directing the Defendant to surrender to the Plaintiffs all types of goods containing/bearing the Trade Mark SPRINKLE or other deceptively similar Trade Marks.

(d) For a preliminary decree in favour of the Plaintiffs, directing the Defendant to render an account of profits made by them by the use of the Trade Mark SPRINKLE on the good referred and for a final decree in favour of the Plaintiffs for the amount of the profits found to have been made by the Defendants, after the Defendants have rendered accounts.

(e) directing the Defendant to pay to the Plaintiffs the costs of the suit.

This Civil Suit coming on this day before this court for hearing in

the presence of Mrs. Gladys Daniel, Advocates for the Plaintiff herein, and the defendant herein, not appearing in person or by advocate and the said defendant herein having been set-exparte and upon reading the plaint filed herein in C.S.No.970 of 2005 and the other exhibits therein referred to and upon perusing the evidence adduced therein, **it is ordered and decreed as follows:-**

That Indus Diet Specialite (P) Ltd., the defendant herein, by themselves, their servants, agents, distributors, or anyone claiming through them be and is hereby restrained by an order of permanent injunction from (a) manufacturing, selling, offering and advertising for sale using the Trademark SPRINKLE upon the goods or in relation to goods or in the course of any media and use the same in Invoices, letter heads and visiting cards or any other trade literature or by using any other Trademark which is in any way visually, phonetically or deceptively similar to the Plaintiffs Registered Trademarks SPRINKLE or in any manner infringing the Plaintiffs Registered Trademark No.592204 and (b) manufacturing, marketing, distributing, offering or advertising for sale double fortified salts using the Trademark SPRINKLES or similar sounding names in the course of their business and pass off their different kinds of goods referred using the Trademark SPRINKLE or with additions either as prefix or suffix in relation to their goods or enable others to pass off.

2. That the defendant herein, be and is hereby directed to surrender to the Plaintiffs all types of goods containing/bearing the Trademark SPRINKLE or other deceptively similar Trademarks.

3. That the defendant herein be and is hereby directed to render an account of profits made by them by the use of the Trademark SPRINKLE on the good referred and do pay in favour of the Plaintiffs for the amount of the profits found to have been made by the defendants herein.

4. That the defendants herein, do pay to the plaintiffs 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
28th DAY OF SEPTEMBER 2021.

Sd/-

ASSISTANT REGISTRAR (Comm.Cases)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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03.02.2022

C.S. No.970 of 2005

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DATED: 28.09.2021

THE HON'BLE MR.JUSTICE
R.SUBRAMANIAN

FOR APPROVAL: 15.02.2022

APPROVED ON: 18.02.2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.S.No.970 of 2005

M/s.Veppolodai Chemicals,
Rep. By its Partner Mr.Michael Motha,
No.13-A/1 Pillayar Koil Street,
Meenakshipuram West,
Tuticorin – 628 002. Tamil Nadu. ...Plaintiff

Vs.

Indus Diet Specialite (P) Ltd.,
Corporate House,
1887, Phase V, Mohalla,
Chandigarh – 160 059. ...Defendant

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

a) granting a permanent injunction, restraining the Defendant, by themselves, their servants, agents, distributors, or anyone claiming through them from manufacturing, selling, offering and advertising for sale using the Trademark SPRINKLE upon the goods or in relation to goods or in the course of any media and use the same in Invoices, letter heads and visiting cards or any other trade literature or by using any other Trademrk which is in any way visually, phonetically or deceptively similar to the Plaintiffs

Registered Trademarks SPRINKLE or in any manner infringing the Plaintiffs Registered Trademark No.592204.

b) granting a permanent injunction, restraining the Defendant, by themselves, their servants, agents, men or anyone claiming through them from manufacturing, marketing, distributing, offering or advertising for sale double fortified salts using the Trademark SPRINKLES or similar sounding names in the course of their business and pass off their different kinds of goods referred using the Trademark SPRINKLE or with additions either as prefix or suffix in relation to their goods or enable others to pass off.

c) directing the Defendant to surrender to the Plaintiffs all types of goods containing / bearing the Trademark SPRINKLE or other deceptively similar Trademarks.

d) for a preliminary decree in favour of the Plaintiffs, directing the Defendant to render an account of profits made by them by the use of the Trademark SPRINKLE on the good referred and for a final decree in favour of the Plaintiffs for the amount of the profits found to have been made by the Defendants, after the Defendants have rendered accounts.

e) directing the Defendant to pay to the plaintiffs the costs of the suit.

For Plaintiff : Mrs.Gladys Daniel

For Defendant : Set Exparte

J U D G M E N T

The plaintiff seeks injunctive reliefs restraining the defendant from using the deceptively similar mark “SPRINKLES” thereby, infringing the registered trademark of the plaintiff “SPRINKLE”.

2.It is claimed that the name “SPRINKLES” is used for salt, which is also the product of the plaintiff. Claiming that the plaintiff has got a registered trademark under Trademark No.592204 for the word “SPRINKLE” to be used in salt, the plaintiff would contend that use of the name “SPRINKLES” by the defendant infringes the trademark of the plaintiff as well as the defendant to pass off its product as the product of the plaintiff.

3.Despite service, the defendant has not chosen to appear either in person or through counsel to resist the suit. Hence, the defendant was called absent and set exparte, after having been served through substituted service on 06.09.2021.

4.The plaintiff has examined one Mr.J.Ashwanth as P.W.1. He has produced Exs.P1 to P5 in respect of the claim of the plaintiff. Ex.P1 is the authorization letter. Ex.P2 is the legal user certificate dated 08.03.1993 for trademark No.592204, which is registered under Class 30 of the schedule. It is seen that the registration has been renewed subsequently and it is valid as of today. Ex.P3 is the advertisement for the Defendant's mark. The

opposition made by the plaintiff before the Trademark Registry for registration of the defendant's trademark has been filed as Ex.P4. A comparison of the registered trademark of the plaintiff and the proposed mark of the defendant in the manner suggested by the Hon'ble Supreme Court in **Parle Products Vs. J.P. & Co. Mysore** reported in **(1972) 1 SCC 618** shows that there is likelihood of deception and the average consumer being lured into purchasing the defendant's product as that of the plaintiff's.

5.It is also stated that the plaintiff has a large turnover to the tune of Rs.9,11,92,465/- in 2002-2003 and it had spent nearly Rs.5,55,690/- towards advertisement and promotional expenses for the trademark "SPRINKLE". As a registered proprietor of the mark "SPRINKLE", the plaintiff is entitled to prevent other persons particularly, the defendant from using a deceptively similar trademark with an intention to pass off its product as that of the plaintiff.

6.I am therefore, of the opinion that the plaintiff has made out a case for grant of injunctive reliefs as prayed for in the suit. The suit is therefore, decreed as prayed for with costs.

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

28.09.2021

List of witness examined on the side of the plaintiff:

Mr.J.Ashwanth (PW1)

List of documents filed on the side of the plaintiff:-

<i>S.No</i>	<i>Description of Documents</i>	<i>Exhibits</i>
1	The original authorization letter dated 21.09.2021.	Ex.P1
2	The photocopy of the legal use certificate under No.592204 dated 08.03.1993 in class 30 along with renewal enclosed. (Original is produced, compared and it is undertaken by the plaintiff that it can be produced as and when required.)	Ex.P2
3	The photocopy of the copy of the extract Trademark journal Mega (6) Page 7805 dated 25.11.2003 advertising Trademark No.540647 B class 30 dated 26.11.1990. (Original is produced, Compared and it is undertaken by the plaintiff that it can be produced as and when required.)	Ex.P3
4	The printout copy of the opposition filed against the Defendant's Trademark before the Trademark Registry on 30.04.2004. (Ex.P4 is the printout taken from the computer for which certificate under Section 65B of Indian Evidence Act, 1872 filed.)	Ex.P4
5	The photocopy of the Article in the "THE NEW INDIAN EXPRESS" dated 25.02.1999. (Subject to proof and admissibility.)	Ex.P5

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

Nil

Sd./-R.S.M.J.
28.09.2021

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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