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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

SATURDAY, THE 17TH DAY OF APRIL 2021

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

C.S.No.170 of 2011

and

O.A.Nos.235 to 237 of 2011

Perenniala Health Care India Private Limited,
rep. by its Executive Director Mr.S.Ashok Kumar
Ashtalakshmi Apartments,
51/1, 3rd Street,
Anna Nagar East,
Chennai - 600 040.

...Plaintiff/Applicant
(in Original Applications)

.Vs.

1.S.Samsen Papli
3B, Vishwa Villa Apartments,
31 & 32, Balfour Road,
Kilpauk, Chennai 600 010.

2.M/s.Franch Herbs Technologies Ltd.,
Rep. by The Official Liquidator,
Office of the Official Liquidator,
High Court, Madras,
No.29, Rajaji Salai,
Chennai - 600 001.

3.M/s.F.M.Herbs Technologies,
a Partnership firm rep. by its
Partner Mr.Ramesh Jain
Old No.61, Krishnappa Naicken Agraharam Street,
Kondithope, Chennai - 600 079.

... Defendants/Respondents
(in Original Applications)

C.S.No.170 of 2011

<https://hcservices.ecourts.gov.in/hcservices/>

Civil Suit praying that this Hon'ble Court be pleased to pass a



judgement and decree against the defendant on the following terms:

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a) A declaration that the plaintiff is having exclusive right and entitled to use and exploit the FRANCH trademarks and copyright in the artistic work thereto by virtue of the deed of assignment dated 08.01.2008 executed by the defendants 1 and 2 in favour of the plaintiff, filed as Suit Document No.14;

b) A declaration that the assignment deeds dated 09.10.2007, 24.01.2009 and 06.02.2009 executed in favour of the defendant No.3 is nonest, null and void and the marks/ artistic works allegedly assigned thereunder or tracing through any other instrument/deed/ document and acts done by the defendants consequent thereto either individually or as group of individuals or through their company/ firm is not binding on the plaintiff and will not affect the deed of assignment dated 08.01.2008 executed by the defendants 1 and 2 in favour of the plaintiff;

c) A permanent injunction restraining the defendants by themselves, their proprietor/ partners/ directors as the case may be, heirs. Legal representatives, successors-in-business, assigns, servants, agents, distributors, retailers, stockists or any one claiming through or under them from in any manner using the trademarks FRANCH, FRANCH OIL, FRANCH OIL NH/NH+ word and label or any other mark/ label

deceptively similar thereto, its variants, combinations thereof or with



FRANCH as prefix or suffix in any manner, any form, in relation to ayurvedic, healthcare, herbal, medicinal products and allied goods, services or using as a trade name, trading style, domain name, website and exporting any such products or doing any other thing adversely affecting the rights vested in the plaintiff in the said trade marks or in any other manner whatsoever;

d) A permanent injunction restraining the defendants by themselves, their proprietor/partners/directors as the case may be, heirs, legal representatives, successors-in-business, assigns, servants, agents, distributors, retailers, stockists or any one claiming through or under them from in any manner interfering with the plaintiff's use and/or commercial exploitation of the trade marks/ artistic work FRANCH, FRANCH OIL word and label, FRANCH OIL NH, NH+ its variants, combinations thereof or with FRANCH as prefix or suffix, utilizing the same in relation to its business, goods, products and services or in any other manner whatsoever;

e) A permanent injunction restraining the defendants by themselves, their proprietor/partners/directors as the case may be, heirs, legal representatives, successors-in-business, assigns, servants, agents, distributors, retailers, stockists or any one claiming through or under them from in any manner infringing the plaintiff's copy right in the artistic work



identical or similar artistic work/label or in any other manner whatsoever;

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f) The defendants be directed to pay to the plaintiff, jointly and severally, a sum of Rs.1,00,00,000/- as compensatory and punitive damages for the various illegal activities committed by them detrimental to the plaintiff's business interests;

g) The defendants be ordered to surrender all the goods, products, label, packaging, bottles, caps, containers, invoices, letter heads, stationery materials, moulds, blocks, dies and such other materials containing the trademark FRANCH or its variants, combinations thereof with FRANCH as prefix or suffix, for the purpose of destruction;

h) The defendants be ordered to render true and faithful accounts of all profits earned by them on account of use of all the FRANCH trademarks after assignment of the same to the plaintiff and a preliminary decree be passed in this respect and a final decree be passed in favour of the plaintiff for the amount of profits thus found to have been made by the defendants after the latter have rendered accounts and

i) for costs of the suit.

O.A.No.235 of 2011

Original Application praying that this Hon'ble Court be pleased to grant an ad-interim to grant an ad interim, temporary, interim injunction

restraining the Respondents by themselves, their proprietor / partners /



directors as the case may be, heirs, legal representatives , successors-in-business, assigns, servants, agents, distributors, retailers, stockists or any one claiming through or under them from in any manner using the trademarks FRANCH, FRANCH OIL, FRANCH OIL NH/NH⁺ word and label or any other mark /lable deceptively similar thereto, its variants, combinations thereof or with Franch as prefix or suffix in any manner, any form, in relation to ayurvedic, healthcare, herbal, medicinal products and allied goods, services or using as a trade name, trading style, domain name, website and exporting any such products or doing any other thing adversely affecting the rights vested in the applicant in the said trademarks or in any other manner whatsoever, pending disposal of the suit.

O.A.No.236 of 2011

Original Application praying that this Hon'ble Court be pleased to grant an ad-interim to grant an ad interim, temporary, interim injunction restraining the Respondents by themselves, their proprietor / partners / directors as the case may be, heirs, legal representatives , successors-in-business, assigns, servants, agents, distributors, retailers, stockists or any one claiming through or under them from in any manner infringing the applicant's copyright in the artistic work FRANCH OIL NH label by substantially reproducing the same by use of identical or similar artistic

**O.A.No.237 of 2011**

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Original Application praying that this Hon'ble Court be pleased to grant an ad-interim, temporary, interim injunction restraining the respondents by themselves, their proprietor/partners/directors as the case may be, heirs, legal representatives, successors-in-business, assigns, servants, agents, distributors, retailers, stockists or any one claiming through or under them from in any manner interfering with the applicant's use and/or commercial exploitation of the trademarks/artistic work FRANCH, FRANCH OIL word and label, FRANCH OIL NH, NH+ its variants, combination thereof or with FRANCH as prefix or suffix, utilizing the same in relation to its business, goods, products and services or in any other manner whatsoever pending disposal of the suit.

This suit along with these Original Applications coming on this before this Court for hearing in the presence of Ms.Gokul Krishnan for Mr.K.Rajasekaran, Advocates for the defendant in C.S.No.170 of 2011 and for the respondent in O.A.No.235 to 237 of 2011 and the plaintiff herein, not appearing in person or by advocate and upon reading the plaint filed in C.S.No.170 of 2011 and the Judge's summons and the affidavit of S.Ashok Kumar filed in O.A.Nos.235 to 236 of 2011 and the order dated 11.03.2011 made in O.A.No.237 of 2011 and this court having observed that the



It is ordered as follows:-

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That the suit in C.S.No.170 of 2011, be and is hereby dismissed for non-prosecution.

2. That these O.A.Nos.235 to 237 of 2011, do stand closed.

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

4. That the learned counsel for the plaintiff is required to inform the plaintiff through E-Mail regarding the dismissal of the suit.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
17th DAY OF APRIL 2021.

Sd./-

ASSISTANT REGISTRAR (O.S.I)

//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.



12.05.2021

C.S.No.170 of 2011
and
O.A.Nos.235 to 237 of 2011

ORDER

DATED:17.04.2021

THE HON'BLE MR.JUSTICE
R.SUBRAMANIAN

FOR APPROVAL: 28.06.2021

APPROVED ON : 14.07.2021

**IN THE HIGH COURT OF JUDICATURE AT MADRAS****DATED : 17.04.2021****CORAM****THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN****C.S.No.170 of 2011****and****O.A.Nos.235 to 237 of 2011**

Perenniala Health Care India Private Limited,
rep. by its Executive Director Mr.S.Ashok Kumar
Ashtalakshmi Apartments,
51/1, 3rd Street,
Anna Nagar East,
Chennai - 600 040.

...Plaintiff

.Vs.

1.S.Samsen Papli

2.M/s.Franch Herbs Technologies Ltd.,
Rep. by The Official Liquidator,
Office of the Official Liquidator,
High Court, Madras,
No.29, Rajaji Salai,
Chennai - 600 001.

3.M/s.F.M.Herbs Technologies,
a Partnership firm rep. by its
Partner Mr.Ramesh Jain
Old No.61, Krishnappa Naicken Agraharam Street,
Kondithope, Chennai - 600 079.

... Defendants

Plaint filed under Order IV Rule 1 of Original Side Rules and Order

VII Rule 1 of Civil Procedure Code read with Sections 27, 134 and 135 of

the Trade Marks Act, 1999, Sections 51, 55 and 62 of Copyright Act, 1957



and Sections 34, 38 and 40 of the Specific Relief Act, 1963 praying for:

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a) A declaration that the plaintiff is having exclusive right and entitled to use and exploit the FRANCH trademarks and copyright in the artistic work thereto by virtue of the deed of assignment dated 08.01.2008 executed by the defendants 1 and 2 in favour of the plaintiff, filed as Suit Document No.14;

b) A declaration that the assignment deeds dated 09.10.2007, 24.01.2009 and 06.02.2009 executed in favour of the defendant No.3 is nonest, null and void and the marks/ artistic works allegedly assigned thereunder or tracing through any other instrument/deed/ document and acts done by the defendants consequent thereto either individually or as group of individuals or through their company/ firm is not binding on the plaintiff and will not affect the deed of assignment dated 08.01.2008 executed by the defendants 1 and 2 in favour of the plaintiff;

c) A permanent injunction restraining the defendants by themselves, their proprietor/ partners/ directors as the case may be, heirs. Legal representatives, successors-in-business, assigns, servants, agents, distributors, retailers, stockists or any one claiming through or under them from in any manner using the trademarks FRANCH, FRANCH OIL, FRANCH OIL NH/NH+ word and label or any other mark/ label

deceptively similar thereto, its variants, combinations thereof or with



FRANCH as prefix or suffix in any manner, any form, in relation to ayurvedic, healthcare, herbal, medicinal products and allied goods, services or using as a trade name, trading style, domain name, website and exporting any such products or doing any other thing adversely affecting the rights vested in the plaintiff in the said trade marks or in any other manner whatsoever;

d) A permanent injunction restraining the defendants by themselves, their proprietor/partners/directors as the case may be, heirs, legal representatives, successors-in-business, assigns, servants, agents, distributors, retailers, stockists or any one claiming through or under them from in any manner interfering with the plaintiff's use and/or commercial exploitation of the trade marks/ artistic work FRANCH, FRANCH OIL word and label, FRANCH OIL NH, NH+ its variants, combinations thereof or with FRANCH as prefix or suffix, utilizing the same in relation to its business, goods, products and services or in any other manner whatsoever;

e) A permanent injunction restraining the defendants by themselves, their proprietor/partners/directors as the case may be, heirs, legal representatives, successors-in-business, assigns, servants, agents, distributors, retailers, stockists or any one claiming through or under them from in any manner infringing the plaintiff's copy right in the artistic work



identical or similar artistic work/label or in any other manner whatsoever;

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f) The defendants be directed to pay to the plaintiff, jointly and severally, a sum of Rs.1,00,00,000/- as compensatory and punitive damages for the various illegal activities committed by them detrimental to the plaintiff's business interests;

g) The defendants be ordered to surrender all the goods, products, able, packaging, bottles, caps, containers, invoices, letter heads, stationery materials, moulds, blocks, dies and such other materials containing the trademark FRANCH or its variants, combinations thereof with FRANCH as prefix or suffix, for the purpose of destruction;

h) The defendants be ordered to render true and faithful accounts of all profits earned by them on account of use of all the FRANCH trademarks after assignment of the same to the plaintiff and a preliminary decree be passed in this respect and a final decree be passed in favour of the plaintiff for the amount of profits thus found to have been made by the defendants after the latter have rendered accounts and

i) for costs of the suit.

For Plaintiff : No appearance

For Defendants : Mr.M.R.Gokul Krishnan
for Mr.K.Rajasekaran

J U D G M E N T



instructions on 15.09.2020. Pursuant to which this Court had ordered notice to the plaintiff. It appears that the said notice was also returned with endorsement "*There is no such office at the above said address with respect to the plaintiff.*" Till date no one has entered appearance for the plaintiff. The name of the plaintiff is also printed in the cause list. In view of the above, it is clear that the plaintiff is not interested in prosecuting the suit.

2. Hence, the suit is **dismissed for non-prosecution**. No costs. Consequently, the connected original applications are closed. The learned counsel for the plaintiff is required to inform the plaintiff through E-Mail regarding the dismissal of the suit.

Sd./- R.S.M.J
17.04.2021

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
17.04.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)