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C.S(Comm.Div).No.186 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.11.2021

Coram :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Suit (Comm.Div.) No.186 of 2020

1. A.D.Padmasingh Issac
Proprietor
Aachi Spices and Foods
Old No.4, New No.181/1
6th Avenue, Thangam Colony
Anna Nagar, Chennai 600 040.

2. M/s.AACHI Masala Foods (P) Ltd.,
Rep. by its Director
Mr.Ashwin Pandian
Old No.4, New No.181/1,
6th Avenue, Thangam Colony
AnnaNagar, Chennai 600 040.

..Plaintiffs

.Vs.

1. Aachi Call Drivers & Travels
No.2 Shop 21 Corporate Building,
Guruvappa Street,
Chindatripet, Chennai 600 002.
And also at
No.14 Lakshmi Amman Koil Street
Siruvallur, Perambur, Chennai 600 011.

And Also at No.42, Doctor Muthu Lakshmi Road,

Indira Nagar, Adyar, Chennai 600 020.

..Defendant



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Prayer: Civil Suit has been filed under Order IV, Rule 1 of the Original Side Rules and Order VII, Rule 1 of the C.P.C. Read with Sections 27(2), 29, 134 and 135 of the Trade Marks Act, 1999, praying to pass a judgment and decree for:-

(a) granting a permanent injunction, restraining the defendant, by itself, its servants, agents, distributors, or anyone claiming through him from, advertising, offering for sale, running taxi services and running the website using same or similar or identical Trade Mark **AACHI CALL DRIVERS & TRAVELS** or any other similar Trade mark or in any media and use the same in invoices, website, letter heads and visiting cards, or any other goods or services by using any other Trade mark which is in any way visually or phonetically similar to the 1st Plaintiff's Trademark **AACHI** and use the mark in invoices, letters heads and visiting cards or any other trade literature or by using any other Trade mark which is in any way visually, or phonetically similar to the Plaintiffs' registered Trade mark No.838786, 1479159, 3371007 & 3370968 or in any manner infringe the 1st Plaintiff's registered Trade mark.

(b) granting a permanent injunction, restraining the defendant, by itself, its servants, agents, distributors, or anyone claiming through him from advertising, offering for sale, running taxi services and running the website using deceptively and phonetically similar Trade Mark **AACHI/AACHI CALL DRIVERS & TRAVELS** or any other similar



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Trade mark or in any media and use the same in invoices, website, letter heads and visiting cards, or any other goods o services by using any other trade mark which is in any way visually or deceptively or phonetically similar to the Plaintiffs' Trade mark **AACHI** or use the mark in invoices, letters heads and visiting cards or any other trade literature or by using any other Trade mark which is in any way visually, or phonetically similar to the Plaintiffs' Trade mark **AACHI** of in any manner pass off the Plaintiffs' services.

(c) directing the defendant to surrender to the plaintiffs all the packing material, cartons, advertisement materials and hoardings, letter-heads, visiting cards, office stationery and all other materials containing/bearing the name **AACHI/AACHI CALL DRIVERS & TRAVELS** or other deceptively or phonetically similar trade mark used in the pouches and packets.

(d) directing the defendant to render an account of profits made by them by the use of the impugned Trademark **AACHI CALL DRIVERS & TRAVELS** and decree the suit for the profits found to have been made by the Defendant, after the defendant has rendered accounts.

(e) directing the defendant to pay to the plaintiffs the costs to the suit, and



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(f) pass such further order or order, as may be deemed fit and proper in the circumstances of the case and thus render justice.

For Plaintiffs : Mrs.Gladys Ganiel

For Defendant : Set exparte

J U D G M E N T

The instant suit has been filed seeking for the relief of permanent injunction, restraining the defendant, its servants, agents or anyone claiming through the defendant, from, advertising, offering for sale, running taxi services and running the website using same or similar or identical trade mark *AACHI CALL DRIVERS & TRAVELS*/  or any other similar trade mark or in any media and use the same in invoices, websites, letter heads and visiting cards, or any other goods or services by using any other trade mark which is in any way visually or phonetically similar or any other mark identical or deceptively similar to the plaintiffs' registered trade mark *AACHI* / 



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2. The case of the plaintiffs is with respect to the infringement of their registered trademark *AACHI* /  and passing off the label marks. The trade mark *AACHI* was assigned in favour of the 1st plaintiff by one registered proprietary concern called the Aachi Masala Foods (P) Ltd., on 30.03.2007. The plaintiffs state that in the year 1999, the trade mark *AACHI* was first applied for and registered in the name of the 1st plaintiff trading, as Naveen products. The plaintiffs also state that there are currently 178 registrations of the trade mark *AACHI* in various words, labels and stylized marks and the 1st plaintiff also acquired international registration (WIPO) under the Madrid protocol for the trade mark *AACHI* word and device under Classes 30 and 39 in 107 and 117 designated countries respectively. It is claimed by the plaintiffs that the label marks as a whole have been in use since 1995 and that they have become widely famous among the trading community and the public. It is further claimed by the plaintiffs that they have been using these marks *AACHI* with respect to almost all the masala preparations from the commencement of their business. The plaintiffs state that from the year 2016, they introduced new label marks across their product segments and all their marks got registered in class 30, being unopposed.



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3. The grievance of the plaintiffs is that in March 2020, they came across the defendant's travel agency bearing the mark ***AACHI CALL DRIVERS & TRAVELS***/ . The defendant's name consists of the word ***AACHI*** incorporated in its trade mark as ***AACHI CALL DRIVERS & TRAVELS***. It is stated by the plaintiffs that they are concerned about the label adopted by the defendant which is visually and phonetically similar to the plaintiffs' trade mark and that the defendant mark is a conscious copy of the plaintiffs' marks which is widely famous, thereby leading to infringement and passing off the goods of the defendants as that of the plaintiffs. The plaintiffs claim that a person of average intelligence will undoubtedly mistake the defendant travel agency to be an undertaking of the plaintiffs. The plaintiffs further state that the word ***AACHI*** has earned a lot of goodwill and reputation over the years and the public is bound to presume that the plaintiffs have diversified and commenced a travel agency under the trade mark ***AACHI CALL DRIVERS & TRAVELS***. The plaintiffs stated that the defendant does not have any registration for the impugned trade mark with respect to travel agency and that the plaintiffs have registered their trade mark



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AACHI /



with respect to travel and transport. The plaintiffs

further stated that the blatant and conscious copy of their registered trademark by the defendant amounts to theft and that the defendant's service is inferior in quality and substandard.

4. The defendant was served notice. The defendant did not choose to appear either in person or through counsel to defend the case and was called absent and was set ex parte by this Court on 05.07.2021.

5. The only issue that arises for consideration in the present suit is that whether the defendant, by using the mark **AACHI CALL DRIVERS & TRAVELS** /  has infringed the plaintiffs' trademarks **AACHI** /  and whether the same is deceptively, phonetically and visually identical to the trade mark of the plaintiff and as to whether the plaintiff is entitled for the reliefs sought for in this suit.

6. The General Manager of the 2nd plaintiff Company was examined-in-chief as PW-1. Ex Parte evidence was recorded and Ex.P-1 to Ex.P-19 were marked.



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7. Heard Mrs. Gladys Daniel, learned counsel for the plaintiff and carefully perused the documents relied upon by the plaintiff.

8. On carefully going through Exhibits P-13, P-14, P-15 and P-16, it can be seen that the plaintiff is a registered trade mark owner of the marks *AACHI*/ . The plaintiffs' marks have distinct identity and are in usage since 1995. The word and label marks *AACHI* /  have become a well-known mark for masala and food products. The defendant who was aware about the same decided to make use of this mark for their travels. The defendants are passing off on the goodwill and reputation earned by the plaintiffs for over more than 40 years by adopting the prominent part of the plaintiffs' mark *AACHI*.

9. From a careful perusal of *Exhibit P13* and *P14*, it is clear that the sole proprietor concern of the 1st plaintiff owns the intellectual property rights under the registered trade mark *AACHI*. From exhibits P-13 to P-16, it is clear that the 1st plaintiff continues to use the trade mark *AACHI* through his licensees Aachi Spices and Foods Private



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Limited and the 2nd plaintiff. From the above-mentioned exhibits P-13 to P-16, it is clear that the 1st plaintiff owns the trade mark of **AACHI** under various labels and the 2nd plaintiff uses the same.

10. Further, the 1st plaintiff possesses the international registration (WIPO) under the Madrid protocol for the trade mark **AACHI** word under clauses 29, 30 and 43 in 107 countries the same is clear from the document marked as exhibit P18. The 1st plaintiff also possesses the international registration (WIPO) under the Madrid protocol, for the trade mark **AACHI** device under the same Clauses in 117 countries and the same is clear from the document marked as exhibits P-17 and P-18.

11. Exhibit P-19 contains the label of the defendant. A closer look at the trade mark **AACHI CALL DRIVERS & TRAVELS/**



which is used by the defendant shows that it is being used for running taxi services. This mark is phonetically and visually similar to the plaintiff's trade marks **AACHI** /  . Further, the plaintiffs has already acquired registrations with respect to travel arrangements and transport under registration nos. 3371007 for word mark AACHI and no.



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3370968, under clause 39, for the device of  and the same is evident from Exhibit P15. The defendant does not have any registration for the impugned trade mark . The defendant has adopted this trademark only with a view to exploit the commercial goodwill achieved by the plaintiffs.

12. It must be borne in mind that the consumer who avail the call taxi services will be in the category of a man of average intelligence and imperfect recollection. To such a man, there is absolutely no chance of drawing a distinction between the plaintiffs' product and the defendant's service. This is not a case of deceptive similarity but one of almost exact reproduction of the prominent part of the registered trademark of the plaintiffs. The defendants are deliberately using the trademark ***AACHI CALL DRIVERS & TRAVELS***/  to mislead the general public at large, and they are trying to cash on the goodwill and reputation enjoyed by the plaintiffs. A careful look at the impugned marks blatantly reveal that it is visually and phonetically identical to the prominent part of the plaintiffs' registered trade mark.



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13. It is plain from the facts of the case that this case squarely falls under the umbrella of doctrine of dilution. In the case of ***Caterpillar Inc. v. Mehtab Ahmed & Ors.*** reported in **2002 SCC OnLine Del 865**, the Hon'ble Delhi High Court held that dilution is not a fair practice of trade and commerce. The relevant paragraph from the judgment is extracted below:

16. So far as doctrine of dilution is concerned it is an independent and distinct doctrine. The underlying object of this doctrine is that there is presumption that the relevant customers start associating the mark or trademark with a new and different source. It results in smearing or partially affecting the descriptive link between the mark of the prior user and its goods. In other words, the link between the mark and the goods is blurred. It amounts to not only reducing the force or value of the trade mark but also it gradually tapers the commercial value of the marks slice by slice., Such kind of dilution is not a fair practice that is expected in trade and commerce.

14. Further in the case of ***James Chadwick & Bros. Lid v. The National Sewin Thread Co. Ltd.*** reported in **MANU/MH/0063/1951**, the Court ruled as under:



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In an action for infringement what is important is to find out what was the distinguishing or essential feature of the trade mark already registered and what is the main feature or the main idea underlying the trade mark.

In ***Parle Products (f) Ltd. v. J.P. & Co. Mysore***, reported in ***MANU/SC/0412/1972***, the Hon'ble Supreme Court took the same view.

15. Further in the case of ***De Cordova v. Vick Chemical Company***, reported in ***68 R.P.C. 103, 106*** it was held as under:

It has long been accepted that, if a word forming part of a mark has come in trade to be used to identify the goods of the owner of the mark, it is an infringement of the mark itself to use that word as the mark on part of the mark of another trader, for confusion is likely to result.

16. In the case of ***M/s Kirorimal Kashiram Marketing & Agencies Pvt. Ltd. v. M/s. Shree Sita Chawal Udyog Mill*** reported in ***2010 SCC OnLine Del 2933***, it was held that copying of a prominent part of a trademark of a person is prohibited, more so, when the same is a registered trademark. In the case of ***M/s. S. Oliver Bernd Freier GMBH & Co. KG v. M/s. Rasul Exports & Anr.*** reported in ***2014 SCC OnLine***



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Del 564, it was held that:

29. Even if a word forming part of the mark has come in trade to be used to identify the goods of the owner of the trade mark, it is an infringement of the mark itself to use that word as the mark or part of the mark of another trader for which confusion is likely to result.

17. In the present case, it is clear from the *Exhibits* submitted by the plaintiffs that their registered trade mark **AACHI** /  is a well-known mark, having been in the market since 1995. The mark **AACHI** /  has come in trade to be used to identify the goods of the owner of the mark. The defendant has used this prominent word **AACHI** in their un-registered trademark **AACHI CALL DRIVERS & TRAVELS** /  and though both the parties are involved in different businesses, this leads to dilution of the plaintiffs' registered trademark and would cause irreparable harm to the goodwill and reputation earned by the plaintiffs over the years. The defendant's mark is phonetically, structurally and visually identical to the prominent part of the plaintiffs' trade mark and it is bound to cause confusion as both the products and the services will be made available to the general public at large. The above discussion leads to the



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conclusion that the mark **AACHI CALL DRIVERS & TRAVELS** /



used by the defendant has infringed the

plaintiffs' trademarks **AACHI** /  . Accordingly, the plaintiffs are entitled for the reliefs sought for in this suit. The issue is answered accordingly.

18. The learned counsel for the plaintiffs in her oral arguments, pressed only for the reliefs of permanent injunction restraining the defendant from infringing or passing off of the plaintiffs' registered trade mark i.e., reliefs (a) and (b) prayed for by them in the plaint.

19. In fine, there shall be a decree for permanent injunction, restraining the defendant, by itself, their servants, agents, men, or anyone claiming through them from advertising, offering for sale, running taxi services and running the website using same or similar or identical trade mark **AACHI CALL DRIVERS & TRAVELS** /



or any other similar trademark or in any media and use the same in invoices, websites, letter heads and visiting cards, or any other



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goods or services by using any other trademark which is in any way visually or phonetically similar or any other mark identical or deceptively similar to the plaintiffs' registered trade mark *AACHI* /  or in any other manner infringe or pass off the plaintiffs' registered trade mark.

20. The suit is decreed by imposing a cost of Rs.25,000/-[Rupees Twenty Five Thousand only] payable by the defendant to the plaintiffs.

29.11.2021

Internet: Yes
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List of Witness examined on the side of the Plaintiffs:-

Mr. B.Gnanasambandam (PW1) - examined in Chief.

List of Witness examined on the side of the Defendant :- Nil

List of the Exhibits marked on the side of the Plaintiff:-

S.No.	Exhibits	Dscription of Documents
1.	Ex.P.1	The original Authorisation letters dated 19.10.2021, 27.10.2021.
2.	Ex.P-2	The Print outs of the list of Products manufactured and marketed by the Plaintiffs bearing the trademark AACHI . (Ex.P2 is the Printout taken from the computer for which Certificate 65B Under Section Indian Evidence Act, 1872 is filed.)
3.	Ex.P-3	The Phtocopy of the Certificate of incorporation of Aachi Masala Foods P Ltd. Dated 30.06.2006. (original is produced, compated and it is undertaken by the plaintiff that it can be produced as and when required.)



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S.No.	Exhibits	Description of Documents
4.	Ex.P.4	The Photocopy of the Certificate of Commercial Tax Registration of Aachi Masala & Foods (P) Ltd dated 10.07.2006. (Original is produced, compared and it is undertaken by the plaintiff that it can be produced as and when required.)
5.	Ex.P-5	The Photocopy of the Dissolution Deed between Mrs. Rani Pandian and Mr.A.D.Padmasingh Isaac dissolving the partnership firm, Naveen Products dated 31.03.2007. (Original is produced, compared and it is undertaken by the plaintiff that it can be produced as and when required.)
6.	Ex.P-6	The Photocopy of the Certificate of Commercial Tax Ragistration and Central Sales Tax of Aachi Spices & foods dated 28.12.2006 and 03.01.2007. (Original is produced, compared and it is undertaken by the plaintiff that it can be produced as and when required.)
7.	Ex.P-7	The Photocopy of the Trade Mark License user Agreemtn between Mr.A.D.Padmasingh Isaac trading as Aachi Spices and Foods and Aachi Masala Foods Pvt.Ltd dated 01.04.2007. (Original is produced, compared and it is undertaken by the plaitniff that it can be produced as and when required.)



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S.No.	Exhibits	Dscription of Documents
8.	Ex.P.4	The Photocopy of the Certificate of Commercial Tax Registration of Aachi Masala & Foods (P) Ltd dated 10.07.2006. (Original is produced, compared and it is undertaken by the plaintiff that it can be produced as and when required.)
9.	Ex.P-9	The Photocopy of the Memorandum of Association of Aachi Spices and Foods P Ltd. Dated 06.03.2010. (Original is produced, compared and it is undertaken by the plaintiff that it can be produced as and when required.)
10.	Ex.P-10	The Photocopy of the Trade Mark License user Agreement between Mr.A.D.Padmasingh Isaac and Aachi Spices and Foods Pvt.Ltd., dated 21.04.2010. (Original is produced, compared and it is undertaken by the plaintiff that it can be produced as and when required.)
11.	Ex.P-11	The Photocopy of the License user Agreeemtn between between Mr.A.D.Padmasingh Isaac and Aachi Spices and Foods Pvt.Ltd., dated 21.04.2010. (Original is produced, compared and it is undertaken by the plaintiff that it can be produced as and when required.)
12.	Ex.P-12	The Certified Copy of Plaintiffs Advertisement in RITZ Magazine.



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S.No.	Exhibits	Dscription of Documents
13.	Ex.P-13	The Photocopy of the Legal use certificate of Trade Mark No.838786 in Class 30, dated 29.01.1999. (Original is produced, compared and it is undertaken by the plaintiff that it can be produced as and when required.)
14.	Ex.P-14	The Photocopy of the Legal use certificate of Trade mark No.1479159 in Class 30, dated 17.08.2006. (Original is produced, compared and it is undertaken by the plaintiff that it can be produced as and when required.)
15.	Ex.P-15	The Photocopy of the Legal use certificate of Trade Mark No.3371007 in class 39 dated 26.09.2016. (Original is produced, compared and it is undertaken by the plaintiff that it can be produced as and when required.)
16.	Ex.P-16	The Photocopy of the Legal use certificate of Trade Mark No.3370968 in Class 39 dated 26.09.2016. (Original is produced, compared and it is undertaken by the plaintiff that it can be produced as and when required.)
17.	Ex.P-17	The photocopy of the Registration Certificates of the mark AACHI in various countries around the world. (Original is produced, compared and it is undertaken by the plaintiff that it can be produced as and when required.)



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S.No.	Exhibits	Description of Documents
18.	Ex.P-18	The Photocopy of the Madrid Protocol Registration in classes 29, 30 43 with respect to the Trademark AACHI designating 107 countries valid and subsisting as on date. (Original is produced, compared and it is undertaken by the plaintiff that it can be produced as and when required.)
19.	Ex.P-19	The Print out of the Defendant's Website Aachi Call Drivers & Travels (along with the Certificate issued under Section 65B).

List of the Exhibits marked on the side of the Defendants:- Nil



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KP

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