



C.S.(Comm.Div.)40 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :07.12.2021

Coram:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Suit (Comm.Div.) No.40 of 2021

Amrutanjan Health Care Ltd.,
No.103, (Old No.42-45),
Luz Church Road, Mylapore,
Chennai 600 004
Rep by its Company Secretary,
Mr.M.Srinivasan.

.. Plaintiff

/versus/

Yashvi Enterprise,
Near HSC, Pandey Gaon,
Landmark-Sani Mandir
Pithoragarh, Uttrakhand 262501.

..Defendant

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, 134 & 135 of the Trade Marks Act, 1999 and Proviso 1 to Section 7 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, praying to pass a judgment and decree for:-

(a) a permanent injunction restraining the defendant, themselves, their partners, successors-in-business, servants, agents distributors, dealers, stockists, wholesalers, retailers, shop keepers, representatinvcs,



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assigns and all other persons claiming through them from manufacturing, selling and distributing, advertising sanitary napkins using the mark COMFY LIGHT SANITARY PADS which is deceptively similar to the plaintiff's trademark AMRUTANJAN COMFY SNUG FIT amounting to infringement of the plaintiff's registered trademark in any manner whatsoever;

(b) a permanent injunction restraining the defendant by themselves, their directors, legal representatives, successors in business, assigns, servants, agents, transporters, distributors, printers, stockists, wholesalers, dealers, retailers, advertisers or any one claiming through or under them from committing acts of passing off and enabling others to pass off by manufacturing, distributing, marketing, selling, offering for sale, advertising or in any other manner dealing in sanitary napkins or any other product bearing the deceptively similar mark COMGY LIGHT SANITARY PADS which is confusingly similar to plaintiff's brand name and mark AMRUTANJAN COMFY or in any other manner whatsoever which would be considered to be similar to the plaintiff's mark;

(c) the defendant be ordered to pay to the plaintiff a sum of Rs.10,00,000/- as damages for committing acts of infringement of trademark and passing off;

(d) the defendant be ordered to surrender to the plaintiff for destruction all goods advertisement materials, packing materials, cartons, wrappers, labels in respect of sanitary napkins and other allied/cognate goods containing the offending mark COMFY LIGHT SANITARY



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PADS or any other mark/label similar to plaintiff's trademark
AMRUTANJAN COMFY SNUG FIT;

(e) a preliminary decree be passed in favour of the plaintiff directing the defendant to render true and faithful account of profits earned by them by use of offending label for sanitary napkins or other allied and cognate goods and a final decree be passed in favor of the plaintiff for the amount of profits thus found to have been made by the defendant after the latter have rendered accounts;

(f) for entire costs of the suit; and

(g) pass such further and other orders as this Hon'ble Court may deem fit and necessary under the facts and circumstances of the case.

For Plaintiffs :Mrs.Chandini Pradeep

For Defendant :Set exparte

J U D G M E N T

The present suit was filed with the grievance that the defendant is interfering with the registered trademark of the plaintiff and the plaintiff has sought for various relief against the defendant.

2. The suit was filed on 10.08.2021 and it was admitted on 13.08.2021. When the notice was sent to the defendant, the defendant sent a communication dated 13.09.2021 to the plaintiff. The said



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communication in its entirety is extracted hereunder:-

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*"Yashvi Enterprises
Near HSC Pandey Gaon, Pithoragarh,
Uttarakhand, 262501*

*3 Floor, Ceebros Building No 32,
Cenotaph Road, Teynampet,
Chennai 600018*

*Subject:Acceptance of Claims
Date 13/09/2021*

Dear Claimant,

This response is to your notice letter received on the 13th day of September, 2021. I, Lakshman Singh Airy (Authorised Representative), on behalf of Yashvi Enterprises hereby accept the claims made by you after having validated through the Office of the Controller General of Patents, Designs & Trademark office, DPIIT, Ministry of Commerce and Industry, Govt. of India.

Affirmative Statement

I was not aware until your notice letter was brought to my attention that we were violating trademark on file with the Indian Trademark Office. I have taken all measures to remove the registered term from all of our products. I assure you, disposing off this sanitary brand name 'comfy light' promptly. I request your good self to kindly not take this



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case to Courts and allow us a week's time to dispose off the brand that is causing infringement. I thank you for your support and understanding.

-Sign-

*Sincerely,
Lakshman Airy
Yashvi Enterprises"*

3. When the matter came up for hearing on 23.11.2021, this Court passed the following order:-

"The Registry has circulated a note to the effect that the suit summons has been served on the sole defendant on 30.09.2021. There is no appearance either in person or through counsel for the defendant and the defendant is called absent and set ex-parte.

2. The learned counsel for the plaintiff submitted that immediately after the suit summons was received by the defendant, a communication was sent through e-mail to the plaintiff to the effect that the defendant will not use the trademark in question and the defendant had requested the



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plaintiff to permit them to sell the goods that are already available. The learned counsel submitted that the said e-mail communication will be produced before this court and this Court can pass a final judgement based on the same in the suit.

3. Post this case under the caption 'For Passing Judgement and Decree' on 07.12.2021."

4. When the matter was taken up for hearing today, the learned counsel appearing on behalf of the plaintiff submitted the communication received from the defendant. It is very clear from the above said communication that the defendant does not want to continue with the impugned mark and has also given an undertaking to that effect. This undertaking was sent through e-mail dated 15.09.2021 and the above said letter was attached with the mail. Both the e-mail communication as well as the letter are taken on file. The defendant did not choose to enter appearance through counsel and is not willing to defend the case and hence, was set ex-parte.



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5. In view of the above, the suit is decreed in terms of the undertaking given by the defendant through letter dated 13.09.2021. The undertaking letter shall form part of the decree.

6. The suit is accordingly allowed and considering the facts and circumstances of the case, there shall be no order as to costs.

07.12.2021

Index:yes/no
nsa/rka

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

Mr.R.Prasanna Raghavan ----- PW.1

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

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

Sl. Nos.	Dated	Description and nature of documents	Parties
1.	26.05.2016	Certified copy of registration of trademark AMRUTANJAN COMFY under application no.3268724 in class 5 (Photocopy)	Plaintiff
2.	2016-2021	Copies of invoices for sale of AMRUTANJAN COMFY products (Photocopy)	Plaintiff



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Sl. Nos.	Dated	Description and nature of documents	Parties
3.	--	Promotional materials proving use of the mark AMRUTANJAN COMFY by plaintiff (Photocopy)	Plaintiff
4.	30.06.2021	Notice issued by Plaintiff to Defendant (Office Copy)	Plaintiff to Defendant
5.	03.08.2021	Web page extracts from defendant's website www.comfypads.co.in (Printout)	Defendant
6.	--	Plaintiff's AMRUTANJAN COMFY SNUG FIT packaging (Photograph)	Plaintiff
7.	--	Defendant's infringing COMFY LIGHT SANITARY PADS packaging and advertisement materials (Photograph)	Defendant

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

N.ANAND VENKATESH. J.,



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