

**O.A.Nos.655, 656 of 2020**  
**in C.S.No.349 of 2020**

**C.V.KARTHIKEYAN J,**

The suit had been filed by M/s.Angel Christian Charitable Foundation India (GOD TV) a company registered under the Companies Act, 1956 against the defendants seeking a Judgment and Decree of permanent injunction restraining the defendants or anybody acting under them from in any manner using the Trademark of GOD or any mark similar to the plaintiff's mark.

2. In effect the plaintiff claims protection from infringement of the registered marks under the Registration No.1160863 in class 16 and Registration No.1305502 in class 38 and also for permanent injunction restraining the defendants from communicating or telecasting or broadcasting by using their impugned mark GOD TV which is similar to the mark of the plaintiff GOD and also restraining the defendant from passing off their services as the services of the plaintiff and for consequential reliefs and for costs of the suit.

3. Along with the plaint, the plaintiff had also filed the present applications seeking an order of interim injunction restraining the defendants from infringing the registered trademark of the plaintiff and also from passing off broadcasting materials as if they are the plaintiff's materials.

4. When the applications came up for consideration on 07.12.2020, it had also been brought to the Notice of this Court that the defendants have also registered a Trademark in the name GOD TV Mobile Network LLP under class 42. It was also stated that the plaintiff had also moved the Intellectual Property Appellate Board seeking rectification of the mark of the defendants. In view of that fact, Notice was directed to the defendants even though learned counsel for the plaintiff had laid stress on 124(5) of the Trademark Act, 1999.

WEB COPY

5. It is the case of the plaintiff that the plaintiff's company had been incorporated on 05.12.2002 primarily as a Charitable Foundation with the object to promote religious television radio programmes and also to decimate the contents in the worldwide web and to propagate

religion in all forms of the media. This object had also been approved of the Department of Company Affairs.

6. The plaintiff, quite independently, had also incorporated another company, Angel Media Network Private Limited. A Trademark Licence Agreement was entered into between the plaintiff and the said Angel Media Network Private Limited granting licence for use of the logo GOD TV. The said agreement had also been filed as document with the plaint.

7. The plaintiff had also applied and obtained registration under the Trademark Act, 1999 in class 16 in Trademark Registration No.1160863 for the device mark GOD. They have also obtained registration in class 38 under Registration No.1305502, again for the device mark GOD. It is to be stated that class 38 relates to Television Broadcasting.

8. The plaintiff had also expanded the manner in which they propagate religious programmes by not only opening a Television Channel, but also opening up a Face Book page, an Instagram page and

establishing presence in the You Tube Channel. Documents relating to these aspects have been filed along with the plaint. Specific reference has been invited to the Screen Shots in the Face Book page of the plaintiff. It is stated that the Face Book page is available not only in India, but also other in countries. As an example a screen shot of GOD TV Israel has been filed as a document along with the plaint.

9. The plaintiff has also opened up a Mobile App which was released on 16.02.2016. A Screen Shot of the Mobile App dated 06.06.2019 reflects that there have been more than One Lakh and above downloads and this aspect is pointed out by the learned counsel for the plaintiff to show the goodwill which the plaintiff had built and the reputation they enjoy among with the people who are directly involved in appreciating the messages propagated by the plaintiff.

10. The learned counsel for the plaintiff also pointed out that the plaintiff had, thereafter, applied to change the name of the plaintiff company to GOD TV Foundation India. This application was made on 17.08.2020. The plaintiff was not able to see a successful end to this application, since the Registrar of Companies had raised an objection

stating that there was another closely resembling LLP name using the name GOD.

11. The learned counsel for the plaintiff stated that it was at that time and from that communication that the plaintiff came to know about the defendants being involved in activities very similar to that of the plaintiff. It is to be noted that this communication was on 22.08.2020. Thereafter, the plaintiff appears to have made some enquiries regarding the defendants and the documents relating to defendants have also been filed along with the plaint. These included, an application for registration under the Trademarks Act, 1999 and it is specifically pointed out by the learned counsel for the plaintiff that the defendants had obtained registration in class 42 which relates to Scientific and Technological Services and Research and Design, and Industrial Analysis and Research Services and Design and Development of Computer Hardware and Software. It was further pointed out that even though application was made only under that class, namely class 42 in the affidavit filed with respect to the usage of the Trademark it was stated that it was for 'entertainment services' which did not and could not be categorized as a service under class 42. This particular aspect had

been stressed by the learned counsel for the plaintiff who stated that the defendants are propagating religious services similar to that of the plaintiff, but only after obtaining registration under class 42. This lack of bonafide on the part of the defendants has been pointed out and it is urged that adverse inference should be drawn against the defendants. Pointing out all the above facts and more particularly laying stress on the fact that the plaintiff is a prior user of the mark GOD, learned counsel for the plaintiff stated that the plaintiff should get the benefit of injunction against the defendants. It was pointed out that the two marks are identical marks, but the defendants who had obtained registration in class 42, are however using it under for entertainment purposes which service does not come under class 42.

12. Learned counsel also pointed out that the plaintiff had commenced their Mobile Application on 16.02.2016 and immediately thereafter on 05.03.2016 the defendants had created their Mobile Application and the Court was invited to compare the face pages of the two Mobile Applications and much stress was laid on the similarity of the two face pages. Learned counsel therefore urged that these

circumstances had compelled the plaintiff to come to Court seeking protection of their registered mark.

13. The learned counsel for the defendants stated that the defendants are engaged in Charitable work and are not propagating religion as business. However, he stated that the defendants are adopting a scientific approach in such religious propagation. The first defendant had stated in the counter as follows:

*"6. I submit that the holy message of Jesus Christ is absolutely in accordance with the rules of modern science. The scientific and spiritual messages of the holy Christ ought to be made to reach the general public therefore the synthesis of science and religion is to be reached among general public since both aspects are one and same. Therefore, with a view to reveal the scientific nature of Christianity I have registered trademark under class 42."*

14. It was also stated by the learned counsel for the defendants that the word GOD is a commonly used word and the plaintiff cannot

claim exclusivity over the same and cannot prevent the defendants using the same. It was also stated by the learned counsel that there is a possibility the plaintiff could have created a fake Face Book in the name of the defendants with ulterior purposes to create evidence. It was stressed that the defendants have adopted a scientific approach and therefore had registered the mark in class 42. It was also stated that the partners of the defendants had not been impleaded and therefore the plaintiff should be nonsuited.

15. I have carefully considered the arguments advanced and the relevant records.

16. It is a fact that the plaintiff had been incorporated in the year 2002 as a company under the Companies Act, 1956. The plaintiff has been propagating religious services through a Television Channel in name GOD TV. The plaintiff has registered the mark GOD in classes 16 and 38. Class 38 to the schedule of the Trademark Act, 1999 relates to Television Broadcasting. The plaintiff has also incorporated in their objects, religious propagation and had also obtained necessary approval from the concerned Ministry for incorporate of such deposit.

17. It is also a fact that the plaintiff has been continuously using the registered mark from the date of its registration. The Legal User Certificates have been filed as documents to the plaint. They reflect that the plaintiff has registered the mark GOD in Registration No.1160863 in a class 16 and in Registration No.1305502 in class 38. Both the registrations still subsist. The plaintiff has also diversified their services by propagating religious services not only through Television Channel, but also through Mobile Apps and have also entered presence in Face Book, Instagram and You Tube. Naturally the plaintiff has built up goodwill and reputation and are interested in protecting their reputation from being encroached by unauthorized usage of their registered mark.

18. The defendants have registered the mark GOD TV in class 42. It is not for this Court to examine whether propagating religion would fall under class 42. It is to be stated that class 42 is distinct in itself. It relates to Scientific and Technological Services and Research and designs relating thereto. It also relates to Industrial Analysis and Research Services. It also relates to design and development of computer hardware and software. Though it would be too harsh, still the

Court will have to necessarily point out that propagating religious services do not fall under any of the above categories. Religious services cannot be considered as being material in nature like computer hardware and software. Underlying spirituality is absent in computer hardwares or in any of the services stated in class 42.

19. Having registered their mark in class 42 the defendants can, without any hindrance, continue activities which are stated in class 42. The defendants however after registering their mark in class 42 cannot encroach on activities which are beyond the scope of such registration. Religious Services cannot be masqueraded as Scientific and Technological Services and Research and design relating thereto and as Industrial Analysis. The Vice Versa is also just not possible or even advisable.

20. My attention has been drawn to the decision of **(2016) 2 SCC 683 S.Syed Mohideen Vs. P.Sulochana Bai**, After trial, the plaintiff's suit was decreed. That decree was upheld by a Division Bench of this Court. The matter finally reached the door steps of the Hon'ble Supreme Court. It was a lis between "Iruttukadai Halwa" and "Tirunelveli

Iruttukadai Halwa”. The Hon'ble Supreme Court held that even in a case when both marks are registered, the action of passing off will lie since the latter user of the mark/name cannot misrepresent his business as that of the business of a prior right holder. It was held that the registration of the trademark by the defendant is no defence to a passing off action. In the instant case, the defendant has not registered the Trademark. Therefore, they cannot claim any special privilege owing to filing an application for registration. It was held as follows:-

*“31.1. Traditionally, passing off in common law is considered to be a right for protection of goodwill in the business against misrepresentation caused in the course of trade and for prevention of resultant damage on account of the said misrepresentation. The three ingredients of passing off are goodwill, misrepresentation and damage. These ingredients are considered to be classical trinity under the law of passing off as per the speech of Lord Oliver laid down in the case of **Reckitt & Colman Products Ltd. v. Borden Inc (1990) 1 WLR 491: (1990) 1 All.E.R. 873 (HL)** which is more popularly known as "Jif*

*Lemon" case wherein the Lord Oliver reduced the five guidelines laid out by Lord Diplock in Erven Warnink v. Townend & Sons Ltd. [1979) AC 731, 742 (HL)] (the "Advocate Case") to three elements: (1) Goodwill owned by a trader, (2) Misrepresentation and (3) Damage to goodwill. Thus, the passing off action is essentially an action in deceit where the common law rule is that no person is entitled to carry on his or her business on pretext that the said business is of that of another. This Court has given its imprimatur to the above principle in the case of **Laxmikant V. Patel v. Chetanbhat Shah (2002) 3 SCC 65.***

**31.2.** *The applicability of the said principle can be seen as to which proprietor has generated the goodwill by way of use of the mark name in the business. The use of the mark/carrying on business under the name confers the rights in favour of the person and generates goodwill in the market. Accordingly, the latter user of the mark/name or in the business cannot misrepresent his business as that of business of the prior right*

*holder. That is the reason why essentially the prior user is considered to be superior than that of any other rights. Consequently, the examination of rights in common law which are based on goodwill, misrepresentation and damage are independent to that of registered rights. The mere fact that both prior user and subsequent user are registered proprietors are irrelevant for the purposes of examining who generated the goodwill first in the market and whether the latter user is causing misrepresentation in the course of trade and damaging the goodwill and reputation of the prior right holder/former user. That is the additional reasoning that the statutory rights must pave the way for common law rights of passing off.*

**32. Thirdly,** *it is also recognized principle in common law jurisdiction that passing off right is broader remedy than that of infringement. This is due to the reason that the passing off doctrine operates on the general principle that no person is entitled to represent his or her business as business of other person. The said action in deceit is*

*maintainable for diverse reasons other than that of registered rights which are allocated rights under Recent Civil Reports the Act. The authorities of other common law jurisdictions like England more specifically **Kerry's Law of Trademarks and Trade Names, Fourteenth Edition, Thomson, Sweet & Maxwell South Asian Edition** recognizes the principle that where trademark action fails, passing off action may still succeed on the same evidence. This has been explained by the learned Author by observing the following:--*

***15-033** "A claimant may fail to make out a case of infringement of a trade mark for various reasons and may yet show that by imitating the mark claimed as a trademark, or otherwise, the Defendant has done what is calculated to pass off his goods as those of the claimant. A claim in "passing off" has generally been added as a second string to actions for infringement, and has on occasion succeeded where the claim for infringement has failed"".*

21. My attention is drawn to **2001(21) PTC 872 (Del) Helpage**

**India -vs- Helpage Garhwal** in which a learned Single Judge of the Delhi High Court had held as follows:

*"11. Coming to the submission that plaintiff cannot claim monopoly in relation to word 'Helpage' it being descriptive in nature, it may be noticed that it is not denied by the defendant that the plaintiff organization which was founded in 1978, is providing consultancy, training and financial support to 531 voluntary agencies who in turn have been running 1400 service projects and financial grants of over Rs.100 crores has been provided to these projects by the plaintiff. Plaintiff has placed on record literature which reflects the nature of activities being carried by the voluntary organizations through service projects. Plaintiff allege that 'Helpage' was coined by it in 1978 and this word has nexus to its aims and objects. The defendant was registered after more than 14 years of the founding of the plaintiff organization. In this backdrop, there is considerable merit in the contention advanced on behalf of plaintiff that said work*

*'Helpage' has prima facie become synonymous with the plaintiff organization only and plaintiff can claim monopoly over the use thereof to the exclusion of others. Decision in Online India Capital Co. Pvt. Ltd. & Anr. v. Dimensions Corporate, 2000 PTC 396 relied on behalf of defendant has no applicability to the facts of the present case.*

*12. This bring me to the last limb of submission referred to above advanced on behalf of defendant. 'Helpage' is the key word of the names of parties to the suit. Both the parties are welfare organizations though the field of activity of defendant is not solely confined to aged persons. Indisputeably, plaintiff organization came to be founded more than 14 years before the defendant was registered under the Societies Registration Act. Considering these facts conjointly, in my view, use of the word 'Helpage' by defendant as part of its name is bound to create confusion and / or deception in the minds of people that defendant organization has some connection with the plaintiff organization.*

*Registration of the name of defendant under the Societies Registration Act cannot come in the way of this Court in granting the relief prayed for. In case the defendant is allowed to use 'Helpage' as part of its name it will cause irreparable injury to the plaintiff organization in whose favour balance of convenience, obviously, lies. This, aforesaid IA 10583/98 deserves to be allowed while IA 3977/1999 dismissed."*

22. It is clear in the instant case the plaintiff is the prior user. The contention of the learned counsel for the defendants that the defendant is engaged only in Charitable activities and is not engaged for profit is neither here nor there. They cannot indulge in activities stipulated under classes 16 and 38. Having registered their mark under class 42, but consciously encroaching upon activities similar to that of the plaintiff, certainly shows a very oblique frame of mind. The Court has to necessarily protect the mark registered under class 16 and class 38.

23. The learned counsel for the defendants took umbrage over the jurisdiction of this Court particularly when proceedings are pending

before the IPAB. It is to be noted that the plaintiff had stated that a petition has been filed before the IPAB. The defendants have not entered appearance, Section 124(5) of the Trademarks Act, 1999 is as follows:

*"124. Stay of proceedings where the validity of registration of the trade mark is questioned etc.,*

*1.....*

*2.....*

*3.....*

*4.....*

*5. The stay of a suit for the infringement of a trade mark under this section shall not preclude the Court from making any interlocutory order (including any order granting an injunction, directing account to be kept, appointing a receiver or attaching any property), during the period of the stay of the suit."*

24. It is clear that the Court can pass any Interlocutory Order including any order granting injunction or direct accounts or even appoint receiver or attach property during the period when there is a stay of the suit. In this case, there is no stay of the suit. A petition alone has been filed before the IPAB. I hold that there is no reason to deny the reliefs sought by the plaintiff.

25. The plaintiff has made out a *prima facie* case in view of the registrations. The plaintiff has established goodwill and reputation which is evident from the documents filed relating to their presence in Face Book, Instagram and You Tube, quite apart from developing and designing their Mobile App prior to the defendants. The plaintiff's trademark registrations are also much prior to that of the defendants. The defendants have come into the picture much later, nearly after 14 years after the plaintiff's company had been incorporated.

26. I hold that the balance of convenience is certainly in favour of the plaintiff's. Much loss and hardship would accrue if the defendants were permitted to continue to market their services under the impugned mark GOD TV.

27. It is also to be noted that when the application came up for the first time the Court had also examined the similarities of the Trademark.

A pictorial representation of the two marks are given below:



28. A casual glance reveals that similarities are more striking and there is every possibility of anybody and everybody being misled in believing that the Defendants' Mobile Application is actually that of the plaintiff.

29. It is clear that the defendant had made a very conscious attempt to encroach upon the goodwill of the plaintiff by using a very identical mark. The word GOD is very prominent in the mark of the defendant.

30. I hold that the defendants have definitely adopted their mark with sole intention to infringe on the reputation already built of the plaintiff.

31. In view of these facts, I have no other option but to make absolute the orders as sought for in the applications.

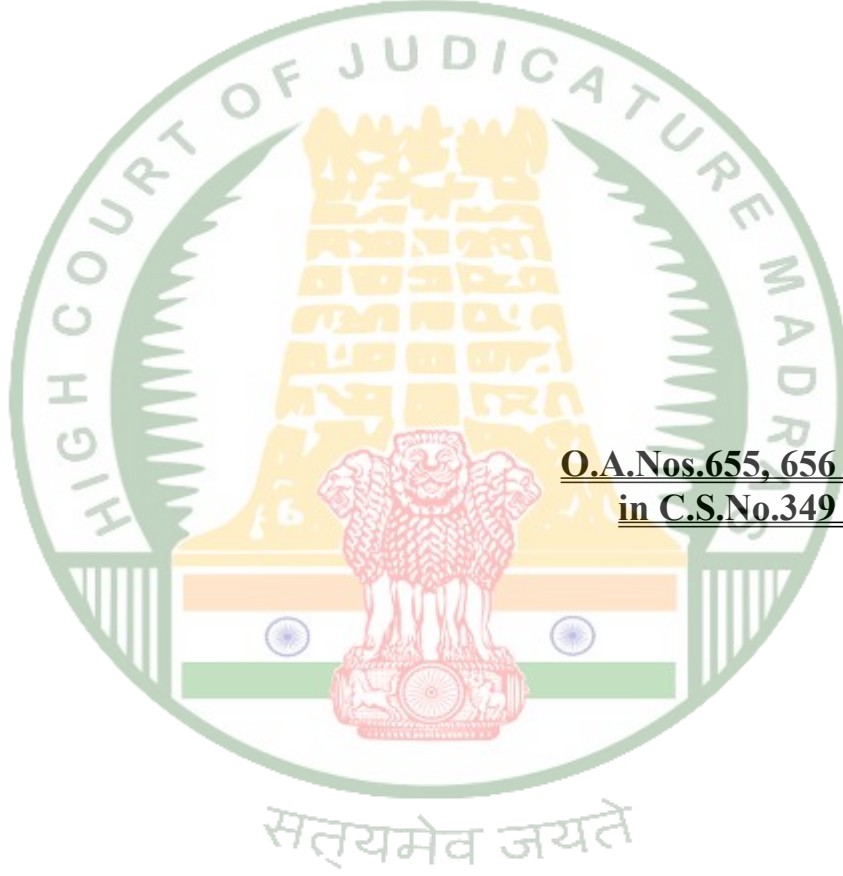
32. Applications are allowed. Injunction is granted as prayed for till disposal of suit. No order as to costs.

**08.01.2021**  
**(1/2)**

rna

**C.V.KARTHIKEYAN.J.**

rna



**O.A.Nos.655, 656 of 2020**  
**in C.S.No.349 of 2020**

WEB COPY

08.01.2021  
(1/2)