



WEB COPY

1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 09TH DAY OF SEPTEMBER 2021

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

C.S. (Comm. Suits) No.542 of 2019

and

A. No. 3157 of 2021

1.Prosound Products,

Partnership Firm,

Represented by its Partner Mr.Pradeep Ahuja,

C/o.Audioplus, A1/A2, Giriraj Industrial Estate,

Mahakali Caves Road Andheri (East),

Mumbai– 400 093, Maharashtra.

2.Audio plus.

Partnership Firm,

Represented by its Partner Mr.Pradeep Ahuja,

Having office at A1/A2, Giriraj Industrial Estate,

Mahakali caves Road Andheri (East),

Mumbai– 400 093, Maharashtra.

... Plaintiffs

-Versus-

John Enterprises,

28/13, Narasingapuram Street,

Opp. Raheja Complex, Anna Salai,

Chennai – 600 002, Tamil Nadu

Also at:

46/54, Kakka Thoppu Street,

Town Hall Road, Madurai – 625 001.

... Defendant

**C.S. (Comm. Suits) No.542 of 2019**

WEB COPY

Civil Suit praying that this Hon'ble Court be pleased to pass a judgment and Decree on the following terms:

(a) A permanent injunction restraining the Defendant, their directors, proprietors, partners, subsidiaries, affiliates, franchisees, officers, employees, personnel, servants, agents, representatives including wholesalers, distributors, stockists and anyone acting for or on their behalf from in any manner directly or indirectly using the trade mark or indulging in the import, export, acquisition, purchase and /or sale of products under the trademark 'STUDIOMASTER' and /or any mark identical or similar to the Plaintiffs' trademarks 'STUDIOMASTER' and 'STUDIOMASTER PROFESSIONAL' amounting to infringement of Plaintiff's registered trade mark as referred to in paragraph 7 of the Plaint.

(b) A permanent injunction restraining the Defendant, their directors, proprietors, partners, subsidiaries, affiliates, franchisees, officers, employees, personnel, servants, agents, representatives including wholesalers, distributors, stockists and anyone acting for or on their behalf from in any manner directly or indirectly using the trade mark or indulging in the import, export, acquisition, purchase and/or sale of products under the trademark 'STUDIOMASTER' and/or any mark identical or similar to the Plaintiffs'



amounting to passing off of the Defendant's products as those of the Plaintiffs;

(c) An order directing the Defendant to furnish all the data and accounts of all transactions undertaken, goods sold and the profits obtained during the course of their business relating to the sale of products under the impugned trade mark 'STUDIOMASTER' , to the Plaintiffs;

(d) An order directing the defendant to pay preliminary damages for a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) to the plaintiff apart from such damages as calculated upon accounts being rendered by the defendant.

(e) An order for delivery up of all finished and/or unfinished products, materials including signage, cards, stationary, accessories, labels, brochures, printed materials including hoardings and other material bearing the impugned trademark 'STUDIOMASTER' or any mark identical with or deceptively similar to the Plaintiff's trade mark 'STUDIOMASTER', by the Defendant to the Plaintiff for the purpose of destruction;

(f) Costs

A. No. 3157 of 2021

Application praying that this Hon'ble Court be pleased to permit the applicants to withdraw the present suit with liberty to file the same as against the present defendant and/or the parties directed to be impleaded by



the Hon'ble Division Bench of this Hon'ble Court, for the same cause of action or any other cause of action, before the appropriate forum.

This civil suit along with application coming on this day before this court for hearing in the presence of Mr.K.Prem Chandar, Advocate for the plaintiffs in C.S.No(C). 542 of 2019 and for the applicants in A.No. 3157 of 2021 and M/s. L. Maithili, Advocate for the defendant in C.S.No(C). 542 of 2019 and for the respondents in A.No. 3157 of 2021 and upon reading the plaint filed in C.S.No(C). 542 of 2019 and the Judges Summons and the affidavit of Sathyanarayan Karkala kamath filed in A.No. 3157 of 2021 and this court having observed that as far as the present suit C.S.No. 542 of 2019, wherein it has been observed by the Hon'ble Division Bench that the suit is bad for non joinder of necessary parties and the plaintiffs is not able to implead the necessary parties with in the reasonable time the plaintiffs have been advised to withdraw the suit, and the court cannot stand in their way and **it is ordered as follow:-**

1) That the suit C.S.No. 542 of 2019, be and is hereby dismissed as withdrawn.

2) That the plaintiffs herein do pay to the defendant herein a sum of Rs. 25,000/- (Rupees Twenty Five Thousand only) as costs.



(3) That if the plaintiffs herein, have any surviving cause of action, they shall always approach the court for appropriate remedy.

WITNESS, THE HON'BLE MR.JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT OF MADRAS AFORESAID, THIS THE
09TH DAY OF SEPTEMBER 2021

Sd/-
ASSISTANT REGISTRAR (Comm. Cases)

//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.



WEB COPY

6

C.S. (Comm. Suits) No.542 of 2019
and
A. No. 3157 of 2021

DECREE
DATED 09/09/2021

THE HON'BLE DR.JUSTICE
G.JAYACHANDRAN

FOR APPROVAL: 22/10/2021

APPROVED ON: 25/10/2021



WEB COPY

7

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2021

CORAM:

THE HON'BLE MR.JUSTICE Dr.G.JAYACHANDRAN

C.S. (Comm. Suits) No.542 of 2019

and

A. No. 3157 of 2021

1.Prosound Products,
Partnership Firm,
Represented by its Partner Mr.Pradeep Ahuja,
C/o.Audioplus, A1/A2, Giriraj Industrial Estate,
Mahakali Vaves Road Andher (East),
Mumbai, Maharashtra – 400 093.

2.Audio plus.
Partnership Firm,
Represented by its Partner Mr.Pradeep Ahuja,
Having office at A1/A2, Giriraj Industrial Estate,
Mahakali Vaves Road Andher (East),
Mumbai, Maharashtra – 400 093.

... Plaintiffs

Versus

John Enterprises,
28/13, Narasingapuram Street,
Opp. Raheja Complex, Anna Salai,
Chennai – 600 002, Tamil Nadu
Also at:
46/54, Kakka Thoppu Street,
Town Hall Road, Madurai – 625 001.

... Defendant

PRAYER: Civil Suit filed under Order VII Rule 1 CPC read with Order IV

Rule 1 of the Original Side Rules of the Madras High Court, Section 2(1)(c)



11, 27, 29, 134, & 135 of Trade Marks Act, 1999, praying to grant a judgment and decree on the following terms :-

(a) A permanent injunction restraining the Defendant, their directors, proprietors, partners, subsidiaries, affiliates, franchisees, officers, employees, personnel, servants, agents, representatives including wholesalers, distributors, stockists and anyone acting for or on their behalf from in any manner directly or indirectly using the trade mark or indulging in the import, export, acquisition, purchase and /or sale of products under the trademark 'STUDIOMASTER' and /or any mark identical or similar to the Plaintiffs' trademarks 'STUDIOMASTER' and 'STUDIOMASTER PROFESSIONAL' amounting to infringement of Plaintiff's registered trade mark as referred to in paragraph 7 of the Plaint.

(b) A permanent injunction restraining the Defendant, their directors, proprietors, partners, subsidiaries, affiliates, franchisees, officers, employees, personnel, servants, agents, representatives including wholesalers, distributors, stockists and anyone acting for or on their behalf from in any manner directly or indirectly using the trade mark or indulging in the import, export, acquisition, purchase and/or sale of products under the trademark

'STUDIOMASTER' and/or any mark identical or similar to the



Plaintiffs' trademarks 'STUDIOMASTER' and 'STUDIOMASTER PROFESSIONAL' amounting to passing off of the Defendant's products as those of the Plaintiffs;

(c) An order directing the Defendant to furnish all the data and accounts of all transactions undertaken, goods sold and the profits obtained during the course of their business relating to the sale of products under the impugned trade mark 'STUDIOMASTER' , to the Plaintiffs;

(d) An order directing the defendant to pay preliminary damages for a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) to the plaintiff apart from such damages as calculated upon accounts being rendered by the defendant.

(e) An order for delivery up of all finished and/or unfinished products, materials including signage, cards, stationary, accessories, labels, brochures, printed materials including hoardings and other material bearing the impugned trademark 'STUDIOMASTER' or any mark identical with or deceptively similar to the Plaintiff's trade mark 'STUDIOMASTER', by the Defendant to the Plaintiff for the purpose of destruction;



WEB COPY

10

For Plaintiffs : Mr. K.Premchandrar

For Defendant : Ms.L.Maithili

ORDER

(This case has been heard through video conference)

The application has been filed by the plaintiff to withdraw the suit with liberty to file fresh suit against the present defendant and/or the parties, who are directed to be impleaded by the Hon'ble Division Bench in the connected O.S.A.

2.This Court on 10.02.2020 considering the injunction application and the application to vacate the injunction has passed the detailed order on 10.02.2020 vacating exparte interim injunction granted in favour of the plaintiffs. This order was subjected to Intra Court Appeal, wherein the Hon'ble Division Bench has observed that the Nippon Enterprises South and Ningbo Soundking Group Co. Ltd. are necessary parties and therefore the plaintiff cannot sustain the suit without impleading them. In the said circumstances, the present application is filed stating the reason that due to the pandemic 2019 situation, the plaintiffs were not in a position to implead those defendants and proceed with the suit. Therefore, they seek leave to file fresh suit against the present defendant or parties, who were directed to be impleaded by the Hon'ble Division Bench. The inability of the plaintiffs to implead necessary parties cannot be a reason to grant leave to file fresh



suit on the same cause of action. As rightly contended by the counsel for the defendant that the plaintiffs have proceeded against the defendant without any cause of action, the suit cannot be allowed to be withdrawn to file a fresh suit against the defendant for the same cause of action and having dragged the defendant for litigation pending for two years and interim restraint order against the defendant leave to file a fresh suit against this defendant cannot be ordered.

3. Heard the learned counsel appearing on behalf of both the plaintiffs and defendant.

4. As a dominant litus of the plaintiff now wanted to withdraw the suit, Court cannot compel a litigant to agitate when he is not interested to pursue the case further. At the same time, if any fresh cause of action arises, the right to file fresh suit cannot also be deprived. As far as the present suit C.S. No. 542 of 2019, wherein it has been observed by the Hon'ble Division Bench that the suit is bad for non joinder of necessary parties and the plaintiff is not able to implead the necessary parties within the reasonable time, the plaintiffs have been advised to withdraw the suit. The Court cannot stand in their way. For putting the defendant into hardship all along,



defendant. Regarding the leave to file fresh suit, it goes without saying that if the plaintiff has any surviving cause of action, he can always approach the Court for appropriate remedy.

5. Accordingly, the suit is dismissed as withdrawn. Consequently, the application is allowed on the above said condition.

Sd/- G.J.J.
09/09/2021

//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.