



C.S.No.259 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :03/08/2021

Pronounced on :17.08.2021

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

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N.Ranga Rao & Sons Private Ltd.,
PB No.52, Vani Vilas Road,
Mysore 570 004
and also at
T.S.109, Block no.3, Poomagal,
5th Street, Ekkaduthangal,
Chennai 600 032.

.. Plaintiff

/versus/

Sree Annapoorna Agro Foods,
No.98E, Karattu Thottam,
Erode 638 004.

.. Defendant

Prayer: Civil Suit has been filed under Order IV, Rule 1 O.S., Rules read with Order VII, Rule 1 of CPC Along with Sections 27,28,29,134 and 135 of the Trade Marks Act, 1999 praying to pass a judgment and decree:-

(a)granting a permanent injunction restraining the defendant by itself, its servant, agents or any one claiming through it from in any manner infringing the plaintiff's registered trade mark CYCLE by using the identical and offending Trade Mark CYCLE or any other mark or marks which are in anyway identical, deceptively similar to or a colorable imitation of the



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plaintiff's registered Trade Mark CYCLE, either by manufacturing or selling or offering for sale in any manner advertising the same.

b.Granted a permanent injunction restraining the defendant by itself, its servant, agents or any one claiming through it from in any manner passing off its products, under the offending Trade mark CYCLE as and for the plaintiff's products manufactured and marketed under the Mark CYCLE in any manner whatsoever;

c.Directing the defendant to render a true and faithful account of the profits earned by the defendant through the sale of its products, including the products bearing the offending Trade mark CYCLE and direct payment of such profits to the plaintiff for the acts of infringement and passing off committed by the defendant;

d.Directing the defendant to surrender to the plaintiff the entire stock of unused offending labels bearing the offending Trade Mark CYCLE along with the blocks and dyes for destruction.

e.Directing the defendant to pay to the plaintiff the cost of the suit.

For Plaintiff :Mr.Satish Parasaran,
Senior Counsel for
Mr.Rajesh Ramanathan

For Defendant :Mr.R.Sathish Kumar



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JUDGMENT

(The case has been heard through Video Conferencing)

The plaintiff is a company incorporated under the Companies Act, having its head office at Mysore and branch office at various places including Chennai. The defendant is a proprietary firm having its office at Erode. The suit is filed for permanent injunction restraining the defendant from infringing the plaintiff's registered trade mark "CYCLE" by using the identical mark for the defendant's product and 'passing off' the same as that of the plaintiff's product.

2.The suit is filed under Sections 27, 28, 29, 134 and 135 of Trade Marks Act, 1999. Since the subject matter involves the intellectual Property Right of the plaintiff, the suit has been determined as a commercial dispute and taken up for trial by the Commercial Division Court.

3.Gist of the plaintiff's case:-

The plaintiff is a leading manufacturer and supplier of incense sticks



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and other allied products. They are engaged in the business of manufacturing and selling incense sticks/Agarbathies since 1948 and they are the global market leader in Incense/Agarbathies and Dhoops. The plaintiff firm initially started as a proprietary concern transformed into a partnership concern and later a private limited company. They have perfected the art of blending the perfumes and fragrances. The plaintiff predecessor honestly conceived and adopted several trademarks including Cycle Brand, Cycle Brand Three in One with the device of a Cycle, Woods, Lia, Heritage, etc., are some of their registered marks. They are openly, continuously and extensively using the said trade marks over the period of several decades in respect of various products ranging from cosmetics to food products. Their products under the brand umbrella “CYCLE” have gained a strong brand value and tremendous reputation and good will. They are exporting the incense sticks to over 40 countries. The business started by Rango Rao is now managed by the third generation. In order to corporatise the business, the private limited company was incorporated on 23.12.2014. All the business, assets and goodwill of the partnership firm



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was transferred to the plaintiff company. The ownership of the trade mark held by the firm also transferred in favour of the plaintiff company. The trade mark “CYCLE” was adopted in the year 1954 by the plaintiff's predecessor. The trade mark “CYCLE” has come to be identified by the consuming public with the plaintiff alone and the said trade mark has become one of the most recognized and sought after brand not only in India, but overseas as well. In order to safeguard its exclusivity and to obtain statutory protection in respect of the mark “CYCLE”, the plaintiff has obtained registration of the said mark under various classes. The indicative list of registration provided by the plaintiff is as below:-

Sl. No.	Mark	Regd. no.	Class	Date of application	Status
1.		163539	3	01/04/1954	Registered
2.		274106	3	06/08/1971	Registered
3.		163539	3	20/01/1992	Registered
4.		565834	29	20/01/1992	Registered



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Sl. No.	Mark	Regd. no.	Class	Date of application	Status
5.		565835	30	20/01/1992	Registered
6.	CYCLE POPULAR PARFUM	996502	3	14/03/2001	Registered
7.	CYCLE POPULAR COSMETIC	996502	3	14/03/2001	Registered
8.		1686788	3	25/11/2009	Registered
9.		1808749	35	25/11/2009	Registered
10.		2045400	35	27/10/2010	Registered
11.		2045406	41	27/10/2010	Registered
12.		2045409	43	27/10/2010	Registered
13.	CYCLE PURE	2237691	3	22/11/2011	Registered
14.	CYCLE PURE	2237696	35	22/11/2011	Registered
15.	CYCLE PURE	2237699	41	22/11/2011	Registered

4. Apart from the above registrations, the word mark “CYCLE” and the “Cycle logo with the device of cycle” forms part of all the registrations applied for and obtained by the plaintiff. Nearly 100 registrations are in the

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name of the plaintiff and the same has been renewed from time to time and valid.

5.The cycle brand logo contains the device in an unique and distinctive artistic work, which is also the house mark of the plaintiff. They are to be protected under the Copy Right Act. The plaintiff business, under the trade mark “CYCLE” runs in to several crores of rupees, which indicates its popularity and distinctive. The plaintiff spends several crores of rupees for brand advertisements and sales promotion. By the wide turnover and extensive sales and promotional activities, the trade mark “CYCLE” has come to be associated exclusively with that of the plaintiff alone and no one else. The plaintiff is vigilant in protecting its exclusive trade mark by successful legal actions against the infringer. The plaintiff has taken out public auction notice in various reputed newspapers and magazines informing the public and warning potential infringer from usurping or violating the trade mark and copyright of the plaintiff.



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6.The mark “CYCLE” has acquired tremendous reputation and goodwill among the trade and people, who associates the CYCLE mark only with the plaintiff and none else. The trademark “CYCLE” is a well known mark. Therefore, eligible to be protected under the Trade Marks Act, 1999 irrespective the manner of usage for any goods by the third party. The registered proprietary of the trade mark “CYCLE” in respect of various products including food products falling under Sections 29 and 30.

7.While so, the defendant adoption and use of the identical trade mark “CYCLE” in respect of edible oil, which also falls under Class 29 of the NICE classification is an infringement of plaintiff's registered trademark “CYCLE”. The defendant has adopted the identical mark “CYCLE” for its product with an intention to take undue advantage over the said reputation and goodwill vested with the plaintiff in respect of the trade mark “CYCLE”. The use of the trade mark “CYCLE” by the defendant will automatically cause an unwarranted confusion among trade and public as to the source of defendant's goods. Such confusion and resultant deception



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among the general public is detrimental to the distinctive character and reputation of the plaintiff. The use of the identical mark by the defendant in respect of edible oil and such other goods amounts to clear infringement of plaintiff's registered trademark. The defendant unauthorisedly using the the well known trademark "CYCLE" has also placed the device of cycle closely to create an unequivocal impression in the minds of general public that the defendant's product is somehow associated with the plaintiff. The trade mark "CYCLE" along with the cycle logo in a prominent fashion is in close proximity to the plaintiff device of cycle. This is bound to cause confusion among the general public and this is an origin of defendant's product. An ordinary person with imperfect recollection would be easily confused and deceived into believing that the defendant's goods emanates from the plaintiff. The use of the identical mark "CYCLE" by the defendant is a statutory violation of the plaintiff's registered trade mark.

8.Immediately upon knowing the infringing activities of the defendant, the plaintiff issued a cease and desist notice dated 18.11.2016

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seeking the defendant to stop manufacturing or marketing their goods under the mark “CYCLE”. The defendant issued reply justifying the use of the cycle on the ground of difference in the product and the defendant's use of identical trade mark cycle will not cause confusion and mislead the consumers into believing that the product sold by the defendant emanates from the plaintiff. The acts of the defendant in using the identical trade mark “CYCLE” amounts to infringement of the plaintiff exclusive statutory right in respect of the mark “CYCLE”. The plaintiff is the registered proprietary of the mark “CYCLE” in respect of the food products falling under Sections 29 and 30.

9. Therefore, the suit is filed for the following reliefs:-

(a) granting a permanent injunction restraining the defendant by itself, its servant, agents or any one claiming through it from in any manner infringing the plaintiff's registered trade mark CYCLE by using the identical and offending Trade Mark CYCLE or any other mark or marks which are in



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anyway identical, deceptively similar to or a colorable imitation of the plaintiff's registered Trade Mark CYCLE, either by manufacturing or selling or offering for sale in any manner advertising the same.

(b)Granting a permanent injunction restraining the defendant by itself, its servant, agents or any one claiming through it from in any manner passing off its products, under the offending Trade mark CYCLE as and for the plaintiff's products manufactured and marketed under the Mark CYCLE in any manner whatsoever;

(c)Directing the defendant to render a true and faithful account of the profits earned by the defendant through the sale of its products, including the products bearing the offending Trade mark CYCLE and direct payment of such profits to the plaintiff for the acts of infringement and passing off committed by the defendant;



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(d) Directing the defendant to surrender to the plaintiff the entire stock of unused offending labels bearing the offending Trade Mark CYCLE along with the blocks and dyes for destruction.

(e) Directing the defendant to pay to the plaintiff the cost of the suit.

10. Gist of the Written Statement:-

The defendant states that they are carrying on business of manufacturing edible vegetable oils under the trade mark “CYCLE” since 2009. They have adopted the trade mark “CYCLE” as it was an arbitrary choice for edible oils. They are using the said trade mark for the past 8 years. The plaintiff used the trade mark “CYCLE” only with respect to incense sticks and agarbathies and they have never used the trade mark “CYCLE” with respect to food products. The registration of the plaintiff trade mark “CYCLE” in class 29 and 30 are subject to other provisions of the Act and also liable to be cancelled on the ground of non-user. Since the product of the plaintiff is different from the defendant, no confusion or



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deception in the market will cause. The plaintiff is a manufacturer and suppliers of incense sticks and allied products under cycle brand. Whereas, the defendant is using the mark “CYCLE” for edible oils which is neither allied or cognate to the goods of the plaintiff. The mark “CYCLE” is neither a coined word nor a fancy word. It is a word well known in English. Adoption of the common dictionary word for particular product a trade mark for its product will not give exclusive right to the plaintiff over the said name. It is an arbitrary choice of the defendant to use the word “CYCLE” for its product edible oils. It is not in bad faith.

11.The plaintiff has not filed any document to show that they are dealing with food products under the trade mark “CYCLE”. The plaintiff's averment clearly confines their claim of reputation and operation in respect of incense and agarbathies only. Therefore, the use of trade mark “CYCLE” by the defendant for its edible oils no way cause infringement or passing off. The trade mark “CYCLE” mentioned and used by the plaintiff is not relevant to the present litigation, as they are for completely different set of



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products than that of the products of the defendant. The trade mark registration under application Nos.565834 in class 29 and 565835 in class 30, both of which are 'proposed to be used' mark. On the date of the application i.e. 20.01.1992, admittedly, the plaintiff had never used the trade mark "CYCLE" for goods under class 29 and 30. More particularly, as far as edible oil, which falls under class 29, the defendant is the prior user of the trade mark "CYCLE". The plaintiff is not entitled to claim monopoly over the word "CYCLE" across the product. Any accolades or awards received by the plaintiff as a trader will not confer monopoly over the trade mark "CYCLE" for all products cutting across goods. The claim of the plaintiff that its trade mark "CYCLE" has gained the status of well known mark, is denied as false.

12.The defendant denies the submissions of the plaintiff as follows:-

(a)The use of the trademark CYCLE for 6 decades is disputed and put to strict proof thereof. Even assuming so, the use of the trade mark has been with regard to one single set of products;



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(b)The assertion that the trademark CYCLE has become a household name is denied and the plaintiff is put to strict proof thereof;

(c)It is vehemently denied that the trademark CYCLE has been recognised as that of the plaintiff's only and has acquired secondary meaning. Even assuming that the said secondary meaning is taken for agarbathies, the same does not confer a monopoly on the plaintiff across all products;

(d)The details regarding steps taken to protect the trademark is not furnished and hence is irrelevant;

(e)Mere advertisement or promotion of the trademark CYCKE by the plaintiff does not per se extend its monopoly across all products.

13.According to the defendant, the plaintiff has no proof of its reputation to claim the status of well known mark or to get protection under Section 29(4) of the Trade Marks Act, cutting across the products. The defendant has adopted the mark “CYCLE” arbitrarily without any mala fide intention to cause confusion or to create any impression with the public that



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its product likely to have association with the plaintiff. The word “CYCLE” is neither distinctive nor can be appropriate by the plaintiff as their own against the world. The plaintiff has never used the word “CYCLE” independently, but had associated with its product Agarbathies. Therefore, using the device of “CYCLE” by the defendant for their edible oils will not cause confusion amidst the public. The public will not mistake the product of the defendant originate from the plaintiff. The plaintiff seeking dilution ought to have shown that the word so well imprinted in the minds of the public that any reference to the word “CYCLE” shall immediately bring to the mind the plaintiff's product. This is possible only if the word is distinctive and had been so exclusively used by the plaintiff. In the instant case, the word “CYCLE” is used by several persons across several products and services including one of the symbols recognised by the Election Commission of India. It could not be exclusively identified with the plaintiff. As far as edible oil under class 29, the defendant is the prior user of the mark and hence, have a better right than the plaintiff.



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14. Based on the rival pleadings, this Court has framed the following issues:-

(1) whether the defendant has infringed the plaintiff's registered trade mark CYCLE?

(2) Whether the defendant is passing off its goods using the trademark CYCLE as and for the goods of the plaintiff under the registered trademark and copyrighted artistic work CYCLE?

(3) Whether the defendant is manufacturing any products under the trademark CYCLE with respect to FOOD PRODUCTS falling under Class 29 or Class 30 of the Trademark Rules?

(4) Whether the defendant adopted the trademark CYCLE for edible oils in the year 2009 and whether the defendant is continuously using the trademark Cycle for edible oils?

(5) Whether the plaintiff's agarbathies/incense sticks and the defendant's products under the trademark CYCLE



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allied or cognate goods?

(6)Whether the defendant's use of the trade mark CYCLE is detrimental to the use of plaintiff's trademark CYCLE or to the distinctive character and repute of the plaintiff's trademark?

(7)Whether the plaintiff's trademark CYCLE has such reputation so as to prevent the defendant from using the dissimilar goods other than those used by the plaintiff and whether the trademark CYCLE has come to be associated with the plaintiff if used in any product?

(8)Whether the plaintiff is entitled to the relief of rendition of accounts of profits earned by the defendant through the infringing use of the mark CYCLE?

(9)Whether the plaintiff is entitled to the surrender of entire stock of unused offending lables, blocks and dyes bearing the offending Trade Mark CYCLE for destruction?

(10)Whether the plaintiff is entitled to costs of the suit?

(11)To what other reliefs the plaintiff is entitled to?



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15. On behalf of the plaintiff, V. Ramamoorthy, Associate Regional Manager, Tami Nadu Branch of the Plaintiff's Company was examined as PW-1. 14 exhibits were marked as Exs.P1 to Ex.P14 on behalf of the plaintiff. On behalf of the defendant, the proprietary of the defendant firm, one Mr.K.Paramasivam was examined as DW-1. 3 exhibits were marked through him as Ex.D1 to Ex.D3.

16. The plaintiff case is based upon the tripod, namely (a) The plaintiff is using the mark cycle since 1948. Thus, they are the prior user of the trade mark 'cycle'. (b) The plaintiff is the sole and exclusive owner of the registered trademark 'cycle' word and device for various goods and services under classes 3, 29, 30, 35, 41 and 43. Particularly, they hold valid trade mark registration for Hair oil under class 3 and for preserved and dried and cooked fruits and vegetable, jellies, jam, milk and dairy under class 29. (c) The plaintiff mark is known mark having reputation over India, therefore use of the mark by the defendant, without due cause for its



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cooking oil, is detrimental to its distinctive character and reputation gained for over several decades with huge turnover, after spending several crores of Rupees for advertisement.

17. In support of the above said contention, the plaintiff has examined its Associate Regional Manager Mr. V. Ramamoorthy as PW-1. To show that the plaintiff holds valid and subsisting legal user certificates for the trade mark CYCLE and the device cycle, inside a unique oval shaped device with distinctive artistic work, had marked Ex.P-2 series (15 Nos). To show the turnover of the goods sold by the plaintiff carrying the trademark CYCLE runs to several crores, the invoices for agarbathi/incense sticks/doop and pooja oil are marked as Ex.P-3 series (57 sheets) and Ex.P-4 series (15 sheets). To show the plaintiff had spent several crores of rupees for advertisement to promote their sales, Ex.P-5 series (40 sheets) are marked. The copies of various awards and accolades in recognition of the plaintiff and its predecessor for its achievements are marked as Ex.P-6 series (18 sheets). Relying upon the sales data, expenses incurred for sales promotion

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and the awards and accolades, the plaintiff content that due to long, continuous and extensive use of the trademark CYCLE, the trade mark has come to be associated exclusively with the plaintiff alone and no one else. By hosting sport and cultural events, including many international cricket matches, and advertising in those events, the plaintiff mark has become well known even to the people living in remotest part of the country. General public associate cycle brand and its logo only with the plaintiff. The association is not only to agarbathi but also in respect of oil and other cognate products. The trade mark cycle has become a well known mark satisfying all the parameters mentioned in Section 2 (1) (zg) of the Trademarks Act.

18.The cease and desist notice dated 18/11/2016 issued by the plaintiff to defendant is marked as Ex.P-7 and the reply of the defendant dated 11/01/2017 is marked as Ex.P-8. To show the imitation and adoption of the plaintiff trade mark by the defendant, the trade label of the plaintiff and the trade label of the defendant are marked as Ex.P-9 and Ex.P-10

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respectively. Documents Ex.P11 to Ex.P13 relates to the agreement for advertisements, additional invoices and the cease and desist notice issued by its founder in the year 1960 for the trademark Cycle for its agarbathi, all to prove that the plaintiff continuously using the trade mark cycle and vigilantly protecting.

19.The learned Senior Counsel for the plaintiff Mr.Satish Parasuran, submitted that the spectrum of infringement begins with adoption of identical trademark in relation to identical goods or services in respect of which the trademark is registered and ends with the adoption of an identical or similar to the registered mark used not in relation to goods or services similar to those of which the trademark is registered subject to the condition. Provided the registered mark has reputation in India and the defendant act of adopting of the mark is detrimental to the distinctive character or repute of the registered trade mark.



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20.Further, explaining the above submission, the learned Senior Counsel dissected Section 29 as below:-

<i>Sl. No.</i>	<i>Mark</i>	<i>Goods/Services</i>
1	Identical	Identical
2	Identical	Similar goods (cognate/allied)
3	Similar/deceptively similar	Identical
4	Similar/Deceptively	Similar goods (cognate/allied)
5.	Identical/similar	Not similar

(*)Sl.Nos.1 to 4 are protected under Section 29(1) to (3)

(*)Sl.No.5 is protected under Section 29(4).

21.According to the learned Senior Counsel, the plaintiff company by its continuous use of the mark “CYCLE” for over sixty years for its incense sticks and other products under various classes has gained reputation and goodwill among the public. It has attained the status of well known trademark, by satisfying all the parameters mentioned in Section 2(1)(zg) of the Trademarks Act, 1999. The plaintiff’s mark “CYCLE” along with the device of the “CYCLE” is a registered mark also for goods under classes 29 and 30. Documents filed on behalf of the plaintiff are sufficient to prove



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that they are the prior users of the mark CYCLE and registered owner of the said mark. The right conferred under Section 28 of the Act for exclusive use of the mark should be protected. Knowing well the colossal presences of the plaintiff in the market trading its product under the brand CYCLE, the defendant had adopted the identical mark of the plaintiff for its product under class 29, amounts to infringement as defined under Section 29 of the Trade Marks Act. Plaintiff being the prior registered users of the mark their right is protected and the defendant cannot be permitted to cause confusion, which likely to cause on the public that the goods of the defendant is associated with the plaintiff trade house.

22.Further, the mark CYCLE being well known among the public and associated with the plaintiff, had gained reputation in India. The adoption of the plaintiff mark by the defendant for its edible oil will cause dilution of the plaintiff's reputation, therefore, its right over the mark CYCLE ought to be protected across all classes irrespective of the nature of goods. On the strength of the documentary evidence and Sections 28(1), 29(4) and 27(2)



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of the Trademarks Act, the learned Senior Counsel argued that the plaintiff is entitled for a decree against the defendant for infringement and passing off.

23.To buttress the above submissions, the below judgments are relied:-

(1) T.V.Venugopal –vs- Ushodaya Enterprises Ltd and another: 2011(4) SCC 85.

(2) Blue Hills Logistics Pvt Ltd –vs- Ashok Leyland Ltd and Ors-: 2011 SCC OnLine Mad 67.

(3) Ford Motors Co and Anr –vs- C.R.Borman and Anr : 2008 SCC OnLine Del 1211.

(4) ITC Limited –vs- Philip Morris Products SA and Ors: 2010 SCC OnLine Del 27.

(5) Bloomberg Finance LP –vs- Prafull Saklecha and Ors.: 2013 SCC OnLine Del 4159.

(6) Mahendra & Mahendra Paper Mills Lt –vs- Mahendra &



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Mahendra Ltd.: (2002) 2 SCC 147.

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(7) Sony Kabushiki Kaisha –vs- Mahalakshmi Textile Mills :2009
SCC OnLine Cal 531.

(8) Novartis AG –vs- Crest Pharma Pvt Ltd & anr.: 2009 (41) PTC
57 (del)

(9) N.Ranga Rao & Sons –vs- Anil Garg & ors.: 2005 SCC OnLine
Del 1293.

24.Per contra, Mr.R.Sathish Kumar, learned counsel appearing for the defendant submitted that the defendant is carrying on business of manufacturing edible vegetable oils under the trade mark “CYCLE” since 2009. The said trade mark “CYCLE” has been continuously used by the defendant without any opposition by any person including the plaintiff. The case of the plaintiff that their mark is infringed under Section 29(2) as well as Section 29(4) of Trade Marks Act, 1999 is inconsistent to each other since both the provisions are mutually exclusive and cannot be simultaneously pleaded. The goods of the plaintiff, for which they claim

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reputation and goodwill are agarbathies/incense sticks. Whereas the defendant is dealing with edible oil. Both the goods are neither identical nor similar/cognate goods. In *JSB Cement LLP v. Assam Roofing Limited* reported in *AIR 2017 Cal 226* and *Pathanjali Ayurved Limited v. Arudra Engineering* reported in *(2021) 2 MLJ 180*, the Courts have clearly held that Section 29(2) and Section 29(4) of the Act are mutually exclusive.

25.As far as the case of the plaintiff is concerned, they neither fall under Section 29(2) nor under Section 29(4) for any prohibitory order against the defendant, who has been using the mark “CYCLE” for the edible oil even prior to the plaintiff. As far as the plea of reputation, the evidence placed by the plaintiff is only in respect of Agarbathies under class 3 and not in respect of edible oil under class 29. To get protection under Section 29(4) of the Trade Marks Act, the plaintiff has to satisfy the triple test namely, (i) use of identical or similar to the plaintiff registration; (ii) reputation in India, and (iii) use of the mark by the defendant without due cause with intention to take unfair advantage or the use of the mark by the



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defendant for its product and it should be detrimental to the distinctive character or reputation of the plaintiff's registered trade mark.

26. In the instant case, the plaintiff has not proved that it has reputation in India for its edible oil. The advertisements are all in respect of its Agarbathies and incense sticks or pooja oil products. They have registration only in respect of hair oil under class 3. The proposed use of cycle brand for edible oil will not take away the right of the defendant, which has already been in the trade of edible oil with their mark "CYCLE". Section 29 is subject to limits (Section 30) and savings of vested rights (Section 34). There is no dishonesty or lack of due cause in adopting the trade mark "CYCLE" for its edible oil. Only after due search under class 29 for the products edible oil, the defendant had ventured to adopt "CYCLE" for its goods viz., edible oil. It is an arbitrary use of the mark same as the plaintiff adoption. The mark "CYCLE" or the logo cycle on the label are not identical or deceptively similar. The plaintiff had adopted the mark "CYCLE" being a common Indian household item. The plaintiff can no way



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be prejudiced or have apprehension that the adoption of mark “CYCLE” by the defendant for its edible oil will cause dilution of their trade mark “CYCLE”, which is known to the public as agarbathies product.

27. Incense sticks, hair oil cannot be a cognate goods for edible oil. The defendant have arbitrarily adopted the mark “CYCLE” for its edible oil after due search. This act cannot be termed as deceptive adoption to have unfair advantage.

28. In support of his argument, the defendant has relied upon three documents viz.,

Ex.D1-is the photocopy of Sales Tax Registration dated 24.10.2008 of the defendant.

Ex.D2 series (46 Nos. & 109 Nos) 46 Nos. of documents are the Invoices for the sale of CYCLE BRAND OIL from the year 2008-2017. 109 Nos. documents are computer generated invoices.

Ex.D3-is the certificate proving sales turnover of the defendant.

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29. The learned counsel appearing for the defendant submitted that the sale tax registration dated 24.10.2008 (Ex.D1); Invoices drawn by the defendant from the year 2008 (Ex.D2) would show that the defendant are the prior user of the trade mark “CYCLE” with respect to edible oils. The plaintiff has not produced any evidence to show that, they were in trade of food products anywhere before 2008. Hence, their claim on the ground of prior user is incorrect. Further, when the plaintiff never used the trade mark “CYCLE” with respect to food products, the apprehension of confusion and deception in the market is un-found. Agarbathies and edible oils are not allied or cognate goods. The word mark “CYCLE” is an ordinary English word, which cannot be monopolised by the plaintiff and it can never be identified with that of the plaintiff alone. It is neither distinctive nor can be appropriated by the plaintiff as his own against all the world. The sales turnover of the defendant for the previous years, which is marked as Ex.D3, would show that the product of the defendant is an existence for more than nine years without causing any actual confusion.

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30.To buttress his argument, the learned counsel rely upon the following judgments:

(i)N.Ranga Rao & Sons v. Shree Balaji Associates and Ors. reported in 2018 (75) PTC 135 (Mad)

(ii)Nandhini Deluxe v. Karnataka Co-operative Milk Producers Federation Ltd., reported in AIR 2018 SC 3516.

31.From the evidence placed by the respective parties, the fact that the plaintiff is a pioneer in incense sticks and other related goods under the trade mark cycle brand with device cycle inside an oval shape, is proved through the documents, like invoices, advertisement materials, awards and accolades. As far as the use of the name “CYCLE” for their edible oil, the defendant has placed invoices from the year 2010. There are evidence placed before this Court by the plaintiff by way of invoices that they are manufacturing and marketing Pooja oil in the name of “Om Sakthi Pooja Oil”. The screen shots of the advertisements displayed from the cricket



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match, which form part of Ex.P12, show that, it is an advertisement for “Cycle Pure Agarbathies” and not for any other products. As on date, there is no evidence to infer, the plaintiff is manufacturing or marketing any edible oil by using their brand name “CYCLE”. Therefore, the prior user of the trade mark “CYCLE” for edible oil is undoubtedly the defendant which is established through Ex.D2(series). Through the invoices for cycle cooking oil, the defendant has proved that they are marketing their product by using the mark “CYCLE”. The statement of turnover from the year 2009-2010 to 2016-2017 furnished by the defendant and marked as Ex.D3 is sufficient to show that atleast 8 years prior to the suit, the defendant are using the mark “CYCLE” for its product namely, edible oil.

32.The question whether the mark “CYCLE” is a distinctive, descriptive, arbitrary/fancy or *publici juris*. Being a dictionary word, it is perse descriptive in nature. There is force in the argument of the defendant's counsel that, as the plaintiff has arbitrarily chosen this name for Agarbathies and other incense sticks. Likewise, the defendant has chosen the name for



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its edible oil and without any objection for more than seven years carrying on trade with the said mark and label.

33.As explained by the learned Senior Counsel appearing for the plaintiff that, infringement trademark is a spectrum, which starts from the identical adoption for identical goods and ends, with identical or similar mark for different goods. However, if a trade mark holder wants to protection of his mark across the goods, he should prove that his registered trade mark has a reputation in India and it is used by others without due cause to take unfair advantage or the use of its trademark by others. Even across the goods will be a detrimental to a distinctive character or reputation of his trade mark. Therefore, in this spectrum of infringement, there are exceptions and limits. It is to be tested, whether the adoption of the mark “CYCLE” by the defendant for his edible oil falls within the spectrum of infringement, as defined under Section 29 or falls outside the spectrum due to the limits mentioned under Section 30 or saving clause under Section 34.



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34. For the said purpose, Section 28(1) is to be first considered:-

Section 28(1): Subject to the other provisions of this Act, the registration of a trade mark shall, if valid, give to the registered proprietor of the trade mark the exclusive right to the use of the trade mark in relation to the goods or services in respect of which the trade mark is registered and to obtain relief in respect of infringement of the trade mark in the manner provided by this Act.

35. The above said Section confers upon the registered proprietor of the trade mark a statutory monopoly for use of the trade mark in relation to goods or services in respect of which the trade mark is registered.

36. This would mean that, the trade mark registered for any particular goods will confer upon the proprietor monopoly only in respect of that class of goods or services or if the registration is narrow only in respect of the goods for which the registration is given within a particular class.



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37. In this case, the legal user certificate relied on by the plaintiff for class 3 is in respect of perfumes, Oodabathy (Agarnathies), Dhoop and hair oil. This certificate No.50866 dated 18.04.1955 is restricted only in respect of the goods mentioned above. The other legal user certificate in respect of class 29 is for preserved and dried and cooked fruits and vegetables, jelly, jam, milk and dairy products preserved and pickles. The device “CYCLE” is registered under Certificate No.345689 dated 05.04.2005. The yet another legal user certificate produced by the plaintiff regarding class 30 for device “CYCLE” is the certificate No.832645 dated 25.01.2010. This certificate is under class 30 for food products made from flour meals for human consumption not being included in other classes, cereals prepared for human consumption, flour pastry and confectionery, baking powder, sauces, spices, bread, cakes biscuits included in class 30.

38. Section 28(1) confers monopoly right on registered trademark holder subject to other provisions of this Act. This condition clause is explicitly found in both Sections 28(1) as well as Section 28(2), which reads



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as below:-

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Section 28(1):Rights conferred by registration:

(1)Subject to the other provisions of this Act, the registration of a trade mark shall, if valid, give to the registered proprietor of the trade mark the exclusive right to the use of the trade mark in relation to the goods or services in respect of which the trade mark is registered and to obtain relief in respect of infringement of the trade mark in the manner provided by this Act.

(2)The exclusive right to the use of a trade mark given under sub-section (1) shall be subject to any conditions and limitations to which the registration is subject.

The limitations, which is referred in Section 28(2), shall not be read narrowly to mean limitations mentioned in the certificate above, it also mean and include the statutory limitations, which are enumerates in Section 30.

39.Before adverting to the limitations enumerated under Section 30, a further reading of Section 29 of the Act, enlightness that Section 29(1) of the Trade Marks Act, is a general proposition of law. Whereas, various



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circumstances, in which the trade mark is infringed, are enumerated in Sub Section (2) to (9) of Section 29 of the Act. A reading of this Act indicates, Sub Section (2) of Section 29 entitles, an action being filed for infringement of a registered trade mark against an identical, nearly identical or deceptively similar trade mark used in relation to the same goods in respect of which the trade mark is registered or to similar goods. In case, the trade mark is not identical and the goods are also not the same, for which the trade mark is registered, an infringement action will lie under Section 29(4) if the conditions of Sub-Section (4) of Section 29 are satisfied.

40.From the legal user certificates produced by the plaintiff and the other documents like invoices and advertisements relied on by the plaintiff show that, the plaintiff had no registration for edible oil, which is one of the goods under class 29. Plaintiff witness admits, it has no invoices to prove that they manufacture or trade edible oil. Therefore, Section 29(2) is not attracted in the instant case.



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41.The plaintiff can only harp on Section 29(4) of the Act. Provided it could satisfies the conditions enumerated under Section 29(4). Section 29(4) says that the registered trade mark is infringed by a person, if he uses the mark which is identical or similar to the trade mark, but for goods or services, which are not similar, subject to satisfaction of the conditions, which are postulated under:

(a)infringing mark is identical or similar to the registered mark;and

(b)such mark is used in relation to goods or services which are not similar to those for which the trade mark is registered; and

(c)the registered trade mark has a reputation in India and the use of the infringing mark is without due cause takes unfair advantage of or is detrimental to the distinctive character or repute of the registered trade mark.

42.In the instant case, both the plaintiff and the defendant are using the word and device “CYCLE” for their product. While the plaintiff device



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“CYCLE” is inside an oval shape, the defendant device “CYCLE” is in a rectangular box. The products of the plaintiff, apart from the device “CYCLE” inside the over ring, the words like 'cycle brand' or 'cycle pure agarbathi', 'cycle brand agarbathi' and words 'the symbol of quality', is also found place irrespective of the products.

43.A mark may be fanciful, generic, suggestive, descriptive or combination two or more above. Strength of a trade mark depends on its distinctiveness, which is broadly classified as inherently distinctive and acquired distinctive.

44.The word “Cycle” per se is a common word. It is arbitrarily used for the products like Agarbathi by the plaintiff. The distinctiveness in the mark is not the device 'cycle' or word 'cycle' perse but the combination of the order words, viz., 'cycle brand agarbathies' and the oval design in which the device cycle is placed. Thus, a generic and weak mark 'cycle' has acquired distinctiveness only with combination of other words and device.



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45. According to the learned Senior Counsel for the plaintiff, the trade mark 'cycle' has acquired distinctiveness on use. It has acquired the distinctiveness on the basis of the consumers association with the mark used by the definite source. The primary meaning should not be attributed to mark if the mark has gained secondary meaning and acquired distinctiveness. In view of this Court, this acquired distinctiveness is for the combined trademark for 'cycle brand agarbathies' and not for word 'cycle' perse.

46. Even for argument sake, it is taken as an identical similar adoption, the plaintiff has not discharged the burden of establishing the fact that the use of cycle mark by the defendant is without due cause or to take unfair advantage of the reputation of the plaintiff or detrimental to the distinctive character or reputation of its trade mark. From out of 14 documents relied on by the plaintiff, none indicates that use of the mark "Cycle" by the defendant is detrimental to their reputation or it causes dilution of the

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reputation. The witness, who had deposed for the plaintiff also not whispered about any unfair advantage gained by the defendant or any detrimental to the distinctive character or reputation of the plaintiff.

47. Dilution of Mark

The Division Bench of this Court, while considering the dilution of mark, in ***Blue Hill Logistics Private Limited v. Ashok Leyland Limited*** reported in 2011(4) CTC 417, referring *Keyly on Trade Marks, 13th Edition*, had observed that, in cases where the public are confused into thinking that there is a commercial connection between the suppliers of the goods or services supplied under the earlier trade mark and the mark the subject of the application, then it is to be anticipated that the prohibition will apply. Such confusion as to origin (origin association) is like to take unfair advantage of and be damaging to the distinctive nature of reputation of the earlier trade mark. In business, gaining reputation of the mark and the reputation of the marker are different. To determine the reputation of a mark, it has to be assessed on the basis of several factors like, volume of



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turnover, publicity and impact that the mark has created in the minds of the public etc. As far as the plaintiff's trade mark "CYCLE" brand is concerned, it is associated with incense sticks scented products used externally, not in relation with products which can be internally consumed. Infact, distinction between edible products and non edible products are palable and obvious. A trade house like the plaintiff which is popular for its non-edible products, particularly, scented products more connected with smell a different sense its reputation cannot cut across product, which is connected with taste. Hence, whatever reputation claimed to have been gained by the plaintiff through their advertisements and turnover is only for its agarbathies, and like products. The apprehension that the general public will associate the product of the defendant with the plaintiff is without any basis.

48.The learned Senior Counsel last limbs of arguments is that, the plaintiff mark is a well known mark as defined under Section 2(1)(zg) of the Act. Therefore, its right to be protected under Section 11(2) of the Act. Therefore, it is argued, though the Registrar has not sofar determined the



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mark as well known mark under Section 9(6) of the Act, the plaintiff mark satisfies all the facts relevant for determining a trade mark as “well known mark” as envisaged under Section 9(6).

49.However, in view of this Court, the recognition of the plaintiff's trade mark among the relevant section of the public is only in respect of “Cycle Brand Agarbathies” in entirety and not for the word “Cycle” perse. The records produced on behalf of the plaintiff clearly indicate the successful enforcement is in respect of “Cycle Brand Agarbaties” as a whole. The repute gained for collection of words cannot be assigned to each of the word by splitting it.

50.Issue No.1:

As discussed earlier, in the spectrum of infringement mentioned in Section 29 of the Act, the limitations and exceptions ought to be taken note before deciding, whether any infringement has taken place. It is established by the defendant that the plaintiff has not produced any document to show



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that they are in the trade of edible oil. The plea of prior user in respect of edible oil is found in favour of the defendant. During the cross examination of PW-1, it is admitted by the witness that the only registration certificate for any oil product in favour of the plaintiff is the trade mark registration under No.163539 for class 3- perfumes, oodabathy, dhoop and hair oil and there is no other reference to oil products under any other trade mark certificates found in Ex.P2(series).

51.Ex.P9 is filed by the plaintiff to compare the mark of the defendant (Ex.P10). This is not for similar or identical product. There is no document relates to edible oil produced by the plaintiff. Same is accepted by PW-1 in the cross examination. Even for pooja oil, which is sold in the name of “Om Sakthi Jasmine Pooja Oil” the invoices are only from the year 2016 and not for the earlier period. To the question put to the plaintiff's witness that in Ex.P4 there is no reference of the trade mark “CYCLE” for pooja oil, the witness answered that “CYCLE” is an umbrella brand and it will not be mentioned for specific products in the invoices. The advertisement for Om



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Sakthi Pooja Oil placed by the plaintiff carries the device “CYCLE” with word “Cycle brand agarbathies”. So, it is very evident that the plaintiff mark and reputation is only in respect of the product connected with agarbathies.

52.As far as the infringement of trade mark, in the instant case, the defendant does not fall under any of the category mentioned in Section 29(1) and 29 (2) of the Trade Marks Act. If the plaintiff falls under class (1) and (2), then the presumes under Sub-Section (3) may be put against the defendant. Since, the plaintiff has failed to prove that the use of the infringed mark, is not in relation to the same goods or similar goods of the plaintiff, the plaintiff has to rely only on Section 29(4). To get protection cutting across the products, three ingredients are required to establish to prove infringement. The plaintiff is able to prove only its reputation in respect of goods related to agarbathies and had failed to prove that the defendant is using the mark without due cause, takes unfair advantage. Also, there is no evidence on the part o the plaintiff to show that the use of the brand “CYCLE” for edible oil by the defendant had anyway caused



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detrimental or dilution to the reputation. The plaintiff ought to have made out a case that the offending mark is identical or similar to the registered mark, which likely to mislead the consumer that the product sold by the defendant enumerates from the product house of the plaintiff.

53. Merely by surmises and presumption such facts can be inferred, unlike, infringement, which falls under Section 29 (1) and (2) of the Act, where there is a presumption clause regarding confusion on the part of the public, when a registered trade mark proprietor wants to prohibit others from using the mark for goods or services other than the goods and services for which he holds valid trade mark, the burden is on the plaintiff to prove (i) his reputation in India; (ii) the defendant is using the mark without due cause; (iii) by using the mark without cause the defendant takes unfair advantage or it is detrimental to the distinctive character of the plaintiff's registered trade mark or it is detrimental to the reputation of the plaintiff's registered trade mark. On scrutinising, the plaintiff evidence both documentary as well as the oral evidence. They are silent about the



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parameters, which requires protection of the mark across the products.

Hence, **Issue No.1 is held in negative.**

54. Issue No.2:

The law of trade mark makes distinction between the right to prohibit infringement of trade mark and right to prohibit passing off.

55.This can be seen from Section 27 of the Trade Marks Act, 1999 reads as below:-

27. No action for infringement of unregistered trade mark:- No person shall be entitled to institute any proceeding to prevent, or to recover damages for, the infringement of an unregistered trade mark.

(2)Nothing in this Act shall be deemed to affect rights of action against any person for passing off goods or services as the goods of another person or as services provided by another person, or the remedies in respect thereof.



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56. Reading the wordings used in Section 29 (4) of the Trade Marks Act, it will indicate that it is an exception to Section 27(1) provided, the registered trade mark user satisfies the parameters envisaged under Section 29(4). In this case, as held under Issue No.1, the plaintiff has miserably failed to satisfactorily prove the triple test laid in Section 29(4). The plaintiff has not established infringement of his mark either by applying Section 29(2) or Section 29(4). The trade mark “CYCLE” being a generic word and a common Indian household item. The plaintiff has acquired distinctiveness by acquisition restricted to Agarbathies and other scented products used externally. The right of the registered trade mark holder is restricted to the goods for which it has registration and it cannot have a monopoly over the word or claim exclusive right cutting across the goods. Therefore, **Issue No.2 is also answered in negative.**

57. Issue Nos.3 and 4:

As pointed out earlier, the plaintiff witness himself has admitted in the cross examination that except an registration for hair oil under class 3



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they have no other registered trade mark for edible oil under class 29.

Whereas there is no evidence to show that the defendant is using the trade mark “CYCLE” in respect of any other products, except edible oil. The plaintiff, till date, have no trade mark registration for edible oil, which is one of the goods mentioned under class 29. Under Section 34 of the Trade Marks Act, the prior user right is protected. It is one of the savings provisions to the absolute right conferred to the registration trade mark holder under Section 29(1). From the evidence placed before this Court by way of Ex.D1, Ex.D2 and Ex.D3, the defendant has proved by preponderance of probabilities, it is trading edible oil under the mark “CYCLE” since 2009. Contrarily the plaintiff could only produce document to show that, it is trading pooja oil from the year 2016. Even assuming the mark “CYCLE” of the plaintiff and the defendant are very near due to the nice classification between the products, both have to co-exist in the market, in view of Section 34 of the Trade Marks Act. In fact, they are already co-existing for more than eight years before institution of the suit. In such circumstances, by all legal parameters, the defendant's right to continue the



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business using the mark “CYCLE” for his edible oil is justified. There is no *mala fide* or lack due cause on the part of the defendant.

58.The defendant has placed evidence to prove manufacturing of edible oil under trade mark “CYCLE” and no other food products falling under class 29 or 30 of the Trade Mark Rules. The defendant's document (Ex.D1) is the Sales Tax Registration dated 24.10.2008. It indicates that the defendant had commenced business of edible oil, but it is not a proof that he was trading edible oil using the brand name “CYCLE”. However, Ex.D2 which are invoices from the year 2010, show that the edible oil sold by the defendant carry the brand name “CYCLE”. Ex.D3 is the sales turnover from the year 2009-2010. Ex.D3 is a self-serving statement of the defendant in respect of actual turn over from the year 2009-2010. The suggestion put to the witness DW1 regarding the genuineness of the sale turnover shown in Ex.D3 had been denied. The defendant has not produced the best evidence regarding his turnover, but, it does not matter when there are evidence to show the defendant is in the trade of edible oil since 1981 and started



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trading edible oil using the name “CYCLE” from 2010 and continue to use it. Therefore, it can be safely concluded that the defendant had adopted the trade mark “CYCLE” for edible oil, not later than 2010 and continuously using the trade mark “CYCLE” for his edible oil. Accordingly, **Issue Nos.3 and 4 are answered in favour of the defendant.**

59. Issue No.5:

Agarbathies incense sticks produced by the plaintiff are used external, not internal. Certainly, it is not an edible product. Whereas the goods sold by the defendant is admittedly an edible oil. None of the products of the plaintiff is allied or cognate to edible oil sold by the defendant. In the cross examination of PW-1, to a specific question that, they are selling pooja oil only from 2016 the witness has answered in affirmative. A further question, whether the pooja oil can be used for cooking, the answer is in negative. Therefore, they need be better evidence than the admission of the plaintiff's witness to hold that the product of the plaintiff and the product of the defendant are not allied or cognate goods. Therefore, **Issue No.5 is answered in negative.**



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60. Issue No.6:

Regarding the averment that the use of mark CYCLE by the defendant had caused dilution of the plaintiff's trade mark or caused detrimental to the plaintiff's trade mark or to prove the distinctive character and repute of the plaintiff's trade mark, has been diminished, no evidence is placed before this Court. Neither PW-1 has asserted through oral and documentary evidence to show that any dilution of the distinctive character of the plaintiff's trade mark, nor any other third party evidence is before this Court to appreciate that the defendant's use of the trade mark “CYCLE” is detrimental to the plaintiff's reputation or to its distinctive character.

61.The learned Senior Counsel appearing for the plaintiff emphatically submitted that the 'cycle brand' has gained reputation among the public for its quality and become a household name for the past six decades. The name has acquired a distinctiveness and a secondary meaning in the business and trade circles. People have come to associate the name cycle brand with certain standard of goods and services. Any attempt by



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another person to use the name in business and trade will likely to create an impression among the consumer/trade circles an association or a connection with the plaintiff's group to that of the products marketed by the defendant and this will affect the plaintiff's reputation and distinctive character of the mark.

62.To be noted, what submitted by way of oral submission by the Senior Counsel is not reflected in the evidence placed by the plaintiff.

63.In support of his submission, he relied upon the judgment of the Hon'ble Supreme Court in *Mahendra and Mahendra Paper Mills Ltd., v. mahindra and Mahindra Ltd., reported in (2002) 2 SCC 147*. This Court finds, sea difference between the facts of the case cited and the present case. In the case cited supra, it was an interim injunction application against the defendant, who was about to start the business in the name of *Mahendra and Mahendra Paper Mills Ltd.*, and the name very much identical to that of the plaintiff's *Mahendra and Mahendra limited*, which is reputed

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manufactures of vehicles established in the year 1948 and have a group of companies of diversified interest from finance, steel manufacturing, framing equipments, chemicals, hotels etc., Whereas in this case, enough evidence show that the defendant are in the trade of edible oil for more than seven years on the date of filing of the suit and after full trial, it is found that there is no proof for detrimental of plaintiff's reputation. In such circumstances, **this issue is held in negative.**

64.Issue No.7:

In case of dissimilar goods, law is well settled that unless the parameters laid under Section 29(4) is satisfied, the plaintiff cannot seek protection cutting across the goods. Further more, there are judgments, which say that the words, which are not coined or fancy but generic in nature exclusive monopoly over those names or mark, cannot be claimed. As a matter of right, even for the said purpose, the plaintiff should establish a strong association of the mark and evidence to show that the general public will infer that the source of the impugned product is the plaintiff.



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65.In *T.V.Venugopal v. Ushodaya Enterprises Limited and another reported in (2011)4 SCC 85*, popularly known as “Eenadu” case, the Hon'ble Supreme Court has held that use of the word “Eenadu” which though a generic work, is common in all south Indian language. Insofar as Andhra Pradesh is concerned, where the daily has a reputation and goodwill, the defendants to be restrained from using the word “Eenadu” for its product incense sticks/agarbathies. The Apex Court, held that the use of the word “Eenadu” even for incense sticks sold within Andhra Pradesh area will amount to passing off. In that case, the defendants were using the word “Eenadu”, which was identical to that of the plaintiff's trade mark. Hence, the Court held that the defendants are trying to ride on the reputation and goodwill of the plaintiff's company. Hence, it is an act of passing off.

66.The Court, while considering the averments of infringement to test detrimental to reputation and dilution of distinctive character has to look at whether the word had acquired in the trade a secondary signification



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differing from its primary one and the defendant attempts to sell his own goods under the pretence, that are the goods of another man. The plaintiff for that purpose should prove a distinctive character in its trade mark, which likely to be diluted. In the present case, unlike “*Eenadu*” case, or *Mahendra and Mahendra Paper Mills Limited* case, there is no evidence to show that the defendant will gain unfair advantage by using the mark “CYCLE” per se for its edible oil or such use will be detrimental to the distinctive character or reputation to the plaintiff. This complete lack of evidence on the part of the plaintiff to establish that its reputation will be diluted or will be detrimental to its distinctive character. The evidence of turn over and expenses over advertisement are tested for reputation. For detrimental of reputation and dilution of distinctive character independent evidence is required. The defendant continuous use of the mark “CYCLE” for its edible oil prior to the plaintiff dis-entitles the plaintiff from seeking the relief of injunction either on the ground of infringement or passing off. Accordingly, ***Issue No.7 is answered in negative.***



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67. Issue Nos.8 & 9:

In view of declining the injunction reliefs claimed by the plaintiff against the defendant for infringement and passing off, the relief of rendition of accounts of profits by the defendant does not arise. Similarly, there is no need to direct the defendant to surrender any label/block for destruction.

68. Issue Nos.10 and 11:

In view of the above findings, **the Civil Suit is dismissed with costs.**

17.08.2021

Index:yes
Speaking order/non speaking order
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List of Witness examined on the side of the Plaintiff:-

Mr.V.Ramamoorthy was examined as PW-1

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

Mr.K.Paramasivam was examined as DW-1

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

Sl. Nos.	Exhibits	Dated	Description of documents
1.	Ex.P.1	12.2.2019	The Authorisation letter enabling the deponent to depose on behalf of the plaintiff.
2.	Ex.P.2series (15 nos.)		The legal use certificates for the trademark CYCLE and the devie of CYCLE in various classes registered in the name of the plaintiff
3.	Ex.P.3we ries (57 sheets)		The copy of sales invoices evidencing use of the mark CYCLE
4.	Ex.P.4 series (15 sheets)		Copy of Sales Invoices evidencing use of the mark CYCLE in respect of oil
5.	Ex.P.5 series (40 sheets)		Copy of the various advertisements issued by the plaintiff for the mark CYCLE
6.	Ex.P.6 series (18 sheets)		Copy of the various awards and recognition conferred upon the plaintiff and its predecessor
7.	Ex.P.7 series	18.11.2016	Office copy of the notice along with postal receipt and acknowledgement
8.	Ex.P.8	11.01.2017	Reply to the notice issued on behalf of the defendant through E-mail to the plaintiff counsel
9.	Ex.P.9 series (5 nos.)		Scanned copy of plaintiff's labels containing the mark CYCLE
10.	Ex.P.10		Scanned copy of defendant's label contianing the mark CYCLE
11.	Ex.P11		Copy of the invoices proving sales of goods under the trademar CYCLE
12.	Ex.P12		Copy of the advertisements and promotional



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Sl. Nos.	Exhibits	Dated	Description of documents
			materials for the trademark CYCLE.
13.	Ex.P13	10.12.2018	Statement filed under Order XI, Rule 4 of C.P.C.
14.	Ex.P14		Copy of the Notices and letters issued to prevent passing off and infringement of the trademark CYCLE

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

<i>Sl.No</i>	<i>Exhibits</i>	<i>Dated</i>	<i>Description of documents</i>
1.	Ex.D1	24.10.2008	Photocopy of sales tax registration of the defendant
2.	Ex.D2 series (46 Nos and 109 Nos.)		46 Nos. Of documents are the invoices for the sale of CYCLE BRAND OIL from the year 2008-2017. 109 Nos. Documents are computer generated invoices.
3.	Ex.D3		Certificate proving sales turnover of the defendant



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Dr.G.JAYACHANDRAN,J.

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Pre-delivery judgment made in
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