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C.S.(Comm. Div.)No.20 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.11.2022

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

**C.S.(Comm. Div.)No.20 of 2022**

Dhanavilas Madras Snuff Company  
A Partnership Firm  
No.18, IV Street,  
Shastri Nagar, (Now Karunanidhi Nagar)  
Tondiarpet, Chennai-600 081  
Represented by its partner  
K.Poongodi

.. Plaintiff

Vs.

MS Snuff Company  
Door No.59, Mugamadhiyapuram  
Madurai Road,  
Dindigul - 624 001.

.. Defendant

This Civil Suit is preferred, under Order IV, Rule 1 of the O.S.Rules and under Order VII, Rule 1 of CPC 1908 and under Sections 27, 134 and 135 of the Trademarks Act, 1999 and under Sections 55 and 62 of the Copyright Act, 1957, praying

(a) Granting a permanent injunction, restraining the defendant, by himself, his servants, agents, distributors, or anyone claiming through him from manufacturing, selling, advertising and offering for sale using the trademark M.S/D.S./word/device or any other similar trademark name or similar sounding expressing in any media and use the same in name



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board, invoices, letter heads and visiting cards or by using any other trade mark / name which is in any way visually or deceptively or phonetically similar to the plaintiff's trademark / name D.S/word/device and use the same in snuff pouches, packets or use the mark in invoices, letter heads and visiting cards or part of their pouch or other trade literature or using any other trade mark which is in any way visually, or phonetically similar to the plaintiff's registered Trade Mark Nos.157995, 1579958 & 1579959 in Class 34 or in any manner infringing the plaintiff's registered Trade Marks referred herein;

(b) Granting a permanent injunction restraining the defendant by himself, his servants, agents or anyone claiming through him his printers and his distributors from committing infringement of the copyright which the plaintiff has in their artistic work contained in the pouches/sachets filed in Document No.1 by distributing, printing or causing to be printed the work as shown in Document No.2 filed along with the plaint or in any other manner infringe the plaintiff's copyright in the artistic work contained in Document No.1;

(c) Granting a permanent injunction restraining the defendant by its servants or agents or anyone claiming through him from manufacturing, selling or offering & advertising for sale the snuff in pouches as shown in Document No.2 or using the Trade Mark M.S/D.S any other pouch carton or label or sachet which is in any way similar in get up, colour scheme of the plaintiff pouch as shown in Document No.1 and pass off the snuff as the goods of the plaintiff or enable others to pass off;



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(d) Directing the defendant to surrender to the plaintiff all the cartons, sachets / pouches labels, packets and any other printed matters containing or consisting of the offending Trade Marks and Copyright together with blocks used for the purpose of printing the same for destruction;

(e) Directing the defendant to render a true and faithful account of the profits earned by them through the manufacture and sale by the use of the offending mark/work as shown in Document No.2, and directing such profits to be paid to the plaintiff for the infringement of the trademark D.S Copyright and passing off committed by the defendant for rendition of accounts;

(f) Directing the defendant to pay to the plaintiff the costs of the suit and

(g) Pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice;

For Plaintiff : Ms.T.Hemalatha  
For Defendant : Set *ex parte* on 19.10.2022

### **J U D G M E N T**

Captioned suit has been listed under the cause list caption 'FOR ORAL ARGUMENTS'.

2. Ms.T.Hemalatha, learned counsel on record for sole plaintiff is before this Commercial Division.



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3. Lone defendant in the captioned suit was set *ex parte* on 19.10.2022, suit was sent to learned 'Additional Master-IV' ['AM-IV'] for recording *ex parte* evidence. To be noted, the defendant did not enter appearance through counsel and it is not a case of being set *ex parte* for not completing pleadings. Therefore, the question of cross-examination did not arise.

4. The case of the plaintiff is that it is in the business of manufacturing and marketing snuff since 1968 and the same is being marketed in polythene sachets from 1993. It is the further case of plaintiff that it has trademark registration 'D.S' i.e., word mark registration, device registration as well as label registration all in class 34 for snuff. The plaintiff, in paragraph No.8 of the plaint has set out promotional expenditure and turnover particulars which remain uncontroverted. To be noted, this is for the financial years 1993-1994 to 2019-2020. It is the further case of the plaintiff that in December 2021, the plaintiff's distributors and stockiest brought to the notice of the plaintiff that the defendant has been manufacturing and selling tobacco snuff in sachets with identical colour scheme, get-up under the trade



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name 'M.S' which is deceptively similar qua plaintiff's trademark 'D.S'. As

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can be culled out from the plaint, the plaintiff's pouch is as follows:



5. As can be culled out from the plaint, the defendant's pouch is as follows :





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6. It is the case of the plaintiff that defendant's identical colour scheme, get up and marketing the same product is leading unwary purchasers of average intelligence and imperfect recollection to mistake one for other and it is also alleged that the defendant is a recent entrant and cause of action arose in December 2021. In these circumstances, plaintiff presented the plaint in the captioned suit on 01.02.2022 and institution of suit was on 15.02.2022 with prayers for injunction qua infringement of trademark, injunction qua infringement of copyright, accounts and costs.

7. As already alluded to supra, after the sole defendant was set *ex parte*, the captioned suit was sent to AM-IV for recording *ex parte* evidence. One Mr.S.Allen Isaac, son of Mr.D.Soundarapandian, authorized signatory of plaintiff was examined as P.W.1, as many as 19 documents were marked as Ex.P1 to Ex.P19 and a tabulation containing details in this regard is as follows:

| S.No. | Exhibits | Description of documents                                                                                                     |
|-------|----------|------------------------------------------------------------------------------------------------------------------------------|
| 1.    | Ex.P1    | The authorization letter dated 08.11.2022.                                                                                   |
| 2.    | Ex.P2    | The photocopy of the registration certificate issued by the Commercial Tax Officer dated 09.01.2007 (compared with original) |



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| S.No. | Exhibits | Description of documents                                                                                                                                  |
|-------|----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3.    | Ex.P3    | The photocopy of the Form RC for Central Excise Registration dated 02.01.2003 (compared with original)                                                    |
| 4.    | Ex.P4    | The printout of the Form GST REG-06 for GST Registration dated 02.08.2018.                                                                                |
| 5.    | Ex.P5    | The original legal use certificate of the Trademark No.1579957 in class 34 dated 13.07.2007.                                                              |
| 6.    | Ex.P6    | The original legal use certificate of the Trademark No.1579958 in class 34 dated 13.07.2007.                                                              |
| 7.    | Ex.P7    | The original legal use certificate of the Trademark No.1579959 in class 34 dated 13.07.2007.                                                              |
| 8.    | Ex.P8    | The photocopy of the Deed of Reconstitution of Partnership after the death of D.Kovilpilai on 03.09.2018 (compared with original).                        |
| 9.    | Ex.P9    | The printout of the Form TM-P filed by the plaintiff to record the change of proprietorship in the Trademark Nos.1579957, 1579958, 1579959 on 24.09.2020. |
| 10.   | Ex.P10   | The original plaintiff's Sachet / Pouch D.S.                                                                                                              |
| 11.   | Ex.P11   | The certified copy of the Registration Certificate for manufacturing dated 30.06.1992.                                                                    |
| 12.   | Ex.P12   | The certified copy of the Proforma price list No.1/93 filed before the Central Excise Authority dated 26.04.1993.                                         |
| 13.   | Ex.P13   | The certified copy of the label affixed by the Central Excise for 2.5 gram pouch label dated 14.07.1997.                                                  |
| 14.   | Ex.P14   | The certified copy of the Gate pass for removal of Excisable Goods from a factory or warehouse on payment of duty dated 27.04.1993 & 28.04.1993.          |
| 15.   | Ex.P15   | The certified copy of the Invoice of goods liable to Central Excise Duty in India transmitted under Central Excise Seal to Nepal dated 04.07.1994.        |
| 16.   | Ex.P16   | The certified copy of the Sample Sales Invoices for the year 1995-2021.                                                                                   |



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| S.No. | Exhibits | Description of documents                                                                                        |
|-------|----------|-----------------------------------------------------------------------------------------------------------------|
| 17.   | Ex.P17   | The original Chartered Accountant Certificated dated 03.10.2020.                                                |
| 18.   | Ex.P18   | The original defendant's impugned Sachet / Pouch 'M.S'.                                                         |
| 19.   | Ex.P19   | The original affidavit of Mr.D.Venkatakrisnan (under Section 65B of the Evidence Act, 1872) for Ex.P4 and Ex.P9 |

8. Ex.P1 is the authorization letter dated 08.11.2022 which authorizes P.W.1 to depose on behalf of plaintiff.

9. Be that as it may, the most critical exhibits are Ex.P10 on one side and Ex.P18 on the other side. Ex.P5, Ex.P6 and Ex.P7 are Legal Use Certificates of the trademark registration of plaintiff qua aforementioned trademark for word, device and label. Ex.P10 is the plaintiff's sachet and a scanned reproduction of the same is as follows:



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10. Ex.P18 is the defendant's sachets and a scanned reproduction of the same is as follows:





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11. The Evidence of P.W.1 is cogent and it supports the pleadings in the plaint, the essential features of which have been captured as set out supra. This Commercial Division carefully compared the competing marks. It is made clear that comparison of competing marks was not done by adopting side by side comparison approach. The plaintiff's mark was seen first, taken away from the sweep of the eye and thereafter the defendant's alleged infringing mark was seen. The question which this Commercial Division posed to itself is, whether a man of average intelligence, ordinary prudence and imperfect recollection will be lulled into the belief that what he is seeing now is what he had seen earlier. The answer is clearly in the affirmative.

12. Ms.T.Hemalatha, learned counsel for plaintiff very fairly submitted that she is not pressing the prayer for accounts as defendant has remained *ex parte*. Learned counsel also brings to the notice of this Commercial Division that an interim order was granted on 21.02.2022 in O.A.Nos.67 to 69 of 2022 in C.S.(Comm. Div.)No.20 of 2022 and the same have been operating throughout the pendency of the suit and continue to operate. The defendant has not even chosen to come before



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this Court much less take steps for vacating the same. The prayer paragraph in the plaint is paragraph No.30 and the same reads as follows:

*'30. The plaintiff, therefore, prays for judgment and decree for:-*

*(a) Granting a permanent injunction, restraining the defendant, by himself, his servants, agents, distributors, or anyone claiming through him from manufacturing, selling, advertising and offering for sale using the trademark M.S/D.S./word/device or any other similar trademark name or similar sounding expressing in any media and use the same in name board, invoices, letter heads and visiting cards or by using any other trade mark / name which is in any way visually or deceptively or phonetically similar to the plaintiff's trademark / name D.S/word/device and use the same in snuff pouches, packets or use the mark in invoices, letter heads and visiting cards or part of their pouch or other trade literature or using any other trade mark which is in any way visually, or phonetically similar to the plaintiff's registered Trade Mark Nos.157995, 1579958 & 1579959 in Class 34 or in any manner infringing the plaintiff's registered Trade Marks referred herein;*

*(b) Granting a permanent injunction restraining the defendant by himself, his servants, agents or anyone claiming through him his printers and his distributors from committing infringement of the copyright which the plaintiff has in their artistic work contained in the pouches/sachets*



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*filed in Document No.1 by distributing, printing or causing to be printed the work as shown in Document No.2 filed along with the plaint or in any other manner infringe the plaintiff's copyright in the artistic work contained in Document No.1;*

*(c) Granting a permanent injunction restraining the defendant by its servants or agents or anyone claiming through him from manufacturing, selling or offering & advertising for sale the snuff in pouches as shown in Document No.2 or using the Trade Mark M.S/D.S any other pouch carton or label or sachet which is in any way similar in get up, colour scheme of the plaintiff pouch as shown in Document No.1 and pass off the snuff as the goods of the plaintiff or enable others to pass off;*

*(d) Directing the defendant to surrender to the plaintiff all the cartons, sachets / pouches labels, packets and any other printed matters containing or consisting of the offending Trade Marks and Copyright together with blocks used for the purpose of printing the same for destruction;*

*(e) Directing the defendant to render a true and faithful account of the profits earned by them through the manufacture and sale by the use of the offending mark/work as shown in Document No.2, and directing such profits to be paid to the plaintiff for the infringement of the trademark D.S Copyright and passing off committed by the defendant for rendition of accounts;*



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*(f) Directing the defendant to pay to the plaintiff the costs of the suit and;*

*(g) Pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice'*

13. It is clear that in prayer paragraph, there are 7 limbs of prayer. Of these prayer limb (e) regarding accounts stands given up by counsel for plaintiff.

14. As the evidence is cogent, this Commercial Division has no difficulty in coming to the conclusion that plaintiff has proved its case. The sequitur is, suit is decreed in terms of prayer limbs (a) to (d), (f), (g) i.e., these prayers are decreed with costs.

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Index : Yes/No  
Speaking/Non-speaking order

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**M.SUNDAR, J.**

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