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C.S.No.643 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.09.2022

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.643 of 2008

Ultramarine and Pigments Limited
(Lapiz Digital Services)
94/95, RR2 Buildings, 1st Floor
R.R.Chambers, VI Block
Thiru-vi-ka Industrial Estate
Guindy, Chennai – 600 032
Rep. By Mr.N.Asokan
Company Secretary

... Plaintiff

Vs.

Mrs.A.C.H, Deen Cottage Industries
No.34, B.D.Colony
Jothi Nagar
Pollachi – 642 001

.. Defendant

This Civil Suit is preferred, under Order IV Rule 1 of O.S.Rules read with Order VII Rule 1 of the Code of Civil Procedure 1908, Sections 51, 63,& 64 of the Copyright Act, 1957 and Sections 27, 134 and 135 of the Trade Marks Act, 1999 praying for

a) granting a permanent injunction restraining the defendant, their directors, partners/proprietors, servants, representatives, successors, agents, stockists, dealers, distributors, wholesalers, retailers or any of them from in any manner infringing the plaintiff's copyright in the Artistic Work OOB Blue Label.



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b) for granting a permanent injunction restraining the defendant, their directors, partners/proprietors, servants, representatives, successors, agents, stockists, dealers, distributors, wholesalers, retailers or any of them from in any manner infringing the plaintiff's registered Trade Mark OOB BLUE under No.512437 in Class 3;

c) granting a permanent injunction restraining the defendant, their directors, partners/proprietors, servants, representatives, successors, agents, stockists, dealers, distributors, wholesalers, retailers or any of them from in any manner passing off or enabling others to pass-off Defendant's goods as that of the plaintiff's goods by use of Trade Mark 007 BLUE Label or any mark/label deceptively similar to Plaintiff's OOB BLUE Label or in any other manner whatsoever;

d) A preliminary decree be passed in favour of the plaintiff directing the Defendants to render an account of profit made by them by sale of ultramarine blue products under Trade Mark 007 BLUE Label and final decree be passed in favour of the plaintiff for the amount of the profits found to have been made by the Defendants after rendering accounts;

e) a decree directing the Defendants to surrender to the Plaintiff for destruction of all goods, labels, dies, moulds, printing materials, pamphlets, brochures and other materials bearing Trade Mark 007 Blue Label or any other deceptively similar marks

f) for costs.

g) such further or other orders as this Hon"ble Court may deem fit and proper in the circumstances of the case.



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For Plaintiff : Ms.S.Savithiri
For Mr.T.D.Selvan Babu

For Defendants : Set Ex parte

J U D G M E N T

Plaint in captioned suit (C.S.No.643 of 2008) was presented on 25.06.2008 and date of institution of suit is 03.07.2008.

2. There is a sole plaintiff and a lone defendant in the captioned suit. The main suit has been filed *inter alia* with prayers for injunctive reliefs *inter alia* qua plaintiff Company's copyright trademark rights in 'OOB BLUE' and 'TEMPLE BLUE' marks {hereinafter referred to as 'said marks' in this judgment for the sake of convenience and clarity} which are being applied qua 'ultramarine blue manufactured for laundry and industrial use' [hereinafter 'said product' for the sake of brevity, convenience and clarity].

3. It is the case of the plaintiff that it was established in the year 1962, it has factory in Ambattur near Chennai with a work force of about



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100, it manufactures high quality said product which is being sold under various marks, the foremost and prime being aforementioned said marks.

4. It is the case of the plaintiff that it obtained trademark registration vide Registration No.512437 in Class 3 which is effective from 26.06.1989. It is also the case of the plaintiff that the registration is being renewed from time to time. There is a specific pleading in the plaint that the registration was subsisting on the date of presentation of plaint as well as on the date of institution of suit.

5. The pleadings are that in January of 2008, the plaintiff company's marketing team at various locations in Tamil Nadu, received complaints regarding circulation of product similar to said product manufactured by defendant in pouches with deceptively similar label.

6. On the above trigger, captioned suit was presented *inter alia* pleading that such deceptively similar pouches are infringement and deception. The offending pouches of the defendant is deceptively similar is plaintiff's sheet anchor pleading. It is a clear case of infringement and



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passing off is plaintiff's further pleadings. Besides injunctive reliefs, prayer limbs for rendition of accounts, surrender of offending material and costs have also been made. Usual residuary prayer limb also forms part of the prayer in the plaint.

7. The case file placed before this Commercial Division brings to light that sole defendant has been duly served with suit summons on 14.07.2008. Though the defendant was served with suit summons, defendant has not chosen to come before this Commercial Division or enter appearance through counsel and defend the case. In the light of such trajectory, Hon'ble predecessor Judge set the defendant *ex parte* in and by proceedings dated 24.08.2022 and a scanned reproduction of proceedings dated 24.08.2022 is as follows:



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O.A.Nos.750, 751, 752 of 2008

O.A.Nos.750, 751, 752 of 2008
in C.S.No.643 of 2008

SENTHILKUMAR RAMAMOORTHY, J.

In spite of being provided multiple opportunities, the defendant has not appeared. Initially, the defendant was not represented at the hearing on 22.07.2022 and therefore the matter was listed on 26.07.2022. Since the defendant was not represented, the matter was listed again on 10.08.2022 and today. In view of the non appearance of the defendant, the defendant is set *ex parte*.

2. Since the learned counsel for the plaintiff seeks time to ascertain whether the examination in chief of P.W.1 was concluded, list the matter on 01.09.2022.


24.08.2022

TMH



8. Pursuant to the aforementioned proceedings captioned suit was listed before learned Additional Master III of this Court for recording *ex parte* evidence. One Mr.N.Karthi Kumar (son of S.Narasimhan), General



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Manager of the plaintiff-company deposed as PW1 and 8 exhibits, namely Exs. P1 to P8 were marked through PW1. 8 exhibits marked through PW1 are as follows:

SI.No.	Date	Description	Exhibit
1	12.02.2022	Board Resolution of Plaintiff authorizing N.Karthi Kumar to give evidence in the legal proceedings	P-1
2	29.04.2005	Copy of the Registration Certificate of Plaintiff's Trade Mark OOB BLUE order No.512437 w.e.f.26.06.1989	P-2
3		Copies of the invoices of Plaintiff pertaining to Trade Mark OOB BLUE Label.	P-3
4		Statement of Sales Turnover of Plaintiff for Trade Mark OOB BLUE Label	P-4
5	05.02.2008	Copy of Cease and Desist Legal Notice issued to Defendant	P-5
6	25.02.2008	Reply to Legal Notice issued by Defendant	P-6
7		Representation Packs bearing Plaintiff's OOB BLUE Label (2 Nos.)	P-7
8		Representation Pack bearing Defendant's OOB BLUE Label	P-8



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9. A careful perusal of the deposition of PW1 brings to light that it is in tune and tandem with the pleadings in the plaint, it buttresses the pleadings besides bolstering the multiple limbs of prayer in the plaint.

10. This Commercial Division also notices that prior to institution of captioned suit, plaintiff has issued a Cease and Desist notice dated 05.02.2008 (Ex.P5) and the defendant has sent a reply dated 25.02.2008 (Ex.P6). A careful perusal of the reply of the defendant brings to light that the defendant's say is that the lay out qua competing marks /pouches are completely different and consumers in modern times are 'very brilliant'. This Commercial Division deems it appropriate to compare the two competing marks. Scanned reproduction of the Plaintiff's pouch Ex.P7 is as follows:



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11. Scanned reproduction of the alleged offending pouch of the defendant (Ex.P8) is as follows:





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12. This Commercial Division compared the aforesaid two marks.

It is made clear that this being a written judgment, this Commercial Division has scanned and reproduced the two competing marks one after the other but this Commercial Division has not made a side by side comparison. This Commercial Division followed the age old *Parle* principle being ratio laid down by Hon'ble Supreme Court in *Parle Products (P) Ltd. Vs. J.P. and Co., [(1972) 1 SCC 618]* for comparison of the two competing marks, namely Exs.P7 and P8. The time honoured test that was applied for comparison of competing marks is this Commercial Division first saw the plaintiff's mark (Ex.P7) took it away from the sweep of the eye and a little later saw the offending mark of the defendant (Ex.P8) and asked itself the question as to whether a man of ordinary prudence, average intelligence and imperfect recollection will be lulled into the belief that what he is seeing now (Ex.P8) is what he had seen earlier (Ex.P7). The answer is clearly in the affirmative. This by itself makes it clear that the plaintiff is entitled to a decree as prayed for. This is buttressed and bolstered by the aforementioned reply of the defendant (dated 25.02.2008 i.e., Ex.P6) to the Cease and Desist notice (dated 05.02.2008 i.e., Ex.P5). The reason is, in the reply to the Cease



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and Desist notice, the defendant has attempted to say that the consumers are very brilliant and they are not likely to be deceived. In any event, the feeble contention of the defendant in the reply notice that the competing marks is different are clearly unacceptable in the light of the discussion and dispositive reasoning supra.

13. Owing to all that have been set out supra, the sequitur is, captioned suit is decreed as prayed for with costs. Though obvious, it is open to the plaintiff to pursue the preliminary decree qua rendition of accounts as contained in clause (d) of the paragraph 24 of plaint if so advised and if so desired.

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Index: Yes/No
Internet: Yes/No

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