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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 08TH DAY OF JUNE 2022

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

O.A.No. 94 of 2022
in
C.S(Comm Div.)No. 27 of 2022

Geoscope Exim Private Limited,
Flat No.B3, Ceebros Building,
No.32, Cenotaph Road, Teynampet,
Chennai – 600 018

Rep. by its Senior Manager/
Authorized Signatory

Mr.V.Prakash

... Applicant/Plaintiff

-Vs-

1. SNJ Distillers Private Limited,
Old No.47, New No.99, Canal Bank Road,
C.I.T. Nagar, Nandanam,
Chennai – 600 035.

2. M/s. Sree Balaji Traders,
Rep. by its Partner Ms.G.Shanthi,
18/37A-6, R.K.S. Building,
Paramathi Road,
Namakkal – 637 001.

... Respondents/Defendants

Original Application praying that this Hon'ble Court be pleased to
grant an ad-interim injunction restraining the Respondents, its men,
servants, agents, retailers, legal representatives, manufacturers, packers,
distributors, stockists, job-workers, importers, exporters, successors in
business, legal representatives, assigns or any other person claiming



under it from in any manner manufacturing, selling, offering for sale, stocking, advertising directly or indirectly dealing in liquor products under the make HOBBS or any other mark that is identical and/or deceptively similar as that of the Plaintiff's mark HOBSONS so as to pass off the Respondent's liquor products as and for the liquor products of the Plaintiff and/or in any other manner whatsoever connected with the Plaintiff, pending disposal of the suit.

This Original Application coming on this day before this court for hearing in the presence of Mr. Arun C. Mohan and M/s.Chandini Pradeepkumar, Advocates for the applicant herein, and Mr. V. Raghavachari, and Mr. R. Rajarajan, Advocates for the Respondents herein and upon reading the Judges Summons and the Affidavit of Mr.P.Prakash filed herein, and the Complaint filed herein and this Court having observed that the bottle in which the Plaintiff's product is sold is taller and such bottle is sold in an orange carton, the labels are also different inasmuch as the label used by the Defendants is predominantly black with a white and gold stripe running across, which is unlike the Plaintiff's label, these differences would be readily noticeable even to an average consumer making the purchase in the unique retail environment that prevails, what cannot be denied, however, is that there is some



HOBBS, but such similarity should be balanced against the fact that the word mark HOBBS is registered, Even in a passing-off action, and this is a relevant though not controlling criterion and should be reckoned along with other aspects, the fact that the two products are sold at different price points is an additional factor that works in the Defendants' favour, therefore, for interlocutory purposes, and this Court conclude that the Plaintiff has failed to make out a case which warrants an order of interim injunction, and **It is ordered as follows:-**

That the Respondents/Defendants herein, be and are hereby directed to maintain separate accounts of revenue and profit earned from the sale of alcoholic beverages with the impugned mark so as to enable the Court to call on the Defendants to produce the same, if required, in course of final disposal.

2. That there shall be no order to costs.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 08TH DAY OF JUNE 2022.

Sd/-

ASSISTANT REGISTRAR (Comm.Cases)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)



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ED

10.06.2022

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O.A.No. 94 of 2022
in
C.S.(Comm.Div.) No. 27 of 2022

ORDER :-

DATED : 08/06/2022

THE HON'BLE MR. JUSTICE
SENTHILKUMAR RAMAMOORTHY

FOR APPROVAL: 15.06.2022

APPROVED ON : 16.06.2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on	25.04.2022
Order pronounced on	08.06.2022

CORAM

The Hon'ble Mr. Justice **SENTHILKUMAR RAMAMOORTHY**

O.A. No.94 of 2022
in
Civil Suit(Comm. Div.) No.27 of 2022

Geoscope Exim Private Limited,
Flat No.B3, Ceebros Building,
No.32, Cenotaph Road, Teynampet,
Chennai – 600 018
Rep. by its Senior Manager/
Authorized Signatory
Mr.V.Prakash

... Applicant/Plaintiff

vs.

1.SNJ Distillers Private Limited,
Old No.47, New No.99, Canal Bank Road,
C.I.T. Nagar, Nandanam,
Chennai – 600 035.

2.M/s.Sree Balaji Traders,
Rep. by its Partner Ms.G.Shanthi,
18/37A-6, R.K.S. Building,
Paramathi Road,
Namakkal – 637 001.

... Respondents/Defendants

This Original Application is filed under Order XIV Rule 8 of Original Side Rules and Order 39 Rule 1 and 2 and Section 151 CPC praying to grant ad interim injunction restraining the Respondents, its men, servants, agents, retailers, legal representatives, manufacturers,



packers, distributors, stockists, job-workers, importers, exporters, succession in business, legal representatives, assigns or any other person claiming under it from in any manner manufacturing, selling, offering for sale, stocking, advertising directly or indirectly dealing in liquor products under the make HOBSONS so as to pass off the Respondent's liquor products as and for the liquor products of the Plaintiff and/or in any other manner whatsoever connected with the Plaintiff, pending disposal of the suit.

For Applicant : M/s.Arun C.Mohan
M/s.Chandini Pradeepkumar

For Respondents : Mr.V.Raghavachari
and Mr.R.Rajarajan

ORDER

The Applicant, which is a company involved in the business of manufacturing liquor, has applied for an interim injunction restraining alleged passing off by the Respondents/Defendants by use of the mark HOBBS or any other mark which is deceptively similar to the Plaintiff's mark HOBSONS.

2. The Plaintiff states that it adopted the mark HOBSONS for brandy in the year 2011 and has been using the mark openly, continuously and extensively since then. Upon submission of an application on 23.09.2010 for registration of the mark HOBSONS in



Class 33 in relation to brandy, whisky, vodka, rum, wines, spirits and alcoholic drinks, Registration No.2027068 was granted on 30.04.2012 with effect from 23.09.2010. The Plaintiff relies upon the sales turnover for the financial years 2011 - 2012 to 2020 - 2021 from the sale of brandy under the mark HOBSON'S. With reference thereto, the Plaintiff asserts that the turnover was Rs.11.85 crore, Rs.10.82 crore and Rs.6.22 crore, respectively, in the financial years 2018 - 2019, 2019 - 2020 and 2020 - 2021.

3. Upon noticing the alleged deceptively similar mark HOBBS in the market recently in January, 2022, the suit and the present application were filed. According to the Plaintiff, the impugned mark of the Respondent is phonetically, visually and structurally similar to the registered trade mark of the Plaintiff. As a result, it is asserted that it would cause confusion and deceive the public as regards the origin of the two products. On account of being admittedly the prior user of the registered trade mark, the Applicant asserts that the Defendants have adopted the impugned mark with a view to unfairly capitalize on the reputation and good will of the Plaintiff. Although the Defendants' obtained registration under Registration No.4657513 in respect of the



mark HOBBS, the Plaintiff contends that such registration does not provide protection in an action for passing off.

4. The Plaintiff refers to the retail sale environment for alcoholic drinks in the State of Tamil Nadu and points out that the likelihood of deception and confusion is compounded by the fact that consumers do not have access to the shelves on which the products are displayed and that the purchase is made by requesting for the product at the counter. The Plaintiff also contended that the goods are identical, the marks are deceptively similar and that the Defendants adopted a deceptively similar mark with full knowledge of the prior use of the mark HOBSONS by the Plaintiff. In support of these contentions, the Plaintiff relies on the following judgments:

(i) Amritdhara Pharmacy v. Satya Deo

Gupta AIR 1963 SC 449 (Paragraphs 6 to 8)(Amritdhara).

(ii) Corn Products Refining Co. v.

Shangrila Food Products Ltd, AIR 1960 SC 142(Paragraphs 21 and 22) (Corn Products).



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(iii) *N.R.Dongre and others v. Whirlpool Corporation and another*(Paragraphs 15 to 18)(**Dongre**).

(iv) *Cadila Health Care Ltd v. Cadila Pharmaceuticals Ltd* (2001) 5 SCC 73(Paragraphs 18 to 20) (**Cadila Healthcare**).

(v) *Imperial Spirits v. SNJ Distilleries*, 2014 (4) LW 304 (paragraphs 22,23 and 25) (**SNJ Distilleries**).

(vi) *Mohan Meakin Ltd v. AB Sugars Ltd* 2013 SCC Online Del 4120(Paragraphs 14 to 22).

5. The Defendants refuted the contentions of the Plaintiff. The second defendant is the registered proprietor of the trademark HOBBS while the first defendant, vide agreement dated 12.08.2020, was authorized for bottling and selling the second defendant's product. The Defendants point out that upon applying for registration, the mark HOBBS was registered on 21.03.2021 with effect from 15.09.2020 under Class 33 under the trade mark certificate No.4657513 in relation to alcoholic beverages (except beers). The Defendants state that the marks



HOBSONS and HOBBS are not phonetically, visually or structurally similar. By drawing attention to the trade dress of the Plaintiff's product in comparison to the Defendants' product, the Defendants state that a consumer of average intelligence and imperfect recollection would not be deceived into believing that both products originate from the same source. In particular, the Defendants state that the Plaintiff's product is sold in an orange carton, the bottle is much taller and the label on the bottle is completely different in comparison to the label on the Defendants' bottle. The Defendants point out that the label on the Defendants' bottle is predominantly black with a white and gold diagonal stripe running across the said label. Even the device, which is placed above the mark HOBBS, is different. Thus, the Defendants state that there is no scope for deception or confusion. The Defendants also state that the Plaintiff's product is sold at a price of about Rs.425/- per quarter whereas the Defendants' product is sold at Rs.190/- per quarter. According to the Defendants, the consumers of such product are extremely price sensitive and conscious.

6. The Defendants further state that these products are sold to TASMAC and not to customers and, therefore, there is virtually no scope for deception or confusion. By drawing reference to the Agreement



dated 16.12.2010 between M/s.Southern Agrifurance Industries Pvt. Ltd(SAIPL) and the Plaintiff, the Defendants contend that the sale to TASMAL is only by SAIPL and not by the Plaintiff. Therefore, the Plaintiff is not entitled to institute the suit. In support of these contentions, the Defendants relied on the following authorities:

(i) M/s.S.M.Dyechem Ltd v. M/s.Cadbury (India) Limited 2000 (5) SCC 573.

(ii) Khoday Distilleries Limited v. Scotch Whisky Association and others (2008) 10 SCC 723 (Khoday Distilleries).

(iii) Meher Distilleries Private Limited v. SG Worldwide Inc. and another, 2021 SCC online Bom 2233.

(iv) Kerly's Law of Trade Marks and Trade Names (Paragraph 14.70 at pages 515 and 523).

7. The admitted position is that the Applicant is the registered proprietor of the trade mark, HOBSONS, and the second Defendant is the registered proprietor of the trade mark HOBBS, which is a word mark. In fact, the Applicant has presented an application for passing off



and not infringement because the Applicant is aware of the protection extended to a registered proprietor under Section 28(3) of the Trade Marks Act, 1999. An action for passing off is dependent on the likelihood of deception and, therefore, the two marks and, indeed, the trade dresses should be examined from that perspective. The undisputed position is that both marks are used in respect of brandy, i.e. the products are identical.

8. Before proceeding to compare the marks and trade dresses, the law on the subject merits brief discussion. *Amritdhara, Corn Products, Dongre and Cadila Healthcare* instruct uniformly that the likelihood of deception should be tested from the perspective of a consumer of average intelligence and imperfect recollection. In addition, they instruct that the marks or trade dresses should be compared as a whole by taking into account all relevant factors, such as the nature of potential consumers and trade channel, so as to determine whether there would be likelihood of deception or confusion in the mind of the consumer described above. With regard to *Khoday Distilleries*, I am inclined to agree with the contention of learned counsel for the Applicant that the observations therein in the context of consumers of Scotch whisky may be inapplicable to consumers of the two products in question herein.



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9. The Plaintiff has enclosed representations of its product and that of the Defendants at pages 36 and 37 of the typed set of papers. In addition, the Defendants have enclosed the label used on their bottle at page 35 of the Defendants' typed set of papers. As held in judgments cited at the bar, the products in question should be examined from the perspective of a potential consumer of the two products of average intelligence and imperfect recollection. As correctly pointed out by learned counsel for the Plaintiff, the retail sale environment in Tamil Nadu and other parts of India for alcoholic beverages should be borne in mind while undertaking the said exercise. Being an action for passing off, the trade dress should be examined as a whole so as to determine whether there is likelihood of confusion. I am conscious that it was held in *SNJ Distilleries* that the shapes and sizes of the bottles are not relevant, but the said observations were made in a case where the plaintiff's mark and the impugned unregistered mark contained the words GOLD NAPOLEON BRANDY. By contrast, in this case, the word marks are not identical or even near-identical and both marks are registered. Therefore, all aspects of the trade dress should be compared.



10. When viewed holistically for interlocutory purposes, the following aspects are noticeable. The bottle in which the Plaintiff's product is sold is taller and such bottle is sold in an orange carton. The labels are also different inasmuch as the label used by the Defendants is predominantly black with a white and gold stripe running across, which is unlike the Plaintiff's label. These differences would be readily noticeable even to an average consumer making the purchase in the unique retail environment that prevails. What cannot be denied, however, is that there is some similarity between the two registered word marks, HOBSONS and HOBBS, but such similarity should be balanced against the fact that the word mark HOBBS is registered. Even in a passing-off action, in my view, this is a relevant though not controlling criterion and should be reckoned along with other aspects. The fact that the two products are sold at different price points is an additional factor that works in the Defendants' favour.

11. Therefore, for interlocutory purposes, I conclude that the Plaintiff has failed to make out a case which warrants an order of interim injunction. However, the Defendants are directed to maintain separate accounts of revenue and profit earned from the sale of alcoholic beverages with the impugned mark so as to enable the Court to call on



the Defendants to produce the same, if required, in course of final disposal. O.A.No.94 of 2022 is disposed of on the above terms without any order as to costs.

Sd./- S.K.R.J.,
08/06/2022

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Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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