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O.A.Nos.381, 382 of 2022
in C.S.(Comm.Div.) No.130 of 2022

SENTHILKUMAR RAMAMOORTHY, J.

At the hearing on 27.07.2022, the applicant filed an affidavit of service evidencing that notice was served on the respondents on 15.07.2022. In order to provide a further opportunity to the respondent, the matter was listed today. At the hearing today there is no representation for the respondent. Therefore, the applications are proceeded with.

2. Learned counsel for the applicant invited my attention to the trademark registration certificate dated 11.06.2018 in respect of the word mark DHEEPAM. The said certificate discloses that the registration is with effect from 23.04.2012. Such registration is under class 4 in relation to lamp oil and illuminating oil for non edible purpose. The legal user certificate corresponding to certificate No.1884190 is also on record and discloses that the word mark DHEEPAM is in use from 14.10.2009. The present suit was instituted after issuing cease and desist notice dated 08.06.2022 to the respondent. Learned counsel for the applicant points out that there was no reply to the said notice. Learned counsel also draws my attention to the representations of the applicant's mark and the respondent's label.

3. On examining the respondent's label, it appears that the respondent uses the mark V.RICH. In addition, the label bears the words DEEPAM OIL, which are displayed prominently at the centre of the label. Beneath the word DEEPAM Oil is the tag line "blend of five divine pooja oils".



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4. On considering the submissions of learned counsel for the applicant and on examining the material documents, it appears *prima facie* that the respondent has used the words DEEPAM Oil prominently. This is likely to cause confusion or deception as to source among prospective consumers given the fact that the impugned label is in relation to the same product. Therefore, the respondent is restrained from using the label depicted at page 13 of the typed set of papers. It is clarified that the respondent is at liberty to use the mark V.RICH. The respondent is also at liberty to use the words DEEPAM Oil provided the said words are used descriptively and by de-emphasizing the words so as to make it clear that the words are not being used as a trade mark. O.A.Nos.381 and 382 of 2022 are disposed of on the above terms.

03.08.2022

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