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C.S.(Comm. Div.)No.58 of 2021

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.58 of 2021

G.Bhaskar
Rep. by its Proprietor
Chennai Angadi
Having office at Old No.8, New No.15
Ground Floor, Muthu Street
Mylapore, Landmark : Sri Varasiddhi Vinayagar Alayam
Chennai-600 004. .. Plaintiff

Vs.

Chennai Angadi,
A unit of Vamshree Enterprises
Registered office at No.894,
Munusamy Salai, K.K.Nagar West,
Landmark : Opp Yes Bank
Chennai, Tamil Nadu - 600 078.
and also
Manufacturing and Branch office address at
Chennai One IT-Special Economic Zone,
Pallavaram, Thoraipakkam
200 Ft. Road, Chennai, Tamil Nadu - 600 096
Rep. by Mr.Vamshee Bharani
Managing Director of Vamshree Enterprises .. Defendant

This Civil Suit is preferred, under Order IV, Rule 1 of the O.S.
Rules and under Order VII, Rule 1 of CPC read with Sections 27, 28, 29,



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134 and 135 of the Trademark Act, 1999 and Section 7 of the Commercial Court Commercial Division and Common Appellants Division of High Court Act, of 2016, praying

(1) A permanent injunction restraining the defendant, its proprietor / directors / partners as the case may be, their men, servants, agents, distributors, stockiest, successors in business, retailers, legal representatives, assignees any other person claiming through or under them, from in any manner using or otherwise dealing with the Chennaiangadi amounting to infringement of the plaintiff's registered trademark or any mark similar to the plaintiff registered trademark or in any other manner whatsoever;

(2) A permanent injunction restraining the defendant, its proprietor / directors / partners as the case may be, their men, servants, agents, distributors, stockiest, successors in business, retailers, legal representatives, assignees any other person claiming through or from passing off of their products under it from in any manner of selling, offering of sale, trading, using advertising, promoting in newspapers, television, radio and using the website of <https://chennaiangadi.com/> and Mobile Application using plaintiff registered trademark name to sell products for online customers, directly or indirectly dealing in the business of web application, software and other allied services and any domain name / email address similar to the plaintiff's registered trademark or that is identical and or / deceptively similar as that of the plaintiff's mark 'Chennaiangadi' and in any other manner whatsoever connected with the plaintiff;



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(3) The defendant be ordered to pay to the plaintiff, a sum of Rs.2,00,000/- as damages for committing infringement of trademark and passing off its business as and for the plaintiff's services / business 'Chennaiangadi' loss account of sales, reputation and goodwill of the plaintiff's trademark caused by the activities of the defendants;

(4) The defendant be ordered to surrender to the plaintiff for delivery up of all hoardings, invoices / bills, brochures, pamphlets, business cards, prints, dies, blocks, moulds and plates, advertising material, compact disks, hard disk and / or any other storage device and other material possession, which bears and / or contains Chennaiangadi;

(5) A preliminary decree be passed in favour of the plaintiff directing the defendant render account profits made by use of the identical Trademark CHENNAIANGADI amounting to infringement of the plaintiff's registered trademarks and / or passing off and final decree be passed in favour of the plaintiff for the amount of profits thus found to have been made by the defendant after the latter have rendered accounts;

(6) To award exemplary costs of the present proceedings in favour of the plaintiff's and against the defendants;

(7) For such further and other relief as this Hon'ble Court deem fit and proper in the circumstances of the case and thus render justice;

For Plaintiff	:	Mr.M.Arunkumar M/s.Sampath Kumar and Associates (Law Firm)
For Defendant	:	Set <i>ex parte</i> on 01.11.2022



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J U D G M E N T

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

2. Mr.M.Arunkumar, learned counsel of M/s.Sampath Kumar and Associates (Law Firm) for plaintiff is before this Commercial Division. Lone defendant was set *ex parte* on 01.11.2022. Captioned suit was sent to learned Master for recording of *ex parte* evidence.

3. Learned counsel for plaintiff draws the attention of this Commercial Division to pleadings in the plaint and submits that the plaintiff is selling genuine organic products which are ISO certified both online and offline at very reasonable prices. The plaintiff has obtained trademark registration for 'Chennaiangadi' in class 30 in respect of grocery products vide trademark registration No.4671141 dated 24.09.2020 is learned counsel's say.



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4. It is the case of plaintiff that it came to know that the defendant is running two stores at K.K.Nagar West and Pallavaram operating both as store and cottage industry products and registered mobile application in Google play store for selling similar products in the name of 'Chennaiangadi'. On 17.07.2021, plaintiff made some decoy purchases and found that there is a clear infringement. Learned counsel also submits that the defendant is using a fake FSSAI registration number 22415543000003 whereas the plaintiff has a genuine ISO certification.

5. Reverting to *ex parte* evidence, Mr.G.Bhaskar, son of S.Gangadharan (plaintiff) deposed as P.W.1 and as many as 15 exhibits were marked namely, Ex.P1 to Ex.P15. The details of Ex.P1 to Ex.P15 are as follows:

S.No.	Exhibits	Description of documents
1.	Ex.P1	Online printout of website of Chennaiangadi which was registered in the public domain dated 14.07.2018.
2.	Ex.P2	Computer generated MSME Certificate dated 20.08.2018 issued in favour of the plaintiff.
3.	Ex.P3	Computer generated first invoice bill dated 03.01.2019 issued by the plaintiff to the consumer.
4.	Ex.P4	Downloaded copy of the Trademark Registry Certificate dated 24.09.2020.



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S.No.	Exhibits	Description of documents
5.	Ex.P5	Photocopy of the ISO-9001:2015 certificate dated 18.12.2020 of the plaintiff (compared with the original).
6.	Ex.P6	Photocopy of the ISO-9001:2015 certificated dated 18.12.2020 of the plaintiff (compared with the original)
7.	Ex.P7	Photocopy of the Trademark certificate dated 29.06.2021 (compared with the original)
8.	Ex.P8	Photocopy of the defendant's invoice dated 17.07.2021 using the plaintiff's name 'Chennai Angadi'
9.	Ex.P9	Photograph of the defendant's products using the plaintiff's registered trademark name along with compact disc.
10.	Ex.P10	Photograph to show that the defendant is using the plaintiff's registered trademark name in his registered office at K.K.Nagar West.
11.	Ex.P11	Photograph of the products purchased by the plaintiff from the defendant's store.
12.	Ex.P12	Printout regarding the promotion of the defendant under the plaintiff's registered trademark name in Just Dial Website.
13.	Ex.P13	Printout of the fake license number of the defendant extracted from FSSAI official website.
14.	Ex.P14	Printout regarding registration of the defendant under the plaintiff's trademark name in Google Play Store.
15.	Ex.P15	Copy of the advertisement of the plaintiff's interview aired in Big F.M.

6. The trademark registration certificate is Ex.P7 and a scanned reproduction of the same is as follows:



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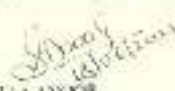
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 **भारत गणराज्य (REPUBLIC OF INDIA)**
व्यापार चिह्न पंजीयन (TRADE MARKS REGISTRY)
पंजीयन प्रदाता युएन.एम.एस.एल.सॉल्यूशंस प्राइवेट लिमिटेड - 600032
Intellectual Property Building, C. R. R. Road, Chennai, Chennai-600032

 **INTELLECTUAL PROPERTY INDIA**
भारत गणराज्य

Trade Mark Application Number : 4875541
TradeMark NO: 4875541
Proprietor Details:
Name: BHASKAR.G
Category: Single Firm
Partnership Firm Details :
Trading As: Trade Description:
Proprietor Address: CHENNAI ANGADI, NEW NO.15, OLD NO.8, NUTHU STREET, MYLAPORE, CHENNAI-600004
Address For Service: UNIMARKS LEGAL SOLUTIONS,
No.43, Medavakkam Tank Road, 1st Floor, Chennai - 600016
Email: suresh@unimarkslegal.com
Country: India
Details:-
Registration Date : 24/05/2020 Certificate No: 2711938 Certificate Date: 22/04/2021
Registration Valid Upto: 24/05/2030 Status:Registered
Journal No : 1973-0
Used Since: 14/05/2018
Trade Mark Type: DEVICE
Word Mark: ChennaiAngadi.com With Device
Translation: Store
Transliteration: Angadi
Goods & Descriptions: (Class : 30) Coffee, tea, cocoa and artificial coffee; Rice, pasta and noodles; Tapioca and sago; Flour and preparations made from cereals; Bread, pastries and confectionery; Chocolate; Ice cream, sorbets and other edible ices; Sugar, honey, treacle; Yeast, baking-powder; Salt, seasonings, spices, preserved herbs; Vinegar, sauces and other condiments; Ice (frozen water)
HISTORY DATA:
BHASKAR.G, CHENNAI ANGADI, NEW NO.15, OLD NO.8, NUTHU STREET, MYLAPORE, CHENNAI-600004,
Single Firm, (Single Firm)




SHREYA ANAND
Executive, Trademarks & GI
Intellectual Property India
Intellectual Property Building, C.R.R. Road, Chennai
Chennai - 600032, Tamil Nadu, India



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भारत सरकार GOVERNMENT OF INDIA
व्यापक चिह्न रजिस्ट्री / TRADE MARKS REGISTRY
सिडार्थ एडवोकेट्स एंड ऑनर्स प्राइवेट लिमिटेड, चेन्नई-600010
Intellectual Property Building, G.S.T. Road, Gairdy, Chennai-600010

INTELLECTUAL PROPERTY REGISTRY

THE TRADE MARKS ACT, 1999.
(ACT 47 OF 1999)
(SECTION 137)
(FOR USE IN LEGAL PROCEEDINGS ONLY)
(as per data available on computer as on today.)

No. TM-46790 1712/29/06/21 In the matter of Registered No. 4671141 in Class- 30

IT IS HEREBY CERTIFIED THAT

The annexure hereto is the True copy/Photo copy of the entry in Register of Trade Marks relating to Registered Trade Marks No. 4671141 in Class- 30



SHEELA ANDOR
[Signature]
(Authorised Under Section 3(2) of the Trade Marks Act, 1999)
Chennai - 600 002, Tamil Nadu, India

Dated this Friday 18th day of June 2021.

TO
M/S: UNIMARKS LEGAL SOLUTIONS
No. 43, Medavakkam Tank Road, 1st Floor, Chennai - 600010

HIGH COURT, MADRAS
Date: 18/06/21
Page No: 07
Filed by: [Signature]
Filed on: 18/06/21
[Signature]
[Signature]



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7. Ex.P11 and Ex.P12 depict plaintiff's products with registered trademark in the defendant's store and in online portal, a scanned reproduction of the same are as follows:

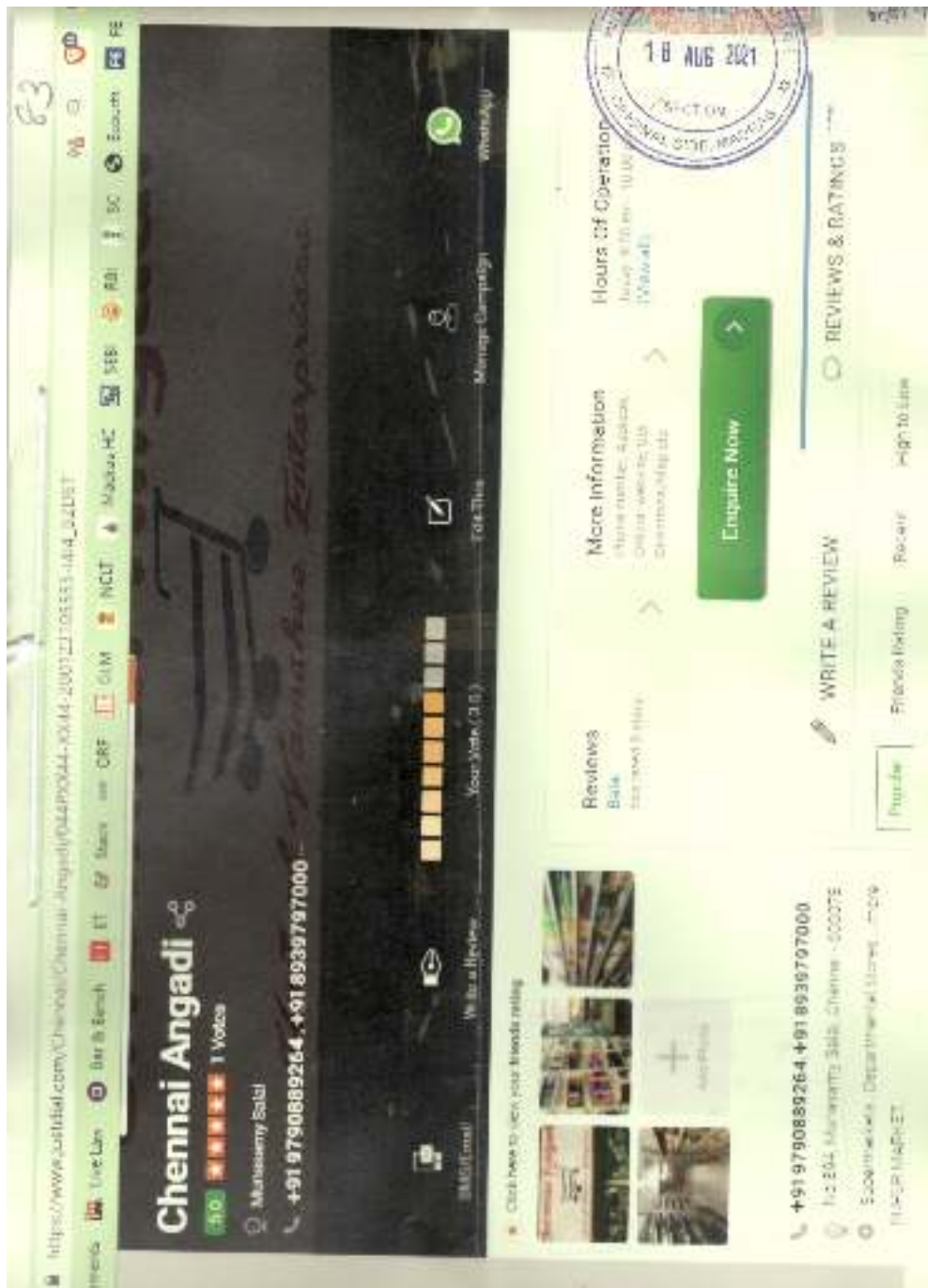




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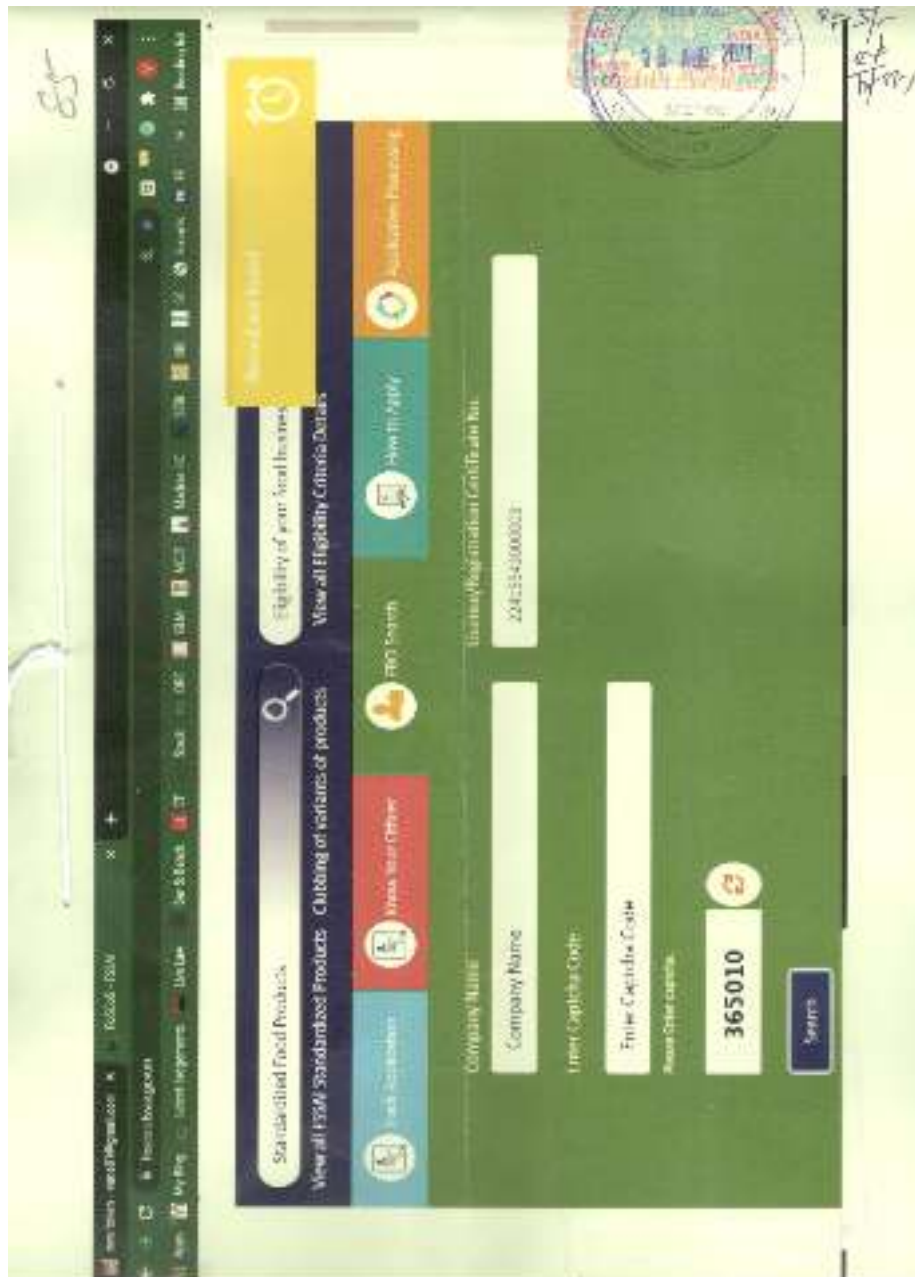
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WEB COPY 8. On the contrary, defendant's online portal are Ex.P13, Ex.P14 and a scanned reproduction of the same are as follows:

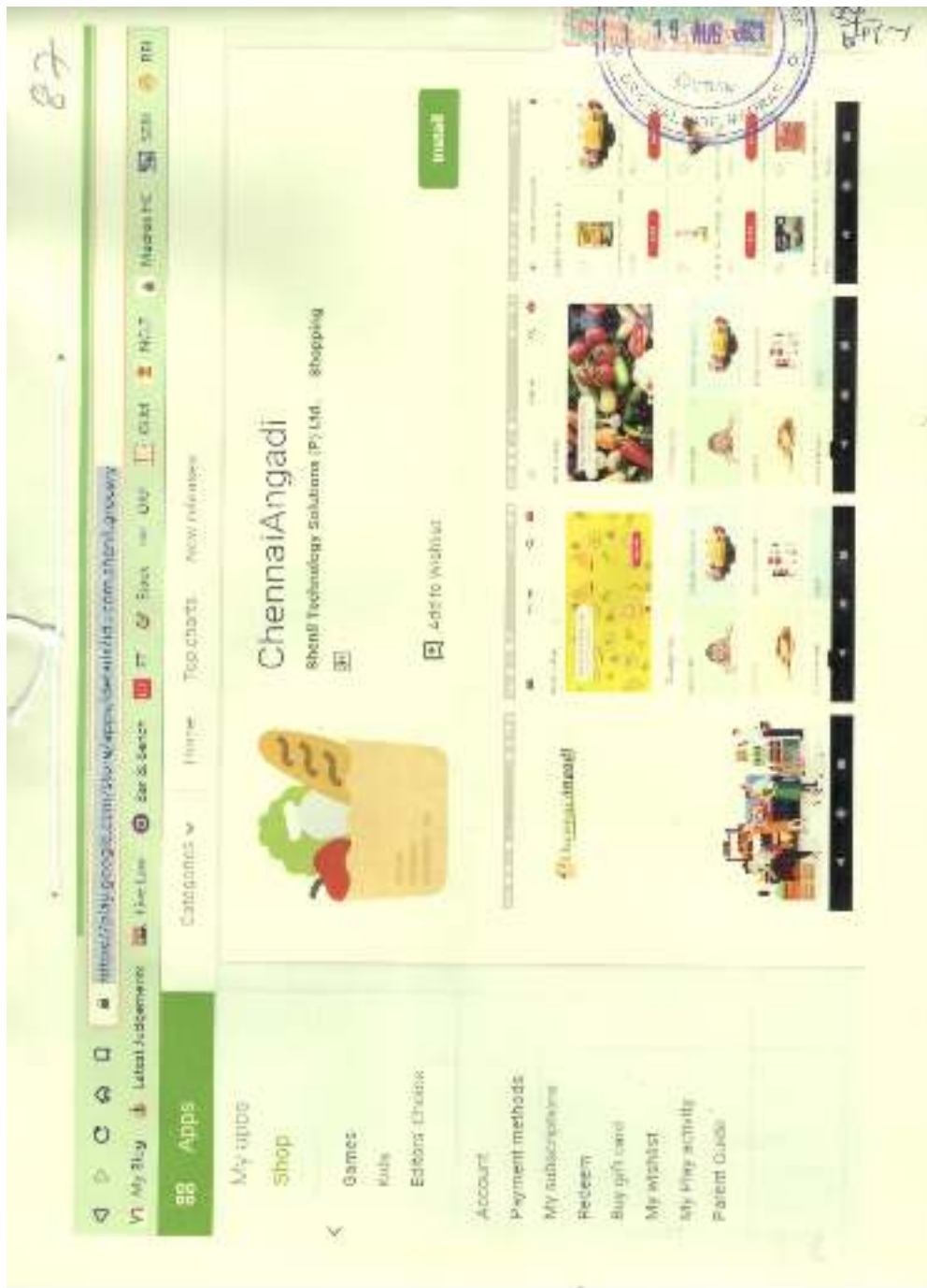




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9. This Court carefully considered the aforementioned competing marks. To be noted, this Court did not make side by side comparison.

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. This was done by stepping into the shoes of a man of average intelligence, ordinary prudence and imperfect recollection. This Court posed to itself a question as to 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.

10. The deposition of the plaintiff is cogent. As regards plaintiff prayer, the same is set out in paragraph No.19 of the plaint and the same reads as follows:

'19. The plaintiff it is therefore prayed that this Hon'ble Court may be pleased to pass judgment and decree in favour of the plaintiff against the defendant on the following terms:

(1) A permanent injunction restraining the defendant, its proprietor / directors / partners as the case may be, their men, servants, agents, distributors, stockiest, successors in



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business, retailers, legal representatives, assignees any other person claiming through or under them, from in any manner using or otherwise dealing with the Chennaiangadi amounting to infringement of the plaintiff's registered trademark or any mark similar to the plaintiff registered trademark or in any other manner whatsoever;

(2) A permanent injunction restraining the defendant, its proprietor / directors / partners as the case may be, their men, servants, agents, distributors, stockiest, successors in business, retailers, legal representatives, assignees any other person claiming through or from passing off of their products under it from in any manner of selling, offering of sale, trading, using advertising, promoting in newspapers, television, radio and using the website of <https://chennaiangadi.com/> and Mobile Application using plaintiff registered trademark name to sell products for online customers, directly or indirectly dealing in the business of web application, software and other allied services and any domain name / email address similar to the plaintiff's registered trademark or that is identical and or / deceptively similar as that of the plaintiff's mark 'Chennaiangadi' and in any other manner whatsoever connected with the plaintiff;

(3) The defendant be ordered to pay to the plaintiff, a sum of Rs.2,00,000/- as damages for committing infringement of trademark and passing off its business as and for the plaintiff's services / business 'Chennaiangadi'



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loss account of sales, reputation and goodwill of the plaintiff's trademark caused by the activities of the defendants;

(4) The defendant be ordered to surrender to the plaintiff for delivery up of all hoardings, invoices / bills, brochures, pamphlets, business cards, prints, dies, blocks, moulds and plates, advertising material, compact disks, hard disk and / or any other storage device and other material possession, which bears and / or contains Chennaiangadi;

(5) A preliminary decree be passed in favour of the plaintiff directing the defendant render account profits made by use of the identical Trademark CHENNAIANGADI amounting to infringement of the plaintiff's registered trademarks and / or passing off and final decree be passed in favour of the plaintiff for the amount of profits thus found to have been made by the defendant after the latter have rendered accounts;

(6) To award exemplary costs of the present proceedings in favour of the plaintiff's and against the defendants;

(7) For such further and other relief as this Hon'ble Court deem fit and proper in the circumstances of the case and thus render justice.'

11. A careful perusal of prayer paragraph reveals that there are 7



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limbs of prayer. There is no evidence with exactitude with regard to the prayer limb (6) wherein the plaintiff has sought for exemplary costs.

12. From a comparison of competing marks delineated supra, this Court is of the considered view that the plaintiff has proved its case. Though there shall be no exemplary costs, there will be costs. The sequitur is, captioned suit is decreed (except sub-paragraph 6 of paragraph 19 of plaint which is prayer paragraph) with costs.

15.11.2022

Index : Yes/No
Speaking/Non-speaking order

mk



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