



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 23rd DAY OF MARCH 2022

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

C.S.No.267 of 2014

Cavinkare Pvt. Limited,
"Cavinville", 12, Cenotaph Road,
Teynampet, Chennai - 600 018.
rep. by its Executive & Authorized Signatory,
R.Thazhalan

... Plaintiff

-vs-

M/s.Mikado Chinn-Kun Foods,
4/324, Uchampatty, Dindal Post,
Karimangalam Via Palacode Taluk,
Dharmapuri - 635 111
rep. by T.Chinna Samy

... Defendant

Civil Suit praying that this Hon'ble Court be pleased to grant a
judgement and decree on the following terms:-

a) a permanent injunction restraining the defendants, by itself, its
partners, men, servants, agents, distributors, stockiest, representatives or any
one claiming through or under them from in any manner infringing the
plaintiff's registered trademark MAA under No.1109946 in class 32 by
using a deceptively similar trademark MAA PLUS or any other trademark
deceptively similar to the plaintiff's registered trademark or in any other
manner whatsoever;



b) a permanent injunction restraining the Defendants, by itself, its partners, men, servants, agents, distributors, stockiest, representatives or any one claiming through or under them from in any manner passing off and / or enabling others to pass off the Defendants' products under the trademark MAA PLUS as and for the plaintiffs' products by manufacturing, selling or offering to sell, distributing, displaying, printing, stocking, using, advertising their products with a trademark MAA PLUS or any other trademark which is identical or similar to the plaintiff's trademark MAA or in any other manner whatsoever.

c) the Defendant be ordered to surrender to plaintiffs for destruction of all products, labels, cartons, dyes, blocks, moulds, screen prints, packing materials and other materials bearing the trademark MAA PLUS or any mark deceptively similar to plaintiffs' registered trademark MAA.

(d) a preliminary decree be passed in favour of the plaintiffs directing the defendant to render account of profits made by use of trademark MAA PLUS and a final decree be passed in favour of the plaintiffs for the amount of profits thus found to have been made by the defendant after the latter have rendered accounts;

e) for costs of the suit.



the presence of Mr.R.Sathish Kumar, Advocate for the plaintiff herein and defendant herein having not appeared in person or by advocate and the said defendants herein having been set *ex parte* and upon reading the plaint filed herein and the other exhibits therein referred hereto and upon perusing the evidence adduced therein and this Court having observed that on the basis of the pleadings and the evidence adduced, the plaintiff is entitled to a decree in terms of the reliefs prayed for in prayers (a), (b), (c) and (e) of paragraph 21 of the plaint and as regards the relief prayed for in prayer (d), since the defendant was set *ex parte* and did not produce accounts, it is not possible to ascertain the profits or pay court fee thereon and therefore, prayer (d) of paragraph 21 of the plaint is rejected and **it is ordered and decreed as follows:-**

That M/s.Mikado Chinn-Kun Foods, rep.by T.Chinnasamy, the Defendant herein by itself, its partners, men, servants, agents, distributors, stockiest, representatives or any one claiming through or under them, be and are hereby restrained by an order of permanent injunction from in any manner (a) infringing the plaintiff's registered trademark MAA under No.1109946 in class 32 by using a deceptively similar trademark MAA PLUS or any other trademark deceptively similar to the plaintiff's registered trademark or in any other manner whatsoever (b) passing off and / or enabling others to pass off the Defendants' products under the trademark



MAA PLUS as and for the plaintiffs' products by manufacturing, selling or offering to sell, distributing, displaying, printing, stocking, using, advertising their products with a trademark MAA PLUS or any other trademark which is identical or similar to the plaintiff's trademark MAA or in any other manner whatsoever.

2. That the defendant herein be and is hereby directed to surrender to the plaintiff herein for destruction of all products, labels, cartons, dyes, blocks, moulds, screen prints, packing materials and other materials bearing the trademark MAA PLUS or any mark deceptively similar to plaintiffs' registered trademark MAA.

3. That the defendant herein, shall pay a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) as costs, which shall include Court fees, lawyer's fees and other costs.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 23rd DAY OF MARCH 2022.

Sd./-
ASSISTANT REGISTRAR (O.S-I)

//Certified to be true copy//
Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)
From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.



KY

WEB COPY

11.04.2022

C.S.No.267 of 2014

DECREE:-

DATED : 23.03.2022

THE HON'BLE MR. JUSTICE
SENTHILKUMAR RAMAMOORTHY

FOR APPROVAL: 12.04.2022

APPROVED ON : 18.04.2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **23.03.2022**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR
RAMAMOORTHY**

C.S.No.267 of 2014

Cavinkare Pvt. Limited,
"Cavinville", 12, Cenotaph Road,
Teynampet, Chennai - 600 018.
rep. by its Executive & Authorized Signatory,
R.Thazhalan

... Plaintiff

-VS-

M/s.Mikado Chinn-Kun Foods,
4/324, Uchampatty, Dindal Post,
Karimangalam Via Palacode Taluk,
Dharmapuri - 635 111
rep. by T.Chinna Samy

... Defendant

PRAYER: Complaint filed under and Order VII Rule 1 CPC Read with Order

IV Rule 1 OS Rules Read with Sections 27, 28, 29, 134 & 135 of the

Trademarks Act, 1999 prayed for Judgment and Decree:-

(a) a permanent injunction restraining the defendants, by itself, its partners, men, servants, agents, distributors, stockiest, representatives or any one claiming through or under them from in any manner infringing the plaintiff's registered trademark MAA under No.1109946 in class 32 by

using a deceptively similar trademark MAA PLUS or any other trademark



deceptively similar to the plaintiff's registered trademark or in any other manner whatsoever;

(b) a permanent injunction restraining the Defendants, by itself, its partners, men, servants, agents, distributors, stockiest, representatives or any one claiming through or under them from in any manner passing off and / or enabling others to pass off the Defendants' products by manufacturing, selling or offering to sell, distributing, displaying, printing, stocking, using, advertising their products with a trademark MAA PLUS or any other trademark which is identical or similar to the plaintiff's trademark MAA or in any other manner whatsoever;

(c) the Defendant be ordered to surrender to plaintiffs for destruction of all products, labels, cartons, dyes, blocks, moulds, screen prints, packing materials and other materials bearing the trademark MAA PLUS or any mark deceptively similar to plaintiffs' registered trademark MAA.

(d) a preliminary decree be passed in favour of the plaintiffs directing the defendant to render account of profits made by use of trademark MAA PLUS and a final decree be passed in favour of the plaintiffs for the amount of profits thus found to have been made by the defendant after the latter have rendered accounts;



(e) for costs of the suit.

WEB COPY

For Plaintiff

: Mr.R.Sathish Kumar

J U D G M E N T

The suit is filed to restrain the defendant from infringing the plaintiff's registered trademark MAA under No.1109946 in class 32 by using the deceptively similar trademark MAA PLUS. The plaintiff has also prayed for an injunction restraining passing off and for ancillary relief such as surrender of infringing material for destruction and for rendition of accounts so as to obtain a decree for profits.

2. After obtaining permission from the Court, the plaintiff effected substituted service on the defendant by making a paper publication on 22.02.2016. Consequently, the defendant was set *ex parte* by order dated 06.01.2022. Thereafter, the plaintiff was permitted to adduce oral evidence.

3. The plaintiff filed the affidavit of evidence of Mr.R.Thazhalan, General Manager, Legal and Secretarial of the plaintiff, who was examined as P.W.1. 6 documents were exhibited through P.W.1 as Exs.P1 to P6. These documents include the certified copy of the trademark registration certificate of the plaintiff under No.1109946 in class 32 for the trademark MAA (Ex.P2); the original invoices for sale of products bearing registered trademark MAA (Ex.P3 series); the print out of the plaintiff's soft drink product bearing registered trademark MAA (Ex.P5); and the print out of the



defendant's soft drink product MAA PLUS (Ex.P6).

WEB COPY

4. On the basis of the pleadings and the evidence adduced, the plaintiff is entitled to a decree in terms of the reliefs prayed for in prayers (a), (b), (c) and (e) of paragraph 21 of the plaint. As regards the relief prayed for in prayer (d), since the defendant was set *ex parte* and did not produce accounts, it is not possible to ascertain the profits or pay court fee thereon. Therefore, prayer (d) of paragraph 21 of the plaint is rejected.

5. Accordingly, the suit is decreed in terms of prayers (a), (b) and (c) of paragraph 21 of the plaint. As regards costs, the defendant shall pay costs assessed in a sum of Rs.2,00,000/- (Rupees Two Lakhs only), which shall include court fees, lawyer's fees and other costs.

Sd./- S.K.R.J
23.03.2022

Plaintiff side Witness:

P.W.1 - R.Thazhalan

Plaintiff side Documents:

<i>Exhibit No.</i>	<i>Exhibits</i>
Ex.P1	True copy of authorization on my behalf for representing the plaintiff dated 12.05.2016.
Ex.P2	Certified copy of the trademark registration certificate of the plaintiff under No.1109946 in class 32 for MAA dated 07.06.2022.
Ex.P3 (Series)	Original invoices for sale of MAA products by plaintiff. (12 Nos.)
Ex.P4	Press clippings showing the news regarding the plaintiff's



<i>Exhibit No.</i>	<i>Exhibits</i>
(Series)	products under the trademark MAA and the point of sale posters. (mentioned in 65B certificate / affidavit) (8 Nos.)
Ex.P5	Printout of plaintiff's MAA soft drink product. (mentioned in 65B certificate / affidavit)
Ex.P6	Printout of defendant's MAA PLUS soft drink product. (mentioned in 65B certificate / affidavit)

Defendants side Witness and Documents:

-NIL-

Sd./- S.K.R.J
23.03.2022

//Certified to be true copy//
Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.