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C.S.(Comm. Div.)No.168 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.11.2022

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.(Comm. Div.)No.168 of 2022

and

O.A.Nos.512 & 513 of 2022

in

C.S.(Comm. Div.)No.168 of 2022

WECO Elevator Private Limited
Represented by its key managerial person
K.Senthil Nathan
Registered Office at
447/P Ward 11,
Edathala Grama Panchayath
Edathala North P.O, Ernakulam, Kerala.
Principle Place of Business at
Old No.19, New No.76
2nd Floor, Rameswaram Street
T.Nagar, Chennai-600 017.

.. Plaintiff

Vs.

1. MAS INDUSTRIES PRIVATE LIMITED
(CIN : U31900MH2003PTC142266)
GOVIND SAGAR BLDG NO 2 IST FL
FLAT No.3 C S T ROAD, KALINA SANTACRUZ (E)
MUMBAI MH 400 098.
- 2 MAS INDUSTRIES PRIVATE LIMITED
D-378, TTC Industrial Area
Turbhe MIDC, Sanpada, Navi Mumbai



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Maharashtra - 400 705.

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3. MAS INDUSTRIES PRIVATE LIMITED
No.18-19, Rajanderan Salai
Sabapathi Nagr, Ponambalam Salai Main Road
Kolapakkam, Porur, Chennai-600 122
also at
174/1, 174/2, Krishanevi Street
Paraniputhur Main Road, Chennai
Kancheepuram - 600 122.
4. MAS INDUSTRIES PRIVATE LIMITED
No.222, Khasara No.58/2, Paul Colony
Rithala, New Delhi - 110 085.
5. MAS INDUSTRIES PRIVATE LIMITED
Godown No.10, Ground Floor, Milkat
No.261, Society, Mumbai - Bangalore High Way
Near Amit Blookfield
Ambeagaon Bk, Pune - 411 046. .. Defendants

This Civil Suit is preferred, under Order IV Rule 1 of the O.S. Rules and Order VII Rule 1 of CPC, read with Sections 134 and 135 of the Trademarks Act, 1999, praying

(a) Granting an order of permanent injunction restraining the defendants, their men, servants, dealers, agents or persons claiming through them or under them, from in any manner, infringing the plaintiff's registered trade mark "WECO Elevator Private Limited" under trade mark No.1619932 in class 7, or any other deceptively similar variation thereof, in any form and manner whatsoever;

(b) Granting permanent injunction restraining the defendants themselves, their directors / partners / proprietors as the case may be,



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their legal representatives, successors in business, assigns, servants, agents, transporters, distributors, printers, stockists, wholesalers, dealers, retailers, advertisers or any one claiming through or under them from in any manner passing off and enabling others to pass off the defendants in manufacturing and trading in installation of lifts and elevators, machines and machine tools, in any manner, as and for the elevator products of the plaintiff by using the well reputed and registered trade mark "WECO" or any other identical or similar trademark which are deceptively similar to or imitation of the words of the plaintiff's registered trademark;

(c) directing the defendants to surrender to the plaintiff's entire stock of unused offending trade mark labels / blocks, dyes, moulds, screen prints, packing materials and other materials bearing identical / deceptively similar trade mark "WECO" for destruction;

(d) a preliminary decree directing the defendants to render a true and faithful account or profits earned by them through the sale of elevator products bearing the offending "WECO" trademark and directing payment of such profits to the plaintiffs for the infringement and / or passing off committed by the defendants;

(e) directing the defendants to be ordered and decreed to pay to the plaintiff a sum of Rs.50,00,000/- (Rupees Fifty Lakhs) as damages for acts of infringement of trademark and passing off committed by the defendants by selling the elevator products bearing the trademark "WECO";

(f) directing the defendants to pay the cost to the plaintiff in this suit;



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(g) and for such further or other reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case;

For Plaintiff : Mr.G.Sudhakar
For Defendant : Ms.A.Rehoboth Niranjani

J U D G M E N T

This judgment / common order which is a product of compromise will dispose of the captioned main suit and captioned two applications.

2. Captioned matter is listed under the cause list caption 'FOR REPORTING SETTLEMENT'.

3. Mr.G.Sudhakar, learned counsel on record for plaintiff company and Ms.A.Rehoboth Niranjani, learned counsel of M/s.Inovent Law Associates (Law Firm) for all the five defendants are before this Commercial Division.

4. Both learned counsel submit that parties on both sides namely, sole plaintiff and five defendants have settled the *lis* and have reduced the



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terms of settlement to writing vide a compromise memo captioned / styled

'MEMO FILED BY THE BOTH PLAINTIFF & DEFENDANT' and dated

18.11.2022 [hereinafter 'said JMOC' denoting 'Joint Memo of Compromise' for the sake of convenience and clarity].

5. On the side of plaintiff, Mr.K.Senthilnathan, Son of Mr.Kannan representing the plaintiff company and being a natural person who has signed and verified the plaint on behalf of plaintiff company, is before this Commercial Division. Likewise, Mr.S.Sharan, Son of Mr.G.K.Sreekumar on behalf of five defendants companies being the natural person who has executed vakalatnama dated 18.10.2022 on the strength of a Board Resolution and authorization given by Mr.Mudassar Mohd. Aslam Mukadam, a Director in defendants companies is before this Commercial Division.

6. Learned counsel on both sides and aforementioned natural persons on both sides request in one voice that the captioned main suit may please be disposed of in terms of said JMOC i.e., by way of a compromise decree. A scanned reproduction of said JMOC together with



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docket is as follows:

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IN THE HIGH COURT OF JUDICATURE AT MADRAS
(ORDINARY ORIGINAL CIVIL JURISDICTION)

C.S. (Commercial) No. 168 of 2022

WECO Elevator Private Limited,
Represented by its key managerial person
K. Senthil Nathan (aged about 45 years)
Registered office at:
447/P Ward 11,
Edathala Grama Panchayat,
Edathala North P.O., Ernakulam, Kerala.

Principle place of business at:
Old no. 19, New No. 76,
2nd Floor, Rameswaram Street,
T. Nagar, Chennai - 600 017.

Versus

1. MAS INDUSTRIES PRIVATE LIMITED
(CIN: U31900MH2003PTC142266)
GOVIND SAGAR BLDG NO 2 1ST FL
FLAT NO 3 C S T ROAD KALINA SANTACRUZ (E)
MUMBAI MH 400098.

Having office also at:

2. MAS INDUSTRIES PRIVATE LIMITED
D-376, TTC Industrial Area,
Turbhe MIDC, Sangar, Navi Mumbai,
Maharashtra - 400703.

3. MAS INDUSTRIES PRIVATE LIMITED
No. 18-19, Rajenderan salai,
Sahapathi Nagar, ponambalam salai main road,
Kolapakkam, Porur, Chennai - 600 122.
Also at:
174/1, 174/2, Krishnavei Street,
Paraniputhur main road, Chennai,
Kancheepuram, 600 122.

4. MAS INDUSTRIES PRIVATE LIMITED
No. 222, Khazana No. 58/2, Pami Colony,
Rithala, New Delhi - 110083.

5. MAS INDUSTRIES PRIVATE LIMITED
Godown No. 10, Ground Floor, Milka,
No. 281, society, Mumbai - Bangalore High way,
Near Asit Bhomfield,
ambegam Bk, pune - 411 046.

Plaintiff

150
25/10/22
21/11/22

Defendants

FOR WECO ELEVATOR PVT LTD
K. Senthil Nathan

MS
Senthil Nathan



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MEMO FILED BY THE BOTH PLAINTIFF & DEFENDANT

The Plaintiff and Defendant both jointly state as follows:

1. The Plaintiff is **WECO Elevator Private Limited.**, existing under the laws of the Companies Act, 2013, having its registered office at 447/P Ward 11, Edathala Grama Panchayath, Edathala North P.O., Ernakulam, Kerala and having its principal place of business at Old no. 19, New No. 76, 2nd Floor, Rameswaram Street, T. Nagar, Chennai - 600 017. The Plaintiff is a registered domestic company in the name of **"WECO Elevator Private Limited"** and represented by its key managerial person Senthil Nathan son of Kannan aged about 45 years, Hindu, residing at 10/21, Anjugamnagar, 4th Street, Jaffarkhanpet, Ashok Nagar, Chennai - 600 083.
2. The Plaintiff has filed the suit for reliefs of Permanent Injunction restraining the Defendant from committing infringement of trademark, passing off and for other reliefs.
3. The Plaintiff is vested with the proprietary rights over the trademark of **"WECO"** which was created several years ago and the Plaintiff has been using the same continuously and extensively till date. The said trademark which is unique and distinctive have been etched in the memory of the trade and public and the trade and public associate the said trademark or any other identical/deceptively similar trademark only with that of the Plaintiff and none else. The defendant is using almost identical/deceptively similar trademark **"WECO"** as that of Plaintiff's trademark **"WECO ELEVATOR PRODUCTS"**. Use of the

For WECO ELEVATOR PVT LTD

K. Senthil Nathan

Authorised Signatory





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offending trademark by the respondent amounts to infringement of the Plaintiff's registered trademarks. The defendant is passing off their goods by using the infringed trademark. Hence the suit.

4. Both the Plaintiff and Defendant had agreed for joint compromise as enumerated here under:

A. That the defendant was called upon to furnish their constitution and the plaintiff reserves their right to make an appropriate amendments in the plaint and by the same the defendant mentions that it is a domestic registered private limited company of committing infringement of trademark and passing off with their manufacturing and trading in installation of lifts and elevators, machines and machine tools goods with that of the plaintiff's well-known and registered trademark of **"WECO ELEVATOR PRODUCTS"** in the trade name of impugned **"WECO"** at

(1) MAS INDUSTRIES PRIVATE LIMITED, (CIN: U31900MH2003PTC142266), GOVIND SAGAR BLDG NO 2 1ST FL, FLAT NO 3 C S T ROAD KALINA SANTACRUZ (E) , MUMBAI MH 400098.

Having office also at :

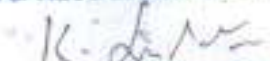
(2) MAS INDUSTRIES PRIVATE LIMITED, D-378, TTC Industrial Area, Turbhe MIDC, Sanpada, Navi Mumbai, Maharashtra - 400705

(3) MAS INDUSTRIES PRIVATE LIMITED, No. 18 -19, Rajanderan salai, Sabapathi Nagar, penambalam salai main road, Kolapakkam, Porur, Chennai - 600 122.

Also at: 174/1, 174/2, Krishanevi Street, Paraniyuthur main road, Chennai, Kancheepuram, 600 122.

(4) MAS INDUSTRIES PRIVATE LIMITED, No.222, khasara No. 58/2, Paul Colony, Rithala, New Delhi - 110085. at which address the summons may be served on the Defendants.

For WECO ELEVATOR PVT LTD


Authorized Signatory


For Defendants 1-5



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(B) MAH INDUSTRIES PRIVATE LIMITED, Garware No. 10, Ground Floor, Milkar, No. 251, society, Mumbai - Dargafore High way, Near Amli Bloomfield, ambegaon blt, pune - 411 046.

B. By way of entering into joint compromise, the plaintiff company's key director Mr. Daniel Thomas had authorized Mr. Senthilenthian and the defendant company's key director Mr. Mudassar Mukadder Mohd Aslam had authorized Mr. Sharan to sign this joint compromise and the defendant have agreed to cease and desist forthwith from using the ~~mark assigned name~~ ^{infringed name} of "WECO" or any other mark which is identical with or deceptively similar to the Plaintiff's trademark "WECO ELEVATOR PRODUCTS".

C. The defendant have agreed to surrender to the Plaintiff for destruction of all infringing labies, dies, blocks and cartons with printed/packing materials, screens, negative, advertisement, publicity materials, stationery, price lists and the like, bearing and/or carrying the false trademark "WECO" or any other mark that is identical with or deceptively similar to the Plaintiff's trademark, "WECO ELEVATOR PRODUCTS".

D. The defendant have agreed to cease the promotions of infringed trademark of "WECO" through internet channel such as "web search", "What's app" and on any other medium of broadcasting and by way of publishing through any means like store's boardings, cards board in front before their shop premises and any such other form of promotions that would leads to passing off the well-known Plaintiff's registered trademark "WECO ELEVATOR PRODUCTS".

For WECO ELEVATOR PVT LTD

K. L. A.

Authorized Signatory

For WECO ELEVATOR PVT LTD



For Defendants



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⑤

E. The defendant agreed and tender an unconditional apology to the Plaintiff for having encroached upon the plaintiff's valuable intellectual property rights and causing the plaintiff unnecessary harassment, hardship and financial loss.

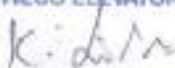
F. The defendant agree and gives an undertaking to the Plaintiff that the defendant would not use or cause to be used any trademark that is identical with or deceptively similar to the Plaintiff's Trademark.

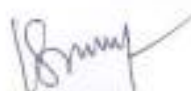
The above joint compromise set out in Para 4 A. to 4F are without prejudice to the Plaintiff's rights to demand and recover such further damages from and relief against the defendant in the event of defendant's failure to comply with the same from below mentioned date of entering in to this joint memo of compromise and on occurrence in the event of violation after such compliance by the defendant.

For the aforementioned reasons, it is prayed before this Hon'ble Court that to take upon record of this joint memo of compromise entered by the Plaintiff and defendant in the above suit, to pass such other order as deem fit and thus thereby render justice.

Dated on this the 18th day of November, 2022.

For WECO ELEVATOR PVT LTD


Plaintiff **Authorised Signatory**


Counsel for Plaintiff




Defendants 1-5


Counsel for Defendants 1-5



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LIST Mailed M.S.J. 09
22/11/2020
IN THE HIGH COURT OF JUDICATURE
AT MADRAS
(ORDINARY ORIGINAL CIVIL
JURISDICTION) (A)

C.S. No. 168 of 2022
(Comm.)

WECO Elevator Private Limited

... Plaintiff

Versus

Mas industries private limited
... Defendant



MEMO OF JOINT COMPROMISE

M/s. G. SUDHAKAR
COUNSEL FOR PLAINTIFF
Cell: 08144230031



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7. Aforementioned natural persons representing the plaintiff and defendant companies have produced photocopies of their AADHAAR Cards and a scanned reproduction of the same are as follows:





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M.SUNDAR, J.

mk

9. In the light of the narrative thus far, captioned main suit is decreed in terms of said JMOC which shall now form part of judgment / compromise decree. Consequently, captioned two applications are closed. There shall be no order as to costs.

23.11.2022

Index : Yes/No
Speaking/Non-speaking order
mk

C.S.(Comm. Div.)No.168 of 2022
and
O.A.Nos.512 & 513 of 2022
in
C.S.(Comm. Div.)No.168 of 2022