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C.S.(Comm.Div)No.62 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.02.2022

Coram:

THE HONOURABLE MR JUSTICE N.ANAND VEKATESH

Civil Suit (Comm.Div) No.62 of 2021

Hatsun Agro Product Ltd.,
Having registered Office at
No.//20-A, Rajiv Gandhi Salai (OMR),
Karapakkam, Chennai-600 097
And also carrying on its business at
Old No. AD-83/New No.AD13,
Anna Nagar, Opp. IOB Towers Branch,
Chennai 600 040.
Represented by its Authorized Signatory.

.. Plaintiff

.VS.

Mr.Shiva Kumar,
Sole Proprietor of
M/s.Sri Arokya Wook Pressed Oils & Cakes,
No.23-H, Balathandayutham Nagar,
Nadupalayam Pirivu, Kannampalayam,
Coimbatore 641 402.

..Defendant

Prayer: Civil Suit has been filed under Order VII Rule 1 CPC read with Order IV Rule I of High Court O.S.Rules and Section 134 and 135 of the Trademarks Act, 1999, and Section 7 of the Commercial Courts Act, 2015 pleased to grant a judgment and decree on the following terms:-



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a) For a permanent injunction restraining the defendant, by himself, his heirs, legal representatives, successors-in- business, agents, servants, distributors or any one claiming through him from in any manner infringing the plaintiff's registered trademark AROKYA by using the mark SRI AROKYA or any other deceptively similar mark in any manner whatsoever causing infringement to the plaintiff's registered trademark as described in the schedule to the plaint;

b) For a permanent injunction restraining the defendant, by himself, his heirs, legal representatives, successors-in-business, agents, servants, distributors or any one claiming through him in any manner whatsoever from passing off and enabling others to pass off the defendant's business as that of the plaintiff's by using the mark SRI AROKYA or any other mark which is deceptively similar or identical to the plaintiff's trademark AROKYA in any manner whatsoever;

c) Directing the defendant to surrender to the plaintiff all the products and stocks with the offending labels, together with the blocks, dies, name boards, sign boards, etc., for destruction;

d) Directing the defendant to render a true and faithful account of the profits earned by him through the sale of the products bearing the offending trademark label and directing payment of such profits to the plaintiff;

e) Directing the defendant to pay to the plaintiff a sum of Rs.1,00,000/- as damages for committing acts of infringement of trademark and passing off;



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For Plaintiff : Mr.Prashant Ali
for M/s.Surana & Surana
For Defendant : Ms.B.K.Dhyana

J U D G M E N T

The present suit was filed by the plaintiff with a grievance that the registered trademark of the plaintiff was infringed by the defendant and accordingly, various reliefs were sought for by the plaintiff.

2. During the pendency of the suit, the parties were able to arrive at a settlement and the same has been reduced to writing by way of a memorandum of compromise. The memorandum of compromise has been signed by both the parties and by their respective counsel.

3. The relevant portions of the memorandum of compromise are extracted hereunder:

'1. The defendant acknowledges and accepts the plaintiff's rights to exclusively use the trademark AROKYA and the suit may be decreed as prayed for in paragraph No.37(A) and paragraph No.37(B) of the plaint.

2. The plaintiff gives up its claims in paragraph No.37(C),



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paragraph No.37(D) & paragraph No.37(E) contingent to the defendant complying with the terms of this memo of compromise.

3. The defendant submits he is no longer in use of the infringing mark SRI AROKYA. The defendant further undertakes to not infringe the plaintiff's mark AROKYA or any other brand of the plaintiff's in the future. The defendant also undertakes to not violate any of the other brands of the plaintiff in the future including "ARUN", "HATSUN", "IBACO", "HATSUN DAIRY INGREDIENTS", "SANTOSA", "HATSUN DAIRY", "OYALO", etc. The defendant undertakes to not market or manufacture any product/service of his by using a mark which is identical or similar to any of the plaintiff's brands.

4. The defendant agrees to not infringe the plaintiff's trademark AROKYA by using the trademark "SRI AROKYA" or any other mark which is identical or similar to the plaintiff's registered trademark "AROKYA or any trademark which is a colorable imitation of the plaintiff's registered trademarks AROKYA as detailed below:-

S.No	Trademark	Class	Number	Status	Type of Mark
1	AROKYA FRESH CREAMY MILK	29	669001	Registered	Device
2	AROKYA (label)	29	1402205	Registered	Word
3	AROKYA (tamil)	29	1402212	Advertised	Device
4	AROKYA Milk (Malayalam)	29	1421080	Registered	Word
5	AROKYA Milk (Telugu)	29	1421081	Registered	Word
6	AROKYA Milk	29	1421082	Registered	Word
7	AROKYA	29	2469516	Registered	Word
8	AROKYA	29	2574529	Registered	Device
9	AROKYA MILK	29	2791526	Registered	Device



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S.No	Trademark	Class	Number	Status	Type of Mark
10	AROKYA MILK	29	2791527	Registered	Device
11	AROKYA MILK	29	2791528	Registered	Device
12	AROKYA MILK	29	2791529	Registered	Device
13	AROKYA	29	2871351	Registered	Device
14	AROKYA CURD	29	3989206	Pending	Device
15	AROKYA CURD	29	3989207	Pending	Device
16	AROKYA CURD	29	3989208	Pending	Device
17	AROKYA CURD	29	3989209	Registered	Device
18	AROKYA DOUBLE TONED MILK	29	4026601	Pending	Device
19	AROKYA TONED MILK	29	4026602	Pending	Device
20	AROKYA STANDARDISED MILK	29	4026603	Pending	Device
21	AROKYA FULL CREAM MILK	29	4026604	Pending	Device
22	GOODNESS OF AROKYA	29	2639930	Registered	Word
23	GOODNESS OF AROKYA	29	2639938	Registered	Device
24	AROKYA PANEER	29	5001067	Pending	Device
25	AROKYA PANEER MADE NATURALLY WITH LEMON	29	5001068	Pending	Device
26	AROKYA GHEE	29	5077442	Pending	Device
27	AROKYA GHEE	29	5077443	Pending	Device
28	AROKYA	30	2467714	Registered	Word
29	AROKYA	30	2574530	Pending	Device
30	AROKYA	30	2871352	Pending	Device
31	TEA SHOP SPECIAL	30	2630077	Registered	Device



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S.No	Trademark	Class	Number	Status	Type of Mark
	<i>AROKYA MILK</i>				
32	<i>GOODNESS OF AROKYA</i>	30	2639931	Registered	Word
33	<i>GOODNESS OF AROKYA</i>	30	2639939	Registered	Device
34	<i>AROKYA</i>	31	2467715	Registered	Word
35	<i>AROKYA</i>	31	2574531	Registered	Device
36	<i>AROKYA</i>	31	2871353	Registered	Device
37	<i>GOODNESS OF AROKYA</i>	31	2639932	Registered	Word
38	<i>GOODNESS OF AROKYA</i>	31	2639940	Registered	Device
39	<i>AROKYA</i>	32	1402206	Registered	Word
40	<i>AROKYA</i>	32	1402211	Registered	Word
41	<i>AROKYA</i>	32	2467716	Registered	Word
42	<i>AROKYA</i>	32	2574532	Registered	Device
43	<i>AROKYA</i>	32	2871354	Registered	Device
44	<i>TEA SHOP SPECIAL AROKYA MILK</i>	32	2630082	Registered	Device
45	<i>GOODNESS OF AROKYA</i>	32	2639933	Registered	Word
46	<i>GOODNESS OF AROKYA</i>	32	2639941	Registered	Device

5. The Defendant further agrees to not infringe the plaintiff's trademark AROKYA by using the trade/business name "M/s.Sri Arokya Wood Pressed Oils & Cakes" and shall use a different trade/business name for his business which is not identical or similar to the plaintiff's registered trademark.

6. The Defendant will not attempt to register any trademark



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containing the plaintiff's trademark "AROKYA" or any trademark which is identical or similar to the plaintiff's trademark AROKYA or any trademark which is a colourable imitation of the plaintiff's registered trademark in any Class for any of its products/services.

7. The suit may be decreed in terms of this compromise memo. The compromise memo to form a part of the decree.'

4. In view of the above, this Civil Suit is disposed of in terms of memorandum of compromise and the memorandum of compromise shall form part of the decree. Consequently, connected applications are closed, if any. Considering the facts and circumstances of the case, there shall be no order as to costs.

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mk/nsa
Internet: Yes
Index : Yes/No

To
The Sub-Assistant Registrar,
Original Side,
High Court,
Madras.



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N.ANAND VENKATESH,J.

mk/nsa

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