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C.S.No.795 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **08.07.2022**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR
RAMAMOORTHY**

C.S.No.795 of 2018

ITC Limited
No.760, Anna Salai,
Chennai - 600 002.
Rep. by its Constituted Attorney
Mr.P.Ramkumar

... Plaintiff

vs.

1.Thathireddy Indra Reddy
Plot No.65, Vorla Shankaramma Colony
Kapra, Secunderabad,
Telangana - 500 062.

2.P.Anjaneyullu
H.No.4-190/31,
Near 5th Avenue Baklery,
Bhaskara Rao Nagar,
Sainikpuri, Hyderabad,
Telangana - 500 094.

3.Rahul Mishra
14-3, Everest Nagar,
Ward No.3, Khalwara,
Katni, Madhya Pradesh - 483 501.

... Defendants



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WEB CO **PRAYER:** Plaintiff filed under Order IV Rule 1 of the Original Side Rules Read With Order VII Rule 1 CPC, Sections 27, 28, 29, 134 & 135 of the Trademarks Act, 1999 and Sections 51, 54, 55 and 62 of the Copyright Act, 1957 and Section 7 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, No.4 of 2016, prayed for Judgment and Decree:-

(a) A permanent injunction restraining the Defendants No.1-6, themselves, its proprietor / directors / partners and other unknown persons as the case may be, successors-in-business, servants, agents, distributors, dealers, stockists, shop keepers, wholesalers, retailers, representatives, assigns and all other persons claiming through or under them from infringing the registered trademark AASHIRVAAD of the plaintiff by manufacturing, selling and / or distributing atta / flour products under identical mark AASHIRVAAD or any other similar or identical mark and in any other manner whatsoever;



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(b) A permanent injunction restraining the Defendants No.1-6, themselves, its proprietor / directors / partners and other unknown persons as the case may be, successors-in-business, servants, agents, distributors, dealers, stockists, shop keepers, wholesalers, retailers, representatives, assigns and all other persons claiming through or under them from manufacturing, selling, offering for sale and / or distributing atta / flour products which would amount to passing off their flour products / food products as and for the Plaintiff's flour products by using an identical artistic work or any other trademark / trade dress deceptively similar to the plaintiff's AASHIRVAAD SUPERIOR MP ATTA Package in get up, lay out and arrangement of features or in any other manner whatsoever;

(c) A permanent injunction restraining the Defendants No.1-6, themselves, its proprietor / directors / partners and other unknown persons as the case may be, successors-in-business, servants, agents, distributors, dealers, stockists, shop keepers, wholesalers, retailers, representatives, assigns and all other persons claiming through or under them from



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manufacturing, selling and / or distributing atta / flour products under identical mark / label from committing acts of copyright infringement by copying the plaintiff's copyright in the artistic work of AASHIRVAAD SUPERIOR MP ATTA package labels by use of an identical labels, colour scheme, get up and placement of features or any other label similar or identical thereto and in any other manner whatsoever;

(d) The Defendants be ordered to surrender to the Plaintiff for destruction all labels, cartons, containers, packaging materials, blocks, dyes, prints, screen prints, notices, pamphlets, advertisements, hoardings, and other promotional materials bearing the mark and packaging / label which is identical to the Plaintiff's registered trademark AASHIRVAAD and the Plaintiff's AASHIRVAAD SUPERIOR MP ATTA label;

(e) The Defendants be ordered to pay to the Plaintiff a sum of Rs.10,00,000/- as damages for committing acts of infringement of trademark, infringement of copyright and passing off;



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(f) A preliminary decree be passed in favour of the Plaintiff directing the Defendants to render true and faithful account of profits earned by them by use of the Impugned Packages and final decree be passed in favour of the Plaintiff for the amount of profits thus found to have been made by the Defendants, after the latter have rendered accounts;

(g) For entire costs of the suit.

For Plaintiff : Mr.S.Karthick for Arun C.Mohan

J U D G M E N T

The suit was filed for relief in respect of alleged trademark infringement and passing off. The defendants were served by substituted service. Pursuant thereto, by order dated 18.11.2021, the Court recorded that the defendants did not appear in spite of service of summons by publication and printing the names of the defendants in the cause list.



Therefore, the defendants were set *ex parte*. The plaintiff adduced *ex parte* evidence by examining Ms.Shubhani Dalal, its authorized signatory, as P.W.1. In course of the examination in chief of P.W.1, 11 documents were exhibited as Exs.P1 to P11.

2. Learned counsel for the plaintiff draws reference to Ex.P2, which is a representation of the plaintiff's packaging. He also draws reference to Ex.P4 which is the certified copy of the deed of assignment dated 04.04.2013 and the legal user certificates (Ex.P5) in respect of the plaintiff's trademark AASHIRVAAD. Learned counsel also points out that evidence of the sales turnover of the plaintiff was provided (Ex.P8). By drawing attention to the defendants' impugned label (Ex.P10), learned counsel points out that it goes beyond trademark infringement and passing off and is tantamount to counterfeiting.

3. On examining the pleadings and the evidence on record and, in particular, by comparing the packaging of the plaintiff's product with that of the defendants, it is evident that the plaintiff's registered trademark has been



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infringed. In addition, the trade dress has been imitated, thereby justifying the relief of passing off especially in the light of the evidence of turn over.

Accordingly, the plaintiff is entitled to the reliefs prayed for as prayers (a) to (d) in paragraph 31. Although the plaintiff prayed for a sum of Rs.10,00,000/- as damages, no evidence has been adduced in respect thereof. Therefore, the said relief is denied. The plaintiff has also prayed for a preliminary decree in respect of the unlawful profits. In the absence of the defendant, the accounts are unavailable and it is also not possible to compute the additional court fee. Therefore this relief is denied.

4. In the result, C.S.No.795 of 2018 is decreed in terms of prayers (a) to (d) of paragraph 31 of the plaint. On the basis of the loser pays principle, the plaintiff is entitled to costs, and the defendant is directed to pay a sum of Rs.2,00,000/- as costs to the plaintiff. This sum includes court fees, reasonable lawyer's fees and other expenses. Furthermore, the defendants have remained *ex parte* and have chosen not to contest the suit in spite of receipt of suit summons. The documents on record evidence counterfeiting



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by the defendants. Accordingly, the defendants are also directed to pay a

sum of Rs.2,00,000/- as compensatory costs to the plaintiff.

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Index : Yes / No

Internet : Yes / No

Plaintiff side Witness:

P.W.1 - Shubhani Dalal

Plaintiff side Documents:

<i>Exhibits</i>	<i>Documents</i>
Ex.P1	Photocopy of the Authorization Letter dated (Separate affidavit not filed).
Ex.P2	Series of photocopies of plaintiff's AASHIRVAAD ATTA packages (6 variants) (Verified with the original and returned).
Ex.P3	Photocopy of the plaintiff's AASHIRVAAD SUPERIOR MP ATTA package (verified with the original and returned).
Ex.P4	Certified copy of the deed of assignment dated 04.04.2013.
Ex.P5	Photocopies of plaintiff's trademark AASHIRVAAD registered under Nos.1063649, 1092702, 1375864, 1087266, 1092701 and 1320218 (Separate affidavit not filed).
Ex.P6	Series of photocopies of the plaintiff's AASHIRVAAD SUPERIOR MP ATTA print advertisement (separate affidavit not filed).



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<i>Exhibits</i>	<i>Documents</i>
Ex.P7	Series of photocopies of the plaintiff's AASHIRVAAD SUPERIOR MP ATTA sales invoices (Separate affidavit not filed).
Ex.P8	Original sales turnover from the year 2013-2018.
Ex.P9	Photocopy of the AC Neilson Certificate Aashirvaad ATTA Market Share (separate affidavit not filed).
Ex.P10	Photocopy of defendant's impugned label (Separate affidavit not filed).
Ex.P11	Original of Newspaper article stating that the defendant has been arrested for selling spurious Atta.



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SENTHILKUMAR RAMAMOORTHY,J

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