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C.S.No.39 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.08.2023

PRONOUNCED ON: 09.11.2023

CORAM

THE HONOURABLE MS.JUSTICE P.T. ASHA

C.S.No.39 of 2021

M/s.Addison & Company Limited
803, Annal Salai,
Chennai - 600002
Rep. by its Whole Time Director & Chief Financial Officer,
Mr.A.Rajeshkumar

... Plaintiff

Vs.

M/s.Addison Cable Pvt. Ltd.
Plot No. P8/9, Road, No.B,
Opp. V-Trans, Kalawad Road,
Rajkot GIDC, Lodhika,
Metoda - 360021

...Defendant

Prayer: Complaint has been filed under Order IV Rule 1 of O.S. Rules and Order VII Rules I of Civil Procedure Code, 1908 read with Sections 27, 28, 29, 134 and 135 of the Trademarks Act, 1999 & proviso 1 to section 7 of the Commercial Courts, Commercial Division and Commercial



Appellate Division of High Courts Act, 2015 to grant a judgement and decree on the following terms:-

a. a permanent injunction restraining the defendant, themselves, servants, their agents, wholesalers, retailers, partners, distributors. successors-in-business, dealers. stockists, shop keepers, representatives, assigns and all other persons claiming through them from manufacturing, selling and distributing, advertising cables wires and other products using the mark ADDISON which is identical to the plaintiff's mark ADDISON amounting to infringement of the plaintiff's registered trademark ADDISON in any manner whatsoever.

b. a permanent injunction restraining the defendants by themselves, their directors, 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 committing acts of passing off and enabling others to pass off by manufacturing, distributing, marketing, selling, offering for sale, advertising or in any other manner dealing in cables and wires or any other products bearing the identical mark ADDISON, using any



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similar trade name, which in any manner whatsoever would be considered to be similar to the plaintiff's mark;

c. the defendant be ordered to pay to the plaintiff a sum of Rs.10.00.000/- as damages for committing acts of infringement of trademark and passing off;

d. the defendant be ordered to surrender to the plaintiff for destruction all goods, advertisement materials, packing materials, cartons, wrappers, labels in respect of cables, wires and other allied/cognate goods containing the offending mark/trade name or any other mark/trade name similar to plaintiff's trademark/trade name
ADDISON:

e. 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 offending trademark for cables, wires or other allied and cognate goods and a 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:



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f. for entire costs of the suit; and

g. pass such further and other orders as this Hon'ble Court may deem fit and necessary under the facts and circumstances of the case.

For Plaintiff : M/s.Arun C. Mohan

For Defendant : M/s.R.Satish Kumar

J U D G E M E N T

The plaintiff has approached this Court for the relief set out morefully in the plaint stating that the defendant has infringed their trademark “ADDISON”. The facts which have culminated in the filing of the above suit is herein below set out:-

Plaintiff's case:-

2. The plaintiff would contend that it is one of the oldest business establishments in India and has diversified business activities. The plaintiff is a member of Amalgamation Group of companies and its associate companies are Simpson and Co. TAFE, T.STANES etc. The



plaintiff is engaged in the business of manufacturing and dealing in GI casting unwrought and partly wrought common metals and their alloys, metal cutting tools including twist drills, reamers, milling cutters, end mills, taps, machine tools, accessories parts and fittings thereof.

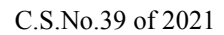
3. The plaintiff would submit that in the course of their trade they had honestly adopted the mark “ADDISON” to market their products. This distinctive mark has been in the market since the year 1970 and they are spending huge amounts for advertising and promoting their products both through the print as well as visual media. The plaintiffs mark “ADDISON” is registered for classes 6 and 7 and the registration is subsisting to date.

4. The plaintiff would further submit that the sales figures of the plaintiff's company under this mark runs to several lakhs of rupees. Similarly, the sales promotional expenditure also runs into huge amounts. The plaintiff has in the plaint set out in brief their sales figures as well as the amounts that have been spent for advertisement/business



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6. The plaintiff therefore, issued a cease and desist notice dated 18.11.2020 calling upon the defendant to refrain from infringing and passing of their goods as that of the plaintiffs. To this, a reply dated 7.12.2020 had been issued by the defendant denying the allegations and contending that they have adopted and are using the mark from the year 1990. They had also contended that the depiction of the mark ADDISON by the defendant is visually, structurally and phonetically identical to the plaintiff's mark. This coupled with the defendant using the trade name Addison Cable Pvt. Ltd. is likely to cause deception to the buyers which would ultimately cause financial loss and injury to the plaintiff. The plaintiff would submit that the defendant's trade mark Addison is used for selling the goods of a similar description and therefore, the likelihood of confusion being caused amongst the public is writ large. An ordinary purchaser with an imperfect memory is likely to think that the product of the defendant is that of the plaintiff. Therefore, the plaintiff has come forward with this suit for the following main reliefs":-



b. a permanent injunction restraining the defendants by themselves, their directors, 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 committing acts of passing off and enabling others to pass off by manufacturing, distributing, marketing, selling, offering for sale, advertising or in any other manner dealing in cables and wires or any other products bearing the identical mark ADDISON, using any similar trade name, which in any manner whatsoever would be considered to be similar to the plaintiff's mark;



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c. the defendant be ordered to pay to the plaintiff a sum of Rs.10.00.000/- as damages for committing acts of infringement of trademark and passing off;

d. the defendant be ordered to surrender to the plaintiff for destruction all goods, advertisement materials, packing materials, cartons, wrappers, labels in respect of cables, wires and other allied/cognate goods containing the offending mark/trade name or any other mark/trade name similar to plaintiff's trademark/trade name

ADDISON:

e. 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 offending trademark for cables, wires or other allied and cognate goods and a 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:



Written statement

7. The defendant on entering appearance in the above matter had filed their written statement inter alia contending that they have been using the mark 'ADDISON' since 1990 and the plaintiff has acquiesced to the use of the trademark for all these years. It is the specific case of the defendant that by the use of the word mark 'ADDISON' by the defendant there has been no incident of any confusion or deception amongst the customers. The defendant would submit that in the year 1990, their predecessors in title had used the mark for the first time and thereafter the defendant had been using the same.

8. It is the further case of the defendant that though they had been using the mark since the year 1990, it was only in October 2000 that they had preferred a Trademark Application for registration of Trademark Label 'ADDISON' in Class 9, wherein the date of usage has been clearly mentioned as 01.01.1990. The said Trademark Application was also published in the Trademark Journal and thereafter the plaintiff



has come forward with an objection. The plaintiff had filed the opposition as early as on 11.07.2005. On 29.01.2009, the defendant's predecessors in title had filed an application in form TM-16 seeking to amend the name of the proprietary concern to the name of the defendant herein. On 23.08.2014, the plaintiff had filed an objection to this Form TM-16. The defendant would submit that the above important facts are deliberately not disclosed by the plaintiff in their plaint. Therefore, it is the contention of the defendant that for 15 years the plaintiff has kept quiet despite the fact that they were aware of the defendant's mark from the month of July 2005 when they had filed the opposition to the application filed by the defendant for registering their mark. Therefore, the defendant would contend that the cause of action pleaded is nothing but an illusory one.

9. The defendant would submit that on 23.01.2009, a transfer agreement had been entered into between their predecessors in title and the defendant, wherein their predecessors in title had transferred the entire business along with the trademark 'ADDISON' to the defendant



company. Therefore, the defendant is now the owner of the Trademark 'ADDISON' with the use since 01.01.1990.

10. The defendant would further submit that the suit is not maintainable since the defendant is not carrying on business similar to that of the plaintiff. The defendant is carrying on business in electrical wires and cables classified in Class 9 and the defendant's name is Addison Cable Private Limited. The plaintiff company's name is Addison and Company Limited. The defendant would submit that the plaintiff has not mentioned a single incident of confusion or deception. The defendant would further submit that despite being aware about the usage as early as in the year 2005 the plaintiff has not taken any steps to file a suit and stopped with just issuing a notice of opposition to the defendant's registration of the mark. It is also the case of the defendant that when they had received the cease and desist notice dated 18.11.2020, they had issued a reply on 07.12.2020 setting out that they had adopted the mark 'ADDISON' for the first time in the year 1990. The defendant therefore sought to have the suit dismissed.



Issues:-

11. This Court had framed the following issues by its order dated

25.08.2023:-

(i). Whether the plaintiff and the defendant's marks are phonetically, structurally and ocularly identical, which leads to infringement and deceptive?

(ii). Whether the defendant and their predecessor are prior use of the Trademark ADDISON?

(iii). Whether the plaintiff is entitled for production of its trademark ADDISON across the class of goods?

(iv). Whether the plaintiff is entitled for injunction against the defendant for use of the Trademark ADDISON?

(v). Whether the defendant is use of the Trademark ADDISON for its products amounts to passing off as that of the plaintiff's goods?



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(vi). *Whether the plaintiff is entitled to a preliminary decree be passed in its favour directing the defendant to render account of profits that would be made on account launch of their product under the identical mark ADDISON? If in affirmative.*

(vii). *Whether the plaintiff is entitled to a final decree be passed in its favour for the amount of profits thus found to have been made by the defendant after the latter have rendered accounts?*

(viii). *Whether the plaintiffs are entitled to damages and costs of the suit?*

(ix). *Whether the suit is hit by delay, laches and acquiescence?*

(x). *What other reliefs the plaintiff is entitled for?*



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12. After hearing the arguments of the learned counsels on either side and taking into account the pleadings and evidence on record, this Court is recasting the aforesaid 10 issues as follows:-

1. Whether the plaintiff's and the defendant's marks are phonetically, structurally and ocularly identical which leads to infringement and deception of the plaintiff's mark by the defendant as a result of which the plaintiff is entitled for protection of its trademark ADDISON across the class of goods?

2. Whether the plaintiff is entitled to injunction against the defendant for use of the trademark ADDISON and whether the use of the trademark ADDISON would amount to passing off of the plaintiff's goods?

3. Whether the defendant and their predecessors are using the trademark ADDISON for a very long time and therefore, whether the suit is hit by delay, laches and acquiescence?



4. *Whether the plaintiff is entitled to a preliminary decree in its favour directing the defendant to render account of profits made on account launch of their product under the identical mark ADDISON?*

5.. *IF the above issue is answered in the affirmative, whether the plaintiff is entitled to a final decree be passed in its favour for the amount of profits thus found to have been made by the defendant after the latter have rendered accounts?*

6. *Whether the plaintiffs are entitled to damages and costs of the suit?*

7. *What other reliefs the plaintiff is entitled for?*

Submissions:-

13.Both the parties apart from making their oral submissions have also reduced the same into written arguments.



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14. Mr.Arun C. Mohan, counsel for the plaintiff would contend that the the plaintiff had adopted the trademark ADDISON in the year 1970 and have obtained registration of their trademark under various Classes and the certified copies of these registrations have been marked as Ex.P.1 to P.3. The plaintiff is engaged in the manufacture and sale of GI castings, unwrought and partly wrought common metals and their alloys, metal cutting tools including inter alia twist drills, reamers, milling cutters, end mills, taps, machine tools, accessories, parts and fittings thereof.

15. The learned counsel for the plaintiff would submit that the defendant had adopted an identical trade name that is **Addison Cable Private Limited** and had applied for its registration which is identical to the plaintiff's trademark. The defendant's infringing mark ADDISON has been marked as Ex.P.9. The plaintiff's counsel would further submit that when the defendant had applied for registration of the mark, the



same was opposed by the plaintiff and is pending before the Trademarks Registry.

16. He would further submit that the very fact that the defendant had sought to register the mark in the year 2000 would only go to show that they had recognized the value of the mark and sought to have a statutory protection to the same. The defendant by adopting the said mark is causing loss to the reputation and the goodwill earned by the plaintiff since the plaintiff's goods are of excellent quality

17. He would further add that in a passing off action, the plaintiff is not bound to prove the actual loss sustained by them. It is his contention that the plaintiff is a prior user and owner of the trademark ADDISON and therefore, they are entitled to prevent competitors who are attempting to use the goodwill earned by the plaintiff to enter into the market. He would also submit that the quality of the defendant's goods is no match for that of the plaintiff.

18. The contention of the learned counsel is that the products of



the plaintiff and the defendant are identical and the possibility of creating confusion in the minds of the general public is quite high. The fact that the defendant has not disputed the use of the infringing mark only proves that the defendant had infringed the plaintiff's mark and was passing off the plaintiff's mark as their own. The learned counsel would further submit that by a reason of the extensive usage of the word mark ADDISON, by reason of the provisions of Section 29(4) of the Trademarks Act, 1999, there is a presumption that the plaintiff's registered trademark has attained a reputation in the market. In support of this argument, the learned counsel would rely upon the judgement reported in *2011 (4) CTC page 417 – Blue Hill Logistics and Anr Vs. Ashok Leyland* which is a Division Bench Judgement of this Court wherein the Division Bench had held that when the marks are identical and goods and services are also identical there is a statutory presumption of confusion and therefore, it is a case of infringement. Thereafter, it is for the defendant to disprove the same. The plaintiff had produced Ex.P.4 which are the invoices for the sale of the plaintiff's goods in the brand name of ADDISON from 29.12.1977.



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19. He would further argue that while deciding the question of similarity, the marks have to be considered as a whole and viewed from the point of view of a man of average intelligence and imperfect recollection. The learned counsel would submit that when comparing the goods of the plaintiff and the defendant, it is crystal clear that the goods are of allied products which is likely to cause confusion. In support of this argument, he would rely upon the judgment reported in ***AIR 1960 SC 142 - Corn Products Refining Co. Vs. Shangrila Food Products Ltd.***

20. It is also his contention that the plaintiff's trademark by its usage since the year 1970 has attained the status of a well-known mark and is directly linked to the plaintiff. In support of this argument, he would rely upon the judgement of the Hon'ble Supreme Court reported ***1994 (2) SCC page 448 – Power Control Appliances and Ors. Vs. Sumeet Machines Pvt. Ltd.***



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21. He would submit that by adopting the name ADDISON which, apart from being an illegal adoption, is also a source of confusion amongst the general public and would tantamount to fraud on the public. In support of this argument, he would rely upon the judgement of the Hon'ble Supreme Court reported in ***AIR 2006 SC 3304 – Ramdev Food Products Pvt. Ltd. Vs. Arindbhai Rambhai Pate and Ors.***

22. He would summarize his arguments by stating that;

- a). The plaintiff has adopted the mark ADDISON as early as in the year 1970 and has been continuously using the same;
- b) The defendant who has later adopted the mark ADDISON has done so only to sell side by side with the plaintiff and ride on the plaintiff's goodwill; and
- c) The conduct of the defendant is clearly fraudulent and made with a malafide intention of passing off their products as that of the plaintiff.



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23. He would also rely upon the following judgments :-

i. Ford Motor Company of Canada Limited and Anr Vs. Ford Services Centre - MANU/DEL/1774/2008.

ii. Punjab Tractors Ltd., Vs. Pramod Kumar Garg- 85 (2000) DLT 567.

iii. Honda Motors Vs. Charanji Singh - 2003 (26) PTC 1 Del.

iv. N. Ranga Rao & Sons Vs. Anil Garg & Ors. - 2005 SCC OnLine Del 1293.

v. Prakash Industries Ltd. Vs. Rajan Enterprise - 1994 (14) PTC 31 Del.

vi. Daffodils Perfumes and Chemicals Vs. Daffodil Chemicals (P) Ltd - 1996 (16) PTC 153 Del.

vii. Cadila Healthcare Limited Vs. Cadila Pharmaceuticals Limited - AIR 2001 SC 1952.

viii. Needle Industries (India) Ltd. Vs. Sanjay



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Jaiswal & Ors - 2002 (24) PTC 646 Mad.

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24. Ultimately, the learned counsel would submit that the above documents and arguments would clearly prove the infringement by the defendant and therefore, they should be prohibited from using the mark ADDISON.

25. Mr. R. Satish Kumar, learned counsel appearing on behalf of the defendant would submit that the present suit as framed by the plaintiff suffers from delay, laches and acquiescence and further the plaintiff has not been able to show the infringement of the mark ADDISON. The defendant have adopted the mark which is not identical to that of the plaintiff, as early as in the year 1990, the name ADDISON is only used for the electrical wires and cables and the registration of the firm and its PAN card have been marked as Ex.D.1 and D.2.

26 The learned counsel would submit that since the business had grown, the parties had decided to incorporate a company in the name of



Addison Cable Private Limited and the partners of the erstwhile firm were the subscribers to the Memorandum and Articles of Associations.

The learned counsel would submit that all the official communications and their registrations were in the name of the Addison Cable Private Limited as evidenced by Ex.D.3 to D.11, D.14 to D.18. The earlier firm was known as Addison Industries.

27. On 11 October 2000, the predecessors in title of the defendant had made an application for registration of the Trademark label ADDISON in class 9 in which it has been clearly stated that the user was from 01.01.1990. The Trademark Application was also published in the Trademark Journal dated 03.01.2005 which was opposed by the plaintiff vide Opposition No.199004 dated 11.07.2005 and the same is pending adjudication. The notice of opposition and affidavit of evidence in support of opposition filed by the plaintiff have been marked as Ex.D.130 and D.131.

28. After the transfer of the business in the name of the defendant,



namely Addison Cable Private Limited, the predecessors in title of the defendant had filed an application under Form TM-16 for amendment of the name. This application was made on 29.01.2009 and the plaintiff has objected to the same by the letter dated 23.08.2014 i.e. six years later. The letter of the plaintiff and the Form TM-16 are marked as Ex.D.12 and D.13 respectively. The transfer agreement was entered into by the predecessors in title with the defendant on 23.01.2009, wherein the predecessors in title had transferred the entire business along with the trademark 'ADDISON' to the defendant. Therefore, it is the contention of the defendant that they have been the proprietor of the trademark ADDISON from 01.01.1990.

29. He would further submit that having filed the opposition to the application filed by the defendant for registration of their mark in the year 2005 and their opposition to the Form TM-16 in the year 2014, the plaintiff had not taken any steps whatsoever to initiate any legal action to stop the usage of the mark ADDISON by the defendant. Therefore, he would submit that this is a clear case of acquiescence by the plaintiff and



therefore the suit filed has to be dismissed.

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30. The learned counsel for the defendant would further submit that the plaintiff has not proved their contention that they have been using the trademark since 1970 despite the denial of the same by the defendant. He would submit that Ex.P.1 and P.2 invoices are dated 02.09.1991 which is subsequent to the use of the mark by the defendant in 1990. The documents filed as Ex.P.4 do not prove the continuous use of the trademark ADDISON since 1970. There were two invoices of the year 1977 that does not contain/depict the trademark ADDISON. The advertisements which have been filed as Ex.P.5 also do not prove this case. On the contrary, the advertisements after 1990 clearly indicates that the defendant is an honest and concurrent user of the trademark ADDISON.

31. The fulcrum of the argument of the learned counsel for the defendant is that the usage of the trademark ADDISON by the defendant is open, honest, concurrent and continuous. He would submit that the



names of the companies are also not identical, while the plaintiff's name is Addison and Company Limited, the defendant has a distinct name Addison Cables Private Limited. The goods that are produced by both the plaintiff and the defendant are distinct and entirely different. The defendant is engaged in the business of manufacturing and selling of PVC Electrical wires and cables whereas the plaintiff is manufacturing goods which are dissimilar to that of the defendant. The target consumers of both the plaintiff and the defendant are totally different. Further, the plaintiff has no registration of trademark in Class 9.

32. He would rely upon the judgement of the Hon'ble Supreme Court reported in *1996 (16) PTC 512 – Vishnudas Trading Vs. The Vazir Sultan Tobacco*. He would also rely upon the judgment of the Hon'ble Supreme Court reported in *(2018) 9 SCC page 183 – M/s. Nandhini Deluxe Vs M/s. Karnataka Cooperative Milk Producers Limited*. He would therefore submit that the trademark law provides exclusive right to use the trademark registered in respect of a specific goods and not for other goods though within the same class.



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33. He would further submit that Ex.D.19 to D.116 clearly evidence the continuous usage of this mark by the defendant from the year 1990 onwards. The adoption of the trademark ADDISON by the defendant is an honest adoption and the defendant has spent a considerable sum of money for advertising and promoting their trademark. The plaintiff by not taking any action at the earliest have acquiesced to the use of the mark by the defendant. The alleged confusion and deception pleaded by the plaintiff is totally non-existent and in fact, it is the contention of the learned counsel that though the defendant has adopted the trademark ADDISON as early as in the year 1990, the plaintiff has not made out a single case where there existed an element of confusion and deception. Therefore, it is his contention that the suit needs to be dismissed.

Discussion.

34. From the pleadings and the evidence, it is seen that the



plaintiff had applied for the registration of the word mark ADDISON on 02.09.1991 stating that the same has been used since 01.01.1970 as evidenced by Ex.P.1 with reference to the following goods, namely, GI castings, unwrought and partly wrought common metals and their alloys under Class 6. Ex.P.2 is another application dated 02.09.1991 where the plaintiff has sought registration of the word mark "ADDISON" that they proposed to use in respect of the metal cutting tools including inter alia Twist Drills, Reamers, Milling Cutters, End Mills, Taps, Machine Tools, Accessories parts and Fittings thereof.

35. Similarly, Ex.P.3. once again, is an application which has been made on 15.02.2016 in respect of the word ADDISON which they claim to have used from the year 15.08.1956 in respect of the goods covered under Ex.P.2 including parts of machines engines or motors, machines tools accessories parts and fittings thereof, motors and engines (except for land vehicles), machine coupling and transmission components (except for land vehicles), agricultural implements other than hand-operated incubators for eggs. This application has been made after the



plaintiff had submitted their first opposition to the application of the defendant in the year 2005.

36. The invoices that have been marked subject to objection as Ex.P.4 nowhere indicates the word mark ADDISON and it only describes the company as Addison and Company Limited. A perusal of Ex. P.4 would further show that the company had adopted a different font for writing the name of the company in the year 1977-78 and it is only in the bill which is dated 03.05.2005 that the name Addison and Company Limited along with the logo/trademark ADDISON within an Egg shape circle is introduced. Therefore, the contention that the word mark ADDISON has been used since 1970 has not been proved by the plaintiff though the bills that have been filed and marked by them as Ex.P.4.

37. Further, Ex.P.5 (which is also objected) is the promotional materials to prove the use of the mark ADDISON by the plaintiff. A perusal of the same would show the use of the mark ADDISON only from the year 1991. A trademark warning notice has been issued by the



plaintiff company wherein they had stated that the word mark ADDISON has been registered under No.183036 in respect of the tools for use in machine tools and “FORGEFORM” registered under No.219051 in respect of Drills (being parts of machines) included in Class 7 of the IV schedule to the Trade and Merchandise Marks Rules, 1959. Therefore, the registration in the year 1991 was with reference to the tools for the use of machines tools. It is therefore clear that the plaintiff who would submit that they have been using the trademark ADDISON since 1970 has not been proved by them and the use of the word mark ADDISON from their documents appears to be only in the year 1991.

38. The defendant's case is that they have been using the mark ADDISON since 1990 to substantiate the same they have filed their sales invoices from the year 1990 where the name of the company has been shown as Addison Industries and the logo ADDISON within an oblong shape. This word mark has been continuously used till the year 2007. In the bill dated 25.02.2008 the name font ADDISON has



undergone a change and continues to be within the oblong shape and the word 'S' has taken the shape of the lightning and below the logo, there is the shape of a cable wire with a name Addison Cable written over the same. This depiction of the cable has been introduced in the year 2003 which is evident from the bill dated 28.03.2003. Thereafter, from the bill dated 16.11.2009, the depiction of the cable has given way to the words "electric wires and cables" below the logo ADDISON. The word "electric wire and cables" has been changed to "wires and cables" as evidenced by the bill dated 09.07.2012.

39. Therefore, it is clear that the defendant has been using the word mark ADDISON from the year 1990 continuously, whereas the documentary evidence produced by the plaintiff is only from the year 1991. Further, the products that are manufactured by both the plaintiff and the defendant are distinct. The defendant is exclusively dealing with electric wires and cable both of which are not being sold by the plaintiff. That apart, from the year 1990, the defendant has been using the word ADDISON and there is no evidence to show that the usage of the word



mark has been caused any dent in the plaintiff's sales. Even the depiction of the word mark is neither structurally nor ocularly identical.

40. The main points that emerge from the above discussion are hereunder set out:-

a) The plaintiff has applied for registration of their trade mark ADDISON only in the year 1991 though they have stated that they have been using the mark since 01.01.1970 as evidenced by Ex.P.1 to P.3 and the plaintiff's mark ADDISON is depicted inside an egg shaped circle.

b) The plaintiff is dealing in the following products:- GI castings, unwrought and partly wrought common metals and their alloys, metal cutting tools including inter alia twist drills, reamers, milling cutters, end mills, taps, machine tools, accessories, parts and fittings thereof.

c) The word mark has been incorporated in the invoices from the year 1991 as evidenced by Ex.P.4, Series.

d) The defendant has been using the mark ADDISON from the



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year 1990 itself as evidenced by Ex.D.19 to D.116, invoice and Ex.D.117 to D.129, Advertisements.

e) The defendants are dealing only in electrical wires and cables.

f) The word mark of the defendant ADDISON is enclosed in an oblong circle with a Star above and later the 'S' is depicted with the symbol of a lightning totally distinct from the plaintiff together with the words Electric Wires and Cables.

g) The plaintiff had knowledge about the use of the word mark ADDISON by the defendant even as early as in the year 2005 and they have permitted the defendant to continue to develop their business on this word mark for over 16 years.

41. The Hon'ble Supreme Court in the judgement reported as ***M/s.Nandhini Deluxe Vs. M/s. Karnataka Cooperative Milk Producers Limited in AIR 2018 SC 3516 = 2018(9) SCC 183*** was dealing with the



adoption of the mark “Nandini” by the appellant before them which was already adopted by the respondent in the year 1985. The respondent had a registration in respect of this mark under Class 29 and Class 30. The Appellant had adopted this mark for their chain of restaurants and therefore, the respondent had opposed the registration of this mark by the Appellant before the Deputy Registrar of Trademarks. The opposition filed by them was rejected by the Deputy Registrar. On a challenge to the Intellectual Property Board the order of the Deputy Registrar was confirmed and upheld by the High Court of Karnataka which was challenged by the Appellant before the Hon’ble Supreme Court. The Hon’ble Supreme Court had extracted the issue in controversy as follows:-

“Therefore, the fulcrum of the dispute is as to whether such a registration in favour of the appellant would infringe rights of the respondent. The entire case of the respondent revolves around the submissions that the adaptation of this trade mark by the appellant, which is phonetically similar to that of the respondent, is not a



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bona fide adaptation and this clever device is adopted to catch upon the goodwill which has been generated by the respondent in respect of trade mark 'NANDINI'. On that premise, the respondent alleges that the proposed trade mark 'NANDHINI' for which the appellant applied for registration is similar trade mark in respect of similar goods and, therefore, it is going to cause deception and confusion in the minds of the users that the goods in which the appellant is trading, in fact, are the goods which belong to the respondent. Precisely, it is this controversy which needs to be addressed in the first instance.”

After discussing the facts of the case the learned Judges had held as follows:-

“We also hold that use of 'NANDHINI' by appellant in respect of its different goods would not be detrimental to the purported distinctive character or



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repute of the trade mark of the respondent. It is to be kept in mind that the appellant had adopted the trade mark in respect of items sold in its restaurants way back in the year 1989 which was soon after the respondent had started using the trade mark 'NANDINI'. There is no document or material produced by the respondent to show that by the year 1989 the respondent had acquired distinctiveness in respect of this trade mark, i.e., within four years of the adoption thereof. It, therefore, appears to be a case of concurrent user of trade mark by the appellant."

Ultimately, the order of the Deputy Registrar, Trade Marks was restored.

42. In the judgement of the Division Bench of this Court reported in **2011 (4) CTC 417 – Blue Hill Logistic and Anr Vs. Ashok Leyland Limited**, the Hon'ble Division Bench after extracting and discussing the provisions of Section 29 of the Trade Marks Act observed as follows in para 10 therein:-



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“On a careful reading of Section 29 of the Act, it is seen that sub-section (2) of Section 29 entitles an action being filed for infringement of a registered trade mark against an identical, nearly identical or deceptively similar trade mark used in relation to the same goods in respect of which the trade mark is registered or to similar goods. In case, the trade mark is not identical and the goods are also not the same for which the trade mark is registered, an infringement action will lie under Section 29(4) only if the conditions of sub-section (4) of Section 29 are satisfied.”

The Division Bench had also held that the onus of proof lies upon the person invoking the provisions of Section 29 of the Act to establish infringement. The Bench had observed that where the rival marks are identical and the goods and services are identical there is a statutory presumption of confusion and a prima facie case of infringement would exist. In the case on hand as discussed earlier, the Trademarks of the plaintiff and the defendant are not visually identical. That apart, the



goods traded by the plaintiff and the defendant are different.

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43. The next point which engages the attention of this Court is the defense of delay and acquiescence. The defendant has produced proof that they have been using the Trademark ADDISON since the year 1990. Further, there is documentary evidence to show that the plaintiff had objected to the application for registration of the Trademark filed in the year 2005 has not taken any steps to prevent the usage of the word “ADDISON” by the defendant till the filing of the suit in the year 2021. The plaintiff has adopted a "Ripvan Winkle" approach.

44. As early as in the year 1990 a Division Bench of this Court had occasion to deal with the concept of acquiescence in Trade Marks which has been reported in *1940 (2) MLJ 793 = AIR 1943 Mad 31 – Devidoss and Co. Vs. Alathur Abboyee Chetty and Co.* where the bench had observed as follows:-

“To support a plea of acquiescence in a trade mark case it must be shown that the plaintiff has stood



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by for a substantial period and thus encouraged the defendant to expend money in building up a business associated with the mark.”

45. The Bombay High Court in its judgement in the case of ***ITC Limited Vs. NTC Industries Ltd. – 2015 SCC Online Bombay 4976*** has discussed the concept of acquiescence by referring to the provisions of Section 33 of the Trade Marks Act and extract 4 critical factors that had to be pleaded and proved. These are :-

- (1) the necessity of adoption by the defendant;*
- (2) a plaintiff's knowledge of the defendant's use of the trade mark in a manner hostile to the plaintiff's rights;*
- (3) conduct by the plaintiff that encourages the defendant's use of the rival mark; and*
- (4) proof of the defendant having acted on the plaintiff's go-ahead.*

Ultimately, relying upon the judgement of the Hon'ble Supreme Court



in the matter of ***Power Control Appliances and Ors. Vs. Sumeet***

Machines Pvt. Ltd held as follows:-

“The principle seems to me to be this: a man cannot sit indolent and idle, aware of the invasion of his rights by another, and then complain of that invasion. or a continuous Acquiescence is a species of estoppel, a rule in equity and a rule of evidence. Being that, it must be pleaded and proved. Essential to the acquiescence doctrine is encouragement or inducement: the plaintiff, possessing a juridical right, must be shown to have to have encouraged the defendant and induced him to act to his detriment; and the defendant must know of the plaintiff's rights and the fact that he has not and is not in pursuit of their enforcement. Though acquiescence is a conduct incompatible with a claim of exclusivity, it requires positive acts, not mere silence or inaction as we know of it in laches”

In the instant case after 2005 there has been no steps taken by the



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plaintiff to prevent the use of the mark ADDISON by the defendant.

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46. Therefore, Issue Nos.1 and 2 are answered against the plaintiff. The defendant admittedly has been using this mark since the year 1990 and it is also seen that the plaintiff has come to know about the usage in the year 2005 when they had filed an objection to the application submitted by the defendant for registering their word mark. Despite coming to know that the mark is being used since 1990, the plaintiff has stopped with only filing an opposition to the registration but has not approached the Court. Therefore, Issue No.3 is also answered in favour of the defendant. As a result of Issue Nos. 1 to 3 being answered in favour of the defendant, issues Nos.4 to 6 are also answered against the plaintiff.

47. In fine, the suit is dismissed with costs.

09.11.2023

Index:Yes/No

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Speaking order/Non-speaking order

Neutral Citation: Yes/No

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APPENDIX

List of Witness Examined on the side of the Plaintiff:

NIL

List of Exhibits marked on the side of the Plaintiff:-

<i>Exhibits</i>	<i>Description of documents</i>
P-1	Ex.P.1 is the Certified copy of registration of trademark ADDISON under no.557557 in class 6 dated 02.09.1991.
P-2	Ex.P.2 is the Certified copy of registration of trademark ADDISON under no.557561 in class 7 dated 02.09.1991.
P-3	Ex.P.3 is the Certified copy of registration of trademark ADDISON under no.3177648 in class 7 dated 05.02.2016.
P-4	Ex.P.4 is the Photocopy of the invoices for sale of ADDISON products dated 1977 to 2020. The learned counsel for the Defendant objected for marking of Document No.4 on the ground that they are all photocopies. Ex.P.4 marked with objection subject to Proof and Relevancy.
P-5	Ex.P.5 is the Photocopy of the Promotional materials proving use of the mark ADDISON by plaintiff.
P-6	Ex.P.6 is the Original Cease and desist notice issued by plaintiff to defendants dated 18.11.2020.
P-7	Ex.P.7 is the Original Reply to the cease and desist notice from the defendant to the Plaintiff dated 07.12.2020.
P-8	Ex.P.8 is the Photocopy of the Plaintiff's registered mark ADDISON.



<i>Exhibits</i>	<i>Description of documents</i>
P-9	Ex.P.9 is the Photocopy of the Defendant's impugned mark ADDISON.

List of Witnesses Examined on the side of the Defendant:

NIL

List of Exhibits marked on the side of the Defendant:-

<i>Exhibits</i>	<i>Description of documents</i>
D-1	Ex.D1 is the Photocopy of the PAN Card of Addition Industries. (Original is produced, compared and it is undertaken by the Defendant that it can be produced as and when required.)
D-2	Ex.D2 is the Photocopy of the Registration of Firm of Addition Industries dated-04.04.1991. The counsel for the Plaintiff objected for marking the document no.2 on the ground that it is a photocopy. Ex.D2 marked with objection subject to proof, admissibility and relevancy,
D-3	Ex.D3 is the Photocopy of the Certificate of Incorporation of Respondent dated-04.08.2007.
D-4	Ex.D4 is the Photocopy of the Memorandum & Articles of Association of Respondent dated-04.08.2007.
D-5	Ex.D5 is the Photocopy of the PAN Card of Respondent.
D-6	Ex.D6 is the Photocopy of the Sales Tax Registration Certificate of Respondent dated-07.03.2008.
D-7	Ex.D7 is the Photocopy of the TAN Allotment Letter of Respondent dated-04.04.2008.
D-8	Ex.D8 is the Photocopy of the VAT Registration Certificate of Respondent dated-05.05.2008.



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<i>Exhibits</i>	<i>Description of documents</i>
D-9	Ex.D9 is the Photocopy of the Excise Registration Certificate of Respondent dated-05.05.2008. (Originals are produced, compared for document no. 3 to 9 and it is undertaken by the Defendant that they can be produced as and when required.)
D-10	Ex.D10 is the Photocopy of the MSME Registration Certificate of Respondent dated-28.01.2009. The counsel for the Plaintiff objected for marking the document no. 10 on the ground that it is a photocopy. Ex.D10 marked with objection subject to proof, admissibility and relevancy.
D-11	Ex.D11 is the Photocopy of the MSME Registration Certificate of Respondent dated-11.12.2016. (Original is compared and it is undertaken by the Defendant that it can be produced as and when required.) The counsel for the Plaintiff objected for marking the document no.11 on the ground that Certificate Under Section 65B of Indian Evidence Act is not filed. Ex.D11 marked with objection subject to proof, admissibility and relevancy.
D-12	Ex.D12 is the Photocopy of the Form TM-16 filed in the Opposition matter by Applicant/Respondent dated- 29.01.2009. The counsel for the Plaintiff objected for marking the document no. 12 on the ground that it is a photocopy. Ex.D12 marked with objection subject to proof, admissibility and relevancy.
D-13	Ex.D13 is the Photocopy of the Letter filed by Opponent/Plaintiff if the Opposition Matter to object the Form TM-16 filed by the Applicant/Respondent dated-28.08.2014. The counsel for the Plaintiff objected for marking the document no. 13 on the ground that it is a photocopy. Ex.D13 marked with objection subject to proof, admissibility and relevancy.
D-14	Ex.D14 is the Photocopy of the BIS Certification Marks License of Respondent dated-05.02.2009. (Original is produced, compared and it is undertaken by the Defendant that it can be produced as and when required.)
D-15	Ex.D15 is the Photocopy of the Service Tax Registration of



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<i>Exhibits</i>	<i>Description of documents</i>
	Respondent dated-23.04.2009. The counsel for the Plaintiff objected for marking the document no.15 on the ground that it is a photocopy. Ex.D15 marked with objection subject to proof, admissibility and relevancy,
D-16	Ex.D16 is the Photocopy of the Renewal Certificate of BIS Marks Certification of Respondent dated-25.01.2012.
D-17	Ex.D17 is the Photocopy of the GST Registration Certificate of Respondent dated-06.07.2018.
D-18	Ex.D18 is the Photocopy of the BIS Certification Marks License Renewal of Respondent dated-05.01.2021.
D-19	Ex.D19 is the Photocopy of the Sales Invoice of Addition Industries dated-14.05.1990.
D-20	Ex.D20 is the Photocopy of the Sales Invoice of Addition Industries dated-22.06.1990.
D-21	Ex.D21 is the Photocopy of the Sales Invoice of Addition Industries dated-30.08.1990.
D-22	Ex.D22 is the Photocopy of the Sales Invoice of Addition Industries dated-30.10.1990.
D-23	Ex.D23 is the Photocopy of the Sales Invoice of Addition Industries dated-23.04.1991.
D-24	Ex.D24 is the Photocopy of the Sales Invoice of Addition Industries dated-14.05.1991.
D-25	Ex.D25 is the Photocopy of the Sales Invoice of Addition Industries dated-20.05.1991.
D-26	Ex.D26 is the Photocopy of the Sales Invoice of Addition Industries dated-21.04.1991.
D-27	Ex.D27 is the Photocopy of the Sales Invoice of Addition Industries dated-12.04.1993.
D-28	Ex.D28 is the Photocopy of the Sales Invoice of Addition Industries dated-07.05.1993.



<i>Exhibits</i>	<i>Description of documents</i>
D-29	Ex.D29 is the Photocopy of the Sales Invoice of Addition Industries dated-18.05.1993.
D-30	Ex.D30 is the Photocopy of the Sales Invoice of Addition Industries dated-03.06.1993.
D-31	Ex.D31 is the Photocopy of the Sales Invoice of Addition Industries dated-30.04.1994.
D-32	Ex.D32 is the Photocopy of the Sales Invoice of Addition Industries dated-08.05.1994.
D-33	Ex.D33 is the Photocopy of the Sales Invoice of Addition Industries dated-22.03.1996.
D-34	Ex.D34 is the Photocopy of the Sales Invoice of Addition Industries dated-28.03.1996.
D-35	Ex.D35 is the Photocopy of the Sales Invoice of Addition Industries dated 29.11.1996.
D-36	Ex.D36 is the Photocopy of the Sales Invoice of Addition Industries dated-25.03.1997,
D-37	Ex.D37 is the Photocopy of the Sales Invoice of Addition Industries dated-28.03.1997.
D-38	Ex.D38 is the Photocopy of the Sales Invoice of Addition Industries dated-28.03.1997.
D-39	Ex.D39 is the Photocopy of the Sales Invoice of Addition Industries dated-26.03.1998.
D-40	Ex.D40 is the Photocopy of the Sales Invoice of Addition Industries dated-12.02.1998.
D-41	Ex.D41 is the Photocopy of the Sales Invoice of Addition Industries dated-31.03.1998.
D-42	Ex.D42 is the Photocopy of the Sales Invoice of Addition Industries dated-15.03.1999.
D-43	Ex.D43 is the Photocopy of the Sales Invoice of Addition Industries dated-29.03.1999.



<i>Exhibits</i>	<i>Description of documents</i>
D-44	Ex.D44 is the Photocopy of the Sales Invoice of Addition Industries dated-30.03.1999.
D-45	Ex.D45 is the Photocopy of the Sales Invoice of Addition Industries dated-17.03.2000.
D-46	Ex.D46 is the Photocopy of the Sales Invoice of Addition Industries dated-29.08.2000.
D-47	Ex.D47 is the Photocopy of the Sales Invoice of Addition Industries dated-31.08.2000.
D-48	Ex.D48 is the Photocopy of the Sales Invoice of Addition Industries dated-30.01.2001.
D-49	Ex.D49 is the Photocopy of the Sales Invoice of Addition Industries dated-30.01.2001.
D-50	Ex.D50 is the Photocopy of the Sales Invoice of Addition Industries dated-22.03.2001.
D-51	Ex.D51 is the Photocopy of the Sales Invoice of Addition Industries dated-22.03.2001.
D-52	Ex.D52 is the Photocopy of the Sales Invoice of Addition Industries dated-15.02.2002.
D-53	Ex.D53 is the Photocopy of the Sales Invoice of Addition Industries dated-18.02.2002.
D-54	Ex.D54 is the Photocopy of the Sales Invoice of Addition Industries dated-20.10.2003.
D-55	Ex.D55 is the Photocopy of the Sales Invoice of Addition Industries dated-29.10.2003.
D-56	Ex.D56 is the Photocopy of the Sales Invoice of Addition Industries dated-10.11.2003.
D-57	Ex.D57 is the Photocopy of the Sales Invoice of Addition Industries dated-30.12.2003.
D-58	Ex.D58 is the Photocopy of the Sales Invoice of Addition Industries dated-27.01.2004.



<i>Exhibits</i>	<i>Description of documents</i>
D-59	Ex.D59 is the Photocopy of the Sales Invoice of Addition Industries dated-26.02.2004.
D-60	Ex.D60 is the Photocopy of the Sales Invoice of Addition Industries dated-14.03.2004.
D-61	Ex.D61 is the Photocopy of the Sales Invoice of Addition Industries dated-27.01.2005.
D-62	Ex.D62 is the Photocopy of the Sales Invoice of Addition Industries dated 28.04.2023.
D-63	Ex.D63 is the Photocopy of the Sales Invoice of Addition Industries dated-31.05.2005.
D-64	Ex.D64 is the Photocopy of the Sales Invoice of Addition Industries dated-06.06.2005.
D-65	Ex.D65 is the Photocopy of the Sales Invoice of Addition Industries dated-14.02.2006.
D-66	Ex.D66 is the Photocopy of the Sales Invoice of Addition Industries dated-29.05.2006.
D-67	Ex.D67 is the Photocopy of the Sales Invoice of Addition Industries dated-30.09.2006.
D-68	Ex.D68 is the Photocopy of the Sales Invoice of Addition Industries dated-05.12.2006.
D-69	Ex.D69 is the Photocopy of the Sales Invoice of Addition Industries dated-14.05.2007.
D-70	Ex.D70 is the Photocopy of the Sales Invoice of Addition Industries dated-08.06.2007.
D-71	Ex.D71 is the Photocopy of the Sales Invoice of Respondent dated- 16.11.2009.
D-72	Ex.D72 is the Photocopy of the Sales Invoice of Respondent dated- 13.05.2010.
D-73	Ex.D73 is the Photocopy of the Sales Invoice of Respondent dated- 12.08.2010.



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<i>Exhibits</i>	<i>Description of documents</i>
D-74	Ex.D74 is the Photocopy of the Sales Invoice of Respondent dated- 21.09.2010.
D-75	Ex.D75 is the Photocopy of the Sales Invoice of Respondent dated- 23.09.2010.
D-76	Ex.D76 is the Photocopy of the Sales Invoice of Respondent dated- 16.06.2011.
D-77	Ex.D77 is the Photocopy of the Sales Invoice of Respondent dated- 08.08.2011.
D-78	Ex.D78 is the Photocopy of the Sales Invoice of Respondent dated- 08.09.2011.
D-79	Ex.D79 is the Photocopy of the Sales Invoice of Respondent dated- 09.07.2012.
D-80	Ex. D80 is the Photocopy of the Sales Invoice of Respondent dated- 13.07.2012.
D-81	Ex.D81 is the Photocopy of the Sales Invoice of Respondent dated- 28.07.2012.
D-82	Ex.D82 is the Photocopy of the Sales Invoice of Respondent dated- 22.11.2012.
D-83	Ex.D83 is the Photocopy of the Sales Invoice of Respondent dated- 23.11.2012.
D-84	Ex.D84 is the Photocopy of the Sales Invoice of Respondent dated- 24.11.2012.
D-85	Ex.D85 is the Photocopy of the Sales Invoice of Respondent dated- 21.01.2013.
D-86	Ex.D86 is the Photocopy of the Sales Invoice of Respondent dated- 24.01.2013.
D-87	Ex.D87 is the Photocopy of the Sales Invoice of Respondent dated- 07.05.2013.
D-88	Ex.D88 is the Photocopy of the Sales Invoice of Respondent dated- 23.01.2014.



<i>Exhibits</i>	<i>Description of documents</i>
D-89	Ex.D89 is the Photocopy of the Sales Invoice of Respondent dated-13.02.2014.
D-90	Ex.D90 is the Photocopy of the Sales Invoice of Respondent dated- 27.09.2014.
D-91	Ex.D91 is the Photocopy of the Sales Invoice of Respondent dated- 31.10.2014.
D-92	Ex.D92 is the Photocopy of the Sales Invoice of Respondent dated- 16.11.2014.
D-93	Ex.D93 is the Photocopy of the Sales Invoice of Respondent dated- 05.05.2015.
D-94	Ex.D94 is the Photocopy of the Sales Invoice of Respondent dated- 01.06.2015.
D-95	Ex.D95 is the Photocopy of the Sales Invoice of Respondent dated- 14.09.2015.
D-96	Ex.D96 is the Photocopy of the Sales Invoice of Respondent dated- 06.10.2015.
D-97	Ex.D97 is the Photocopy of the Sales Invoice of Respondent dated- 07.01.2016.
D-98	Ex.D98 is the Photocopy of the Sales Invoice of Respondent dated- 19.02.2016.
D-99	Ex.D99 is the Photocopy of the Sales Invoice of Respondent dated- 14.03.2016.
D-100	Ex.D100 is the Photocopy of the Sales Invoice of Respondent dated- 12.01.2017.
D-101	Ex.D101 is the Photocopy of the Sales Invoice of Respondent dated- 06.02.2017.
D-102	Ex.D102 is the Photocopy of the Sales Invoice of Respondent dated- 05.03.2017.
D-103	Ex.D103 is the Photocopy of the Sales Invoice of Respondent dated- 08.12.2017.



<i>Exhibits</i>	<i>Description of documents</i>
D-104	Ex.D104 is the Photocopy of the Sales Invoice of Respondent dated- 09.02.2018.
D-105	Ex.D105 is the Photocopy of the Sales Invoice of Respondent dated- 20.03.2018.
D-106	Ex.D106 is the Photocopy of the Sales Invoice of Respondent dated- 10.12.2018.
D-107	Ex.D107 is the Photocopy of the Sales Invoice of Respondent dated- 05.01.2019.
D-108	Ex.D108 is the Photocopy of the Sales Invoice of Respondent dated- 28.02.2019.
D-109	Ex.D109 is the Photocopy of the Sales Invoice of Respondent dated- 30.03.2019
D-110	Ex.D110 is the Photocopy of the Sales Invoice of Respondent dated- 12.12.2019.
D-111	Ex.D111 is the Photocopy of the Sales Invoice of Respondent dated- 16.01.2020.
D-112	Ex.D112 is the Photocopy of the Sales Invoice of Respondent dated- 22.02.2020.
D-113	Ex.D113 is the Photocopy of the Sales Invoice of Respondent dated- 05.05.2020.
D-114	Ex.D114 is the Photocopy of the Sales Invoice of Respondent dated- 02.06.2020.
D-115	Ex.D115 is the Photocopy of the Sales Invoice of Respondent dated- 01.01.2021.
D-116	Ex.D116 is the Photocopy of the Sales Invoice of Respondent dated- 13.02.2021. (Originals are produced, compared for document no.16 to 116 and it is undertaken by the Defendant that they can be produced as and when required.)
D-117	Ex.D117 is the Photocopy of the Advertisement in Magazines. Document No.117 marked as Ex.D117 which contains page no.153 to 195. Page no.153 to 156, 160, 163 to 172, 176 to 195



<i>Exhibits</i>	<i>Description of documents</i>
	Originals are produced, compared and it is undertaken by the Defendant that they can be produced as and when required. Page no.157, 158, 159, 161, 162, 173, 174, 175 are photocopies for which the counsel for the Plaintiff objected for marking of the same. Page nos. 157, 158, 159, 161, 162, 173, 174, 175 in Ex.D117 marked with objection subject to Proof, Admissibility and Relevancy.
D-118	Ex.D118 is the Photocopy of the Newspaper Advertisement of Respondent dated-05.05.2012.
D-119	Ex.D119 is the Photocopy of the Newspaper Advertisement of Respondent dated-01.04.2014.
D-120	Ex.D120 is the Photocopy of the ISO Certificates of Respondent.
D-121	Ex.D121 is the Photocopy of the CE Certificates of Respondent dated- 22.05.2012.
D-122	Ex.D122 is the Photocopy of the CE Certificates of Respondent dated- 21.05.2018.
D-123	Ex.D123 is the Photocopy of the NSIC-CRISIL Certificate of Respondent dated-25.06.2012. (Originals are produced compared for document no.118 to 123 and it is undertaken by the Defendant that they can be produced as and when required.)
D-124	Ex.D124 is the Photocopy of the Issued Dealership Certificates by Respondent. Document No. 124 marked as Ex.D124 which contains page no.207 to 210. For page no.208, 209 originals are produced, compared and it is undertaken by the Defendant that they can be produced as and when required. Page no.207, 210 are photocopies for which the counsel for the Plaintiff objected for marking of the same. Page nos. 207, 210 in Ex. D124 marked with objection subject to Proof, Admissibility and Relevancy.
D-125	Ex.D125 is the Photocopy of the Advertisement on Pamphlet by Respondent. Document No. 125 marked as Ex.D125 which contains page no.211 to 218. For page no.211 to 214 Originals are produced,



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<i>Exhibits</i>	<i>Description of documents</i>
	compared and it is undertaken by the Defendant that they can be produced as and when required. Page no.215 to 218 are photocopies for which the counsel for the Plaintiff objected for marking of the same. Page nos. 215 to 218 in Ex.D125 marked with objection subject to Proof, Admissibility and Relevancy.
D-126	Ex.D126 is the Photocopy of the Product Brochure of Respondent. (Original is produced compared and it is undertaken by the Defendant that it can be produced as and when required.)
D-127	Ex.D127 is the Photocopy of the Products Images of Respondent. Document No. 127 marked as Ex.D127 which contains page no.227 to 237. For page no.227 originals are produced, compared and it is undertaken by the Defendant that they can be produced as and when required. Page no.228 to 237 are photocopies for which the counsel for the Plaintiff objected for marking of the same. Page nos. 228 to 237 in Ex.D127 marked with objection subject to Proof, Admissibility and Relevancy.
D-128	Ex.D128 is the Photocopy of the Sales Promotional Material of Respondent Document No. 128 marked as Ex.D128 which contains page no.238 to 254. For page no.238, 240, 241, 244, 246 to 254 originals are produced, compared and it is undertaken by the Defendant that it can be produced as and when required. Page no.239, 242, 243, 245 are photocopies for which the counsel for the Plaintiff objected for marking of the same. Page nos. 239, 242, 243, 245 in Ex.D128 marked with objection subject to Proof, Admissibility and Relevancy.
D-129	Ex.D129 is the Original Soft Copy of Advertisement Videos in language of Hindi, Kannada, Tamil and Telugu of Respondent (Compact Disk). The counsel for the Plaintiff objected that marking of document no. 129 on the ground that copy not furnished and Certificate Under Section 65B of Indian Evidence act is not filed. Ex.D129 is marked with objection subject to proof, admissibility and relevancy.



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<i>Exhibits</i>	<i>Description of documents</i>
D-130	Ex.D130 is the Photocopy of the Notice of Opposition on Form TM-5 filed by the Opponent/Plaintiff dated-08.07.2005.
D-131	Ex.D131 is the Photocopy of the Affidavit of Evidence in Support of Opposition filed by Opponent/Plaintiff dated-07.03.2006. The counsel for the Plaintiff objected that marking of documents no. 130, 131 on the ground that they are photocopies. Ex.D130, Ex.D131 are marked with objection subject to proof, admissibility and relevancy.



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C.S.No.39 of 2021

P.T. ASHA, J.

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Pre-Delivery Judgement
in
C.S.No.39 of 2021



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