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C.S.No.58 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

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1.Rajeswari Educational and Charitable Trust

Rep.by its Managing Trustee G.V.Selvam

Registered Office at No.21, 2nd Main Road

Gandhi Nagar, Vellore 632 006.

And Administrative Office at No.111,

Vellalar Street, Kodambakkam,

Chennai 600 024.

2.Anusha Selvam

Trustee, Rajeswari Educational and Charitable Trust

Residing at No.111, Vellalar Street,

Kodambakkam, Chennai 600 024.

... Plaintiffs

Vs.

Dr.Arumugam Gounder

Director

GD Goenka Toddlers Schools,

Vellore International School Bikaner

E-15, Kantakathuria Colony

Behind Reliance Fresh, Bikaner 334 001.

... Defendant



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Prayer: This Civil Suit is filed under Order IV Rule 1 of Original Side Rules Read with Order VII Rule 1 & 2 of Civil Procedure Code r/w Sections 27, 28, 29, 134 & 135 Trademarks Act, 1999, praying to pass the judgment and decree:-

a) A perpetual injunction restraining the defendant, by himself, or through their trust, associates, sister concerns or by its servants or agents or anyone claiming through it from in any manner infringing the plaintiff's registered trade mark "Vellore International School" and "VIS" by using the offending trade mark " Vellore International School" in India either as a trade mark or as a part of its trading style or any other mark or marks which are in any way deceptively similar to the plaintiff's well established and registered trade mark " Vellore International School";

b) A permanent injunction restraining the defendant by himself, or through any other agencies in India or by its servants or agents or anyone claiming through it from in any manner passing off its educational services in India by using the offending trade mark " Vellore International School" and "VIS" as and for the celebrated educational services of the plaintiff bearing the well-established and registered trade mark " Vellore International School" and " VIS" either by using the same for its educational institution or in any manner advertising the same;



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c) Directing the defendant to surrender all the unused letter heads and other materials containing the trade mark “ Vellore International School” together with its dyes, blocks etc.,;

d) Directing the defendant to pay the costs of this suit;

For Plaintiffs : Mr.A.Saravanan

ORDER

The plaintiff has filed this suit seeking perpetual injunction restraining the defendant from infringing its registered trade mark “Vellore International School” and “VIS” by using the offending trade mark “Vellore International School.” The plaintiff also sought for a direction to the defendant to surrender all the unused letter heads and other materials containing the trade mark “Vellore International School.”

2. According to the plaintiffs, the first plaintiff is a Public Charitable Trust and the second plaintiff is a Trustee of the first plaintiff. The plaintiffs have been administering Educational Institution in the name of “Vellore Institute of Technology.” The plaintiffs also established a university



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called “Vellore Institute of Technology” and administrating a School in the name of “Vellore International School.” The plaintiffs are the owners of the trade mark “Vellore Institute of Technology Chennai”, “Vellore Institute of Technology Bangalore”, Vellore Institute of Technology Andrapradesh”, and “Vellore Schools of Business.” By using the above name, the plaintiffs have acquired a distinct reputation in the field of education.

3. The plaintiffs are the registered proprietor of the trade mark “Vellore International School” (“VIS”) and “Vellore International School Chennai” and therefore, they had acquired both statutory and common law rights over the said trade mark. The above said trade mark are registered with the trade mark registry under Class 41.

4. The plaintiffs had acquired the knowledge on 01.02.2021 that the defendant was using the trade mark “Vellore International School” and started school in that name at Bikaner, Rajasthan. The said Act of the defendant would amount to violation of the plaintiffs' statutory and common law rights over the registered trade mark. The adoption of the trade mark



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“Vellore International School” by the defendant caused lots of confusion in the minds of the students and parents, as if the Institution, which is being run by the defendant, is associated with the plaintiffs. The defendant with the malafide intention of causing confusion in the minds of the general public has adopted the mark “Vellore International School” and thereby infringed the trade mark rights of the plaintiffs.

5. It was also asserted by the plaintiffs that they had been using the above said trade mark for several years and by adopting the said trademark the defendant is trying to reap the benefits of the goodwill enjoyed by the plaintiffs. It was further asserted that if the defendant is allowed to continue with the mark, which is identical to the registered mark of the plaintiffs, they would be put to irreparable loss and hardship and the same cannot be compensated. On these pleading, the plaintiffs laid the above suit for the relief mentioned above.

6. This Court, by order, dated 02.02.2023 recorded that inspite of service of summons dated 11.03.2022 on the defendant, he had not entered



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appearance either through counsel or in person and consequently he lost his right to file written statement, in terms of Order 8 Rule 1 of CPC r/w Order 5 Rule 1 of CPC as amended for the purpose of Commercial Court Act. Thereafter, exparte evidence was recorded before the learned Master. The Administrative Officer and Authorised person of the first plaintiff was examined as PW1 and through him 9 documents were marked as Ex.P1 to Ex.P9.

7. The learned counsel for the plaintiffs by taking this Court to the evidence of PW1 and the exhibits marked on behalf of the plaintiffs submitted that the plaintiffs are the registered owner of the trade mark “Vellore International School” and “VIS”, but the defendant by adopting the offending mark “Vellore International School” caused infringement of the plaintiffs right over the registered mark and also its educational services.

8. Heard the learned counsel for the plaintiffs and perused the evidence available on record.



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9. The Administrative Officer of the first plaintiff Trust was examined as PW1 and through him 9 documents were marked. Ex.P3 is the online application for registration of the trade mark of the plaintiffs. Ex.P5 is the certificate of registration issued by the trade mark registry for the trade mark “Vellore International School” (“VIS”).

10. A perusal of Ex.P5 would make it clear that the plaintiffs' trademark “Vellore International School” (“VIS”) is registered in the name of the first plaintiff Trustee in Class 41. Therefore, it is proved that the plaintiffs are the registered owner of the above said trade mark.

11. Ex.P7 is the offending mark used by the defendant and PW1 proved the same by producing certificate under Section 65 (B) of the Evidence Act. Ex.P9 is the cease and desist notice issued by the plaintiff to the respondent by way of registered post. The comparison of the mark used by the defendant under Ex.P7 with the registered trade mark of plaintiff Ex.P5, would make it clear that the combination of words adopted by the defendant is identical to the registered trade mark of the plaintiff. Further,



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they are also using offending trade mark in their School. When the defendant uses identical offending trade mark in respect of the identical services, a presumption is raised under Section 29 (3) of the Trade Mark Act that it would cause confusion in the minds of general public. The offending mark adopted by the defendant is identical to that of the registered mark of the plaintiff both visually and also phonetically. Hence, certainly it will cause confusion in the minds of the general public.

12. If the defendant is allowed to continue with the offending mark, which is identical to that of the registered trade mark of the plaintiff, it would cause irreparable loss and hardship to the plaintiff. Therefore, in the light of the evidence of PW1 and the exhibits Ex.P3, Ex.P5, Ex.P7 and Ex.P9 the suit claim is proved and the plaintiff is entitled to decree for permanent injunction as prayed for in prayers (a) & (b) of the plaint.

13. In view of the discussion made earlier the plaintiff is entitled to seek surrender of all the unused letter heads and other materials containing the offending trade mark and consequently, it should be appropriate to direct



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the defendant to surrender the same to the plaintiff. Therefore, the plaintiff is also entitled to prayer (c) in the plaint.

14. Accordingly, the suit is decreed as prayed for in respect of prayers (a), (b) & (c). In the facts and circumstances of the case, there shall be no order as to costs.

12.04.2023

Index : Yes / No
Internet : Yes / No
dna



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List of witness examined on the side of the plaintiff:-

P.W.1. Mrs.Sumathi – Authorized Signatory of the Plaintiff-Company

List of documents marked on the side of the plaintiff:-

Sl. No.	EXHIBITS	DATE	DESCRIPTION
1	P1	11.02.2023	Authorization letter
2	P2	08.03.2018	Extract of Trust Resolution
3	P3	05.04.2019	Online print out copy of Trademark application for “Vellore International School” (VIS) dated 05.04.2019 (under Section 65B certificate submitted)
4	P4	03.02.2020	Online print out copy Trademark journal dated 03.02.2020 (under Section 65B certificate submitted)
5	P5	11.09.2020	Photocopy of Trademark Certificate of “Vellore International School (VIS) dated 11.09.2020 (Original verified and returned)
6	P6	24.04.2020	Online print out copy of Trademark application for “VIS” logo dated 24.04.2020 (under Section 65B certificate submitted)
7	P7		Online print out copy of the logo with enclosures (under Section 65B certificate submitted)
8	P8		Online print out copy of defendant School Board (under Section 65B certificate submitted)
9	P9	04.02.2021	Office copy o the notice from the plaintiff to defendant dated 04.02.2021.

List of witness examined on the side of the Defendant:-

-NIL-

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

-NIL-



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S.SOUNTHAR, J.

Dna

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