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C.S. No.73 of 2021

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.S. No.73 of 2021

M/s PREMIER TISSUES INDIA LTD.

Rep by its Managing Director

G.KRISHNA KUMAR

.... Plaintiff

vs

M/s DOLPHIN TISSUES

Rep by Mr. Vijay Sharma

8/1, Srinivasan Street, K.M.Nagar,

Chennai-600 118.

.... Defendant

Prayer : PLAINT FILED UNDER ORDER IV RULE 1 OF O.S. RULES AND ORDER VII RULE 1 OF CPC, READ WITH SECTIONS 27, 134 & 135 OF THE TRADEMARKS ACT, 1999 & PROVISIO 1 OF SECTION 7 OF THE COMMERCIAL COURTS, COMMERCIAL DIVISION AND COMMERCIAL APPELLATE DIVISION OF HIGH COURTS ACT, 2015 to grant a judgment and decree on the following terms :

A. Granting permanent injunction restraining the defendant, their legal representatives, their successors in business, assignees, franchisees, servants or agents from using the Mark 'PREMIUM' or operate business by infringing the Plaintiff's Mark 'PREMIER' or by use of confusingly similar or any other mark deceptively and identically similar to the Plaintiff's registered Trade Mark 'PREMIER' or in any other manner whatsoever;

B. The Defendant be ordered to surrender to the plaintiff for destruction of all packing materials, card board boxes and any other material in their possession bearing the mark 'PREMIUM' which is identical to the plaintiff's mark 'PREMIER'



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C. The defendant be ordered to pay to the plaintiff a sum of Rs.1,00,00,000/- (Rupees one crore only) as damages for their wrongful and illegal act by use of the trademark 'PREMIUM' and

d. For cost of the suit

For Plaintiff	: Mr.Roshan Atiq for M/s.KV Law Firm
For Defendant	: Exparte

JUDGEMENT

The suit has been filed for infringement and for damages.

2. The plaintiff is a registered Proprietor of the trademark '**PREMIER**' having obtained Registration under the Trade Marks Act, 1999. A certificate of Registration to that effect has also been issued by the Registrar of Trade Marks, Chennai on 23.12.1997 under Class 16 in respect of all kinds of tissue papers. The plaintiff is carrying on the business of manufacturing tissue papers and one of their major brands is '**PREMIER**'.

3. According to the plaintiff, the trademark '**PREMIER**' is a well known trademark and they won several certifications as a mark of their quality products. The plaintiff claims that they are pioneer in the manufacturing, marketing of the tissue papers of all forms and is doing



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business approximately around Rs.50 crores every year. However, it came to their knowledge that in the year 2020, the defendant has blatantly copied the trademark of the plaintiff by using a deceptively similar trade mark 'PREMIUM' for the manufacture of tissue papers. The sales turnover and the advertisement expenses incurred by the plaintiff which runs to several lakhs of Rupees have also been disclosed in the plaint.

4. The plaintiff having come to know about the usage of mark 'PREMIUM' by the defendant in respect of the manufacture of tissue papers issued a legal notice on 02.11.2020 calling upon the defendant to cease and desist using the word mark 'PREMIUM' which is deceptively similar to that of the plaintiff. According to the plaintiff, with a dishonest intention, the defendant has copied the trademark of the plaintiff '**PREMIER**' and has deceptively used the similar mark 'PREMIUM'. According to the plaintiff only with a fraudulent and malafide intent, the defendant has adopted the word mark 'PREMIUM' copying the plaintiff's registered trademark '**PREMIER**'. According to the plaintiff, the essential features of the plaintiff's registered trademark has been copied by the plaintiff. In such circumstances, this suit has



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been filed for infringement as well as for damages for the alleged losses suffered by the plaintiff on account of the illegal usage of the mark 'PREMIUM' by the defendant.

5. The defendant has been set exparte by this Court. Exparte evidence was recorded by the learned Additional Master – I. The plaintiff's Regional Sales Manager was examined as PW1 before the learned Additional Master – I. P.W.1 has also filed his proof affidavit in support of the suit claim. Before the learned Additional Master I, the following documents were marked as Exhibits on the side of the plaintiff :-

Ex.P1 is the photocopy of Turnover certificate for financial years from 1998-99 to 2019-20
Ex.P2 is the photocopy of series of certifications given to the plaintiff
Ex.P3 is the photocopy of acknowledgment card dated 05.11.2020
Ex.P4 is the original reply notice caused by the defendant
Ex.P5 is the original samples of plaintiff's product/cover containing its Mark
Ex.P6 is the original Samples of defendant's product /cover containing its Mark.
Ex.P7 is the certified true copy of Certificate of Incorporation dated 19.03.1998.
Ex.P8 is the certified true copy of Fresh certificate of Incorporation dated 04.03.2005.
Ex.P9 is the office copy of Legal notice caused by the plaintiff to the



defendant dated 02.11.2020.

Ex.P10 is the duplicate certificate of certificate of Registration of Trade Mark dated 23.12.1997.

Ex.P11 is the computer printout of the renewal of registration of Trade Mark dated 17.12.2017

Ex.P12 is the certified copy of the order passed in O.A. No.114/2021 dated 01.03.2021

Ex.P13 is the photocopy of the Address proof of Mr.Raghothaman

Ex.P14 is the original authorisation letter issued to Mr.Raghothaman by the plaintiff dated 26.07.2021

Ex.P15 is the statement of the plaintiff showing the loss incurred to it due to the infringement of Trademark by the defendant.

Ex.P16 is the true copy of TNVAT Annual returns filed by the plaintiff for the FY 2015-2016

Ex.P17 is the true copy of TNVAT Annual returns filed by the plaintiff for the FY 2016-2017

Ex.P18 is the true copy of TNVAT Annual returns filed by the plaintiff for the FY 2017-2018

Ex.P19 is the true copy of GST Annual returns filed by the plaintiff for the FY 2017-2018

Ex.P20 is the true copy of GST Annual returns filed by the plaintiff for the FY 2018-2019

Ex.P21 is the true copy of GST Annual returns filed by the plaintiff for the FY 2019-2020

Ex.P22 is the true copy of GST Annual returns filed by the plaintiff for the FY 2020-2021

Ex.P23 is the true copy of GST Annual returns filed by the plaintiff for the months of April 2021 and July in FY 2021-2022

Ex.P24 is the true copy of the proof of filing the GST Monthly returns of the plaintiff.



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6. As seen from the aforementioned documents, it is clear that the plaintiff has obtained Registration for its trademark '**PREMIER**' under Class 16 of the Trade Marks Act, 1999 and the same is evidenced by its Registration Certificate, dated 23.12.1997, which has been marked as Ex.P10. The plaintiff has also averred in the plaint that ever since the Date of Registration, the plaintiff has been using the registered trademark in the manufacture of tissue papers. The photocopy of the turnover certificate for the financial year 1998-99 to 2019-2020 and the originals of the same after having got compared, verified and returned for the year 1998-99 to 2019-2020 were marked as Ex.P1. As seen from Ex.P1, the turnover of the plaintiff is huge. Ex.P2 is the photocopy of the series of certifications given to the plaintiff and the originals of the same were also produced, compared, verified and returned. The photocopy of the series of certifications(Ex.P2) highlights the credentials of the plaintiff. The plaintiff has filed the sample covers of the defendant's label 'PREMIUM' which has been marked as Ex.P6. The plaintiff's label for the trademark '**PREMIER**' has been marked as Ex.P5. On a comparison of Exs.P5 and P6, it is evident that the



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'PREMIER', as noticed below:-

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a) The font of **'PREMIER'** which is the plaintiff's trademark is identical to the font of the defendant's word mark 'PREMIUM'.

b) Though the word Dolphin is mentioned in the defendant's label, it is described in small letters.

c) Any layman will necessarily get deceived by the defendant's label as found in Ex.P6 to be that of the plaintiff, which is a reputed trademark and who are admittedly in the market using the trademark **'PREMIER'** ever since 1999. There is visual and phonetic similarity between the plaintiff's registered trade and the defendant's trade mark 'PREMIUM'. The usage of the **'PREMIUM'** in the same font as that of the plaintiff will certainly confuse the minds of the general public at large.

Therefore, it is clear that there is deceptive similarity between the plaintiff's registered trademark **'PREMIER'** and that of the defendant's word mark 'PREMIUM'.

7. The defendant has also not entered appearance in the suit and they have already been set exparte by this Court. Even prior to the filing



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they have already been set exparte by this Court. Even prior to the filing of this suit, the plaintiff had issued a legal notice to the defendant on 02.11.2020 which has been marked as Ex.P9. As seen from the legal notice(Ex.P9), the plaintiff had requested the defendant to cease and desist using the word mark 'PREMIUM' and the plaintiff has categorically stated in the said notice that the defendant has copied the plaintiff's trade mark '**PREMIER**'. An undated reply has also been received by the plaintiff's counsel from the defendant's counsel, which has been marked as Ex.P4. As seen from the said reply, though the defendant contends that they have been extensively selling their products by using the word mark 'DOLPHIN PREMIUM', they have not given specific dates with regard to the usage. Admittedly, they have not obtained any registration for their word mark 'DOLPHIN PREMIUM'. Admittedly, they are also using the word mark 'DOLPHIN PREMIUM' which is phonetically and visually similar to that of the plaintiff's trademark used for tissue paper business. Though the defendant contends that they have applied for trademark registration for the brand name 'DOLPHIN' under Application No.3504003, dated 04.03.2017 under Class 16, admittedly, they have not applied for registration in respect of the word mark 'PREMIUM'. Till date, the defendant has also not



'PREMIUM'. This Court has also once again compared the labels of both the plaintiff as well as the defendant and as seen from the said labels, the defendant's label is similar to that of the plaintiff's label as the essential features of the plaintiff's label has been copied by the defendant.

8. This Court has perused and examined the pleadings and the oral and documentary evidence available on record. Though the plaintiff has claimed damages in the suit, i.e. Prayer (c) of the plaint, the same has not been proved by any concrete evidence. Mere assertions are not sufficient. There must be clinching evidence through oral and documentary evidence to prove that the plaintiff has suffered damages on account of the infringement of the plaintiff's trademark by the defendant. Therefore, the question of awarding damages in favour of the plaintiff will not arise. Hence, the relief of damages sought for by the plaintiff has to be rejected by this Court.

9. However, the plaintiff has proved the suit claim insofar as the relief of infringement is concerned, in view of the reasons stated supra.

10. Though the plaintiff in prayer (b) of the plaint has sought for a direction to the defendant to surrender to the plaintiff for destruction of all packaging materials, card board boxes and any other materials in their possession bearing the mark 'PREMIUM', which is identical to the



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possession bearing the mark 'PREMIUM', which is identical to the plaintiff's mark '**PREMIER**', there is no evidence produced by the plaintiff in the form of oral and documentary evidence to prove that the packing materials, card board boxes and any other materials are still in the possession of the defendant. Therefore, the said relief cannot also be granted by this Court and the same has to be rejected. Accordingly, prayer (b) & (c) of the plaint are rejected.

11. For the foregoing reasons, the suit is partly decreed by granting permanent injunction restraining the defendant, their legal representatives, their successors in business, assignees, franchisees, servants or agents from using the Mark 'PREMIUM' or operate business by infringing the Plaintiff's Mark '**PREMIER**' or by use of confusingly similar or any other mark deceptively and identically similar to the Plaintiff's registered Trade Mark '**PREMIER**' or in any other manner whatsoever;

12. The defendant is directed to pay the cost of the suit to the plaintiff.

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Index: Yes/ No

Speaking order / Non speaking order



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APPENDIX

List of Witness Examined on the side of the Plaintiff:

1. P.W.1 – Mr.M.RAGHOTHAMAN

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ABDUL QUDDHOSE, J.

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