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C.S. (COMM. DIV.) No.130 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.S. (COMM. DIV.) No.130 of 2022

and

A. No.2658 of 2022

M/s. Kaleesuwari Refinery Private Ltd.,

Represented by its Manager (Legal)

A. Saravanan

...

Plaintiff

vs.

Sri Vinayaka Agro Industries,

Survey No.44/1, Block 10,

Back to Sisuhospital,

Kandhampatty,

Tamil Nadu – 636 005.

...

Defendant

Prayer : Complaint has been filed under Order IV Rule 1 of the O.S. Rules r/w Order VII Rule 1 of C.P.C. Rules r/w Sections 134 and 135 of Trade Marks Act, 1999 praying for the following judgment and decree :-

i) For a permanent injunction to restrain the Defendant, their men, agents, associates and / or assignees or any person claiming rights from them from **infringing** the Plaintiff's reputed and well known registered Trade Mark "**DHEEPAM**" by using the offending trade Mark "**V RICH DEEPAM OIL**" or any mark or word deceptively similar to the aforesaid Trade Mark of the Plaintiff's for any edible oil marketed by the



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Defendant, their men, agents, associates and / or assignees or any person claiming rights from the Defendant.

ii) For a permanent injunction to restrain the Defendant its men, agents, associates and / or assignees or any person claiming rights from therein from **passing-off** their inferior product, as that of the Plaintiff's **“DHEEPAM”** lamp oil by using the offending words **“V RICH DEEPAM OIL”** or any other words or mark and offending packing Material / Pouch Bottles deceptively similar to the Plaintiff's trade mark **“DHEEPAM”** and Trade dress for **“DHEEPAM”**.

iii) Direct the Defendant their men, agents, assignees, dealers and / or retailers, distributor to surrender to the Plaintiff all offending **“V RICH DEEPAM OIL”** bottle / container / packing materials label, advertising materials hoarding, letter heads office stationery and all other goods containing / bearing offending mark / label **“V RICH DEEPAM OIL”** with distinct color scheme, get up or any other mark visually or phonetically similar to the plaintiff's well known trademark **“DHEEPAM”** label and bottle/container for destruction by an order of this Court and

iv) To pay for the costs of the suit

For Plaintiff

: Mr. Vijayan Subramanian



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JUDGMENT

This suit has been filed for infringement and passing-off in respect of the registered Trade Mark **“DHEEPAM”**. The plaintiff is the proprietor of the aforementioned Trade Mark which is a registered Trade Mark under the Trade Marks Act, 1999.

2. The plaintiff has filed the suit seeking for the following reliefs :-

a) permanent injunction to restrain the defendant from infringing the Plaintiff's reputed and well known registered Trade Mark **“DHEEPAM”** by using the offending Trade Mark **“V RICH DEEPAM OIL”** or any mark or word deceptively similar to the aforesaid Trade Mark of the Plaintiff's for any edible oil marketed by the Defendant and

b) to restrain the defendants from claiming the rights from passing of the plaintiff's product **“DHEEPAM”** lamp oil by using the offending words **“V RICH DEEPAM OIL”** or any other words or mark and offending packing Material / Pouch/Bottles deceptively similar to the Plaintiff's Trade Mark **“DHEEPAM”** and Trade dress for **“DHEEPAM”**.

3. The learned counsel for the plaintiff is not pressing the 3rd relief



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sought for by the plaintiff in the plaint, which is to seek for a direction to surrender to the plaintiff all offending **“V RICH DEEPAM OIL”** bottle/container / packing materials label, advertising materials hoarding, letter heads office stationary and all other goods containing / bearing offending mark / label **“V RICH DEEPAM OIL”** with distinct color scheme, get up or any other mark visually or phonetically similar to the plaintiff's well known Trade Mark **“DHEEPAM”** label and bottle/container for destruction by an order of this Court.

4. Since the plaintiff has given up the 3rd prayer, this Court is not dealing with the same in this judgment.

5. The plaintiff has let in oral and documentary evidence before the learned Master in support of their pleadings in the plaint that the defendant has infringed their Trade Mark and the defendant has passed off their goods as if it is theirs. The plaintiff has also disclosed in the plaint various suits filed by them against various offenders of the plaintiff's Trade Mark **“DHEEPAM”**, and its present status which have been enumerated in paragraph No.18 of the plaint, which is extracted hereunder :-



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S. No.	PRODUCT	C.S. No's	STATUS
1.	Maha Dheepam	407/2015	Disposed
2.	Dheepa Olee	852/2015	Disposed
3.	Swasthik Dheepa Oil	520/2018	Disposed
4.	Dhivya Dheepam	187/2019	Disposed
5.	Maha Dheepam	308/2019	Disposed
6.	Olee Olee Dheepam	309/2019	Disposed
7.	Raha Dheepam	655/2019	Disposed
8.	Sri Deepam	173/2020	Disposed
9.	Deepam	188/2020	Injunction granted
10.	Nandhi Dheepam	250/2020	Injunction granted
11.	Deepam	123/2021	Disposed
12.	Deepam	124/2021	Disposed
13.	SRT Deepam	140/2021	Injunction granted
14.	Deepam	55/2022	Disposed
15.	Deepam	80/2022	Injunction granted
16.	Deepam	81/2022	Injunction granted

6. The plaintiff has also pleaded in the plaint the advertisement expenses incurred by them with regard to their registered Trade Mark “DHEEPAM” in paragraph No.20 of the plaint and the details are as follows :-

Year	Quantity in Metric Tonnes	Value in Crores
2012-13	2,438	27.05
2013-14	3,224	38.31
2014-15	3,564	41.98
2015-16	3,854	45.06
2016-17	3,420	38.27
2017-18	4,033	47.42
2018-19	5,102	60.88
2019-20	4,153	51.81
TOTAL	29,788	350.78



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7. The plaintiff has filed the following documents before the learned Additional Master – IV, which have been marked as Exhibits.

The details of the documents filed by the plaintiff, which have been marked as Exhibits before the learned Additional Master IV, High Court, Madras are as follows :-

Ex.P1 is the printout of the Application for Registration of Trade Mark “Dheepam”, dated 23.04.2012.
Ex.P2 is the printout of the certificate of registration of design No.245127 issued in favour of the plaintiff dated 07.05.2012.
Ex.P3 is the printout of the certificate of registration of Trade Mark No.2320404 issued in favour of the plaintiff's mark “Dheepam”, dated 11.06.2018.
Ex.P4 is the original board resolution passed by the plaintiff dated 17.03.2021.
Ex.P5 is the printout of the certificate of registration of copyright No.A-139256/2021 issued in favour of the plaintiff dated 29.07.2021.
Ex.P6 is the printout of the legal usage certificate for the mark “Dheepam” registered as No.2320404, dated 18.04.2022.
Ex.P7 is the office copy of the legal notice sent by the plaintiff to the defendant along with track and trace dated 08.06.2022.
Ex.P8 is the printout of the comparison table showing “Dheepam” lable and “V Rich Deepam Oil” label

8. As seen from the documents marked as Exhibits, the plaintiff is the registered proprietor of the Trade Mark **“DHEEPAM”** and the certificate of Registration was issued in their favour on 07.05.2012, as seen from Ex.P2. The plaintiff had applied for registration of Trademark **“DHEEPAM”** on 23.04.2012 and the Registration was obtained on



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07.05.2012. Ex.P3 is the certificate of Registration of Trade Mark in

respect of **“DHEEPAM”** issued in favour of the plaintiff. The same has

been issued on 11.06.2018. The copy right in respect of **“DHEEPAM”**

has also been registered in favour of the plaintiff as seen from Ex. P5,

dated 29.07.2021. The legal usage certificate for the Trade Mark

“DHEEPAM”, dated 18.04.2022, which has been marked as Ex.P6 has

been issued in the name of the plaintiff. Prior to the filing of the suit,

the plaintiff has also issued a legal notice to the defendant dated

08.06.2022 which has been marked as Ex.P7. Ex.P8 is the print out of

the comparison table showing **“DHEEPAM”** label and **“V RICH**

DEEPAM OIL”. As seen from the label of the defendant, it is

deceptively similar to the plaintiff's label **“DHEEPAM”**.

9. Section 65-B affidavit has also been filed by the plaintiff with regard to Exs.D1 to D3, D5 to D8.

10. Ex.P8 which contains the offending label of the defendant as well as the label of the plaintiff, which the defendant has infringed is reproduced hereunder :-



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11. As seen from the offending label of the defendant, it is clear that the Trade dress of both the labels are similar and identical in many respects. The plaintiff has also been dealing with the **“DHEEPAM”** Lamp oil from the year 2009. The defendant has also not entered appearance in this suit despite service of suit summons. The suit is of the year 2022. The maximum period of 120 days available for the defendant to file the written statement has also got expired. Therefore, the question of filing of written statement by the defendant at this stage will not arise. The defendant has already been set exparte by this Court. From the oral and documentary evidence available on record, it is clear that the plaintiff has proved the suit claim by establishing its rights as prayed for in the plaint filed in support of C.S. No.130 of 2022. Therefore, the suit is decreed as prayed for in respect of prayer Nos.1 and 2 in the plaint with costs. Insofar as the prayer No.3 in the plaint is concerned, the suit is dismissed, since the plaintiff is not pressing the said relief. Consequently, connected application is closed.

03.10.2023

Index: Yes/ No
Speaking order / Non speaking order
Neutral citation : Yes / No
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APPENDIX

List of Witness Examined on the side of the Plaintiff:

1. P.W.1 – Mr.A. Saravanan

S. No.	Exhibits	Description of documents
1.	P1	Ex.P1 is the printout of the Application for Registration of Trade Mark “Dheepam”, dated 23.04.2012.
2.	P2	Ex.P2 is the printout of the certificate of registration of design No.245127 issued in favour of the plaintiff dated 07.05.2012.
3.	P3	Ex.P3 is the printout of the certificate of registration of Trade Mark No.2320404 issued in favour of the plaintiff's mark “Dheepam”, dated 11.06.2018.
4.	P4	Ex.P4 is the original board resolution passed by the plaintiff dated 17.03.2021.
5.	P5	Ex.P5 is the printout of the certificate of registration of copyright No.A-139256/2021 issued in favour of the plaintiff dated 29.07.2021.
6.	P6	Ex.P6 is the printout of the legal usage certificate for the mark “Dheepam” registered as No.2320404, dated 18.04.2022.
7.	P7	Ex.P7 is the office copy of the legal notice sent by the plaintiff to the defendant along with track and trace dated 08.06.2022.
8.	P8	Ex.P8 is the printout of the comparison table showing “Dheepam” lable and “V Rich Deepam Oil” label



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ABDUL QUDDHOSE, J.

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