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C.S. (Comm. Div) No.136 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.S. (Comm. Div) No.136 of 2022

Hatsun Agro Product Ltd.
Rep. By its Authorised Signatory
P. Vivek

...

Plaintiff

vs.

K. Sarinivas Reddy,
Proprietor of M/s.Balaji Milk Foods,
Having office at
Mallaram (V),
Nizamabad,
Telangana – 503 001.

...

Defendant

Prayer : Complaint has been filed Order VII Rule 1 CPC read with Order IV Rule 1 of High Court O.S. Rules and Section 134 and 135 of the Trade Marks Act, 1999 and Section 7 of the Commercial Courts Act, 2015 prays for judgment and decree ;

A. For a permanent injunction restraining the Defendant, by itself, its servants, agents, legal representatives, distributors or any one claiming through it from in any manner infringing the Plaintiff's registered trademark AROKYA by using the mark SRI AROGYA or any other deceptively similar mark in any manner whatsoever causing infringement to the plaintiff's registered trademark as described in the Schedule to the Complaint.



C.S. (Comm. Div) No.136 of 2022

B. For a permanent injunction restraining the Defendant, by itself, its servants, agents, legal representatives, distributors or any one claiming through it from in any manner whatsoever from passing off and enabling others to pass off the Defendant's business as that of the Plaintiff's by using the mark SRI AROGYA or any other mark or trade name which is deceptively similar or identical to the Plaintiff's trademark AROKYA in any manner whatsoever.

C. For a declaration that the Plaintiff's trademark AROKYA is a well-known mark as recognised under the Trade Marks Act, 1999.

D. Directing the Defendant to surrender to the Plaintiff all the products and stocks with the offending labels, together with the blocks, dies, name boards, sign boards, etc., for destruction.

E. Directing the Defendant to render true and faithful accounts of the profits earned by it through the sale of the products bearing the offending trademark labels and directing payment of such profits to the Plaintiff.

F. Directing the Defendant to pay to the Plaintiff a sum of Rs.5,00,000/- as damages for committing acts of infringement of trademark and passing off.

G. Grant such further or other reliefs as this Hon'ble Court may deem fit and proper under the circumstances of the case.

For Plaintiff	: Ms.Y.K.Aiswarya for M/s.Surana and Surana
For Defendant	: Set exparte



C.S. (Comm. Div) No.136 of 2022

JUDGMENT

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The learned counsel for the plaintiff has made an endorsement in the Court bundle on instructions giving up the reliefs sought for insofar as prayers C,D, E and F found in paragraph No.24 of the plaint. In view of the same, the suit claim insofar as the relief sought in C, D, E and F in paragraph No.24 of the plaint is dismissed as not pressed. Therefore, the plaintiff is restricting its suit claim only in respect of prayers A & B found in paragraph No.24 of the plaint.

2. The suit has been filed for infringement and passing off. The plaintiff adopted and has been using the Trade Mark AROKYA in respect of milk and related products since 1994. The plaintiff has obtained registration for the trademark AROKYA under various classes, more particularly Class 29, Class 30, Class 31 and Class 32 and are in the business of manufacturing and selling products under these classes. According to the plaintiff in the month of January 2022, they were shocked to discover the defendant's intention to launch milk products under the impugned mark SRI AROGYA. The plaintiff immediately sent a cease and desist notice on 11.01.2022 to the defendant calling upon



C.S. (Comm. Div) No.136 of 2022

him to cease and desist from launching his products under the impugned mark SRI AROGYA in the market. According to the plaintiff, despite issuing the cease and desist notice, the defendant has been continuing to use the impugned mark SRI AROGYA in the market. A reminder notice dated 10.03.2022 was also sent by the plaintiff to the defendant once again reminding him to stop using the impugned mark SRI AROGYA. According to the plaintiff, the combination of colour scheme, get up, pictorial depictions and package design adopted by the defendant for his packaging is identical / deceptively similar to the packaging of the plaintiff's products sold under the trademark AROKYA.

3. According to the plaintiff apart from the trade dress, the colour combination of the impugned mark of the defendant is also similar to that of the plaintiff. In the aforementioned circumstances, the present suit has been filed for infringement and passing off. The defendant has been set exparte by this Court on 26.07.2023. Till date, no application has been filed by the defendant to set aside the exparte order.

4. Before the learned Additional Master II, proof affidavit has been filed by the plaintiff's witness by name P.Vivek, who was examined as P.W.1. The following documents were marked as Exhibits on the side of



C.S. (Comm. Div) No.136 of 2022

the plaintiff before the learned Additional Master – II :

WEB COPY

1.	Ex.P1 is the Board resolution of plaintiff company authorizing Mr.P.Vivek to represent the plaintiff company.
2.	Ex.P2 is the photocopy of the incorporation certificates dated 04.03.1986.
3.	Ex.P3 is the website printout of company master data of the plaintiff company dated 23.06.2023.
4.	Ex.P4 is the Trademark legal user certificates (series 1-33)
5.	Ex.P5 is the Chartered Accountant certificate for plaintiff company from the year 1994-1995 to the year 2020-2021.
6.	Ex.P6 is the Chartered Accountant certificate of the plaintiff mark Arokya from the year 2013-2014 to 2020-2021
7.	Ex.P7 is the photocopy of ISO certificates obtained by the plaintiff company dated 04.12.2018.
8.	Ex.P8 is the photocopy of the FSSAI certificate of the plaintiff company dated 09.12.2018 valid upto 05.05.2023.
9.	Ex.P9 is the office copy of Invoices of advertisement expenses of plaintiff company for the brand Arokya.
10.	Ex.P10 is the printout copy of Advertisements/ Pamphlets of the plaintiff company
11.	Ex.P11 is the printout copy of Advertisements published in various news papers and journals.
12.	Ex.P12 is the printout copy of List of distributors of plaintiff product through out India.
13.	Ex.P13 is the printout copy of invoices against the orders made for the plaintiff product from the year 1994
14.	Ex.P14 is the printout copy of Screenshots along with CD of the television advertisement for the mark Arokya
15.	Ex.P15 is the original product package of plaintiff product Arokya
16.	Ex.P16 is the original product package of defendant's product Sri Arogya
17.	Ex.P17 is the printout of defendants FSSAI certificate dated 13.12.2021
18.	Ex.P18 is the cease and desist notice issued by the plaintiff dated 11.01.2022 along with acknowledgment card
19.	Ex.P19 is the reminder cease and desist notice issued by the plaintiff



C.S. (Comm. Div) No.136 of 2022

dated 10.03.2022 along with acknowledgement card.

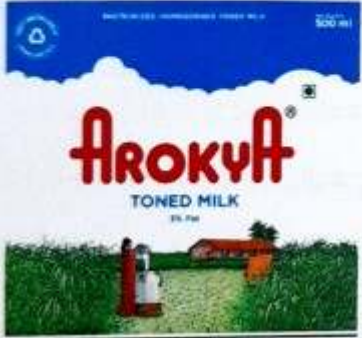
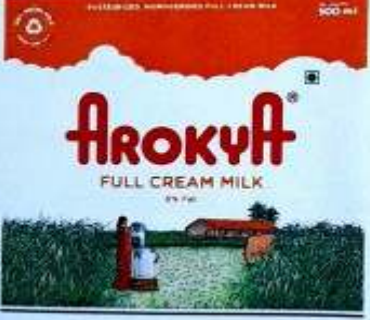
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5. As seen from the aforementioned Exhibits, more particularly Exs.P15 and P16 which gives a comparison between the plaintiff's product package AROKYA as well as the defendant's product package SRI AROGYA, it is clear that the combination of the colour scheme, get up, pictorial depictions and package design adopted by the defendant for his packaging is deceptively similar to the packaging of the plaintiff's product sold under the trade mark AROKYA. The comparison of the product packaging of the plaintiff as well as of the defendant is reproduced herein:-



C.S. (Comm. Div) No.136 of 2022

WEB COPY

Plaintiff's product packaging	Defendant's product packaging
 Plaintiff's Arokyat Toned Milk packaging. The label features a blue header with a recycling symbol and '500 ml'. The brand name 'Arokyat' is in large red letters, followed by 'TONED MILK' and '2% FM'. The illustration shows a woman in a red sari milking a cow in a green field.	 Defendant's SRI Arogya Toned Milk packaging. The label features a blue header with a recycling symbol and '500 ml'. The brand name 'SRI AROGYA' is in red letters, followed by 'Toned Milk'. The illustration shows a green pitcher and a glass on a table with a landscape background.
 Plaintiff's Arokyat Standardized Milk packaging. The label features a green header with a recycling symbol and '500 ml'. The brand name 'Arokyat' is in large red letters, followed by 'STANDARDIZED MILK' and '4.2% FM'. The illustration shows a woman in a red sari milking a cow in a green field.	 Defendant's SRI Arogya Standardized Milk packaging. The label features a green header with a recycling symbol and '500 ml'. The brand name 'SRI AROGYA' is in red letters, followed by 'Standardized Milk'. The illustration shows a green pitcher and a glass on a table with a landscape background.
 Plaintiff's Arokyat Full Cream Milk packaging. The label features a red header with a recycling symbol and '500 ml'. The brand name 'Arokyat' is in large red letters, followed by 'FULL CREAM MILK' and '8% FM'. The illustration shows a woman in a red sari milking a cow in a green field.	 Defendant's SRI Arogya Full Cream Milk packaging. The label features a red header with a recycling symbol and '500 ml'. The brand name 'SRI AROGYA' is in red letters, followed by 'Full Cream Milk'. The illustration shows a green pitcher and a glass on a table with a landscape background.



C.S. (Comm. Div) No.136 of 2022

6. As seen from the comparison, the colour fonts used by the defendant's is similar to that of the plaintiff's registered trade mark AROKYA as well as its products packaging. The colour scheme, getup, pictorial depictions and package design adopted by the defendant copies the colour scheme, get up, pictorial depictions and package design adopted by the plaintiff. There are three colours adopted by the defendant which is identical to that of the plaintiff, who is also using three colours. The plaintiff has obtained Registration for the trade mark AROKYA under various classes more particularly, Class 29, Class 30, Class 31 and Class 32 and are in the business of manufacturing and selling products under these classes, ever since 1994. The Registration Certificate for obtaining Registration for the trademark AROKYA has also been marked as Ex.P4. Ex.P4 also contains the trademark Legal usage certificate (series 1-33). The plaintiff has also issued a cease and desist notice to the defendant, which is dated 11.01.2022, which has been marked as Ex.P18 calling upon the defendant not to use the impugned mark SRI AROGYA. The said notice has also been duly acknowledged by the defendant as seen from Ex.P18. A reminder cease and desist notice has also been sent by the plaintiff which is dated 10.03.2022



C.S. (Comm. Div) No.136 of 2022

which is marked as Ex.P19. The said reminder notice was also served on the defendant as seen from the acknowledgement card which is also marked as Ex.P19. A categorical assertion has been made by the plaintiff that despite receipt of the cease and desist notice, the defendant has been continuing to use the impugned mark SRI AROGYA. The plaintiff is having a huge sales turn over as seen from the averments contained in the plaint as well as from the documents which have been marked as Exs.P5 & P6. Ex.P6 is the sales turnover and the promotional advertisement cost incurred by the plaintiff in respect of the products using the trademark AROKYA alone.

7. After giving due consideration to the oral and documentary evidence placed on record by the plaintiff, this Court is of the considered view that the plaintiff has proved the suit claim, insofar as prayers a & b of the plaint prayers are concerned. The plaintiff has already given up the plaint reliefs insofar prayers C to F are concerned. On account of the infringement of the plaintiff's trademark, the defendant is also liable to pay the costs of the suit.

8. For the foregoing reasons, the suit is partly decreed by granting the following reliefs :-



C.S. (Comm. Div) No.136 of 2022

WEB COPY

a) permanent injunction restraining the defendant or any person claiming through him from infringing the plaintiff's registered trademark AROKYA by using the mark SRI AROGYA or any other deceptively similar mark in any manner whatsoever causing infringement to the plaintiff's registered trademark AROKYA.

b) permanent injunction restraining the defendant or any person claiming through him from passing off and enabling others to pass off the defendant's business as that of the plaintiff's by using the mark SRI AROGYA or any other mark or trade name which is deceptively similar or identical to the plaintiff's trademark AROKYA in any manner whatsoever.

9. The defendant is also directed to pay the cost of the suit.

30.10.2023

Index: Yes/ No

Speaking order / Non speaking order

Neutral citation : Yes / No

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C.S. (Comm. Div) No.136 of 2022

APPENDIX

List of Witness Examined on the side of the Plaintiff:

Mr.P.Vivek as PW1

List of documents marked on the side of the plaintiff :

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C.S. (Comm. Div) No.136 of 2022

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C.S. (Comm. Div) No.136 of 2022

ABDUL QUDDHOSE, J.

vsi2

C.S. (Comm. Div) No.136 of 2022

31.10.2023