



WEB COPY

A.Nos.484 and 485 of 2022
in C.S (COMM DIV) No.157 of 2022

S.SOUNTHAR, J.

These applications are filed by the applicants/plaintiffs seeking injunction restraining the respondent from infringing the registered trademark of the applicants,



Aquatex, Aquasub, Aqua Sub Engineering, Aquapump Industries by using a similar mark “Aquatec”. The applicants also sought for injunction restraining the respondent from passing off its goods as that of the applicants by using a deceptively similar trademark “Aquatec”.

2. The learned counsel for the applicants contended that the applicants are the registered owner of the trademark “Aquatex” and its variations. The earliest registration was obtained by the applicants in the year 1997 and hence the applicants have been using the registered trademark “Aquatex” for more than two decades. The learned counsel further submitted by long usage the applicants have acquired good will and



WEB COPY

reputation among the general public. It is the submission of the learned counsel for the applicants that the respondent adopted an identical trademark namely “Aquatec” with a view to encash on the good-will reputation earned by the applicants by long user of the registered trademark. It is also the submission of the learned counsel for the applicants that the respondent is engaged in passing off its goods as that of the applicants by adopting a deceptively similar trademark. The learned counsel further submitted that “Aquatex” is an invented mark and hence entitled to high standard of protection.

3. The learned counsel for the respondent countered the arguments of the learned counsel for the applicants mainly on the ground that even before the applicants got registration of the word “Aquatex”, the word “Aquatech” was registered in the name of the 3rd party and when an application was made by the applicants seeking registration of the word “Aquatex”, it was objected by the trademark registry by pointing out registration of a similar mark “Aquatech” in favour of a 3rd party. The learned counsel by taking this Court to the explanation submitted by the applicants to the trademark



WEB COPY

registry, which is included in the typed set of papers filed by the respondent submitted that before the trademark registry, the applicants represented as if its trademark “Aquatex” is completely different from earlier trademark registered in favour of the 3rd party namely “Acqutech”. The learned counsel further submitted that nobody can claim exclusive right over the words Aqua and tex and therefore, the present applications filed by the applicants seeking injunction is liable to be dismissed.

4. In support of his contention, the learned counsel for the respondent relied on the following judgment reported in ***Capital Plastic Industries Vs. Kapital Plastic Industries in CDJ 1989 DHC 466.***

5. A perusal of the affidavit filed in support of the injunction applications and the documents in the typed set of papers filed by the applicants would suggest that the applicants are the registered owner of the word mark “Aquatex” *per se* in registration No.762990 in class 7 relating to pumps and motors. The registration was obtained by the applicants as early as on 28.07.1997. The sample sale invoices and sample advertisements



WEB COPY

produced by the applicants along with the typed set of papers would suggest that the applicants have been using the registered trademark “Aquatex” for more than two decades continuously. The chartered accountant's certificate produced by the applicants would suggest the volume of turnover of the applicants. It is also seen from various legal use certificates produced by the applicants, the applicants are registered owner of the trademark “Aquatex”, Label “Aquatex” with red triangle, word mark Aqua Sub, Label “Aqua Group” written in an oval shaped red ring.

6. The judgment relied on by the learned counsel for the respondent in *Capital Plastic Industries Vs. Kapital Plastic Industries* reported in **CDJ 1989 DHC 466** is not applicable to the facts of this case for the simple reason that in the case law cited by the learned counsel for the respondent, the suit was filed for common law remedy of passing off. In the case on hand, the applicants are registered owner of the trademark “Aquatex” and they filed the present suit complaining infringement of registered trademark and seek an interim injunction on that ground apart from the common law remedy of passing off.



WEB COPY

7. The respondent is not the registered owner of the trademark “Aquatec”. It is seen from the averments of the parties that the respondent had applied for the registration of the trademark “Aquatec” and the same was opposed by the applicants before the trademark registry.

8. Though the learned counsel for the respondent contended that earlier the applicants represented before the trademark registry that its trademark “Aquatex” was different from “Aquatech”, the said contention is not very impressive to this Court for the simple reason, the respondent is not the registered owner of the said mark “Aquatech”. If at all, it is for the registered owner of the mark “Aquatech” to raise the said point. The respondent who is not the registered owner of the trademark is not entitled to raise the point with regard to the contention made by the applicants before the trademark registry when it made an application for registration.

9. This Court compared the registered trademark of the applicants available at page 334 of typed set of papers along with the impugned trademark of the respondent available at page 335.



WEB COPY

10. Both the applicants and respondents are engaged in marketing of similar goods namely pumps and motors. The applicant's registered trademark "Aquatex" is phonetically and visually similar to the impugned trademark "Aquatec" of the respondent. The respondent not only adopted a similar trademark "Aquatec", he also adopted similar colour scheme. The applicant's trademark "Aquatex" is written in a red triangle. The applicant's another registered trademark "Aqua group" is written in a oval shaped red ring. The respondent trademark "Aquatec" is also written in a oval shaped red ring.

11. After comparison of the registered trademark of the applicants and the impugned trademark of the respondent, this Court comes to a definite conclusion that the impugned trademark would certainly cause confusion in the minds of the general public having average intelligence and imperfect recollection. This Court already granted an order of interim injunction as prayed for on 22.08.2022 and the same has been extended from time-to-time till today.



WEB COPY

12. In these circumstances, by granting liberty to the respondent to raise all his objections in the main suit, this Court is inclined to make the interim order absolute.

13. Interim injunction granted on 22.08.2022 is made absolute. The applications for interim injunction are disposed of accordingly.

27.06.2023

ub



WEB COPY



8

S.SOUNTHAR, J.

ub

A.Nos.484 and 485 of 2022
in C.S (COMM DIV) No.157 of 2022

27.06.2023