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C.S.(Comm.Div).No.160 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.06.2023

PRONOUNCED ON : 30.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.S.(Comm.Div).No.160 of 2022
and O.A.Nos.486 and 487 of 2022
and A.No.3437 of 2022

- 1.Mr.A.D.Padmasingh Isaac
Proprietor, Aachi Spices and Foods
Old No. 4, New No. 181/1,
6th Avenue Thangam Colony,
Anna Nagar, Chennai – 600 040.
- 2.M/s.Aachi Masala Foods Private Limited
No.1926, 34th Street, I Block,
Ishwarya Colony, Anna Nagar West,
Chennai – 600 040
Represented by its Director
Mr.Ashwin Pandian
- 3.M/s.Heavenly Foods Private Limited
No.1926, 34th Street, I Block,
Ishwarya Colony, Anna Nagar West,
Chennai – 600 040
Represented by its Director
Mrs.Shiny Ashwin

... Plaintiffs

VS



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Aachi Mess
Gandhi Nagar,
5th Street,
Tirupur – 641603

... Defendant

Prayer: Civil Suit is filed under Order IV Rule 1 Original Side Rules and Order VII, Rule 1 of the Civil Procedure Code read with Sections 27 (2), 29, 134 and 135 of the Trade Marks Act, 1999 praying for,

(a) granting a permanent injunction, restraining the Defendant, by himself, his servants, agents distributors, or anyone claiming through him from manufacturing, selling, advertising and offering for sale or providing services using the name '**AACHI MESS**' or any other similar Trade Mark name or similar sounding expression in any media and use the same in name board, invoices, letter heads and visiting cards or by using any other trade mark/name which is in any way visually or deceptively or phonetically similar to the 1st Plaintiff's trade mark/name **AACHI/AACHI CHETTINAD RESTAURANT/AACHI KITCHEN** and use the same in pouches, packets or use the mark in invoices, letters heads and visiting cards or website, internet advertisements as part of their restaurant name any other trade literature or Menu card by using any other trade mark which is in any way visually, or phonetically similar to the Plaintiffs' registered Trade Mark Nos.838786, 1116254, 1479159, 1715718 and 2965624 or in any manner infringing the 1st Plaintiff's registered Trade Marks referred herein.



(b) granting a permanent injunction restraining the Defendant by itself, its agents or servants or anyone claiming through or under him any business marketing, selling advertising using in trade literature, menu card, invoices, name boards, website, internet advertisements the mark/name '**AACHI MESS**' in relation to the Restaurant or with respect to or any other food preparation or on any other business the impugned trademark/name which is in any manner deceptively or phonetically confusingly similar to the Plaintiffs Trade Mark/name **AACHI/AACHI CHETTINAD RESTAURANT/AACHI KITCHEN** or in any other manner pass off their hotel, business or goods as and for that of the Plaintiffs.

(c) directing the Defendant to surrender to the Plaintiffs all the packing material, cartons, advertisement materials and hoardings, letter-heads, visiting cards, office stationery and all other materials containing/bearing the name '**AACHI MESS**' or other identical trade mark used in the pouches and packets bearing the word **AACHI/AACHI CHETTINAD RESTAURANT/AACHI KITCHEN**.

(d) directing the Defendant to render an account of profits made by them by the use of the impugned trademark '**AACHI MESS**' on the service referred and decree the suit for the profits found to have been made by the Defendant, after the Defendant has rendered accounts.

(e) directing the Defendant to pay to the Plaintiffs the costs to the suit, and



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(f) pass such further or other orders, as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Plaintiffs : Mrs.Gladys Daniel
for M/s.C.Daniel

J U D G E M E N T

The plaintiffs herein have come up with this suit seeking permanent injunction restraining the defendant from any manner infringing the 1st plaintiff's registered trade marks 'AACHI/AACHI CHETTINAD RESTAURANT/AACHI KITCHEN'. The plaintiffs also prayed for permanent injunction restraining the defendant from any manner passing off their hotel business/goods as that of the plaintiffs by adopting the mark/name 'AACHI MESS' or any other mark which is deceptively or phonetically similar to that of the 1st plaintiff's registered trade marks 'AACHI/AACHI CHETTINAD RESTAURANT/AACHI KITCHEN'. The plaintiffs also sought for a direction to the defendant to surrender the infringing materials and to render account of profits made by them by using the impugned trade mark.



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2. It is averred by the plaintiffs that the suit was filed by them to protect their registered trade mark 'AACHI' which is synonymous with a variety of spices, condiments and food products. The trade mark 'AACHI' has created for itself an indelible mark in the market with respect to food preparations. The plaintiffs are dealing with 525 different products with the trade mark 'AACHI'. The trade mark 'AACHI' was first conceived and adopted by 1st plaintiff through his proprietary concern Abishek Enterprises in the year 1995. Initially, the 1st plaintiff was engaged in marketing of variety of spices under the trade mark 'AACHI'.

3. The 1st plaintiff is the proprietor of the trade mark 'AACHI' and he has been using the trade mark 'AACHI' through his licensee 2nd plaintiff. The 3rd plaintiff is the licensee of the 1st plaintiff's registered trade mark 'AACHI KITCHEN' and 'AACHI CHETTINAD RESTAURANT'. The trade mark 'AACHI' was first registered in the year 1999. The 1st plaintiff is holding 189 registrations of the trade mark 'AACHI' in various word, label and stylized marks. The 1st plaintiff in order to distinguish his various items of products



from others, adopted the trade mark 'AACHI' for all its products and services.

The expression 'AACHI' has become very popular because of its continuous and substantial usage over a decade. No other person can use the expression 'AACHI' for spices, masalas and other goods or services for which the 1st plaintiff is using the said mark.

4. The 1st plaintiff also acquired International Registration (WIPO) under Madrid Protocol for the trade mark 'AACHI' (word) in Registration No.1437301 under Classes 29, 30 and 43 in 107 Designated Countries. The 1st plaintiff also acquired registration of the trade mark 'AACHI' (device mark) under Madrid Protocol. The 1st plaintiff has honestly adopted the mark 'AACHI' and has put in enormous amount of hard work and labour and invested huge sums of money for advertisement and sales promotional expenses. Because of the efforts made by the plaintiffs, in the minds of the general public, the mark 'AACHI' is associated with the plaintiffs. The 1st plaintiff is the registered owner of the trade mark AACHI/AACHI CHETTINAD RESTAURANT/AACHI KITCHEN under Registration Nos.838786, 1116254 and 1715718 respectively. In June 2022, the plaintiffs



came across the defendant's hotel business under the name 'AACHI MESS', which is a blatant infringement of the plaintiffs trade marks AACHI/AACHI CHETTINAD RESTAURANT/AACHI KITCHEN. The defendant's restaurant name 'AACHI MESS' is identical to the plaintiffs registered trade marks. If the defendant is allowed to carry on business with a name which is identical to that of the 1st plaintiff's registered trade marks, the general public with average intelligence would mistake the defendant's restaurant as that of the 1st plaintiff. The use of the identical mark of the defendant diluted the plaintiffs right in the trade mark 'AACHI'. The continued use of the identical mark by the defendant would cause confusion in the minds of the general public and the same would result in irreparable loss to the plaintiffs. On these pleadings, the plaintiffs sought for the above said reliefs.

5. In spite of service of suit summons, the defendant failed to appear before this Court and hence, it was set *ex parte* on 26.04.2023. Thereafter, the *ex parte* evidence was recorded. On behalf of the plaintiffs, the General Manager (L&S) of the plaintiffs was examined as PW.1 and through him 32 documents were marked as Exs.P1 to P32.



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6. The learned counsel for the plaintiffs by taking this Court to the evidence of PW.1 and exhibits marked on behalf of the plaintiffs, submitted that the 1st plaintiff is the registered proprietor of the trade marks 'AACHI/AACHI CHETTINAD RESTAURANT/AACHI KITCHEN. The 2nd and 3rd plaintiffs are licensed user of the trade marks under the 1st plaintiff. The learned counsel further submitted that the defendant adopted a deceptively similar trade mark 'AACHI MESS' with deliberate intention to cheat and confuse the general public and pass off its products and services as that of the plaintiffs. It is the submission of the learned counsel that if the defendant is allowed to continue its business with the name 'AACHI MESS', which is deceptively similar to the registered trade marks of the 1st plaintiff, it would result in infringement of the statutory rights of the 1st plaintiff and it will cause dilution of reputation of the 1st plaintiff's registered trade marks. Therefore, the learned counsel sought for grant of permanent injunction and other reliefs as prayed for.

7. The plaintiffs' witness PW.1 filed his proof affidavit in respect of the averments contained in the plaint. Ex.P23 is the Legal Use Certificate issued



by the Trade Marks Registry. A perusal of the same would show that the word 'AACHI' *per se* was registered with Trade Marks Registry in the name of the 1st plaintiff as early as 29.01.1999 in Class-30 relating to Masala Powder and Spices. Therefore, by virtue of presumption under Section 31 of the Trade Marks Act, 1999, the 1st plaintiff established that he is the registered owner of the word/trade mark 'AACHI'.

8. Ex.P24 is the Legal Use Certificate issued by the Trade Marks Registry which establish that the 1st plaintiff is the owner of the device mark 'Aachi Chettinad Restaurant' from 03.07.2002. Ex.P25 is the Legal Use Certificate issued by Trade Marks Registry, which establish that the 1st plaintiff is the registered owner of the word mark 'AACHI KITCHEN'. Under Ex.P24 registration of the mark 'Aachi Chettinad Restaurant' was granted under Class-30 in respect of all kinds of food preparations for human consumption. Under Ex.P25 registration of the word mark 'AACHI KITCHEN' was granted under Class-43 in respect of the restaurant services.

9. Exs.P11 to P14 are the Trade Mark License User Agreement between the 1st plaintiff and 2nd plaintiff. These exhibits established that the 2nd



plaintiff is the licensed user of the registered trade marks of the 1st plaintiff.

Ex.P16 is the Trade Mark License user Agreement between the 1st plaintiff and the 3rd plaintiff. The same would establish that the 3rd plaintiff is the licenced user of the registered trade mark of the 1st plaintiff. Ex.P19 is the copy of the International Registration Certificate obtained by the 1st plaintiff.

10. A perusal of Exs.P21 and P22 copies of the sample sales invoices filed by the plaintiffs would establish that the 1st plaintiff has been engaged in the business for nearly 2 decades. Ex.P32 is the photocopy of the defendant's name board. A perusal of the same would establish that the defendant adopted a similar mark 'AACHI MESS' in respect of its restaurant business.

11. As discussed earlier, the 1st plaintiff is the registered owner of the word mark 'AACHI'. Therefore, under Section 29 (5) of the Trade Marks Act, 1999, the adoption of the word 'AACHI' as a part of the defendant's trade name would amount to infringement of plaintiffs trade mark. Therefore, the plaintiffs are entitled to injunction as prayed for in respect of the 1st prayer in the plaint.



WEB COPY 12. The 1st plaintiff by producing the Legal Use Certificate issued by the Trade Marks Registry proved that he is the registered owner of the trade marks 'AACHI/AACHI CHETTINAD RESTAURANT/AACHI KITCHEN'. The oral evidence of PW.1 and the exhibits discussed above established the continuous usage of the registered trade mark by the plaintiffs for nearly 2 decades. The defendant has not appeared before this Court and contested the claim made by the plaintiffs. The adoption of the trade mark 'AACHI MESS', which is phonetically and visually similar to that of the registered trade marks of the 1st plaintiff would cause confusion in the minds of the general public with average intelligence and imperfect recollection.

13. In such circumstances, if the defendant is allowed to use trade mark, which is deceptively similar or even identical to that of the 1st plaintiff's registered trade marks, certainly it would cause irreparable loss and hardship to the 1st plaintiffs. The continued usage of the mark by the defendant would result in dilution of the 1st plaintiff's registered trade mark. Therefore, the plaintiffs are entitled to permanent injunction as prayed for in respect of the



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prayers A and B of the plaint.

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14. This Court has already come to a conclusion that the plaintiffs are entitled to permanent injunction as prayed for. In these circumstances, as a necessary consequence, the defendant is bound to surrender all the infringing articles containing the impugned trade mark 'AACHI MESS' to the plaintiffs as prayed for.

15. This Court has already found that the usage of the impugned trade mark would cause confusion in the minds of the general public and in such circumstances, the defendant is liable to render true account of the profits earned by it by using the impugned trade mark. Accordingly, the plaintiff is entitled to prayer C and D also as prayed for.

16. In the result, the suit is decreed as prayed for in respect of prayers A, B, C and D. In the facts and circumstances of the case, there will be no



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order as to costs. Consequently, the connected applications are closed.

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Index : Yes / No
NCC : Yes / No
dm

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

P.W.1. - Mr.B.Gnanasambandam – General Manager (L&S) of the plaintiffs-company.

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

Sl.No.	EXHIBITS	DESCRIPTION OF DOCUMENTS
1.	P1	The original authorization letters dated 25.03.2023.
2.	P2	The original Board Resolution dated 13.08.2020 and 10.09.2020.
3.	P3	The Printout of list of products manufactured and marketed by the Plaintiffs bearing the trademark AACHI.
4.	P4	The photocopy of the Certificate of incorporation dated 30.06.2006 of Aachi Masala Foods Private Limited. (Compared with original.)
5.	P5	The photocopy of the Certificate of Commercial Tax Registration of Aachi Masala Foods Private Limited dated 10.07.2006. (Compared with original.)
6.	P6	The photocopy of the Dissolution Deed between Mrs. Rani Pandian and the Mr. A.D.Padmasingh Isaac dissolving the partnership firm, Naveen Products dated 31.03.2007. (Compared with original.)
7.	P7	The photocopy of the Certificate of Commercial Tax Registration and Central Sales Tax of Aachi Spices & Foods dated 28.12.2006 and 03.01.2007. (Compared with original.)
8.	P8	The photocopy of the Trade Mark License user Agreement between Mr. A.D.Padmasingh Isaac trading as Aachi Spices and Foods and Aachi Masala Foods Pvt Ltd dated 01.04.2007. (Compared with original.)



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Sl.No.	EXHIBITS	DESCRIPTION OF DOCUMENTS
9.	P9	The photocopy of the Certificate of incorporation of Aachi Spices and Foods P Ltd. Dated 17.03.2010. (Compared with original.)
10.	P10	The photocopy of the Memorandum of Association of Aachi Spices and Foods P Ltd. Dated 06.03.2010. (Compared with original.)
11.	P11	The photocopy of the Trade Mark License user Agreement between Mr. A.D.Padmasingh Isaac and Aachi Spices and Foods Pvt Ltd dated 21.04.2010. (Compared with original.)
12.	P12	The photocopy of the Trade Mark License user Agreement between Mr. A.D.Padmasingh Isaac and Aachi Masala Foods P Ltd dated 21.04.2010. (Compared with original.)
13.	P13	The photocopy of the Trademark License user Agreement between Mr. A.D. Padmasingh Isaac and Aachi Masala Foods P Ltd, dated 04.03.2020. (Compared with original.)
14.	P14	The photocopy of the Trademark License user Agreement between Mr. A.D.Padmasingh Isaac and Aachi Spices and Foods Pvt Ltd, dated 04.03.2020. (Compared with original.)
15.	P15	The Printout of the Certificate of Incorporation of M/s. Heavenly Foods (P) Ltd and Memorandum and Articles of Association dated 01.04.2014 (Section 65B of the Evidence Act, 1872 is filed).
16.	P16	The photocopy of the Trade Mark License user Agreement between Mr. A. D. Padmasingh Isaac, Aachi Spices and Foods and Heavenly Foods (P) Ltd dated 11.08.2014. (Compared with original.)
17.	P17	The Certified copy of the Plaintiffs Advertisement in RITZ Magazine.
18.	P18	The photocopy of the Registration Certificates of the mark AACHI in various countries around the world. (Compared with original.)
19.	P19	The photocopy of the Madrid Protocol Registration in classes 29, 30, 43 with respect to the Trademark AACHI (Word) & (Device) designating 107 & 117 countries valid and subsisting as on date. (Compared with original.)
20.	P20	The Certified copies of the Chartered Accountant certificates.
21.	P21	The Certified copy of the sample sales invoices for the years 2000 – 2020. (Page No.421 to 426, 430 and 431 are compared with original. The other pages are enclosed with certified copies.



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Sl.No.	EXHIBITS	DESCRIPTION OF DOCUMENTS
22.	P22	The Certified copy of the sample advertisement Invoices and expenses for the years 1999 – 2020.
23.	P23	The photocopy of the Legal use certificate of Trade Mark No.838786 in Class 30, dated 29.01.1999 (Compared with original.)
24.	P24	The photocopy of the Legal use certificate of the Trademark No.1116254 in Class 30, dated 03.07.2002 and the trademark No.1116254 is subsequently registered along with legal use certificate also enclosed. (Compared with original.)
25.	P25	The photocopy of the Legal use certificate of the Trademark No.1715718 in Class 43, dated 30.07.2008. (Compared with original.)
26.	P26	The photocopy of the Legal use certificate of the Trademark No.2965624 in Class 43, dated 18.05.2015. (Compared with original.)
27.	P27	The photocopy of the Legal use certificate of the Trademark No.1479159 in Class 30, dated 17.08.2006. (Compared with original.)
28.	P28	The Printout of the order passed by the Trademark Trial and Appellate Board, United States Patent and Trademark office dated 13.09.2016.
29.	P29	The Printout of the order passed by the Australian Trademark Office in an Opposition filed by the 1 st Plaintiff dated 04.06.2021.
30.	P30	The Printout of AACHI KITCHEN Name Board.
31.	P31	The Original AACHI KITCHEN Menu card.
32.	P32	The Printout of the Defendant's name board. (Section 65B affidavit is filed for Ex.P3, Ex.P15, Ex.P28, Ex.P29, Ex.P30 and Ex.P32.)

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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Pre-delivery judgment made in
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