



C.S.(Comm.Div.)No.255 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2023

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.S.(Comm.Div.)No.255 of 2022

and

O.A.Nos.834, 835 & 836 of 2022

Texmo Industries,
A Registered Partnership Firm,
Represented by its Authorized Signatory
Mr.Purushotham Kausik.S
P.B.No.5303,
Gnanmbika Mills P.O.,
Mettupalayam Road,
Coimbatore - 641 029.

Also at
No.259/2, 200 feet bye pass service road,
Vanagaram,
Chennai - 600 095.
Tamil Nadu.

... Plaintiff

Vs

Mr.P.Selvakumar
Proprietor
Trading as Ponkuzhali Pumps
93, Sathy Road,
Veerappanchatram,
Erode - 638 004.



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Also at,
Ponkuzhalli Industries,
Located at 1/3, South Street-01,
Avarampalayam,
Coimbatore - 641 006.

... Defendant

Prayer: This Civil Suit is filed under Order VII Rule 1 of the Code of Civil Procedure, 1908 read with Order IV Rule 1 of Original Side Rules of the Madras High Court, Section 2(1) (C) (xvii) read with Section 7 of the Commercial Courts Act, 2015 and Sections 11, 27, 29, 134, 135 of the Trade Marks Act, 1999, prayed for a Judgment and Decree:-

a) A permanent injunction restraining the defendant, their partners, their employees, officers, servants, agents, and all others acting for and on their behalf from manufacturing, selling, distributing, exporting, advertising, offering for sale, any products and in any other manner, directly or indirectly, dealing with any products in the name of "TECHSUMO" and/or "TEXMO" which is deceptively similar or phonetically identical and visually with colour combination similar to the plaintiff's well-known registered trademark "TEXMO" amounting to an infringement of the plaintiff's registered trademarks bearing number 315049 in class 7, 315050 in class 7, 819813 in class 7, 794420 in class 4, 794425 in class 2, 794426 in class 11, 794451 in class 11, 794432 in class 22, 794433 in class 23, 794464 in class 23, 794434 in class 24, 794438 in class 09, 794417 in class 25, 794465 in class 24, 794418 in class 26, 794441 in class 03, 794442 in class 02, 794424 in class 03,



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794436 in class 19, 794448 in class 14, 794454 in class 26, 794460 in class 19, 3898579 in class 11, 1646256 in class 07.

b) A permanent injunction restraining the defendant, their partners, their employees, officers, servants, agents and all others acting for and on their behalf from manufacturing, selling, distributing, exporting, advertising, offering for sale, and in any other manner, directly or indirectly, dealing with any products in the name of "TECHSUMO" and/or "TEXMO" amounting to passing off.

c) A permanent injunction restraining the defendant, their partners, their employees, officers, servants, agents and all others acting for and on their behalf from using impugned mark "TECHSUMO" and/or "TEXMO" or any mark which is deceptively similar and or phonetically identical and visually with colour combination similar to the plaintiff's well-known registered trademark "TEXMO" in any of the websites, domain names, social media platforms, mobile application and other intermediaries in any language.

d) The defendant be ordered to pay the plaintiff a sum of Rs.25,00,000/- (Rupees Twenty-Five Lakhs) as damages for having committing infringement of the plaintiff's registered trademark, passing off trademark dilution and tarnishment of trademark in respect of the mark "TEXMO".



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e) A preliminary decree be passed in favour of the plaintiff directing the defendant to render true and proper accounts of the profits arising out of the number of sales generated by the defendant in respect of their alleged activities especially sale and export of products bearing the mark "TECHSUMO" and/or TEXMO for their business, after the latter have rendered accounts.

f) To grant order of delivery up of any brochures/printed material and/or any material bearing "TECHSUMO" and/or "TEXMO" which infringes plaintiffs' well known registered trademark "TEXMO".

g) Costs and such other relief as this Hon'ble Court may deem fit, in the circumstances of the case, in the interests of justice and equity.

For Plaintiff : Mr.M.S.Bharath

For Defendant : Mr.K.Karthikeyan

JUDGMENT

The plaintiff has filed this suit for the following relief:

"a) A permanent injunction restraining the defendant, their partners, their employees, officers, servants, agents, and all others acting for and on their behalf from manufacturing, selling, distributing, exporting, advertising,



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offering for sale, any products and in any other manner, directly or indirectly, dealing with any products in the name of "TECHSUMO" and/or "TEXMO" which is deceptively similar or phonetically identical and visually with colour combination similar to the plaintiff's well-known registered trademark "TEXMO" amounting to an infringement of the plaintiff's registered trademarks bearing number 315049 in class 7, 315050 in class 7, 819813 in class 7, 794420 in class 4, 794425 in class 2, 794426 in class 11, 794451 in class 11, 794432 in class 22, 794433 in class 23, 794464 in class 23, 794434 in class 24, 794438 in class 09, 794417 in class 25, 794465 in class 24, 794418 in class 26, 794441 in class 03, 794442 in class 02, 794424 in class 03, 794436 in class 19, 794448 in class 14, 794454 in class 26, 794460 in class 19, 3898579 in class 11, 1646256 in class 07.

b) A permanent injunction restraining the defendant, their partners, their employees, officers, servants, agents and all others acting for and on their behalf from manufacturing, selling, distributing, exporting, advertising, offering for sale, and in any other manner, directly or indirectly, dealing with any products in the name of "TECHSUMO" and/or "TEXMO" amounting to passing off.

c) A permanent injunction restraining the



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defendant, their partners, their employees, officers, servants, agents and all others acting for and on their behalf from using impugned mark "TECHSUMO" and/or "TEXMO" or any mark which is deceptively similar and or phonetically identical and visually with colour combination similar to the plaintiff's well-known registered trademark "TEXMO" in any of the websites, domain names, social media platforms, mobile application and other intermediaries in any language.

d) The defendant be ordered to pay the plaintiff a sum of Rs.25,00,000/- (Rupees Twenty-Five Lakhs) as damages for having committing infringement of the plaintiff's registered trademark, passing off trademark dilution and tarnishment of trademark in respect of the mark "TEXMO".

e) A preliminary decree be passed in favour of the plaintiff directing the defendant to render true and proper accounts of the profits arising out of the number of sales generated by the defendant in respect of their alleged activities especially sale and export of products bearing the mark "TECHSUMO" and/or TEXMO for their business, after the latter have rendered accounts.

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brochures/printed material and/or any material bearing "TECHSUMO" and/or "TEXMO" which infringes plaintiffs' well known registered trademark "TEXMO".

g) Costs and such other relief as this Hon'ble Court may deem fit, in the circumstances of the case, in the interests of justice and equity."

2. The defendant has entered appearance through Mr.K.Karthikeyan, learned Counsel and has filed a memo undertaking not to use the offending Trade Mark/word "TECHSUMO".

3. It is submitted that the website of the defendant will also be changed by removing the offending Trade Mark/word "TECHSUMO".

4. The relevant portion from the memo reads as under:-

"2. It is submitted that suit was numbered in C.S.(Comm.Div.)No.255 of 2022 before this Hon'ble Court, this Hon'ble Court please to issue the summon to defendant and grant the interim injunction against the defendant post the matter on 14.02.2023, in the meanwhile the defendant filed vakalat through their counsel before this Hon'ble Court.



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3. It is submitted that the above suit listed before this Hon'ble Court on 30.01.2023 for extension of interim order, on defendant side submitted that the defendant will not to use the name of the "TECHSUMO" the defendant change the trademark and industries namely "Kuzhali Pumps" and manufacturing by Ponkuzhali Industries. The defendant will not use any name "TECHSUMO" hereinafter.

4. It is submitted that the defendant not interest to use the name of the "TECHSUMO". It is further submitted that the defendant without any condition, the defendant given up the name of "TECHSUMO".

5. This Civil Suit is decreed in terms of the undertaking given by the defendant in the Memorandum of Compromise, with liberty to initiate fresh proceedings, in case, the defendant is found violating the undertaking given in the Memorandum of Compromise.

6. The defendant shall also ensure that the offending Trade Mark /word "TECHSUMO" is deleted from their website, Registry is directed to refund the Court Fee paid by the plaintiff in accordance with the provisions of the Tamil Nadu Court-Fees and Suits Valuation Act, 1955. No costs. Consequently, connected Original Applications are



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closed.
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22.02.2023

Index : Yes/No

Neutral Citation : Yes/No

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