



C.S.(Comm.Div).No.92 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.06.2023

PRONOUNCED ON : 28.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

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1.Aqua Pump Industries
rep by its Managing Partner
Mr. Ramaswamy Kumaravelu
Thudiyalur Post, Coimbatore 641 034
Having their branch office at
New No 10, Old No.26
Errabalu Chetty Street,
Parrys Corner, Chennai – 600 001.

2.Aqua Sub Engineering
rep by its Managing Partner
Mr. Ramaswamy Kumaravelu
Thudiyalur Post, Coimbatore 641 034
Having their branch office at
New No 10, Old No 26
Errabalu Chetty Street,
Parrys Corner, Chennai – 600 001

... Plaintiffs

VS

Vijay Shankar Sharma

... 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, 134 and 135 of the Trade Marks Act, 1999 praying for,

(a) granting a permanent injunction, restraining the Defendant, by itself, their servants, agents distributors, or anyone claiming through them from manufacturing, selling, advertising and offering for sale using the Trade Mark TEXMO / TEXMON as such or prefix or suffix in any Electric Motors Aata Chakki and Agriculture Machines included in Class 7 or in any other goods manufactured and sold by the Defendant or its trading style or in any media and use the same in invoices, letter heads and visiting cards or by using any other trade mark which is in any way visually, or phonetically identical or deceptively similar to the Plaintiffs' registered Trade Mark TEXMO or in any manner infringing the Plaintiffs Registered Trade Mark Nos. 315049 (SP-I), (SP-II) and 315050 (SP-I), (SP-II) renumbered as 2702778, 2702779, 2702780 and 2702781 respectively and other registrations in para 8 of the plaint.

(b) granting a permanent injunction, restraining the Defendant, by its, their servants, agents, distributors, or anyone claiming through them from manufacturing, selling, advertising and offering for sale using the Trade Mark TEXMO / TEXMON as such or with prefix or suffix in any Electric Motors Aata Chakki and Agriculture Machines included in Class 7 or in any other



goods manufactured and sold by the Defendant and its trading style or in any media and use the same in invoices, letter heads and visiting cards or by using any other trade mark which is in any way visually, or phonetically identical or deceptively similar to the Plaintiffs Trade Mark TEXMO or in any manner pass off the Plaintiffs' goods.

(c) directing the Defendant to surrender to the Plaintiffs all the goods, packing materials, cartons, advertisement materials and hoardings, letter-heads, visiting cards, office stationery and all other materials containing/bearing the Trade Mark TEXMON or other deceptively similar to the Plaintiffs' Trademark TEXMO.

(d) directing the Defendant to render an account of profits made by them by the use of the impugned trademark TEXMON on the goods Electric Motors Aata Chakki and Agriculture Machines included in Class 7 and decree the suit for the profits found to have been made by the Defendant, after the Defendant has rendered account.

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

(f) pass such further or other order, 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

For Defendant : No Appearance



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JUDGEMENT

The plaintiffs herein filed a suit for permanent injunction restraining the defendant from infringing their registered Trade Mark ‘TEXMO’ or committing passing off its goods by adopting deceptively similar Trade Mark ‘TEXMO/TEXMON’. The plaintiffs also sought for a direction to the defendant to surrender all the infringing materials and to render account of profits.

2. It is averred by the plaintiffs in their plaint that they are manufactures of different types of electrical motors and pumps. The Managing Partner of the plaintiffs one Mr.Ramaswamy Kumaravelu and his brother late Ramachandran trading as a proprietary concern secured registration of the Trade Mark ‘TEXMO’ with effect from 21st May 1976 in respect of electrical motors pumps included in Class-7. They obtained registration of the word mark ‘TEXMO’ and also device mark,



3. The plaintiffs initially commenced their business as licensed user of the above said two trade marks and later on, due to reconstitution of the firms and on the basis of an agreement between the parties, the plaintiffs become exclusive owners of the trade mark. The same was recognised by the order passed by the Registrar of Trade Marks on 20.04.1998. Therefore, the plaintiffs have become Registered Proprietors of the trade mark 'TEXMO' from 20.04.1998. The trade marks were adopted to distinguish the goods of the plaintiffs and that of the others. Thereafter, plaintiffs obtained various registration of the word, logo and stylised marks with prefix/suffix 'TEXMO'. At present, the plaintiffs are holding registration for 37 trade marks. The plaintiffs have been extensively and continuously using trade marks all over India in respect of the goods allotted to them.



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4. It is further averred in the plaint that plaintiffs have been spending substantial amount for advertisement and other promotional activities in respect of the goods bearing trade mark 'TEXMO'. During May-2021, it came to the knowledge of the plaintiffs that the defendant applied for registration of their trade mark 'TEXMON'. The plaintiffs initiated opposition proceedings in the Trade Mark Registry, Ahmedabad under No.1109293 opposing the defendant's trade mark application. The defendant has adopted the impugned mark just to deceive and confuse the ordinary general public and infringe the plaintiffs intellectual property rights. The defendant has adopted identical trade mark 'TEXMON' in respect of the goods in same class as that of the plaintiffs just for the purpose of exploiting the commercial goodwill of 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, he was set *ex parte* by order dated 25.04.2023. Thereafter, *ex parte* evidence was taken and the Branch Manager of the 2nd



plaintiff was examined as PW.1. Through him, the plaintiffs marked 12 documents as Ex.P1 to P12.

6. The learned counsel for the plaintiffs by taking this Court to the Legal Use Certificates Exs.P2 and P3, Sample Sales Invoice Ex.P6, Sample Advertisement Ex.P7, Chartered Accountant Certificate Ex.P5 and Notice of Opposition filed by the plaintiffs Ex.P12, submitted that the plaintiffs are the registered owners of the trade mark 'TEXMO' and consequently, they are entitled to exclusive use of the same. The learned counsel further submitted that the adoption of the deceptively similar mark by the defendant would amount to infringement of the plaintiff Trade Mark and hence, the plaintiffs are entitled to relief sought for in the suit.

7. A perusal of Ex.P2, Legal Use Certificate issued by the Trade Marks Registry would suggest that the plaintiffs' Managing Partner Ramaswamy Kumaravelu and his brother Ramachandran got registration of the following device mark 'TEXMO' as early as 21.05.1976,



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8. The history data endorsed in the certificate would suggest from 20.04.1998 onwards, the 1st plaintiff has become registered owner of the device mark under Class – 07 in respect of motors and other goods mentioned therein. The Ex.P3 would suggest the 2nd plaintiff is the registered owner of the trade mark,



in respect of goods, submersible motors, submersible pumps and submersible pumpsets.

9. Ex.P6 is the sample sales invoice series from the year 1977 to 2021. A perusal of the same would suggest that the plaintiffs are engaged in the business continuously from the year 1976 in respect of the goods for which



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registration was obtained. Ex.P5 is the Chartered Accountant Certificate. A perusal of the same would suggest that the turnover of the plaintiffs was increased gradually from Rs.84.66 lakhs in the year 1979 - 1980 to Rs.14,291.06 lakhs in the year 2019 - 2020, the same would exhibit huge turnover of the plaintiffs. Ex.P7 series is the paper cutting which contains the advertisement of the plaintiffs in various newspapers. The same would establish continuous usage of the registered trade mark by the plaintiffs for more than three decades. Ex.P11 is the trade mark application of the defendant dated 22.02.2021 wherein the trade mark of the defendant is shown as 'TEXMON'.

10. The registered trade mark of the plaintiffs 'TEXMO' and the mark of the defendant 'TEXMON' are phonetically and visually similar. The Ex.P11 also establish that the defendant adopted the similar mark in the very same class of goods. From the exhibits mentioned above, it is clearly established that plaintiffs and their predecessors have been using the registered trade mark 'TEXMO' for more than 45 years. In these circumstances, adoption of a similar trade mark by the defendant in very same



class of goods would certainly cause confusion in the minds of the general public with average intelligence and imperfect recollection. In the absence of any contra evidence to the oral and documentary evidence let in by the plaintiffs and in the light of the documentary evidence available on record, the suit claim stands proved. Accordingly, the plaintiffs are entitled to decree for injunction as prayed for.

11. In view of the discussions made above, this Court has already come to a conclusion that the plaintiff is entitled to injunction as prayed for. As a necessary consequence, the defendant is not entitled to retain the infringing materials with him. Therefore, the defendant is directed to surrender all the infringing materials containing his impugned trade mark 'TEXMON' to the plaintiff for destruction. Since the plaintiff is found to be the registered owner of the mark 'TEXMO' and the defendant is enjoined from using the similar mark 'TEXMON', he is bound to render true account of profits earned by him by use of the impugned trade mark 'TEXMON'. Therefore, the plaintiff is entitled to decree as prayed for.



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12. In the result, the suit is decreed in the following terms:-

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- (a) The plaintiff is entitled to permanent injunction as prayed for.
- (b) The defendant is directed to surrender all the infringing materials to the plaintiff for destruction.
- (c) The defendant is directed to render true account of profits earned by him through use the impugned trade mark 'TEXMO'.
- (d) In the facts and circumstances of the case, there will be no order as to costs.

28.06.2023

Index : Yes / No
NCC : Yes / No
dm



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

P.W.1. - Mr.R.Prasanna Raghavan – Branch Manager of the 2nd plaintiff.

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

Sl.No.	EXHIBITS	DESCRIPTION OF DOCUMENTS
1.	P1	The Authorization letters dated 02.06.2023.
2.	P2	The photocopy of the Legal Use Certificates of the Trademark Nos.2702778 and 2702780. (Compared with original)
3.	P3	The photocopy of the Legal Use Certificates of the Trademark Nos.2702779 and 2702781. (Compared with original)
4.	P4	The Print out of the Plaintiffs' label.
5.	P5	The Original Chartered Accountant certificate dated 30.08.2021.
6.	P6	(Series) Typed set series No.86 to 119 and series No.121 to 144 are the photocopy of the Sample sales invoice for the years 1977 – 2021. (Original is produced, compared and it is undertaken by the plaintiff that it can be produced as and when required.
7.	P7	The certified copy of the Advertisements for the years 1992-2021.
8.	P8	The certified copy of the Publication in Daily Thanthi informing the 4 th Consecutive Winner of the best export award given by the Government of India 2021. (Ex.P8 certified copy is enclosed with Ex.P7 certified copy)
9.	P9	(Series) Typed set series No.223 to 231, 233, 234, 236, 238 are the Awards for the year 1998 – 2016. (Original is produced, compared and it is undertaken by the plaintiff that it can be produced as and when required.
10.	P10	The photocopy of the Plaintiffs firm Registration Certificate.
11.	P11	The Print out of the Defendant Trade Mark Application No.4768907 dt 05.12.2020 in class 7.
12.	P12	The Print out of the Notice Opposition under No.1109293 in Application No.4768907 dt 05.12.2020. (65B affidavit is filed for Ex.P4, Ex.P11 and Ex.P12.)

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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S.SOUNTHAR, J.

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Pre-delivery judgment made in
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