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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.06.2023

PRONOUNCED ON : 30.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.S.No.4 of 2020

Hatsun Agro Product Limited,
Having registered office at
No.1/20-A, Rajiv Gandhi Salai (OMR),
Karapakkam, Chennai – 600 097.

And also Carrying on its business at
Old.No.AD-83/New No.AD13,
Anna Nagar, Opp:IOB Towers Branch,
Chennai – 600 040.
Represented by its Authorized Signatory

... Applicant/Plaintiff

vs

... Defendant/Respondent

M/s.Riniva Marketing Private Ltd.,
Having Registered Office at
Plot No.62, Road No.2,
Chandeeshwari Colony,
Mansooralood,
Hyderabad,
Telangana – 500 068.
(Amended as per Order dated 15.06.2022 in A.No.2141/2022)



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Prayer: Civil Suit is filed under Order VII Rule 1 CPC r/w Order IV Rule 1 of High Court Original Side Rules and Section 134 and 135 of the trademarks Act, 1999 and Section 7 of the Commercial Courts Act, 2015, praying to,

(a) For permanent injunction restraining the defendant by itself, its agents, servants, distributors or any one claiming through it from using in any manner infringing the plaintiff's trademark AROKYA by exposing for sale or using them or copying/reproducing or causing reproduction of the same in any packaging or literature or any colourable imitation or substantial reproduction thereof in any manner whatsoever or causing infringement of the plaintiff's registered trademark as described in the schedule to the plaint;

(b) For permanent injunction restraining the defendant by itself, its agents, servants, distributors or any one claiming through it in any manner whatsoever from passing off its products as that of the Plaintiff by using the offending trademark "AROGYA ROCK SALT" which are similar, deceptively similar and identical to the Plaintiff's trademark AROKYA or by using any other trademark which is similar, deceptively similar or identical to that of the



Plaintiff's trademark "AROKYA" by manufacturing or selling or offering for sale in any manner advertising the same;

(c) Directing the defendant to surrender to the Plaintiff the entire products with the offending labels, stocks with offending labels together with the blocks and dies, name boards, sign boards etc., for destruction;

(d) Directing the defendant to render true and faithful accounts of the profits earned by them through the sale of the offending rock salt products bearing the offending trademark label and directing payment of such profits to the plaintiff;

(e) Directing the defendant to pay to the plaintiff the cost of the suit;

(f) Pass such other order or orders as this Court may deem fit in the circumstances of the case.

For Plaintiff : M/s.R.Palaniandavan

J U D G M E N T

The plaintiff herein filed a suit for injunction restraining the defendants from infringing the plaintiff's registered trademark "AROKYA" and also for injunction restraining the defendant from



committing passing off its products as that of the plaintiff by using the offending trademark “AROGYA ROCK SALT”. The plaintiff also sought for direction to the defendant to surrender the infringing materials and to render true accounts.

Averment found in the plaint:

2.1. The plaintiff is India's largest private sector dairy engaged in manufacture and marketing of various food and dairy products. The promoter of the plaintiff's company namely Mr.R.G.Chandramohan, established a partnership firm in the year 1970 under the name of M/s.Chandramohan and Company for the manufacture and sale of Ice creams. Subsequently, the plaintiff's company came to be incorporated originally under the name of “Hatsun Foods Private Limited” in the year 1986. The partnership firm of M/s.Chandramohan and Company came to be dissolved and all the assets and liabilities of the firm were transferred to the new company. In the year 1995, the plaintiff changed its name “Hatsun Foods Private Limited” with a new name “HATSUN AGRO PRODUCT LTD.



2.2. The plaintiff diversified into various products like ice

creams, milk, dairy whitener, skimmed milk powder, Agmark Certified Ghee, butter, cooking butter, varieties of curd, Paneer, butter milk, chilled milk and flavored milk through their various brands, such as 'ARUN, HATSUN, AROKYA, IBACO, HATSUN DAIRY INGREDIENTS, SANTOSA, HATSUN, OYALO etc.,

2.3. By virtue of its extensive use of said trademarks, tireless sales promotional efforts and maintenance of high standards, the plaintiff trademarks have become highly popular among the consumers. The annual sales turnover of the plaintiff which was 734.59 lakhs in 1994-95 raised up to Rs.4,76,029.89/- in the year 2018-2019. The plaintiff has been using the trademark “AROKYA” in respect of milk and milk products from the year 1994. The products under the name of “AROKYA” have acquired enormous amount of goodwill and reputation and the trademark “AROKYA” has come to be distinctively identified and associated with the products of the plaintiff. By virtue of extensive and continuous usage, the plaintiff's trademark “AROKYA” has clearly acquired secondary meaning to connote and denote the products of the plaintiff. By efforts of the plaintiff in



2.4. Since the plaintiff's trademark "AROKYA" has any meaning, even if the said trademark is used and adopted on a product which is not being produced and marketed by the plaintiff, the public would always associate the said product with the plaintiff. The said product is also coming from the plaintiff. Therefore, the use of a trademark which is deceptively similar to that of the plaintiff's trademark "AROKYA" by defendant would result in dilution of plaintiff's trademark.

<https://www.mhc.tn.gov.in/judis>



ROCK SALT”, which is deceptively similar to the plaintiff registered trademark “AROKYA”. The legal notice sent to the defendant was returned with an endorsement “addressee left” without instructions.

2.6. The defendant's use of the words “AROGYA ROCK SALT” even without any registration as a trademark would cause disruption and confusion in the mind of the general public. Both the products of the plaintiff and defendant are very common and are purchased by the end consumer in a single visit to the grocery shop. The plaintiff's products are used by the same class of consumers and the products are sold in a similar channel of trade. Any consumer of average intelligence and imperfect memory is bound to associate the product sold by the defendant with the trademark of the plaintiff.

2.7. On these pleadings, the plaintiff filed the above suit seeking permanent injunction as prayed for.



Averments found in the written statement of the defendant:

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3.1. The suit filed by the plaintiff is a sheer abuse of process of Court and law. The suit is intended to cause inconvenience and to harass to the defendant.

3.2. The defendant company was incorporated in the year 2016 and engaged in marketing of various products including Ayurvedic Products, Honey and Himalayan Rock Salt under various trade names and logos. In the year 2019, the defendant began the process of packaging and marketing of natural Himalayan Pink Rock Salt under the name of “RINIVA AROGYA ROCK SALT”. The defendant was aware, the plaintiff engaged predominantly in the sphere of dairy products and confectionery. Though the product of the plaintiff's company has been sold under the trademark “AROKYA” for substantial period of time, the plaintiff cannot claim right to use the trademark “AROKYA” for all products comprised in Class 30 as it got certificate of the registration for the trademark “AROKYA” only in respect of Ice creams, desserts, and confectioneries. Hence, the plaintiff is not entitled to the relief prayed for.



3.3. Though the plaintiff adopted the trademark “AROKYA” in respect of milk and milk products in the year 1994 had applied for registration of trademark “AROKYA” under Class 30 only on 28.01.2013 and got it registered on 12.01.2017 in respect of ice cream, desserts, and confectioneries. Therefore, the claim that the defendant had infringed its trademark by using the word “AROGYA” in the package of its rock salt product is false and an attempt to defeat the rights of the defendant.

3.4. The word “AROKYA” is a common word having distinct meaning across all Indian languages. The defendant used the trade name “RINIVA AROGYA ROCK SALT” in respect of its Himalayan Rock Salt Product only. The trade name of the plaintiff is identified with dairy products and confectioneries, but not with the salt and other products. The registration of the trademark by the plaintiff, in respect of Ice creams, desserts and confectioneries does not extend to salt. The claim of the plaintiff that trademark “AROKYA” has become distinctive and is being associated exclusively with the plaintiff was specifically denied. The products marketed by the plaintiff and defendant are substantially different and therefore, the trademark of the defendant would not cause confusion in the minds of the consumer of average intelligence.



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3.5. Though the names of the trademarks adopted by the plaintiff and the defendant are phonetically similar insofar as “AROKYA/AROGYA are concerned, the trademark along with the logo adopted by the plaintiff and defendant are altogether different and they relate to different products. The plaintiff is not entitled to the relief claimed in the plaint and consequently the suit is liable to be dismissed.

4. On consideration of the pleadings, this Court framed following issues for trial on 27.07.2022:

(i) Whether the mark AROKYA is distinctive and entitled to protection?;

(ii) Whether the goods in relation to which the impugned mark “AROGYA ROCK SALT” are applied are similar to the goods in relation to which the plaintiff applied the mark AROKYA ?;

(iii) Whether the mark AROKYA is a well known mark, which is entitled to protection under Section 29(4) of the trademarks Act, 1999?;



(iv) Whether the plaintiff is entitled to the

injunction relief prayed for in relation to alleged infringement?

(v) Whether the defendant is passing off its

products under the mark “AROGYA ROCK SALT” as products of the plaintiff and whether the plaintiff is entitled to relief in relation thereto?

(vi) Whether the parties are entitled to any

other reliefs?.

During trial, on behalf of the plaintiff, the Assistant Manager (Legal) of the plaintiff company was examined as PW.1 and 20 documents were marked on behalf of the plaintiff as Exs.P1 to P20. On behalf of the defendant no witness was examined.

5. The learned counsel for the plaintiff contended that the plaintiff has been in the business of dairy products from the year 1994. The plaintiff also got the registration of the trademark “AROKYA” and consequently entitled to exclusive user of the same. The learned counsel further submitted that by the continuous, uninterrupted and extensive use of the trademark and effective sale promotional efforts, the plaintiff has



acquired reputation in respect of its products. The registration of the plaintiff mark “AROKYA”, after scrutiny by trademark registry clearly proves that there was no prior mark similar to that of the plaintiff's mark at the time of registration. It is also submitted by the learned counsel though the plaintiff registered various logos, labels etc., with the name “AROKYA” from the year 1994, they got the registration of the word mark “AROKYA” only during year 2013. It is the submission of the learned counsel for the plaintiff, the plaintiff waited for twenty years to build reputation and thereafter applied for registration. It is also submitted by the learned counsel that by extensive, long usage of the trademark “AROKYA” and maintenance of high standard of the product, the plaintiff trademark “AROKYA” acquired distinctiveness. The learned counsel also submitted that the defendant admittedly started using the word “AROGYA” only in the year 2019 knowing very well of the existence of registered trademark “AROKYA”. If the defendant who is a later entrant is allowed to use the word “AROGYA” it will result in dilution of plaintiff's reputation. The learned counsel also submitted that the plaintiff's trademark of “AROKYA” is qualified to be recognized as a well known mark under Section 11 (6) of Trademarks Act and consequently, entitled to protection under Section 29(4) of Trademarks Act.



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6. In support of his contention, the learned counsel for the plaintiff relied on the following judgments:

(i) Cardila Healthcare Ltd., Vs. Cadila Pharmaceuticals Ltd., reported in (2001) 5 SCC 73;

(ii) Corn Products refining Company Vs. Shangrila Food Products Limited, reported in (1960) 1 SCR 968;

(iii) S. Syed Mohideen Vs. P. Sulochana Bai, reported in (2016) 2 SCC 683;

(iv) International Society for Krishna Consciousness (ISKCON) Vs. Iskcon Appaeral Private Ltd., and another, reported in (2020) SCC online Born 729;

(v) Hermes International and another Vs. Crimzon Fashion Accessories Private Limited, reported in (2023) SCC online Del 883;

(vi) Tata SIA Airlines Limited Vs. Union of India, reported in (2023) SCC online Del 3446.

7. Per contra, the learned counsel for the defendant submitted that the trademark of the defendant is “RINIVA AROGYA ROCK



“SALT” and the same is in no way similar to the registered trademark of the plaintiff “AROKYA”. The learned counsel further submitted that the plaintiff is predominantly engaged in marketing of milk and dairy products and whereas, the defendant is marketing entirely different product of “ROCK SALT” and therefore, any protection available to the plaintiff by virtue of registration is confined to the products mentioned in its registration certificate and the same will not extend to the different product namely “ROCK SALT”. The learned counsel further submitted that the actual appearance of the two marks are entirely different that it will not confuse the persons of ordinary intelligence.

8. In support of his contention the learned counsel for the defendant relied on the following judgments:

(i) Nandhini Deluxe Vs. Karnataka Co-operative Milk Producers Federation Limited, reported in (2018) 9 SCC 183;

(ii) Vishnudas Trading AS Vishnudas Kishendas Vs. Vazir Sultan Tobacco Company Limited Vs. Hyderabad and another, reported in (1997) 4 SCC 201.



9. Issue Nos.1 and 3:

It is admitted fact that the plaintiff obtained registration of the word mark “AROKYA” under Class 29 'milk and dairy products'. The defendant is using the mark “RINIVA AROGYA ROCK SALT” in respect of rock salt. Therefore, it is necessary to find out whether the plaintiff trademark “AROKYA” acquired distinctiveness by virtue of long and extensive usage and consequently the plaintiff is entitled to protection in respect of other products also.

10. The expression 'well known mark' is defined by Section 2(1) (zg) of Trademarks Act which reads as follows:

Well-known trade mark, in relation to any goods or services, means a mark which has become so to the substantial segment of the public which uses such goods or receives such services that the use of such mark in relation to other goods or services would be likely to be taken as indicating a connection in the course of trade or rendering of services between those goods or services and a person using the mark in relation to the first mentioned goods or services.”



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11. A trademark which is not distinctive at the inception may acquire a distinctiveness by virtue of its long use. The same can be gathered from proviso to Section 9(1) of Trademarks Act, which reads as follows:

1) The trade marks--

(a) which are devoid of any distinctive character, that is to say, not capable of distinguishing the goods or services of one person from those of another person;

(b) which consist exclusively of marks or indications which may serve in trade to designate the kind, quality, quantity, intended purpose, values, geographical origin or the time of production of the goods or rendering of the service or other characteristics of the goods or service;

(c) which consist exclusively of marks or indications which have become customary in the current language or in the bona fide and established practices of the trade, shall not be registered:

Provided that a trade mark shall not be refused registration if before the date of application for registration it has acquired a distinctive character as a result of the use made of it or is a well-known trade mark.



12. The Section 11(2) of trademarks Act, declares if an earlier mark is well known mark, a subsequent similar mark is not to be registered even in respect of good or services which are not similar, the same reads as follows:

(2) A trade mark which--

(a) is identical with or similar to an earlier trade mark; and

(b) is to be registered for goods or services which are not similar to those for which the earlier trade mark is registered in the name of a different proprietor, shall not be registered if or to the extent the earlier trade mark is a well-known trade mark in India and the use of the later mark without due cause would take unfair advantage of or be detrimental to the distinctive character or repute of the earlier trade mark.

13. The factors which are relevant for the purpose of determining the trademark as a well known are mentioned in Section 11(6) of trademark Act, which reads as follows:

(6) The Registrar shall, while determining whether a trade mark is



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a well-known trade mark, take into account any fact which he considers relevant for determining a trade mark as a well-known trade mark including--

(i) the knowledge or recognition of that trade mark in the relevant section of the public including knowledge in India obtained as a result of promotion of the trade mark;

(ii) the duration, extent and geographical area of any use of that trade mark;

(iii) the duration, extent and geographical area of any promotion of the trade mark, including advertising or publicity and presentation, at fairs or exhibition of the goods or services to which the trade mark applies;

(iv) the duration and geographical area of any registration of or any application for registration of that trade mark under this Act to the extent that they reflect the use or recognition of the trade mark;

(v) the record of successful enforcement of the rights in that trade mark, in particular the extent to which the trade mark has been recognised as a well-known trade mark by any court or Registrar under that record.



14. Section 29(4) of Trademarks Act offers protection to

owner of the registered trademark from infringement even if a similar mark is used in respect of the goods/services which are not similar to those for which the registered trademark under certain circumstances, the same reads as follows:

4) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which--

(a) is identical with or similar to the registered trade mark; and

(b) is used in relation to goods or services which are not similar to those for which the trade mark is registered; and

(c) the registered trade mark has a reputation in India and the use of the mark without due cause takes unfair advantage of or is detrimental to, the distinctive character or repute of the registered trade mark.

15. In the light of the above statutory provisions let us



decide whether the plaintiff's mark "AROKYA" acquired distinctiveness and consequently the plaintiff is entitled to protection in respect of other goods.

16. The authorized representative of the plaintiff's company was examined as PW.1 and he deposed in line with the averments found in the plaint. Ex.P1 is the photocopy of the certificate of incorporation of the plaintiff company in the year 1998. As per the plaint averment and evidence of PW.1., originally the plaintiff was established as a firm in the year 1970 under the name and style M/s.Chandramohan and Company, subsequently in the year 1986, the plaintiff's company came to be incorporated as a Private Company under the name of "HATSUN Food Private Limited". The plaintiff adopted the trademark "AROKYA" in respect of the milk and milk products in the year 1994 itself. A perusal of Exs.P4 and P5 chartered accountant certificates establish the huge volume of turnover of the plaintiff and also the amount spent for the promotion of the trademark "AROKYA".



17. It is seen from Ex.P4-annual turnover of the plaintiff in the year 1994-1995 was Rs.734.59 lakhs. The same increased to Rs.4,76,029.89/- in the year 2018-2019. The same would suggest the huge volume of turnover and the amount spent by the plaintiff towards promotion of trademark “AROKYA” for nearly three decades from 1994. Ex.P7 series is the various trademark certificates obtained by the plaintiff in respect of its trademark “AROKYA” regarding various logo, label in class 29, 30, 31 and 32. The earliest device mark obtained by the plaintiff dates back to 14.06.1995.

18. Though the plaintiff obtained various logos and labels for its trademark “AROKYA”, it waited for nearly 20 years for reputation to build up and got registration of the trademark “AROKYA” only in the year 2013 as seen from Ex.P7-series. Ex.P10 is the list of distribution channels of the plaintiff's product in various places in the States of Tamil Nadu, Andhra Pradesh, Telangana, Karnataka, Goa etc. A perusal of Ex.P10 would suggest that the plaintiff has got extensive network of distribution channels. It shows the wide spread popularity of the plaintiff trademark “AROKYA” and its products.



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19. The exhibits mentioned above categorically established that the plaintiff has been using trademark “AROKYA” for nearly three decades and it has got widespread reach in various States in India. The chartered accountant certificate mentioned above establishes a huge turnover and the investment made by the plaintiff for promoting the trade name and the profit.

20. Ex.P7-series of trademark registration certificates obtained by the plaintiff in various labels, logos and also for the trademark “AROKYA” would suggest the efforts taken by the plaintiff to protect its rights in respect of the trademark “AROKYA”. The evidence of PW.1 coupled with the above said exhibits would establish that the plaintiff has obtained multiple registration for its trademark “AROKYA”.

21. It is seen from Ex.P7 trademarks certificate filed by the plaintiff that it not only got registration for the trademark “AROKYA” in respect of milk and dairy products but it also got registration for various food items like Meat, Fish, Poultry, Dried and Cooked Foods, Fruits and



Vegetables, Jellies, Jams, Fruit Juice, Edible Oil, Eggs, Grains, Malt, Fresh Fruits, Seeds, Fruit Drinks, Syrups, etc.

22. It is clear from the evidence available on record that initially the plaintiff started their business in milk and dairy products and subsequently diversified to various food products.

23. Therefore, it can be safely concluded that the trademark “AROKYA” has become synonymous with the food product originating from the plaintiff and the use of similar mark by any person in respect of the food products would be identified with the plaintiff's name and cause confusion in the mind of the general public. The same would result in dilution of plaintiff's reputation and its trademark.

24. The comparison of the defendant's infringing trademark exhibited under Ex.P12 with the plaintiff's registered trademark would suggest that the defendant adopted the word “AROGYA” by replacing the letter “K” with the letter “G”. The plaintiff's word “AROKYA” and the defendant's word “AROGYA” are phonetically identical and visually similar.



Merely because the defendant replaced the letter “K” by “G”, the ordinary general public would not distinguish both the trademark.

25. The learned counsel for the defendant contended that the defendant's trademark is “RINIVA AROGYA ROCK SALT” and therefore, if the word “AROGYA is taken into consideration with the prefix and suffix, it would create lot of difference. The plaintiff has got registration of the trademark “AROKYA” from 28.01.2013 as seen from Ex.P7.

26. Ex.P12 is the defendant's trademark “RINIVA AROGYA ROCK SALT”, the prefix RINIVA is printed in a different colour and outside white ring with the mark “TM”. The word “AROKYA” is printed within the white ring as in the case of plaintiff's product. The only difference is replacement of the letter “K” by “G”. The suffix “ROCK SALT” refers to a food product. As seen earlier, the plaintiff got registration of the trademark “AROKYA” in respect of various food products. Even though the plaintiff does not obtain registration in respect of rock salt, the fact remains that the same is also a food product. When the suffix “ROCK SALT” is deceptively



synonymous with food products certainly it will cause confusion in the minds of the general public with ordinary intelligence and imperfect recollection.

There is every possibility that a person of ordinary intelligence will be induced to believe that defendant's product "AROGYA ROCK SALT" is also a product of the plaintiff which has registered trademark "AROKYA". Therefore, this Court comes to a conclusion that continued use of word "AROGYA" by the defendant would cause dilution of plaintiff's trademark and reputation. Hence, the act of defendant in adopting the trademark which has got deceptive similarity with the plaintiff's registered trademark would amount to infringement of plaintiff's trademark within the meaning of Section 29(4) of trademark Act.

27. The learned counsel for the defendant by relying on the following judgment reported in *Nandhini Deluxe Vs. Karnataka Co-operative Milk Producers Federation Limited, reported in (2018) 9 SCC 183* submitted that the plaintiff has not obtained registration in respect of rock salt and hence merely because plaintiff obtained registration of the trademark "AROKYA" in respect of certain goods it cannot claim monopoly over the other goods in the same class. In *Nandhini Deluxe* case cited



supra, the respondent therein engaged in selling of milk product alone. On the other hand, the appellant therein engaged in the business of selling of food stuffs in its restaurant. In the case on hand, the plaintiff got registration of the word “AROKYA” in respect of not only dairy and dairy products but in respect of variety of food items as mentioned earlier. The defendant herein adopted similar trademark and started marketing a food product namely “ROCK SALT”. Therefore, possibility of the public associating the product of the defendant with the trademark of the plaintiff is much more in this case. Further in *Nandhini Deluxe case*, the respondent therein started using the mark *Nandhini* for milk products in the year 1985. As against the same, the appellant therein adopted the trademark “*Nandhini*” in respect of its goods from the year 1989. Whereas, in the case on hand, the plaintiff has been using the mark “AROKYA” from 1994 and it got registration of the trademark in the year 2013. The defendant has come to the market only in the year 2019, after plaintiff established the mark for more than 25 years. Therefore, the *Nandhini Deluxe case* cited supra by the learned counsel for the defendant would not help the defendant in anyway.



28. In view of the discussions made earlier, I hold that the trademark of the plaintiff “AROKYA” has acquired distinctiveness by long and extensive usage and as a consequence it is entitled to protection under Section 29(4) of trademark. The issue Nos.1 and 3 are answered accordingly in favour of the plaintiff.

Issue No.2:

29. As discussed earlier, the plaintiff got registration of the trademark “AROKYA” not only in respect of dairy and dairy products it obtained registration of its trademark “AROKYA” in respect of various food products like ice creams, milk, dairy whitener, skimmed milk powder, Agmark Certified Ghee, butter, cooking butter, varieties of curd, Paneer, butter milk, chilled milk and flavored milk through their various brands, such as 'ARUN, HATSUN, AROKYA, IBACO, HATSUN DAIRY INGREDIENTS, SANTOSA, HATSUN, OYALO etc.,

30. Though the plaintiff has not obtained the registration in respect of the product “ROCK SALT”, the fact remains that “ROCK SALT” is also a food item available in very same trade channels in which the food



products of the plaintiff are also available. Therefore, I hold the rock salt marketed by the defendant is similar to the products marketed by the plaintiff.

Issue Nos.4 and 5:

31. In view of the conclusion reached by this Court to issue Nos.1 and 3, the plaintiff is entitled to the relief of injunction against infringement and passing off as prayed for.

Issue No.6:

32. The plaintiff is entitled to the decree for injunction in respect of prayer (a) and (b) of the plaint. In view of the discussions made earlier, the defendant is not entitled to possess the infringing materials with offending trademark “AROGYA ROCK SALT” and consequently, the defendant is directed to surrender the infringing materials to the plaintiff for destruction.

33. In view of the findings reached by this Court that the defendant is guilty of infringing plaintiff's registered trademark, the defendant is liable to render the true accounts of its profits earned by use of infringing



trademark. Accordingly, the plaintiff is also entitled to prayer (c) and (d) made in the plaint. In the facts and circumstances of the case, the defendant is directed to pay the cost of the suit to the plaintiff.

34. In nutshell:

(a) The plaintiff is entitled to decree for permanent injunction in respect of prayer (a) and (b) of the plaint;

(b) The defendant is directed to surrender the infringing materials to the plaintiff for destruction;

(c) The defendant is directed to render true accounts of its profits earned by it through the sale of infringing products;

(d) The defendant is directed to pay the cost of the suit to the plaintiff.

30.06.2023

Index : Yes / No

NCC : Yes / No

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**List of witness examined on the side of the plaintiff:-**

P.W.1. Mr.Muthunathan – Authorized Signatory of the Plaintiff-Company

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

Sl. No.	EXHIBTS	DESCRIPTION
1.	Ex.P1	Photocopy of the Incorporation Certificate of the plaintiff company of the year 1998 (original seen and returned)
2.	Ex.P2	Photocopy of the registration of Branch Certificate issued by the Government of Tamil Nadu, Commercial Taxes Department dated 06.08.2008 (Original seen and returned)
3.	Ex.P3	Photocopy of the board resolution of plaintiff company authorizing Mr.B.Muthunathan to represent the plaintiff company dated 09.02.2016
4.	Ex.P4	Photocopy of the Chartered Accountant Certificate for Annual Sales turn over and Sales Promotion Expenses for the financial years 1994-95 to 2018-2019 dated 15.05.2019 (Original seen and returned)
5.	Ex.P5	Series of photocopies of the Chartered Accountant Certificates for Annual Sales turnover and Sales promotion AROKYA brand from the financial years 2013-14 to financial years 2018-2019 dated 17.03.2016 to 15.05.2019 (original seen and returned) (12 pages)
6.	Ex.P6	Series of ISO certificate dated 04.12.2018 (original seen and returned) and photocopies of ISO Certificate bearing registration No.1251044379/10 TMS, registration No.1251044379/12 TMS, ISO certificate bearing ISO NO.22000:2005, certificate bearing certificate No.158691-2014-AFSMS-IND-RvA, Certificate bearing certificate No.154694-2014-FSMS-IND-RvA. ISO certificate dated 27.09.2015, ISO Certificate No.9001:2008 and ISO certificate dated 12.02.2016
7.	Ex.P7	Online printout of trademark certificates obtained by the plaintiff for their trademark AROKYA (Affidavit under Section 65B of Indian Evidence Act is produced)
8.	Ex.P8	Printouts of the invoices for advertisement expenses incurred by the plaintiff company from the period 2000 to 2013 (Affidavit under Section 65B of Indian Evidence Act is produced)



Sl. No.	EXHIBITS	DESCRIPTION
9.	Ex.P9	Screenshots of the television advertisements of the plaintiff company (Affidavit under Section 65B of Indian Evidence Act is produced)
10.	Ex.P10	Printout of the list of distribution channel (Affidavit under Section 65B of Indian Evidence Act is produced)
11.	Ex.P11	Printout of the plaintiff's product package (Affidavit under Section 65B of Indian Evidence Act is produced)
12.	Ex.P12	Printout of the defendant's product package (Affidavit under Section 65B of Indian Evidence Act is produced)
13.	Ex.P13	Series of photocopies of the FSSAI Certificates obtained by the plaintiff for its various plants (36 pages)
14.	Ex.P14	Original return cover of the cease and desist notice issued on behalf of the plaintiff dated 29.08.2019
15.	Ex.P15	Office copy of the cease and desist notice issued on behalf of the plaintiff dated 29.07.2019
16.	Ex.P16	Series of photocopies of the legal user certificates obtained by the plaintiff for its trademark AROKYA from 1995 to 2014 (Original seen and returned)
17.	Ex.P17	Series of printouts of updated FSSAI Certificates obtained by the plaintiff for its various plants from 09.12.2018 to 03.06.2021 (54 pages)
18.	Ex.P18	Series of photocopies of the invoices raised against orders made for the plaintiff's product AROKYA from 1992 to 2021 (marked subject to objection) (142 pages)
19.	Ex.P19	Series of photocopies of the updated list of distribution channels (Affidavit under Section 65B of Indian Evidence Act is produced) (100 pages)
20.	Ex.P20	Compact Disk (not viewed)

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 Order made in
C.S.No.4 of 2020

30.06.2023