



WEB COPY

C.S.(Comm.Div.) No.12 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.07.2024

CORAM:

THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

C.S. (Comm. Div.) No.12 of 2024

M.Anees Ahmed
Sole Proprietor,
M/s.Ambur Star Briyani,
Having its office at No.116/1,
Arcot Road, Vadapalani,
Chennai – 600 026.

... Plaintiff

Vs.

Star Fast Food,
No.24, Thiru.Vi.Ka.Road,
Express Estate, Royapettah,
Chennai – 600 014.

... Defendant

Civil Suit is filed under Order VII Rule 1 Civil Procedure Code read with Order IV Rule 1 of the High Court Original Side Rules and Section 134 and Section 135 of the Trade Marks Act, 1999, praying for a judgment and decree against the defendant:

a) granting a permanent injunction restraining the defendant, their men, servants, agents or anyone claiming through or under them from in any manner infringing the plaintiff trademark and trading style “AMBUR STAR



WEB COPY

BRIYANI” by using the offending Trademark and Trading style “STAR FAST FOOD” or any other mark or marks which are similar or in any way deceptively similar to or a colorable imitation of the plaintiffs Trademark “AMBUR STAR BRIYANI”.

(b) granting a permanent injunction restraining the defendant, their men, servants, agents or anyone claiming through or under them from in any manner passing-off the plaintiff trademark and trading style “AMBUR STAR BRIYANI” by using the offending trademark and trading style “STAR FAST FOOD” or any other mark or marks which are similar or in any way deceptively similar to or a colourable imitation of the plaintiffs trademark “AMBUR STAR BRIYANI”.

(c) directing the defendant to surrender the plaintiff the entire stock of unused offending goods with Trade Mark “STAR FAST FOOD” with name boards, labels, wrappers, boxes, covers, bags, packets, cartons, bills, advertisements, materials, reports, envelopes, brochures, printing blocks, etc., bearing the offending trademark for destruction.



WEB COPY



d) directing the defendant to pay the plaintiff the costs of the suit.

For Plaintiff : Mr.Vijayan Subramanian

For Defendants : Set *ex parte* on 16.02.2024

JUDGMENT

The plaintiff has filed this Civil Suit seeking permanent injunction restraining the defendant from in any manner infringing and passing off the plaintiff's trademark and trading style “AMBUR STAR BRIYANI” by using the offending Trademark and Trading style “STAR FAST FOOD” and to direct the defendant to surrender the entire stock of unused offending goods with trademark “AMBUR STAR BRIYANI” for destruction.

2. It is the case of the plaintiff that in the year 1890, the great - grandfather of the plaintiff has started his own hotel under the name “AMBUR STAR BRIYANI” and was serving Biriyanis at Ambur town. After the demise of plaintiff's great-grandfather in the year 1934, his son Khursheed continued the business and as on today his sons Muneer Ahmed and Anees Ahmed, the plaintiff herein, are running the business under the name “AMBUR STAR BRIYANI”. The trademark registry has issued the



certificates of registration on 27.01.2017 and 01.08.2018. Due to their long, continuous and uninterrupted use of the trademark “AMBUR STAR BRIYANI”, it has come to be associated exclusively with the plaintiff. The food preparations made and served in plaintiff's hotel has acquired enormous popularity throughout Tamil Nadu and other states. The name “AMBUR STAR BRIYANI” is so popular that it has become the household name throughout Tamil Nadu and there is extensive reference to this name in TV shows and chat shows.

2.1 To the shock and surprise, the plaintiff came to know that the defendant is running hotel in the name “STAR FAST FOOD” to deceive the general public and to make them believe that the food preparations served at the defendant's place has the connection with the plaintiff's hotel and the defendant is associated with the plaintiff. If the defendant is allowed to continue the illegal acts in adopting the plaintiff's celebrated trade mark and vend food preparations under the offending trademark, the plaintiff would be put to very serious loss, hardship and injury. The plaintiff's hotel is registered before the concerned authority and the rights acquired by the plaintiff under the said registered trade mark would be absolute and no one except plaintiff can have exclusive right of use of such trade mark and now



the defendant is infringing the plaintiff's trademark which is not permissible under law and the plaintiff is entitled to get an injunction restraining the defendant from using the offending trade name "STAR FAST FOOD".

3. The learned counsel for the plaintiff submitted that the defendant had commenced adopting identical or deceptively similar trademark and trading style "AMBUR STAR BRIYANI" in respect of their hotel business only in order to deceive the general public and to make them believe the food preparations served at the defendant place has the connection with the plaintiff's hotel and the defendant is associated with the plaintiff. The defendant has no manner of right to adopt the use the said offending trademark. If the defendant is allowed to continue the illegal acts in adopting the plaintiff's trademark and vend food preparations under the offending trademark, the plaintiff would be put to very serious loss and hardship. There is also danger of the public being cheated by the defendant by adopting the offending trademarks by misleading the public to believe the food preparations being sold by the defendant in connecting with the plaintiff. The acts of the defendant also constitute criminal offences under the Trademark Act, 1999.



WEB COPY



3.1 The learned counsel for the plaintiff further submits that since the defendant is continuing to use the trademark name of the plaintiff's hotel, the plaintiff was constrained to issue a legal notice dated 03.10.2023 to stop the usage of the trademark "STAR". However, the defendant had refused to accept the legal notice on 06.10.2023 and the same was returned back on 07.10.2023. Hence, the present suit has to be decreed with costs.

4. Despite summons being served on the defendant, they have not chosen to contest the matter. Hence, the defendant was set *ex parte* by this Court on 16.02.2024.

5. In order to prove the case of the plaintiff, the Authorised signatory of the plaintiff is examined as P.W.1. He had also filed a proof affidavit by reiterating the contents of the plaint filed in support of this suit. Through PW1, Exs.P1 to P22 were marked.

6. Ex.P1 is the original authorization letter dated 24.04.2024. Ex.P2 is the certificate issued by the labour department dated 31.12.2003 and Ex.P3 is the certificate of registration issued by the Commercial Tax Officer dated



WEB COPY



04.05.2005. Ex.P4 is the photocopy of the acknowledgment issued by the department of industries and commerce dated 12.10.2008. Ex.P5 is the fire service license issued by the fire and rescue service department and Ex.P6 is the license issued by the corporation of Chennai. Exs.P7 is the receipt issued by BSNL dated 10.08.2009. Exs.P9 and P10 are the certificates of registration issued by the Commercial Tax department. Exs.P11 & P12 is the acknowledgment and certificate issued by the Department of Industries and Commerce. Ex.P14 is the certificate issued by Bharat Sevak Samaj and Ex.P15 is the trademark registration certificate. Exs.P20 to P22 are the photographs of plaintiff and defendant hotel and the comparison chart of both hotels respectively.

7. The defendant neither challenged the averments in the plaint nor challenged the proof affidavit of the plaintiff. Upon hearing the learned counsel for the plaintiff and on analysis of the oral and documentary evidence adduced on the side of the plaintiff, it is clear that the plaintiff has proved its case.



WEB COPY

bkn



C.S.(Comm.Div.) No.12 of 2

8. In view of the same, the Civil Suit is decreed with costs.

02.07.2024

(1/2)



ANNEXURE

Plaintiff's witness: P.W.1 – Mr.M.Ravi

WEB COPY

Documents exhibited by the plaintiff:

SNo	Exhibit	Description of the document
1	Ex.P1	Original authorization letter dated 24.04.2024
2	Ex.P2	Photocopy of the certificate issued by labour department dated 31.12.2003
3	Ex.P3	Photocopy of the certificate of registration issued by the Commercial Tax Officer dated 04.05.2005
4	Ex.P4	Photocopy of the acknowledgment issued by the department of industries and commerce dated 12.10.2008
5	Ex.P5	Photocopy of the fire service license issued by the fire and rescue service department dated 23.02.2009
6	Ex.P6	Photocopy of the licence issued by the corporation of chennai dated 12.06.2009
7	Ex.P7	Photocopy of the receipt issued by BSNL dated 10.08.2009
8	Ex.P8	Photocopy of the bill issued by Shree Traders dated 13.06.2011
9	Ex.P9	Photocopy of the certificate of registration (Form D) issued by Commercial Tax Department dated 16.10.2012
10	Ex.P10	Photocopy of the certificate of registration (Form B) issued by Commercial Tax Department dated 16.10.2012
11	Ex.P11	Photocopy of the acknowledgment issued by the department of industries and commerce dated 04.11.2013
12	Ex.P12	Photocopy of the certificate issued by the department of industries and commerce dated 04.11.2013
13	Ex.P13	Photocopy of the ISO certificate dated 17.10.2015
14	Ex.P14	Photocopy of the certificate issued by Bharat Sevak Samaj dated 21.02.2017



15	Ex.P15	Printout of the trademark registration certificate dated 01.08.2018
16	Ex.P16	Printout of the article issued in Kungumam Magazine about Ambur Star Briyani dated 15.02.2019
17	Ex.P17	Photocopy of the ISO Certificate issued for the present assessment year dated 14.09.2020
18	Ex.P18	Photocopy of the Udayam Registration Certificate dated 19.09.2020
19	Ex.P19	Office copy of the legal notice issued by the plaintiff to defendants dated 03.10.2023
20	Ex.P20	Printout of the photograph of the plaintiff hotel
21	Ex.P21	Printout of the photograph of the defendant hotel
22	Ex.P22	Printout of the comparison chart of the plaintiff and the defendant hotel

Defendants' witness: Nil

Documents exhibited by the Defendant: Nil

02.07.2024
(2/2)



WEB COPY



C.S.(Comm.Div.) No.12 of 2

P.VELMURUGAN, J.

bkn

C.S.(Comm.Div.) No.12 of 2024

02.07.2024