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C.S.No.269 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2024

CORAM

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

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P.M.Palani Mudaliar & Co.,
a registered partnership firm,
rep. By its Managing Partner
Mr.P.Pandian,
36, Coral Merchant Street,
Mannady, Chennai – 1.

.. Plaintiff

-VS-

M/s.Abdul Hafiz Lungi Merchant,
86/10, Rabindra Sarani,
Kolkata – 700073.

.. Defendant

PRAYER: Civil Suit is filed under Order IV Rule 1 of High Court
O.S. Rules and Order VII Rule 1 of CPC read with Sections 27, 28, 29, 134
& 135 of the Trademarks Act, 1999, praying:-

(a) a perpetual injunction restraining the defendant, by themselves,



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their proprietor/partners as the case may be, men, servants, agents, dealers, distributors, stockists, wholesalers, retailers, representatives or any one claiming under them from in any manner infringing the plaintiff's registered trademark 450 BRAND device by use of an identical trademark 450 BRAND or any mark similar to plaintiff's registered trademark or in any other manner whatsoever;

(b) a perpetual injunction restraining the defendant, by themselves, their proprietor/partners as the case may be, men, servants, agents, dealers, distributors, stockists, wholesalers, retailers, representatives or any one claiming under them from in any manner passing off and enabling others to pass off the defendant's lungies, handkerchief, handloom, textile goods as and for the plaintiff's lungies, hand kerchief, handloom, textile goods by use of the trademark 450 BRAND or any other mark deceptively similar to the plaintiff's trademark 450 BRAND in any manner whatsoever;

(c) the defendant be ordered to surrender to plaintiff for destruction of all lungies, labels, dyes, blocks, moulds, screen prints, packing materials and other materials bearing the identical trademark 450 BRAND or any trademark similar to plaintiff's trademark 450 BRAND.



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(d) the defendant be ordered and decreed to pay to the plaintiff a sum of Rs.10,00,000/- as damages for acts of infringement of trademark and passing off committed by the defendant by manufacture and sale of lungies bearing the trademark 450 BRAND;

(e) a preliminary decree be passed in favour of the plaintiff directing the defendant to render accounts of profits made by use of trademark 450 BRAND and a final decree be passed in favour of the plaintiff for the amount of profits thus found to have been made by the defendant after the latter have rendered accounts; and

(f) for costs of the suit.

For Plaintiff : Ms.Vandana Jain
for Mr.Arun C.Mohan

Defendant is set exparte



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JUDGMENT

The suit has been filed for infringement, passing off and damages.

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2. The plaintiff is a manufacturer of textile goods, which includes lungies, handkerchiefs, vests, briefs and various other textile products. They claim that their products are being sold throughout India and in Abroad as well.

3. The plaintiff adopted a distinctive trademark “450 BRAND” in the year 1999 for Lungies. They have also obtained registration of their distinctive trademark “450 BRAND” under Trademark No.839959, dated 05.02.1999 in Class 24. They have renewed the said trademark registration periodically and is valid till date. The plaintiff is also registered proprietor of artistic work “450 BRAND” label in blue, white and yellow colour scheme with blue, red and black lettering. According to the plaintiff, the distinctive “450 BRAND” label was first published in the year 1999 and has been continuously published since then. In order to protect their rights in the distinctive 450 BRAND label, the plaintiff has registered the same under No.A-59634/2001, dated 16.08.2001. The sale figures of the plaintiff's

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Lungies sold under the trademark “450 BRAND” for the last 10 years are as follows:-

<i>Year</i>	<i>Amount in Rs. (approx)</i>
2009-2010	14,47,200.00
2010-2011	39,94,043.00
2011-2012	2,98,404.00
2012-2013	2,87,100.00
2013-2014	1,29,396.00
2014-2015	3,21,200.00

4. The plaintiff has also incurred huge amount of money towards advertisement costs for promoting its products under the trademark “450 BRAND”. The plaintiff claims that they enjoyed great reputation and goodwill all over India and abroad for their trademark “450 BRAND”. According to them, the trade and public immediately identify the distinctive trademark “450 BRAND” with the superior quality Lungies manufactured and sold by the plaintiff alone and no one else.

5. The plaintiff came to know in February, 2015, that the defendant is manufacturing and selling Lungies under an identical trademark “450



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BRAND”. According to the plaintiff, Lungies sold by the defendant with mark “450 BRAND” are of substandard and inferior quality. According to the plaintiff, the defendant's activities are seriously affecting their business and spoiling its hard earned reputation and goodwill attained for the goods sold under the mark “450 BRAND”.

6. The plaintiff contends that the defendant has deliberately adopted an identical name with a view to misrepresent the trade and public, and use the hard earned reputation and goodwill earned by the plaintiff in the competitive market, and ultimately derive illegal monetary benefits.

7. According to the plaintiff, any ordinary purchaser cannot make out the difference between the plaintiff's Lungies and defendant's Lungies. Under the aforesaid circumstances, the plaintiff has filed this suit for infringement and passing off as well as for damages.

8. The defendant has been served with suit summons on 23.03.2022 and they were set exparte by this Court on 10.10.2023 due to their non-



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appearance. Thereafter, this Court has posted the matter before the Additional Master-II for recording exparte evidence. The plaintiff's witness Mr.Ravichandran was also examined as PW1 before the Additional Master-II. He is the Manager of the plaintiff's company and he has filed his proof affidavit reiterating the contents of the plaint. Through PW1, the following documents were marked as exhibits:-

<i>Date</i>	<i>Nature of documents</i>	<i>Exhibits</i>
20.11.2023	Original letter of authorization	Ex.P1
	Downloaded copy of the invoices (series No.35) of the plaintiff's company	Ex.P2
	Scanned copy of the defendant's invoice proving use of the mark 450 BRAND.	Ex.P3
	Colour printout copy of the defendant's 450 BRAND label.	Ex.P4
	Certified copy of the copyrights registration certificate for 450 BRAND label under No.A-59634/2001	Ex.P5
	Certified copy of the trademark registration certificate for 450 BRAND device under No.839959 in Clause 24	Ex.P6
	Plaintiff's 450 BRAND product and label	MO-I

9. As seen from the aforesaid exhibits and material objects, it is clear that the defendant has blatantly copied the plaintiff's registered trademark



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“450 BRAND” and has used the same trademark for manufacturing and distribution of Lungies. Being an identical mark to that of the plaintiff's registered trademark, it is clear that the defendant has committed an act of infringement and passing off. The plaintiff has filed documents, which have been marked as exhibits, and has categorically averred in the plaint about their reputation and goodwill in the market with regard to sale of Lungies under the trademark “450 BRAND”.

10. Admittedly, the plaintiff has obtained registration for its trademark “450 BRAND”, which is evidenced by Ex.P5, a copy of the copyrights registration certificate for “450 BRAND” label; and Ex.P6, certified copy of the trademark registration certificate for “450 BRAND” under Number 839959 in Class 24. Invoices raised by the defendant, marked as Ex.P3, prove that the defendant has blatantly copied the plaintiff's trademark “450 BRAND” for sale and distribution of its Lungies. Invoices raised by the plaintiff for sale of its Lungies, marked as Ex.P2, also prove that the plaintiff is the prior user of the trademark “450 BRAND”. As stated above, the defendant has also remained exparte despite service of suit



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summons. The plaintiff has also averred in the plaint that a huge amount of money has been spent by them towards advertisement costs for promoting their products sold under the trademark “450 BRAND”.

11. After giving due consideration to the oral and documentary evidence as well as pleadings, this Court is of the considered view that the suit claim insofar as injunction reliefs sought for in the plaint have been proved by the plaintiff. However, insofar as damage claim is concerned, the learned counsel for the plaintiff is not pressing for the same on instructions. Unless and until sufficient evidence is available on record to prove that the plaintiff has suffered loss on account of infringement and passing off committed by the defendant, the question of granting the relief of damage will not arise.

12. For the foregoing reasons, this suit is partly decreed by granting the following reliefs in favour of the plaintiff.

(i) Perpetual injunction is granted restraining the defendant from infringing the plaintiff's registered trademark “450 BRAND” device, by use



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of an identical trademark 450 BRAND or any mark similar to plaintiff's registered trademark or in any other manner whatsoever;

(ii) Perpetual injunction is granted restraining the defendant from passing off and enabling others to pass off the defendant's lungies, handkerchief, handloom, textile goods as and for the plaintiff's lungies, handkerchief, handloom, textile goods, by use of the trademark “450 BRAND” or any other mark deceptively similar to the plaintiff's trademark “450 BRAND” in any manner whatsoever;

(iii) The relief sought for in the prayer (c), (d) and (e) of the plaint is dismissed as not pressed.

(iv) The defendant is directed to pay the costs of this suit to the plaintiff.

22.01.2024

Index:yes/no
Neutral citation: yes/no
Speaking/non-speaking
rkm

Plaintiff's witness:

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Mr.Ravichandran

- PW1

Documents exhibited by the Plaintiff:

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AQJ

ABDUL QUDDHOSE, J.

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