



C.S (Comm. Div.) No.43 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2024

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.S (Comm. Div.) No.43 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 Briyani,

No.18/93, Mahatma Gandhi Road,

Kumaran Nagar,

Padi, Chennai-600 050

... Defendant

Prayer: The plaint filed under Order VII Rule 1 C.P.C. read with Order IV Rule 1 of High Court O.S. Rules and Section 134 and Section 135 of the Trademarks Act, 1999, praying to pass judgment and decree against the defendant as follows:

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 Trade Mark and Trading style “**AMBUR STAR BRIYANI**” by using the offending Trade Mark and Trading style “**STAR BRIYANI**” or any other mark or marks which



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are similar or in any way deceptively similar to or a colorable imitation of the Plaintiff's Trade Mark **“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 Trade Mark and Trading style **“AMBUR STAR BRIYANI”** by using the offending Trade Mark and Trading style **“STAR BRIYANI”** or any other mark or marks which are similar or in any way deceptively similar to or a colorable imitation of the Plaintiff's Trade Mark **“AMBUR STAR BRIYANI”**.

c) Directing the Defendants to surrender the Plaintiff the entire stock of unused offending goods with Trade Mark **“STAR BRIYANI”** with name boards, labels, wrappers, boxes, covers, bags, packets, cartons, bills, advertisements, materials, reports, envelope, brochures, printing blocks, etc., bearing the offending Trademark for destruction.

d) To pass an order of declaration, declaring the Plaintiff's registered trademark **“AMBUR STAR BRIYANI”** as “well-known mark” within the meaning of Section 2(1) (zg) read with Section 11(6) of the Trademarks Act, 1999 along with a direction to the Registrar of Trademarks to notify the mark **“AMBUR STAR BRIYANI”** on the register of well-known marks; and

e) for costs of the suit;



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For Plaintiff : Mr.Vijayan Subramanian
For Defendant : Set Ex-parte on 23.04.2024

JUDGMENT

This suit is filed for permanent injunction from infringing and passing off the plaintiff's Trade Mark and Trading style "AMBUR STAR BRIYANI" and direction to the defendant to surrender the plaintiff the entire stock of unused offending goods with Trade Mark "STAR BRIYANI" and also for declaration declaring the plaintiff's registered trademark "AMBUR STAR BRIYANI" as "well-known mark" and for costs of the suit.

2. The averments made in the plaint is that the plaintiff/Anees Ahmed's great-grand father of Late Mr.Hasain Baig was a cook in the kitchens of the Arcot Nawabs and he was a well-known cook during nawabs period and that he started his own hotel under the name "AMBUR STAR BRIYANI" in the year 1890. He commenced the hotel business, particularly in preparation and serving of Biryani at Ambur town. The



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business has acquired enormous popularity for the extraordinary quality and unique flavour and taste, particularly in preparation of Biryani by the name "AMBUR STAR BRIYANI. Since Ambur is transit point for Bangalore, Tirupati, Salem, Pondicherry and Chennai, there are extensive travelers passing through the Ambur town and the hotel named AMBUR STAR BRIYANI had acquired extensive popularity. After the demise of his great grandfather in the year 1934, Mr.Khursheed, son of Mr.Hasain Baig continued the business AMBUR STAR BRIYANI hotel. The said Khursheed died in the year 1981. Subsequently Mr. Nazeer Ahmed, son-in-law of Mr. Khursheed continued the business AMBUR STAR BRIYANI hotel and the said Nazeer Ahmed, the father of the Plaintiff is still alive. The sons of Mr.Nazeer Ahmede namely Mr.Muneer Ahmed and the plaintiff/Anees Ahmed are running the business under the name AMBUR STAR BRIYANI.



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2(i). The plaintiff has also taken steps to protect the trademark and trading style by applying for registration of the trademark and trading style AMBUR STAR BRIYANI and that the plaintiff has started their branches at Chennai from 01/01/2008 onwards. The plaintiff and his brother has registered the trade mark AMBUR STAR BRIYAN and the Trade Mark registry has issued the certificates of registration on 27/01/2017 and 01/08/2018. Currently the plaintiff along with his brother is running the hotel AMBUR STAR BRIYANI all over the world. The Legal usage certificate dated 26/06/2023 was also issued in the name of plaintiff for Ambur Star Briyani. The plaintiff has invested a substantial sum of money in order to create the awareness among the public with regard to the high-quality hotel named "AMBUR STAR BRIYANI". The plaintiff due to their long, continuous and uninterrupted use of the trade mark "AMBUR STAR BRIYANI", it has come to be associated exclusively with the plaintiff. The food preparations made and served in plaintiffs hotel AMBUR STAR



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BRIYANI has acquired enormous popularity throughout Tamil Nadu and other states by virtue of extensive tourist flow through Ambur Town. There was extensive articles published about the special and unique preparations found in the hotels run by the plaintiff and their predecessors.

2 (ii). The trademark and trading style AMBUR STAR BRIYANI is being associated exclusively with the original business commenced by the plaintiff's predecessors at Ambur and subsequently, extended to other cities in Tamil Nadu by the Plaintiff. There is extensive patronage by the general public for the products prepared and served in their restaurants and hotels of the plaintiff. The trademark and trading style AMBUR STAR BRIYANI Hotel has acquired the secondary meaning to denote and connote the product of the plaintiff which assures to the public a unique taste and standard in the food preparations. The various articles published in several Tamil magazines would brief and establish the high popularity of the name AMBUR STAR BRIYANI and the products prepared and served in the



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AMBUR STAR BRIYANI run by the plaintiff. In fact, the popularity is so vast that the said name STAR BRIYANI was also being referred in several Tamil feature films as a landmark place for quality food. The plaintiff is maintaining the unique taste and quality by meticulous efforts. In fact, the method of preparation is unique which has been passed on to the plaintiff through their ancestors.

2 (iii). Some unscrupulous traders wanting to take illegal advantage and enrich themselves at the popularity and reputation of the plaintiff, are now resorting to adopt the said trademark and trading style "AMBUR STAR BRIYANI" for their hotels and restaurant business. They have no manner of right either to adopt or use the said trademark and/or trading style "AMBUR STAR BRIYANI". The trademark and trading style of AMBUR STAR BRIYANI come to mean and refer the products and services of the plaintiff's restaurant. The obvious intention of the unscrupulous traders is only to take advantage of the enormous popularity



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of the trademark and trading style AMBUR STAR BRIYANI hotel and to enrich themselves at the hard-earned reputation of the plaintiff.

2 (iv). The plaintiff's trademark "AMBUR STAR BRIYANI" is well-known, not only in India but also in abroad. Their turnovers and the cost spent by the plaintiff runs into several crores and the plaintiff has fixed a position for themselves in Restaurant business. Plaintiff has satisfied all the factors for recognizing their trademark as a well-known mark as per the provisions of Section 11(6) of the Trade Mark Act. The name "AMBUR STAR BRIYANI" is synonymous to the plaintiff and the plaintiff is therefore, entitled to the highest level of protection, as the public at large associate the name "AMBUR STAR BRIYANI" only with the plaintiff. It is very clear from the above that the plaintiff's trademark falls within the definition of well-known mark within the meaning of Section 2(1) (zg) of the Act and deserves protection, that is conferred to well-known marks under the Trademarks Act.



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2 (v). The plaintiff has spent huge amount of time and money in promoting and advertising their products bearing the mark "AMBUR STAR BRIYANI" as mentioned above and that they have been vigilant in defending their mark "AMBUR STAR BRIYANI" in all manner and before all judicial forums as and when required. Therefore, the plaintiff's registered trademark "AMBUR STAR BRIYANI" has attained the status of well-known mark within the meaning of Section 2(1) (zg) read with Section 11(6), Section 11(7), and Section 11(8) of the Trademarks act, 1999.

2 (vi). To the shock and surprise, the plaintiff came to know that the defendant is running hotel in the name "STAR BRIYANI" 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 hotel and the defendant is associated with the plaintiff. In view of the extensive popularity and reputation of the trademark and trading style "AMBUR



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"STAR BRIYANI", the defendant is running the hotel in the name "STAR BRIYANI" which would make no difference to the plaintiff's mark and it is done with an intention to deceive the general public and to make them think and believe that the food served by the defendant is from the plaintiff, which in fact is not factually correct and thus would amount to an passing off/Infringement offending action by the defendant. 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 trade mark, the plaintiff would be put to very serious loss, hardship & injury. Apart from the loss that is being caused to the plaintiff, the plaintiff also fears that well-earned reputation would be spoiled by the substandard foods being served at the defendants' business premises. There is serious danger of hard-earned goodwill and reputation of the plaintiff being ruined, if the defendant is allowed to continue with the illegal business with the offending trade mark. Further, there is a danger of the public being cheated



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by the defendant's by adopting the offending trade mark by misleading the public to believe that the food preparations being sold at defendant's hotels/restaurants are that of plaintiffs or the defendant is in some way connected or associated with the plaintiff. The acts of the defendants also constitute criminal offences under the Trade Mark act, 1999.

2 (vii). The plaintiff herein is keeping high standards and traditional taste which has been passed on to them by their ancestors. But the defendant by using the sub-standard foodstuff and also not keeping with the taste and method of preparation of the food preparations like that of the plaintiff, and by virtue of such acts and serving inferior food preparations is likely to damage the goodwill and reputation earned by the plaintiff and their predecessors over the years for the food preparations served under the trademark and trading style AMBUR STAR BRIYANI.

2 (viii). The mark of the plaintiff is registered before the concerned authority and the rights acquired by the plaintiff under the said registered



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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 BRIYANI". Since the defendant is continuing to use the trademark name of the plaintiff's, the plaintiff was constrained to issue a legal notice dated 03.10.2023 to stop the usage of the trademark "STAR" for their Restaurant business. The defendant received the legal notice on 06.10.2023 but did not respond to the Legal Notice. Therefore, the present suit is filed for Trade Mark infringement and passing-off.

3. Despite service of suit summons and printing of name in the cause list, none appeared on behalf of the defendant and therefore, the sole defendant was set ex-parte by this Court on 23.04.2024.



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4. In order to substantiate the case of the plaintiff, the authorized signatory of the plaintiff's hotel, one Hafees Ahmed was examined as P.W.1 and he has reiterated the averments made in the plaint in his proof affidavit and on the side of the plaintiff, 33 documents were marked as Ex.P.1 to Ex.P.33 in which Ex.P.1 is the Board Resolution dated 24.04.2024; Ex.P.2 is the photocopy of the Dinathanthi Newspaper Article Photo showing applicant's father receiving the award for Star Briyani as the best Briyani Hotel in Ambur from Ganasekar, M.L.A., 1992; Ex.P.3 is the photocopy of the Article published in Tamil Murasu about Star Biriyani in the year 2003; Ex.P.4 is the photocopy of the Article published in Anandha Vikatan about Star Biriyani in the year 2003; Ex.P.5 is the photocopy of the photo showing the plaintiff of Star Briyani and the video telecasted in Jaya TV dated 15.03.2006; Ex.P.6 is the photocopy of the certificate issued by Labour Department dated 31.12.2003; Ex.P.7 is the photocopy of the Certificate of Registration issued by the Commercial Tax



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Officer dated 04.05.2005; Ex.P.8 is the photocopy of the Acknowledgment issued by the Department of Industries and Commerce dated 12.10.2008; Ex.P.9 is the photocopy of the Fire Service License issued by the Fire and Rescue Service Department dated 23.02.2009; Ex.P.10 is the photocopy of the License issued by the Corporation of Chennai dated 12.06.2009; Ex.P.11 is the photocopy of the Receipt issued by BSNL dated 10.08.2009; Ex.P.12 is the photocopy of the Bill issued by Shree Traders dated 13.06.2011; Ex.P.13 is the photocopy of the Certificate of Registration issued by Commercial Tax Department dated 16.10.2012; Ex.P.14 is the photocopy of the Certificate of Registration issued by Commercial Tax Department dated 16.10.2012; Ex.P.15 is the photocopy of the Acknowledgment issued by the Department of Industries and Commerce dated 04.11.2013; Ex.P.16 is the photocopy of the Certificate issued by the Department of Industries and Commerce dated 04.11.2013; Ex.P.17 is the photocopy of the ISO Certificate dated 17.10.2015; Ex.P.18 is the



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photocopy of the Certificate issued by Bharat Sevak Samaj dated 21.02.2017; Ex.P.19 is the printout of the Trademark Registration Certificate dated 01.08.2018 (Certificate u/s. 65-B of Indian Evidence Act produced); Ex.P.20 is the printout of the Article issued in Kungumam Magazine about Ambur Star Briyani dated 15.02.2019 (Certificate u/s. 65-B of Indian Evidence Act produced); Ex.P.21 is the printout of the Legal Usage Certificate of Plaintiff dated 26.06.2023 (Certificate u/s. 65-B of Indian Evidence Act produced); Ex.P.22 is the photocopy of the ISO Certificate issued for the present assessment year dated 14.09.2020; Ex.P.23 is the photocopy of the Udyam Registration Certificate dated 19.09.2020; Ex.P.24 is the Printout of the GST Registration Certificate dated 16.07.2022 (Certificate u/s. 65-B of the Indian Evidence Act produced); Ex.P.25 is the photocopy of the order passed in O.A.No.1009 and 1010 of 2019 in C.S. (Comm. Divn.) No.648 of 2019 dated 11.11.2019; Ex.P.26 is the photocopy of the order passed in O.a.No.1096



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and 1097 of 2019 in C.S.No.694 of 2019 dated 03.01.2020; Ex.P.27 is the photocopy of the order passed in O.A.No.171 and 172 of 2020 in C.S.No.129 of 2020 dated 18.03.2020; Ex.P.28 is the photocopy of the order passed in O.A.No.581 and 582 of 2023 in C.S. (Comm. Divn.) No.162 of 2023 dated 27.06.2023; Ex.P.29 is the photocopy of the order passed in O.A.No.28 and 30 of 2024 in C.S.(Comm. Divn.) No.12 of 2024 dated 12.01.2024; Ex.P.30 is the photocopy of the Legal Notice sent by the plaintiff to the defendant along with Tracking Consignment receipt dated 03.10.2023; Ex.P.31 is the photograph of the plaintiff Hotel (Certificate u/s. 65-B of Indian Evidence Act Produced); Ex.P.32 is the photograph of the defendant Hotel (Certificate u/s. 65-B of Indian Evidence Act produced); Ex.P.33 is the photograph of the plaintiff and defendant Hotel (Certificate u/s.65-B of Indian Evidence Act produced).

4. On a perusal of the averments made in the plaint, the proof affidavit filed by P.W.1 and also the documents marked on the side of the



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plaintiff, this Court finds that the plaintiff has proved his case. Therefore,
the suit is decreed as prayed for with costs.

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List of Witnesses examined on the side of the plaintiff: One witness

Hafees Ahmed - P.W.1

List of documents marked on the side of the plaintiff : 33 Documents

S.No.	Exhibits	Date	Description of documents
1	Ex.P.1	24.04.2024	Board Resolution
2	Ex.P.2		Photocopy of the Dinathanthi Newspaper Article Photo showing applicant's father receiving the award for Star Briyani as the best Briyani Hotel in Ambur from Ganasekar, M.L.A., 1992
3	Ex.P.3	2003	Photocopy of the Article published in Tamil Murasu about Star Biriyani
4	Ex.P.4	2003	Photocopy of the Article published in Anandha Vikatan about Star Biriyani
5	Ex.P.5	15.03.2006	Photocopy of the photo showing the plaintiff of Star Briyani and the video telecasted in



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S.No.	Exhibits	Date	Description of documents
			Jaya TV
6	Ex.P.6	31.12.2003	Photocopy of the certificate issued by Labour Department
7	Ex.P.7	04.05.2005	Photocopy of the Certificate of Registration issued by the Commercial Tax Officer
8	Ex.P.8	12.10.2008	Photocopy of the Acknowledgment issued by the Department of Industries and Commerce
9	Ex.P.9	23.02.2009	Photocopy of the Fire Service License issued by the Fire and Rescue Service Department
10	Ex.P.10	12.06.2009	Photocopy of the License issued by the Corporation of Chennai dated
11	Ex.P.11	10.08.2009	Photocopy of the Receipt issued by BSNL
12	Ex.P.12	13.06.2011	Photocopy of the Bill issued by Shree Traders
13	Ex.P.13	16.10.2012	Photocopy of the Certificate of Registration issued by Commercial Tax Department
14	Ex.P.14	16.10.2012	Photocopy of the Certificate of Registration issued by Commercial Tax Department
15	Ex.P.15	04.11.2013	Photocopy of the Acknowledgment issued by the Department of Industries and Commerce
16	Ex.P.16	04.11.2013	Photocopy of the Certificate issued by the Department of Industries and Commerce
17	Ex.P.17	17.10.2015	Photocopy of the ISO Certificate
18	Ex.P.18	21.02.2017	Photocopy of the Certificate issued by Bharat Sevak Samaj
19	Ex.P.19	01.08.2018	Printout of the Trademark Registration Certificate (Certificate u/s. 65-B of Indian Evidence Act produced)



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S.No.	Exhibits	Date	Description of documents
20	Ex.P.20	15.02.2019	Printout of the Article issued in Kungumam Magazine about Ambur Star Briyani (Certificate u/s. 65-B of Indian Evidence Act produced);
21	Ex.P.21	26.06.2023	Printout of the Legal Usage Certificate of Plaintiff (Certificate u/s. 65-B of Indian Evidence Act produced)
22	Ex.P.22	14.09.2020	Photocopy of the ISO Certificate issued for the present assessment year
23	Ex.P.23	19.09.2020	Photocopy of the Udyam Registration Certificate
24	Ex.P.24	16.07.2022	Printout of the GST Registration Certificate (Certificate u/s. 65-B of the Indian Evidence Act produced)
25	Ex.P.25	11.11.2019	Photocopy of the order passed in O.A.No.1009 and 1010 of 2019 in C.S. (Comm. Divn.) No.648 of 2019
26	Ex.P.26	03.01.2020	Photocopy of the order passed in O.a.No.1096 and 1097 of 2019 in C.S.No.694 of 2019
27	Ex.P.27	18.03.2020	Photocopy of the order passed in O.A.No.171 and 172 of 2020 in C.S.No.129 of 2020
28	Ex.P.28	27.06.2023	Photocopy of the order passed in O.A.No.581 and 582 of 2023 in C.S. (Comm. Divn.) No.162 of 2023
29	Ex.P.29	12.01.2024	Photocopy of the order passed in O.A.No.28 and 30 of 2024 in C.S.(Comm. Divn.) No.12 of 2024
30	Ex.P.30	03.10.2023	Photocopy of the Legal Notice sent by the plaintiff to the defendant along with Tracking Consignment receipt



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S.No.	Exhibits	Date	Description of documents
31	Ex.P.31		Photograph of the plaintiff Hotel (Certificate u/s. 65-B of Indian Evidence Act Produced);
32	Ex.P.32		Photograph of the defendant Hotel (Certificate u/s. 65-B of Indian Evidence Act produced);
33	Ex.P.33		Photograph of the plaintiff and defendant Hotel (Certificate u/s.65-B of Indian Evidence Act produced).

List of Witnesses examined on the side of the defendant: **Nil**

List of documents marked on the side of the defendant: **Nil**

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Index : Yes / No

Speaking Order : Yes / No

Neutral Case Citation : Yes/No

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