



C.S. (Comm. Div.) No.48 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2024

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.S. (Comm. Div.) No.48 of 2024 and

O.A.Nos.158 & 159 of 2024 and

A.Nos.1156 & 1157 of 2024

M/s.D.R.Raanka Bros.,

Door No.151, 1st Floor, N.S.C.Bose Road,

Chennai – 600 079.

represented by its Partner

Mr.Kapil Raanka

... Plaintiff

Vs.

Sri Sumangali Nagai Maaligai,

Main Road, Tirukanoor – Sithalampattu,

Opp. Petrol Bunk, Tirukanoor,

Pondicherry – 605 501.

... Defendant

Prayer: The suit filed under Order IV Rule 1 of the O.S. Rules r/w Order VII Rule 1 CPC and Sections 27, 28 and 29, 134 and 135 of the Trade Marks Act, 1999, praying to pass a judgment and decree against the Defendants:-

a) Granting a permanent injunction restraining the defendant by



C.S. (Comm. Div.) No.48 of 2024

themselves, their proprietor, partners, men servants, agents, assigns, legal representatives, successors, or any one claiming through them from in any manner infringing the plaintiff's registered Trade Mark DR, by using the identical and offending mark DR or any other mark or marks which are in anyway identical, deceptively similar to or a colorable imitation of the plaintiff's said registered Trade Mark, either by manufacturing or selling or offering for sale or advertising or in any manner using the same as or as part of its trade or trade name or trading style or business name or in any other manner whatsoever;

- b) Granting a permanent injunction restraining the defendant by themselves, their proprietor, partners, men, servants, agents, assigns, legal representatives, successors, or any one claiming through them from in any manner passing off its products or business as and for the plaintiff's products or business through use of the impugned offending mark DR or any other mark deceptively similar to the plaintiff's prior adopted mark DR in any manner whatsoever;
- c) Directing the defendant to render a true and faithful account of the profits earned by them through their use of the offending mark DR in the course of their business and direct payment of such profits to



C.S. (Comm. Div.) No.48 of 2024

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the plaintiff as damages for the acts of infringement and passing off committed by the defendant;

d) Directing the defendant to surrender to the plaintiff the entire stock of products, labels, name boards, hoardings, placards, pamphlets, stickers, stationery or any other materials bearing the offending mark DR along with the blocks and dyes, for destruction.

e) Directing the defendant to pay to the plaintiff the cost of the suit and

For Plaintiff : S.Diwakar for Mr.Rajesh Ramanathan

For Defendant : Set Ex-parte on 29.04.2024

JUDGMENT

This suit is filed to restrain the defendants from infringing the plaintiff's registered Trade Mark DR and to render a true and faithful account of the profits earned by them through their use of the offending mark DR in the course of their business and also to surrender the entire stock of products bearing the offending mark DR, for destruction.



C.S. (Comm. Div.) No.48 of 2024

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2 The averments made in the plaint is as follows;

The plaintiff is a pioneer in the trade of anklets, pooja, articles, ornaments, and other articles exclusively made of silver and are carrying on their business for a very long time. The plaintiff, which is a partnership concern predominantly, containing family members, was first started in the year 1944 under the name and style of D.R.Raanka, which is colloquially referred to as DR/DRR among the trade and public. Step by step, the business grew leaps and bounds to become a household name in buying silver at wholesale prices. The plaintiff is currently being managed by third generation of the family, who continue to trade under the very same trading style and trademark D.R.Raanka. The plaintiff manufactures all their products in their own manufacturing units, thereby ensuring high quality products to reach its ever increasing customer base. With the advent of online trading platform, the plaintiff immediately updated itself to become one of the first jewellers in the country to provide online shopping experience for their silver ornaments and silver articles through their website www.drsilver.in. Considering the ubiquitous nature of the online trading platform, through their said website, the plaintiff's products are now available for purchase across the world, thereby increasing the reach of plaintiff's reputation and goodwill to all parts of the world. To enable the



C.S. (Comm. Div.) No.48 of 2024

trade and public to identify the source of the products emanating from the plaintiff, the plaintiff embosses the letters DR on the product, in a conspicuous manner and thus the mark DR is being specifically used as a source identifier and thus as a trademark. The plaintiff's products sold under the trade name / trading style / trade mark D.R.RAANKA / DR / DRR has thus garnered tremendous reputation and goodwill not only in India but also across the world and the said marks D.R.RAANKA / DR / DRR have become associated all over the world with the products manufactured by the plaintiff alone and none else. Trade and public buy the products embossed with the mark DR with clear understanding of its origin and its quality.

2.1 The Plaintiff had honestly and bonafidely adopted the trademarks D.R.RAANKA and DR with utmost care and has been using the mark ever since its inception, i.e., since 1944, continuously without any interruption whatsoever. Further, with a view to obtain statutory protection, the plaintiff has applied for and obtained registration of several iteration of the marks D.R.RAANKA and DR under various classes. In fact, the plaintiff's first registration was applied for as early as on 21.11.1949 under No.391305. Though the said registration was renewed till the year 2006,



C.S. (Comm. Div.) No.48 of 2024

due to oversight it was not renewed thereafter. However, this earliest registration of the plaintiff clearly shows the plaintiff's penchant to protect their trademark/trading style. Subsequently, the plaintiff herein applied for and obtained registration of the marks D.R.RAANKA and DR under various classes. All the trademark registration have been renewed from time to time and are all valid and subsisting. Thus, the plaintiff submits that they are the exclusive statutory proprietors of the registered trade marks D.R.RAANKA and DR and have the statutory right to stop third parties from using the mark without any license or authorisation from the plaintiff.

2.2 The plaintiff has spent considerable amount of time, money and efforts for promoting the sales of their products and services under the trademarks D.R.RAANKA and DR. Apart from being their house mark, the marks D.R.RAANKA and DR are also the trade name and part of trading style of the plaintiff, whereby the marks are used in each and every product manufactured and sold by the plaintiff. There has been an ever-increasing demand for the products sold under the said trademarks and the sales turnover of the plaintiff runs to several crores of rupees annually. The plaintiff has also spent huge amount of time, money and effort to promote



C.S. (Comm. Div.) No.48 of 2024

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the trademark D.R.RAANKA and DR in audio, visual and print media. The crores of Rupees spent by the plaintiff towards promoting their trademarks D.R.RAANKA and DR, coupled with their high quality products, have ensured that trade and public are well aware of the said trademarks and associate them only with the plaintiff. The plaintiff is also frequently recognized with various awards and accolades for their high quality products and services. The plaintiff has also taken proactive measures to safeguard their intellectual property and stop misuse and abuse of their marks D.R.RAANKA and DR, including but not limited to issuing caution notices to the trade and public to educate them in correctly identifying the plaintiff's products. The said trademarks D.R.RAANKA and DR have come to be perceived as one of the most recognizable marks amongst the traders and the consumers. In view of such tremendous power of association and reputation, not to mention their continuous use by the Plaintiff for more than 70 years, the said trademarks D.R.RAANKA and DR fall well within the definition of 'well known' trademarks, entitling the said marks to be protected under the Trademarks Act, 1999. The plaintiff is therefore entitled to exclusive right over the trade marks D.R.RAANKA and DR.



C.S. (Comm. Div.) No.48 of 2024

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2.3 In the last week of January 2024, the plaintiff came to know about the defendant's misuse of the mark D.R. in respect of identical business, i.e., sale of silver articles. To verify this credible information of infringement of their trade mark, the plaintiff sent representatives to personally visit the defendant's place of business at the address mentioned in the cause title hereinabove and confirmed the acts of infringement committed by the defendant with impunity. The defendant, though is selling under the trading style of Sri Sumangali Nagai Maaligai, is embossing the mark DR on its silver anklets (kolusu) without any rhyme or reason, except to deceive and confuse the trade and public. The defendant is deliberately embossing the plaintiff's registered trademark DR on its products with the sole, deliberately and malafide intention of deceiving the trade and public as to the source of its products. Trade and public, who are well aware of the plaintiff's products that are sold under the mark D.R.RAANKA and DR, specifically with the mark DR embossed on their product, would immediately come to a conclusion that the defendant was procuring the silver anklets from the plaintiff or that the defendant has some association with the plaintiff. The adoption of the identical trade mark DR by the defendant in relation to identical goods is *prima facie* dishonest and is also in violation of the plaintiffs statutory and common



C.S. (Comm. Div.) No.48 of 2024

law rights in respect of their prior adopted, continuously used, well known and registered trademark DR. Through their abuse and misuse of the plaintiff's registered trademark DR, the defendant is actively spreading confusion and deception among the trade and public.

2.4 The defendant started using the identical trademark DR only recently and therefore, unquestionably subsequent to the adoption and use of the registered trademark DR by the Plaintiff. The Plaintiff started using the mark DR since 1944 and has ever since been using the mark openly, continuously, extensively and exclusively in the market. The plaintiff is thus, the undisputed prior adopter and user of the trademark DR and its products under the said mark are well reputed and well established in the market. The defendant has no right to use the identical trademark DR in any manner, as the same amounts to infringement of plaintiff's registered trademark DR. The Defendant has deliberately adopted the impugned mark with the sole intention of usurping the goodwill and reputation of the plaintiff. The defendant's act of embossing the mark DR on their product is deliberate and is in the nature of counterfeiting as it seeks to deceive the trade and public about the source of the product. The defendant is thus involved in sale of spurious



C.S. (Comm. Div.) No.48 of 2024

products and hence, continued use of the mark DR by the defendant on its products would not only result in loss to the plaintiff, but also would mislead and cause loss to the trade and public who might believe that the products they are buying from the defendant is in some manner associated with the plaintiff and therefore is of higher / better quality. The dishonest adoption and bad faith on the part of the defendant is thus clear from the above scheme of facts.

2.5 The marks involved are phonetically, visually and structurally identical; the goods involved are identical and the class of purchasers is also identical. It is further pertinent to mention that products of both plaintiff and defendant are bought by people from all walks of life as silver articles are products that are used almost on a day-to-day basis and therefore customers of such products include ill-literates and semi-literate people, who would not be able to readily identify the origin of defendant's products under the identical trademark DR. Besides, the trade and public, who are well aware of the plaintiff's trade mark DR would be confounded by the defendant's use of the identical impugned trademark, resulting in loss of goodwill, reputation and business for the plaintiff. Thus, the triple identity for a case for infringement and passing off, i.e., identical mark, identical goods and identical class of customers, is



C.S. (Comm. Div.) No.48 of 2024

clearly established and as such use of the impugned mark by the defendant amounts to *prima-facie* infringement of the plaintiffs registered trademark DR and passing off.

2.6 The defendant has no manner of right, title or interest whatsoever to adopt the impugned identical trademark. Through its use of the identical trademark DR, the defendant is creating confusion in the market misleading the consuming public as to the origin of such goods. The act of the defendant has eroded, tarnished and diluted the reputation of the well-established and renowned trademark DR of the plaintiff and exhibits utter parasitic behavior as the defendant's intention is to freely ride on the goodwill and reputation earned over several decades. The defendant is, therefore, guilty of infringement of plaintiffs renowned and registered trademark DR and for the tort of passing-off. As the plaintiff is the registered proprietor of the mark DR, they are entitled to seek a permanent restraint against the defendant or anyone claiming through them from in any manner infringing its well-established trademark by using or manufacturing or selling or offering for sale or in any manner advertising its products or business under the trademark DR or any mark deceptively similar thereto



C.S. (Comm. Div.) No.48 of 2024

and from passing off their product or business under the trademark DR or any mark similar thereto. The plaintiff also submits that by reason of the acts of infringement and passing off committed by the defendant, the plaintiff would be put to serious loss and hardship besides damage to its trade and reputation which cannot be compensated in terms of money. Therefore, the present suit is filed.

3 Sole defendant was served with private summons and name also printed in the cause list, but, since none appeared on behalf of the defendant, it was set ex-parte by this Court on 29.04.2024

4 In order to substantiate the claim of the plaintiff, one Kapil Raanka, one of the partners of the plaintiff company was examined as P.W.1 and he has reiterated the averments made in the plaint in his proof affidavit and marked 10 documents as Ex.P.1 to P.10 in which, Ex.P.1 is original authorization issued on behalf of Kapil Raanka dated 16.01.2024; Ex.P2 is the certified copy of the partnership deed of plaintiff's firm dated 21.10.2019; Ex.P3 series is web copy of the Extract from plaintiff's website www.drsilver.in (Affidavit under Section 65B of the Indian Evidence filed and recorded); Ex.P4 is certified copy of the Trademark



C.S. (Comm. Div.) No.48 of 2024

registration certificate issued to the plaintiff's use in legal proceedings in the year 2019-2021; Ex.P5 is certified copy of the invoices of the plaintiff; Ex.P6 series is photocopies of the advertisements and promotional materials of the plaintiff; Ex.P7 is photocopies of the awards received by the plaintiff; Ex.P8 is photocopies of the caution notices issued by the plaintiff; Ex.P9 is the photograph of defendant's products and shop front dated 25.01.2024; Ex.P10 is the photograph of plaintiff's product bearing the mark DR.

5 On a perusal of the averments made in the plaint and proof affidavit filed by P.W.1 and also the documentary evidence marked on the side of the plaintiff, this Court finds that the plaintiff has proved its claim. Therefore, the suit is decreed as prayed for with cost.

19.06.2024

(1/2)

Index : Yes / No

Speaking Order : Yes / No

Neutral Case Citation : Yes/No

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C.S. (Comm. Div.) No.48 of 2024

List of witnesses examined on the side of the plaintiff – 1 witness

K.Kapil Raanka – P.W.1

List of documents marked on the side of the plaintiff – 10 Documents

Sl. No.	Exhibit	Date	Description of documents
1	Ex.P.1	16.01.2024	Original authorization issued on behalf of Kapil Raanka dated 16.01.2024.
2	Ex.P.2	21.10.2019	The certified copy of the partnership deed of plaintiff's firm dated 21.10.2019
3	Ex.P.3	--	Web copy of the Extract from plaintiff's website www.drsilver.in (Affidavit under Section 65B of the Indian Evidence filed and recorded)
4	Ex.P.4	--	Copy of the Trademark registration certificate issued to the plaintiff's for use in legal proceedings in the year 2019-2021
5	Ex.P.5	--	Certified copy of the invoices of the plaintiff
6	Ex.P.6	--	Photocopies of the advertisements and promotional materials of the plaintiff
7	Ex.P.7	--	Photocopies of the awards received by the plaintiff
8	Ex.P.8	--	Caution notices issued by the plaintiff
9	Ex.P.9	25.01.2024	Photograph of defendant's products and



C.S. (Comm. Div.) No.48 of 2024

			shop front.
10	Ex.P.10	--	Photograph of plaintiff's product bearing the mark DR.

List of witnesses examined on the side of the defendants - Nil

List of documents marked on the side of the defendants - Nil

19.06.2024

(2/2)



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C.S. (Comm. Div.) No.48 of 2024

P.VELMURUGAN. J.

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C.S. (Comm. Div.) No.48 of 2024

19.06.2024