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C.S. No.541 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2024

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THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.S. No.541 of 2013

M/s.Qube Cinema Technologies Private Limited,  
represented by its  
Chief Legal Officer and Company Secretary

.. Plaintiff

(amended as per order dated 27.10.2021  
in A.No.3842 of 2021 and time extended  
as per order dated 12.10.2023)

Vs

1.Sumit Kathuria

2.Harsha Associates Private Limited

.. Defendants

Prayer: Civil Suit filed under Order IV Rule 1 of Original Side Rules,  
Sections 28, 29, 134 and 135 of the Trade Marks Act, 1999 and Sections  
51, 55 and 62 of the Copyright Act, 1957 to pass a judgment and decree for:

a)A perpetual injunction restraining the Defendants, their distributors,  
stockists, servants, agents, retailers, representatives or any other person  
claiming under/through them from in any manner infringing the Plaintiff's  
registered Trade Marks 'Qube' or 'QUBE DEVICE' filed as Plaint Document  
No.1 by using the identical/deceptive similar 'QUBE' trade mark or 'Qube  
Device' filed as Plaint Document No.10 in connection with their existing or  
any other business and/or any other mark or device, which is identical with



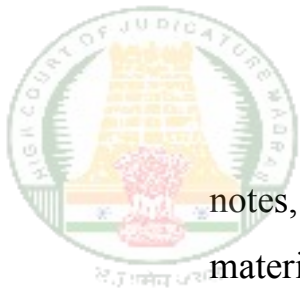
and/or deceptively similar to Plaintiff's registered Trade Marks 'Qube' or 'QUBE DEVICE' or in any other manner whatsoever;

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b) A perpetual injunction restraining the Defendants, their distributors, stockists, servants, agents, retailers, representatives or any other person claiming under/through them from in any manner associating themselves with the Plaintiff by using the Trade Mark 'Qube' or the 'Qube Device' filed as Plaintiff Document No. 10 and/or any other mark which is identical with or deceptively similar to the Plaintiff's Trade Mark 'Qube' or 'QUBE DEVICE' filed as Plaintiff Document No.1 so as to pass off the defendant's goods/business as that of the Plaintiff's or wrongfully associating themselves with the Plaintiff's business or in any other manner whatsoever;

c) A perpetual injunction restraining the Defendants, their distributors, stockists, servants, agents, retailers, representatives or any other person claiming under/through them from in any manner infringing the Plaintiff's Copyright in the 'QUBE DEVICE' filed as Plaintiff Document No.1, by using the 'Qube Device' filed as Plaintiff Document No.10 or any substantial reproduction of the said device or in any other manner whatsoever;

d) The Defendants be ordered to remove all painted displays and other display material being used by the Defendant containing the trade marks 'Qube' or 'Qube Device' filed as Plaintiff Document No.10 or any other mark/device which is deceptively similar and/or is a substantial reproduction of the Plaintiff's trade mark 'Qube' or the 'Qube Device' filed as Plaintiff Document No.1 and surrender to Plaintiff for destruction all goods, labels, dyes, blocks, moulds, screen prints, packing materials, bills, vouchers, literature, publicity material, letterheads, invoices, challans, visiting cards, job cards, delivery



notes, rate list, sign boards, glow signs, blow ups and all reprographic materials and other materials bearing the Trade Mark 'Qube' or the 'Qube Device' filed as Complaint Document No.10, which do not emanate from the Plaintiff;

e)A preliminary decree be passed in favour of the Plaintiff directing the Defendants to render account of profits made by use of trademark 'Qube' or the 'Qube Device' filed as Complaint Document No.10 and a final decree be passed in favour of the plaintiff for the amount of profits thus found to have been made by the defendants after the latter have rendered accounts;

f)The defendants be ordered and decreed to pay to the plaintiff a sum of Rs.25,01,000/- as damages for acts of passing off and infringement of Qube Trade Marks and Copyright committed by the defendants;

g)For costs of the suit.

For Plaintiff : Ms.Reshma Rajagopal

For Defendants : Set Ex-parte

### **JUDGMENT**

The suit has been filed for Trade Mark Infringement, passing off, Copyright Infringement and for damages.

2.At the outset, the learned counsel for the plaintiff would submit, on instructions that the plaintiff is not insisting for the damage claim made



against the defendants and the plaintiff will be satisfied, if the other reliefs are alone granted.

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3.The plaintiff is carrying on business as the service providers, suppliers and merchants of a wide range of products and services pertaining to the digital cinema industry. The plaintiff claims that in the manufacture of Cinematographic Equipment's and Software of various kinds, they are a leading player. The plaintiff has obtained trade mark registration for their word mark 'QUBE' and also for the 'QUBE' device mark under various classes from 2003 onwards. The registrations were obtained under the Trade Marks Act from the year 2003 onwards and the last such registration obtained by the plaintiff was on 13.06.2005. All the Trade Mark registrations obtained by the plaintiff for the mark 'QUBE' and its variants are still in force. The details of the trade mark registrations obtained by the plaintiff are also disclosed in the plaint. The plaintiff claims that they have installed nearly 4500 screens around the world in both E and D cinema installations. The plaintiff claims that they have installed more than 1250 screens across the globe. The plaintiff also claims that they have installed more than 3200 prime release screens across the country and out of which



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2200 screens are in South India by their extensive usage of the mark 'QUBE' and its variants. They claim that they have acquired goodwill and reputation in the cinema industry.

4. According to them, the goods sold and services rendered under the suffix/prefix, 'QUBE' are associated only with the plaintiff and no one else. They have also claimed that they have invested huge amount of money by way of advertisement costs for promoting their products/services under the name 'QUBE'. According to them, they came to know on 27.04.2013, that the defendants were using in connection with their cinema theatre business, deceptively similar reproduction of the plaintiff's trade mark 'QUBE'.

5. On coming to know of the same, the plaintiff issued a Cease and Desist Notice to the defendants on 07.05.2013. On receipt of the Cease and Desist Notice, the plaintiff claims that the first defendant discontinued the usage of the plaintiff's trade mark. According to the plaintiff, despite issuance of Cease and Desist Notice, the defendants have not stopped using the deceptively similar trade mark to that of the plaintiff's trade mark 'QUBE' and its variants. The plaintiff also claims that they came to know that the



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defendants had filed a Trade Mark Application before the Trade Mark Registration seeking for registration of their mark which is deceptively similar to that of the plaintiff's trade mark. The plaintiff claims that the defendants have abandoned their trade mark application No.2199855 after filing of the present suit. The plaintiff claims that the artistic features of the plaintiff's label has also been copied by the defendants and therefore they have committed copyright infringement as well.

6.The defendants were set exparte by this Court on 22.10.2019. The exparte evidence has also been recorded by the plaintiff before the learned Additional Master II. The plaintiff's Director-Legal was examined as witness on behalf of the plaintiff (PW1). She has also filed a proof affidavit before the learned Additional Master II reiterating the contents of the plaint. Through P.W.1, the following documents are marked as exhibits:

Ex.P1 is the online printout of Qube Device of the plaintiff.

Ex.P2 is the original legal user certificates in respect of QUBE/QUBE CINEMA obtained by the plaintiff for Trademark Application Numbers 1363571, 1363572, 1363576, 1363581 and 1363582.

Ex.P3 is the photocopy of the sample media coverage in respect of the



plaintiff's business under the trademark/logo QUBE.

Ex.P4 is the photocopy of the sample invoices evidencing the sale of products/goods under the trademark/logo QUBE.

Ex.P5 is the photocopy of the sample invoices evidencing providing advertisement services.

Ex.P6 is the photocopy of the sample invoices for digital print services.

Ex.P7 is the photocopy of the sample invoices for Mastering services.

Ex.P8 is the photocopy of the sample invoices for the right of use of the Plaintiff's equipment.

Ex.P9 is the E-mail received by the plaintiff from the 2nd defendant dated 27.04.2013.

Ex.P10 is the online printout copy of the Qube Device of the Defendants.

Ex.P11 is the photocopy of the office copy of legal notice sent to the defendants on behalf of the plaintiff.

Ex.P12 is the online printout of Trademark application under No.2199855 filed by the 1st defendant dated 05.09.2011.

7.As seen from Ex.P2, being the legal user certificates, the plaintiff



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has obtained the trade mark registration for their trade mark 'QUBE'/'QUBE CINEMA' under various classes. They have also produced invoices, which have been marked as Ex.P4 to prove that they have been selling products/goods under the trade mark/logo 'QUBE' ever since 2005. The sample invoices are marked as Ex.P4. They have also filed copies of the sample invoices (Ex.P5) to prove that they have incurred huge amount of expenditure towards advertisement costs for promoting their products/services under their registered trade mark 'QUBE'/'QUBE CINEMA'. The other sample invoices marked by the plaintiff, which have been marked as Ex.P6, P7 and P8 will reveal that the plaintiff is having the huge sales turnover in respect of the products/services by using their registered trade mark 'QUBE'/'QUBE CINEMA'. Ex.P10 is the 'QUBE' device of the defendants.

8.As seen from the same, the defendants' mark as well as the trade dress are identical to that of the plaintiff's trademark and trade dress. The defendants are using the very same name 'QUBE' and the defendants' label is also identical to that of the plaintiff's label in all respects. The plaintiff has also issued a Cease and Desist Notice to the defendants on 07.05.2013,



which has been marked as Ex.P11, calling upon the defendants to stop using the deceptively similar mark to that of the plaintiff's registered trade mark.

Despite the same, the defendants have continued to use the trade mark "QUBE" and they are continuing to use the identical trade dress in their label.

Infact it is also noticed as seen from Ex.P12 that the defendants had applied for trade mark registration in respect of their products for the very same trade mark of the plaintiff on 05.09.2011 as seen from Ex.P12. It is now informed by the learned counsel for the plaintiff that the application has been abandoned by the defendants

9.After giving due consideration to the plaint averments as well as the oral and documentary evidence produced by the plaintiff, this Court is of the considered view that the plaintiff, by their long and continuous usage of their trade mark 'QUBE' and by the long and continuous usage of their label, is entitled for the protection sought for in the suit, namely, grant of permanent injunction.

10.It is clear from the oral and documentary evidence placed on



record that the defendants have infringed the plaintiff's trade mark and have also infringed the plaintiff's copyright.

11.For the foregoing reasons, the plaintiff has proved the suit claim insofar as the relief of permanent injunction sought for by them is concerned.

12.Since the plaintiff is not pressing the relief as sought for in prayers 'd', 'e' and 'f', the suit with regard to the said prayers will have to be dismissed as not pressed.

13.In the result, the suit is partly decreed in favour of the plaintiff against the defendants by granting the following reliefs:

a)A perpetual injunction is granted to restrain the Defendants, their distributors, stockists, servants, agents, retailers, representatives or any other person claiming under/through them from in any manner infringing the Plaintiff's registered Trade Marks 'Qube' or 'QUBE DEVICE' filed as Plaint Document No.1 by using the identical/deceptive similar 'QUBE' trade mark or 'Qube Device' filed as Plaint Document No.10 in connection with their existing or any other business and/or any other mark or device, which is identical with and/or deceptively similar to Plaintiff's registered Trade Marks



'Qube' or 'QUBE DEVICE' or in any other manner whatsoever;

b) A perpetual injunction is granted to restrain the Defendants, their distributors, stockists, servants, agents, retailers, representatives or any other person claiming under/through them from in any manner associating themselves with the Plaintiff by using the Trade Mark 'Qube' or the 'Qube Device' filed as Plaint Document No. 10 and/or any other mark which is identical with or deceptively similar to the Plaintiff's Trade Mark 'Qube' or 'QUBE DEVICE' filed as Plaint Document No.1 so as to pass off the defendant's goods/ business as that of the Plaintiff's or wrongfully associating themselves with the Plaintiff's business or in any other manner whatsoever;

c) A perpetual injunction is granted to restrain the Defendants, their distributors, stockists, servants, agents, retailers, representatives or any other person claiming under/through them from in any manner infringing the Plaintiff's Copyright in the 'QUBE DEVICE' filed as Plaint Document No.1, by using the 'Qube Device' filed as Plaint Document No.10 or any substantial reproduction of the said device or in any other manner whatsoever;

14. Insofar as prayers 'd', 'e' and 'f' are concerned, the suit is dismissed as not pressed. The defendants are directed to pay the costs of the suit.

**27.03.2024**

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List of Witness examined on the side of the Plaintiff:-

(PW1) Prathima S.V.

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List of Exhibits marked on the side of the Plaintiff:-

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C.S. No.541 of 2---

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C.S. No.541 of 2013

**ABDUL QUDDHOSE, J.**

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**C.S. No.541 of 2013**

**27.03.2024**