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C.S. (Comm. Div) No.73 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 07.02.2024

CORAM:

**THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE**

**C.S. (Comm. Div) No.73 of 2023**

SFP Sons India Private Limited,  
A-24. MEPZ SEZ,  
Tambaram, Chennai,  
Tamil Nadu 600 045.

...

Plaintiff

Vs

Mr. Jitender Singh,  
Proprietor  
M/s. Sri Vidhiya Agencies,  
35/12, Kasi Cheety Street, RK Complex,  
Sowcarpet,  
Chennai- 600079,  
Tamil Nadu, India

...

Defendant

**Prayer :** PLAINT UNDER ORDER VII RULE 1 READ WITH SECTION 151 OF THE CODE OF CIVIL PROCEDURE, 1908 AND SECTIONS 27,28, 29, 134 & 135 OF THE TRADEMARKS ACT, 1999, READ WITH ORDER IV RULE 1 OF MADRAS HIGH COURT ORIGINAL SIDE RULES, prays for judgment and decree ;

a. a permanent injunction restraining the Defendants, by themselves, their men, servants, agents, distributors, stockiest, representatives or any one claiming through or under them from in any manner infringing the plaintiff's registered trademarks JASS under No.



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2648180 in Class 3 and other registered trademarks by using a deceptively similar trademark JAAS or any other trademark deceptively similar to the plaintiffs registered trademark or in any other manner whatsoever,

b. a permanent injunction restraining the Defendants, their men, servants, agents, distributors, stockiest, representatives or any one claiming through or under them from in any manner passing off and/or enabling others to pass off the Defendants' products under the trademark JAAS as and for the plaintiffs' products by manufacturing, selling, or offering to sell, distributing, displaying, printing, stocking, using, advertising their products with a trademark and/or label that is identical in colour scheme, get up and layout with that of the plaintiff's JASS trademark or in any other manner whatsoever,

c. the Defendants be ordered to surrender to Plaintiffs for destruction of all products, labels, cartons, dyes, blocks, moulds, screen prints, packing materials and other materials bearing the trademark JAAS label or any mark deceptively similar to plaintiffs' trademark and artistic work JASS label.

d. a preliminary decree be passed in favour of the Plaintiffs directing the Defendants to render account of profits made by use of trademark and a final decree be passed in favour of the Plaintiffs for the amount of profits thus found to have been made by the Defendants after the latter have rendered accounts;

e. for costs of the suit; and

f. pass such further or other reliefs as this Hon'ble Court may deem



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fit and necessary in the circumstances of the case and thereby render justice.

For Plaintiff : Mr. R. Sathish Kumar  
For Defendant : Mr.G. Sasikannan

### **JUDGMENT**

The suit has been filed for infringement and passing off.

2. The plaintiff is in the business of manufacturing, making and selling perfumes across the world under various trademarks, chief among them being “JASS”. The plaintiff is the registered proprietor of the trademark “JASS” device under No.2648180 in Class 3 which is valid and subsisting till 24.12.2033. The plaintiff has disclosed in the plaint their sales turnover, advertisement expenses incurred by them for promoting their products under the trademark “JASS”. As seen from the same, the sales turnover of the plaintiff is huge and the advertisement costs incurred by them is also huge. According to the plaintiff in the year 2018, they came to know that the defendant Mr.Jitender Singh, trading as M/s.Sri Vidhiya Agencies has filed a trademark application for the trademark “JSR JAAS” for goods relating to perfumes when the defendant filed an opposition against the registration of the plaintiff's



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trademark application numbers 2648180 & 2648179 in Class 03.

According to the plaintiff, the defendant in their opposition MAS 931007 has admitted that they started using their trademark JSR JAAS since 2016. The plaintiff's application under No.2648179 is dated 24.12.2013. Therefore, the plaintiff claims that they are the prior user of the trademark “JASS” as opposed to the defendant's use of the trademark JSR JASS.

3. The oppositions filed by them against the defendant's application filed before the trademark Registry in respect of the trademark “JASS” or JSR JASS have also been disclosed in the plaint. It is further contended by the plaintiff that the defendant is having the practice of abandoning their trademark applications whenever oppositions have been filed by the plaintiff as detailed hereunder :-

| <b>Defendant's<br/>Trademark<br/>Application No.</b> | <b>Opposition No.</b> | <b>Trademark</b> | <b>Status</b>                                 |
|------------------------------------------------------|-----------------------|------------------|-----------------------------------------------|
| 3785202                                              | 1011727               | JAAS             | Abandoned for non-filing of counter statement |



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| Defendant's Trademark Application No. | Opposition No. | Trademark                                                                          | Status                                        |
|---------------------------------------|----------------|------------------------------------------------------------------------------------|-----------------------------------------------|
| 3798012                               | 949279         |  | Abandoned for non-filing of counter statement |
| 4457682                               | 1065021        |  | Opposed by plaintiff and pending              |

4. According to the plaintiff, the defendant has been continuously and knowingly violated the plaintiff's rights by filing multiple trademark applications and abandoning the same when opposed by the plaintiff. According to the plaintiff, even in the instant suit, the defendant has made false claim as user since 2010, but the same has not been proved.

5. In the suit, the written statement was filed by the defendant but thereafter, they were set exparte by this Court on 13.10.2023 due to their non appearance. Till date, no application has been filed to set aside the exparte order.



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6. The plaintiff had also initiated pre-suit mediation in accordance with Section 12A of the Commercial Courts Act, 2015. However, in the pre-suit mediation also the defendant failed to turn up and thereafter the plaintiff was constrained to file the present suit against the defendant. According to the plaintiff, the defendant has blatantly copied the plaintiff's trademark **“JASS”** and has also copied the colour scheme and get up in respect of the packaging of the product. Since the defendant was set exparte by this Court, exparte evidence was recorded by the learned Additional Master – III on 02.11.2023.

7. The plaintiff's Authorised Signatory Mr.Mohamed Yousuf Haroon was examined as a witness (PW1) on behalf of the plaintiff. He has also filed a proof affidavit on behalf of the plaintiff reiterating the plaint averments. Through PW1, the following documents were marked as exhibits on the side of the plaintiff :-

|    |                                                                                                                                                                                  |
|----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | Ex.P1 is the original Board resolution dated 27.10.2023.                                                                                                                         |
| 2. | Ex.P2 is the certified copy of the trademark registration certificate dated 24.12.2013.                                                                                          |
| 3. | Ex.P3 is the printout of the notice of opposition being MAS-958668 filed by the defendant to the plaintiff's trademark application under no.2648180 in Class 3 dated 13.11.2018. |
| 4. | Ex P4 is the printout of the counter dated 22.01.2019 filed by the plaintiff before the Trademark registry.                                                                      |
| 5. | Ex.P5 is the printout of the order dated 05.11.2018 for opposition No.949279.                                                                                                    |



|     |                                                                                                                                                 |
|-----|-------------------------------------------------------------------------------------------------------------------------------------------------|
| 6.  | Ex P6 is the printout of the order dated 19.06.2019 for opposition No.958668.                                                                   |
| 7.  | Ex.P7 is the printout of the order dated 06.01.2020 for opposition No.1011727.                                                                  |
| 8.  | Ex.P8 is the printout of the invoices of the plaintiff for trademark JASS.                                                                      |
| 9.  | Ex.P9 is the office copy of the pre mediation application filed by the plaintiff.                                                               |
| 10. | Ex.P10 is the Non starter report in FORM 3 under no.TNSLSA No.8720/PIMS/52/2022 by the plaintiff before the TamilNadu Legal Services Authority. |
| 11. | Ex.P11 is the printout of the Plaintiff's Label.                                                                                                |
| 12. | Ex.P12 is the printout of the Plaintiff's Label.                                                                                                |

8. As seen from the aforementioned Exs.P3 to P7, it is clear that the defendant themselves have admitted that they have been using the word mark “JASS”, which is visually and phonetically similar to that of the plaintiff's registered trademark “JASS” only from 2016. It is also seen that the defendant is having the practice of abandoning their trademark applications whenever an opposition has been made by the plaintiff. The plaintiff has also initiated pre-suit mediation as seen from Ex.P9, dated 01.12.2022. A failure report has also been given by the Mediation Centre, which is Ex.P10. The defendant has also not participated in the pre-suit mediation, despite having received notice. The defendant has also not let in any oral or documentary evidence and they have also been set exparte by this Court. A comparison chart has



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also been filed by the plaintiff, which has been marked as Exs.P11 and P12, which would prove that the defendant has copied the plaintiff's trademark and trade dress in every detail viz., the font, the colour scheme, get up and layout, the bottle shape, the device etc. The comparison of the product packaging of the plaintiff as well as of the defendant is reproduced herein:-

|                                                                                    |                                                                                     |
|------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|
|  |  |
|------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|

9. Section 29(3) of the Trademarks Act, 1999 also makes it clear that when marks are identical and the goods are identical, the court shall presume confusion. The plaintiff's trademark “JASS” and the defendant's trademark JAAS are phonetically and structurally identical. Therefore, a case of infringement of registered trademark under Section 29 is made out by the plaintiff.



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10. The plaintiff has sought for two ancillary reliefs, apart from the primary reliefs viz., for delivery and destruction and accounts for profits.

However, no evidence with regard to the same has been produced by the plaintiff either in the pleadings or in their oral and documentary evidence. Hence, the two ancillary reliefs sought for by the plaintiff's which are claimed in prayer (c) and (d) of the plaint are not granted by this Court, since the plaintiff has not let in oral or documentary evidence to prove the same. The learned counsel for the plaintiff during the course of her submissions also did not seriously press for the said reliefs. Therefore, the said ancillary reliefs viz., prayer (c) and (d) of the plaint are rejected by this Court.

11. However, the core reliefs sought for by the plaintiff have to be granted, since the suit claim with regard to the same has been proved by the plaintiff through their pleadings, oral and documentary evidence. Accordingly, the suit is partly decreed against the defendant by granting the following reliefs :-

a. a permanent injunction restraining the Defendant from in any manner infringing the plaintiff's registered trademarks JASS under No. 2648180 in Class 3 and other registered trademarks by using a



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deceptively similar trademark JAAS or any other trademark deceptively similar to the plaintiff's registered trademark or in any other manner whatsoever,

b. a permanent injunction restraining the Defendant from in any manner passing off and/or enabling others to pass off the Defendants' products under the trademark JAAS as and for the plaintiffs' products by manufacturing, selling, or offering to sell, distributing, displaying, printing, stocking, using, advertising their products with a trademark and/or label that is identical in colour scheme, get up and layout with that of the plaintiff's JASS trademark or in any other manner whatsoever,

c. The suit insofar as prayer (c) & (d) in the plaint are concerned, the same is dismissed as not pressed.

12. In view of the act of infringement and passing off committed by the defendant, the defendant is also liable to pay costs of the suit to the plaintiff. Accordingly, the defendant is directed to pay costs of the suit to the plaintiff.

07.02.2024

Index: Yes/ No  
Speaking order / Non speaking order  
Neutral citation : Yes / No  
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***APPENDIX***



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List of Witness Examined on the side of the Plaintiff:

Mr.Mohamed Yousuf Haroon (PW1)

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List of documents marked on the side of the plaintiff :

| S. No. | Exhibits | Description of documents                                                                                                                                                         |
|--------|----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.     | P1       | Ex.P1 is the original Board resolution dated 27.10.2023.                                                                                                                         |
| 2.     | P2       | Ex.P2 is the certified copy of the trademark registration certificate dated 24.12.2013.                                                                                          |
| 3.     | P3       | Ex.P3 is the printout of the notice of opposition being MAS-958668 filed by the defendant to the plaintiff's trademark application under no.2648180 in Class 3 dated 13.11.2018. |
| 4.     | P4       | Ex P4 is the printout of the counter dated 22.01.2019 filed by the plaintiff before the Trademark registry.                                                                      |
| 5.     | P5       | Ex.P5 is the printout of the order dated 05.11.2018 for opposition No.949279.                                                                                                    |
| 6.     | P6       | Ex P6 is the printout of the order dated 19.06.2019 for opposition No.958668.                                                                                                    |
| 7.     | P7       | Ex.P7 is the printout of the order dated 06.01.2020 for opposition No.1011727.                                                                                                   |
| 8.     | P8       | Ex.P8 is the printout of the invoices of the plaintiff for trademark JASS.                                                                                                       |
| 9.     | P9       | Ex.P9 is the office copy of the pre mediation application filed by the plaintiff.                                                                                                |
| 10.    | P10      | Ex.P10 is the Non starter report in FORM 3 under no.TNSLSA No.8720/PIMS/52/2022 by the plaintiff before the TamilNadu Legal Services Authority.                                  |
| 11.    | P11      | Ex.P11 is the printout of the Plaintiff's Label.                                                                                                                                 |
| 12.    | P12      | Ex.P12 is the printout of the Plaintiff's Label.                                                                                                                                 |



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**ABDUL QUDDHOSE, J.**

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