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Civil Suit (Comm.Div.) No.103 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.06.2024

CORAM

THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

Civil Suit (Comm.Div.) No.103 of 2023

and

A.Nos.6210, 6211 and 6212 of 2023

1. Praba's VCare Health Clinic Private Limited
Represented by its Authorised Signatory
No.1 New Giri Road, T.Nagar
Chennai – 600 017
Having registered office at
First Floor, Block – II (Rear Side)
Prince Info Park
Plot No.31-B (S.P.)
New No. B – 81, Second Main Road
Ambattur Industrial Estate
Chennai – 600 08.
2. VCare Herbs Concept Private Limited
Represented by Authorised Signatory
No.1 New Giri Road, T.Nagar
Chennai – 600 017
Having registered Office at :
First Floor, Block – II (Rear Side)
Prince Info Park, Plot No.31-B (S.P.)
New No.B-81, Second Main Road
Ambattur Industrial Estate,
Chennai – 600 08.

... Plaintiffs

Vs.



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M/s.V.V.Care Enterprises
Represented by Ms.Thaiyanayagi
No.6, Kothari Garden
Vasantham Nagar, Avadi
Chennai – 600 071
Also At:
No.68, Paradise Nagar, Nathamedu
Veppampattu, Thiruninravur
Thiruvallur – 602 024.

.. Defendant

Prayer:-

Civil Suit has been filed under Order IV, Rule 1 of the Madras High Court Original Side Rules and Order VII Rule 1 of the Code of Civil Procedure, 1908 read with Sections 27, 28, 29, 134 and 13 of the Trade Marks Act, 1999 read with Section 2(1)(c)(xvii) and Section 7 of the Commercial Courts Act, 2015 read with Rule of the Madras High Court prays for a judgment and decree against the defendant on the following terms :

a) A permanent injunction restraining the defendant, their proprietors, partners, directors, subsidiaries, affiliates, associates, franchisees, officers, employees, personnel, servants, agents, representatives including wholesalers, distributors, stockists, retailers and anyone acting for or on their behalf from in any manner directly or



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indirectly using the trademark 'VCARE' and / or 'VVCARE' and / or any other trade mark, trade name, and / or device identical or similar to the plaintiff's registered trade marks 'VCARE' and  in any form or manner, in respect of any goods and / or services, amounting to infringement of plaintiffs' registered Trademarks.

b) A permanent injunction restraining the defendant, their proprietors, partners, directors, subsidiaries, affiliates, associates, franchisees, officers, employees, personnel, servants, agents, representatives including wholesalers, distributors, stockists, retailers and anyone acting for or on their behalf from in any manner directly or indirectly using the marks 'VCARE' and / or 'VVCARE' and / or any other trade mark, tradename, and / or device identical or similar to the plaintiffs' trade marks 'VCARE' and  y form or manner and / or in respect of any goods or services, thereby passing off their products as that of the plaintiffs' products;

c) An order directing the defendant to prepare and submit an account of profits made by them to the sale of goods under the impugned trademarks and thereafter to pass a final decree for the same upon



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ascertaining the accounts in favour of the plaintiff ;

d) An order directing the defendant to pay preliminary damages for a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) to the plaintiff apart from such damages as calculated upon accounts being rendered by the defendant;

e) An order for delivery up of any and all finished and / or unfinished products, materials including packaging material, signage, cards, labels, brochures, printed materials and any other material bearing the impugned trademark which is identical with and / or deceptively similar to that of the plaintiff's trademark, by the defendant to the plaintiff for the purpose of destruction ;

d) costs of the suit.

For Plaintiffs : Mr.N.C.Vishal
for Mr.K.Premchandar

For Defendant : Set ex-parte on 23.04.2024

J U D G M E N T

The plaintiffs have filed the present suit seeking for the relief of permanent injunction against the defendant, who has infringed the registered trademark of the plaintiff and for the tort of passing-off



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committed by the defendant. The plaintiff has also claimed for Rs.10 lakhs as damages, apart from costs of the suit.

2.1. The case of the plaintiffs is that they are the registered user of the trademark "VCare". The business of the plaintiffs is also run under the brand "VCare". They are specialised in the field of hair care and skin care, bath, body, luxury and wellness products. The business was started in the year 1999 as a proprietary concern spearheaded by Ms.Carolin Praba. In the year 2002, the plaintiffs' predecessor started their first hair treatment clinic in Chennai. Thereafter, the plaintiffs have established and are running over 43 clinics in South India across Tamil Nadu, Pondicherry, Telangana, Andhra Pradesh and Karnataka. On 07.04.2004, the first plaintiff was incorporated to carry on the business under the brand name "VCare". Thereafter on 22.01.2007, the second plaintiff was incorporated as a group company of the first plaintiff.

2.2. It is the case of the plaintiffs that they have established various group concerns, all of which, was prefixed with the word "VCare". The plaintiffs submitted that this trademark, "VCare" has been



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adopted and put into use from the year 1999 in respect of cosmetics and health care goods and services. The said trademark has acquired enviable reputation and goodwill in the minds of the public and trade. In 2003, the first plaintiff had created a logo ' ' which they have also been using since 01.03.2003. The plaintiffs have set out various trademarks registered by them under various classes and have also provided their respective validities.

2.3. It is the case of the plaintiffs that the name "VCare" has become synonymous to their services, products and goods. While so, in the month of January 2022, the plaintiffs came to know that the defendant is dishonestly using the mark "VVCare", which is nearly identical to the plaintiffs' mark "VCare". It is stated that the plaintiffs have attempted to amicably resolve the dispute between them, however, the defendant continued with the impunity, to use the trademark



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"VVCare". On 21.02.2022, the defendant had issued a reply statement and claimed that the defendant was not aware of the plaintiffs or their trademark, that they are not carrying on business in that locality where the plaintiffs operate and their logo is distinctly different from that of the plaintiffs and there is no question of consumers being confused with the trademark as well as the logo. However, after issuing reply, the defendant has now created a logo which in effect resembles the logo of the plaintiffs, since the first alphabet 'V' depicted in the form of a women's face profile . The plaintiff  ed that they have resorted to Pre-Institution Mediation as contemplated under the Commercial Court Act, 2015. The defendant, who entered appearance, had agreed to settle the dispute and offered to change the trademark and thereafter, they have failed to appear before the Mediator, resulting in the failure of mediation procedure.

2.4. The plaintiffs claim that they are the prior adopter, user and registered proprietor of the trademark 'VCare' in respect of cosmetics, bath and beauty products, which falls under class 3 and 5 of Trademarks Act. The defendant has copied the plaintiffs' registered trademark 'VCare'



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and is unlawfully using the mark as 'VVCare' for its products that are identical to that of the plaintiffs' trademark, which violates the statutory rights of the plaintiffs, amounting to infringement of the trademark under Section 29 of the Trademarks Act, 1999. It is further stated that the defendant is neither the registered proprietor of the trademark, nor has the defendant been permitted to use the plaintiffs' registered trademark. It is the further claim of the plaintiffs that they have obtained goodwill and reputation in their business for more than two decades by using trademark 'VCare'. The defendant has made a clear attempt to pass-off their goods as that of the plaintiffs', by adopting the mark 'VVCare', which is visually, structurally and phonetically deceptively similar and almost identical to that of the plaintiff's trademark 'VCare'. It is further stated that the defendant is passing-off their goods as that of the plaintiffs' goods, by attempting to appear as close to the plaintiffs' products and packaging, in order to confuse the public while making minor inconsequential cosmetic alterations in an attempt to escape from the liability. Further, the defendant established their illegal conduct by altering their trading style of 'V.V.Care Enterprises' with the sole view of projecting themselves as one of the group entities of the plaintiffs, in



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order to deceive the public. Therefore, the defendant is liable to be restrained from passing-off their goods as that of the plaintiffs. Further, the plaintiffs reserve their right to claim appropriate compensatory and punitive damages against the defendant herein for illegal, *mala-fide* and dishonest conduct of the defendant. Hence, the present suit.

3. Since the defendant has not filed written statement, the defendant was set *ex-parte* by this Court on 23.04.2024.

4. On the side of the plaintiffs, the Authorized Signatory of the plaintiffs/Company, Mr.S.Mareeswaran was examined as P.W.1 and he has reiterated the averments made in the plaint and also marked 19 documents as Exs.P1 to P19.

5. Heard the learned counsel appearing for the plaintiffs and perused the materials available on record.

6. On a perusal of the plaint averments and also Proof Affidavit of the plaintiffs and documents marked on behalf of them, this Court finds



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that the suit claim is proved by the plaintiffs, and hence, the plaintiffs/Company is entitled to the decree as sought for in the plaint. Accordingly, the suit is decreed as prayed for, with costs. Consequently, connected applications are closed.

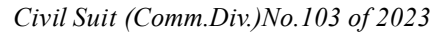
14.06.2024

Index: Yes/No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

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S.Mareeswaran - PW1

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1.	P1	Photocopy of the certificate of Incorporation of 1 st plaintiff	07.04.2004
2.	P2	Photocopy of the certificate of Incorporation of 2 nd plaintiff	22.01.2007
3.	P3	Photocopy of the license agreement between the 1 st and 2 nd plaintiff	31.03.2016
4.	P4	Printout of the certificate of Incorporation pursuant to change of name of 2 nd plaintiff	20.10.2020
5.	P5	Printout of the examination report issued by the Trade Marks registry to trade mark application No.5110924	17.09.2021
6.	P6	Office copy of the cease and Desist notice issued to the defendant by the plaintiff dated 22.01.2022 along with original post receipt	
7.	P7	Original reply issued by the defendant to the plaintiffs' cease and desist notice	21.02.2022
8.	P8	Original invoice for the purchase of the defendant's impugned products	23.08.2022
9.	P9	Series (11 Nos) are the certified copies for use in legal proceedings pertaining to the plaintiffs' trade marks in Application Nos.2145263, 2420323, 3086055, 3086056, 2420324, 2145260, 1297896, 2420325, 2420326, 2405666, 2405667.	



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10.	P10	Original mediation failure report	14.02.2023
11.	P11	Original invoice for the purchase of the defendant's impugned products	20.04.2023
12.	P12	Printout of the trademark application filed by the defendant and its status in Application No.5110924	21.04.2023
13.	P13	Printout of the invoices pertaining to advertisement of the plaintiffs' goods and services for the year 2022	
14.	P14	Printout of the invoices pertaining to sale of the plaintiffs' products and services offered by 1 st plaintiff for the year 2016 and 2022	
15.	P15	Printout of the invoices of the 2 nd plaintiff for the year 2022 to 2023	
16.	P16	Printout of the extracts of the plaintiffs' website	
17.	P17	Photos of the depictions of the defendant's products sold under the impugned trademarks	
18.	P18	Photos of the depictions of the plaintiffs' products	
19.	P19	Photocopy of the chartered accountant's certificate of the plaintiffs	

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P.VELMURUGAN, J

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