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Civil Suit (Comm.Div.) No.147 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.147 of 2023

Hatsun Agro Product Ltd.,
Having registered office at
No.41(49), Janakiram Colony Main Road,
Janakiram Colony, Arumbakkam,
Chennai – 600 106,
Represented by its Authorised Signatory
Mr.P.Vivek.

... Plaintiff

Vs.

Praveen Kumar

... Defendant

Prayer:-

Civil Suit has been filed under Order VII Rule 1 the Code of Civil Procedure, 1908 read with Order IV, Rule 1 of the Madras High Court Original Side Rules and Sections 134 and 135 of the Trademarks Act, 1999 and Section 7 of the Commercial Courts Act, 2015 prays for a judgment and decree against the defendant on the following terms :

a) for a permanent injunction restraining the defendant, by itself, its servants, agents, legal representatives, distributors or any one claiming



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through it from in any manner infringing the plaintiff's registered trademark AROKYA by using the trademark AROGYA DHAN or any other deceptively similar mark in any manner whatsoever causing infringement to the plaintiff's registered trademark as described in the Schedule to the plaint.

b) for a permanent injunction restraining the defendant, by itself, its servants, agents, legal representatives, distributors or any one claiming through it from in any manner whatsoever from passing-off and enabling others to pass-off the defendant's business as that of the plaintiff's by using the mark AROGYA DHAN or any other mark or trade name which is deceptively similar or identical to the plaintiff's trademark AROKYA in any manner whatsoever.

c) for a declaration that the plaintiff's trademark AROKYA is a well-known mark as recognized under the Trademarks Act 1999.

d) directing the defendant to surrender to the plaintiff all the products and stocks with the offending labels, together with the blocks, dies, name boards, sign boards etc., for destruction.

e) directing the defendant to render true and faithful accounts of



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the profits earned by it through the sale of the products bearing the offending trademark labels and directing payment of such profits to the plaintiff.

f) directing the defendant to pay to the plaintiff a sum of Rs.3,00,000/- as damages for committing acts of infringement of trademark and passing off.

For Plaintiff : Mr.Y.K.Aiswarya
for M/s.Surana and Surana

For Defendant : Set ex-parte on 16.04.2024

J U D G M E N T

The suit has been filed for the following reliefs :

a) for a permanent injunction restraining the defendant, by itself, its servants, agents, legal representatives, distributors or any one claiming through it from in any manner infringing the plaintiff's registered trademark "AROKYA" by using the trademark "AROGYA DHAN" or any other deceptively similar mark in any manner whatsoever causing infringement to the plaintiff's registered trademark as described in the Schedule to the plaint.



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b) for a permanent injunction restraining the defendant, by itself, its servants, agents, legal representatives, distributors or any one claiming through it from in any manner whatsoever from passing-off and enabling others to pass-off the defendant's business as that of the plaintiff's, by using the mark "AROGYA DHAN" or any other mark or trade name which is deceptively similar or identical to the plaintiff's trademark AROKYA in any manner whatsoever.

c) for a declaration that the plaintiff's trademark "AROKYA" is a well-known mark as recognized under the Trademarks Act, 1999.

d) directing the defendant to surrender to the plaintiff all the products and stocks with the offending labels, together with the blocks, dies, name boards, sign boards etc., for destruction.

e) directing the defendant to render true and faithful accounts of the profits earned by it through sale of the products bearing the offending trademark labels and directing payment of such profits to the plaintiff.

f) directing the defendant to pay to the plaintiff a sum of Rs.3,00,000/- as damages for committing acts of infringement of trademark and passing-off.

2.1. The case of the plaintiff/Company is that they are the India's



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largest private sector dairy Company and emerged as the market leader in the dairy processing industry. The plaintiff is not only involved in dairy processing industry, but also manufactures and markets various dairy related food products. Originally, one Mr.R.G.Chandramogan, who is one of the promoters of the plaintiff/Company established a partnership firm in the year 1970 under the name M/s.Chandramohan & Co., for manufacturing and selling ice creams. On seeing the tremendous success of the business, the plaintiff herein came to be incorporated originally under the name "Hatsun Foods Private Limited" on 04.03.1986. Thereafter, the plaintiff changed its name as "Hatsun Milk Food Private Limited". Subsequently, the plaintiff/Company was converted into a public limited Company with the name "Hatsun Agro Product Ltd.," in the year 1995. While that being so, the plaintiff, through its brands, such as "AROKYA, ARUN, HATSUN, IBACO, HATSUN DAIRY INGREDIENTS, SANTOSA, HATSUN DAIRY" etc., has built up the reputation and goodwill for their products over the years under the said distinctive trademarks.

2.2. It is stated that the plaintiff adopted and used the trademark "AROKYA" in respect of milk and related products since 1994. The said



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trademark issues in respect of divergent products ever since it has been launched in the market and has been selling its products under the said trademark continuously and uninterruptedly to each and every nook and corner in Tamil Nadu, Telangana, Karnataka, Andhra Pradesh, Goa, Maharashtra and Puducherry. The plaintiff, by way of extensive sales promotions and advertisement through various media sources like television, radio, magazines, newspapers, pamphlets, hoardings etc., in the regional languages, has enabled it to increase its market presence for its trademark. The plaintiff has also obtained multiple registrations for its trademark "AROKYA" under various Classes, more particularly Classes 29, 30, 31 and 32 of the Trademarks Act, 1999. The fact that the plaintiff's trademark has been registered after scrutiny by the Trademark Registry, clearly shows that there was no prior mark similar to that of the plaintiff's mark at the time of registration. Further, the plaintiff has strongly established itself in the 'milk and allied products' industry under the brand name "AROKYA".

2.3. It is the claim of the plaintiff that in the year 2021, it came to the knowledge of the plaintiff that the defendant's product salt was sold under the impugned mark "AROGYA DHAN". Thus, the plaintiff issued a



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Cease and Desist notice dated 15.10.2021 to the defendant, pertaining to infringement and passing-off of the plaintiff's trademark "AROKYA". Post issuance of the above mentioned notice to the defendant, it has refrained from selling its products under the impugned mark "AROGYA DHAN", which is nearly identical and similar to the plaintiff's mark "AROKYA". Despite sending the above notice, the defendant's have resumed selling their product with the impugned mark.

2.4. It is the further claim of the plaintiff that the defendant has verbatim misused the plaintiff's trademark "AROKYA" as "AROGYA DHAN". The addition of "DHAN" as a suffix to "AROGYA" does not attribute to the distinctiveness by any stretch of imagination and does not in any manner alter the innate similarities between the plaintiff's trademark and the defendant's trademark. Thus, the blatant and identical imitation of the plaintiff's trademark by the defendant, where they are using it as trademark and trade name, is highly prejudicial to the plaintiff's interest and causing confusion among consumers.

2.5. It is stated that the defendant is neither the registered





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proprietor of the trademark, nor has been permitted to use the plaintiff's registered trademark. Further, the defendant used the words "AROGYA DHAN" even without any registration as a trademark. The defendant's trademark application No.3408422 for registration for the impugned mark "AROGYA DHAN" has been refused by the Trademark Registry, vide order dated 08.03.2019. As on date, the defendant does not have any subsisting registration for the mark "AROGYA DHAN". Further, the similarity between the plaintiff's products, viz., milk and milk products and the defendant's product viz., salt, which are edible and perishable in nature and also being sold through same trade channels, the use of the defendant's impugned trademark would result in confusion amongst the public. Thus, the defendant's use of the impugned mark "AROGYA DHAN" is infringing the plaintiff's registered trademark "AROKYA". The defendant has made a clear attempt to pass-off their goods as that of the plaintiff's, by adopting the mark as "AROGYA DHAN", which is deceptively similar and almost identical to that of the plaintiff's trademark 'AROKYA'. The use of the impugned mark by the defendant will result in irreparable injury and loss to the plaintiff. Further, the said adoption by the defendant amounts to



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infringement of the plaintiff's registered mark and the defendant is further liable for passing-off its goods as that of the plaintiff. Further, the defendant is in blatant violation of the plaintiff's intellectual property rights. When the plaintiff discovered the re-selling of the defendant's product under the impugned trademark, the plaintiff has sent another fresh Cease and Desist notice, dated 11.10.2022 to the defendant and the same has been delivered to the defendant. However, the defendant has failed to reply to the above notice. Thus, it can be proved that the defendant has wilfully refrained from responding to the above said notices. Thereafter, the plaintiff initiated the Pre-Institution Mediation before the State Legal Services Authority under Section 12-A of the Commercial Courts Act. However, the defendant neither appeared, nor was represented in the Mediation proceedings. Therefore, the State Legal Services Authority issued the "Non-starter Report" as no representation for the defendant.

2.6. It is further stated that the defendant has no right to use the impugned mark "AROGYA DHAN" which could prejudice the reputation of the plaintiff's trademark "AROKYA" and would also dilute the



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distinctiveness of the plaintiff's trademark "AROKYA". Further, the degree of resemblance between the defendant's impugned mark and the plaintiff's trademark is extremely high. The defendant has been in continuous use of the infringing trademark, since the plaintiff came across the defendant's products. The cause of action continues to arise *de die diem*, as the defendant is continuing to use the impugned trademark illegally.

2.7. It is well established that the goods sold by the plaintiff and defendant are identical and similar and the defendant's claim has no base or is an invalid defence, as the defendant does not establish any method of distinctiveness, nor does he advertise his products which makes his mark known to the customers. The defendant has neither adduced documentary evidence, nor oral evidence to prove the distinctiveness of its trademark. Therefore, it is clear that the defendant has dishonestly adopted the mark with an ill-intention to pass-off its products under the impugned mark "AROGYA DHAN" as products of the plaintiff. Hence, the present suit.



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3. Since the defendant has not filed written statement, the defendant was set *ex-parte* by this Court on 16.04.2024.

4. On the side of the plaintiff, the Deputy Manager-Legal and Authorized Signatory of the plaintiff/Company, Mr.P.Vivek was examined as P.W.1 and he has reiterated the averments made in the plaint and also marked 21 documents as Exs.P1 to P21.

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

6. On a perusal of the plaint averments and also Proof Affidavit of the plaintiff and documents marked on behalf of them, this Court finds that the suit claim is proved by the plaintiff, and hence, the plaintiff/Company is entitled to the decree as sought for in the plaint. Accordingly, the suit is decreed as prayed for, with costs. Consequently, connected pending applications, if any, are closed.



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Index: Yes/No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

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List of Witness examined on the side of the plaintiff

P.Vivek - PW1

List of documents marked on the side of the plaintiff

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1.	P1	Photocopy of the incorporation certificate of the plaintiff company for the year 1986 to 1998	
2.	P2	Printout of the plaintiff's company's master data as available on the MCA website	
3.	P3	Photocopy of the board resolution	27.04.2022
4.	P4	Series (33 nos) is the certified copy of the trade mark certificates obtained by the plaintiff for their trade mark AROKYA for the year 1995 to 2018	
5.	P5	Original chartered accountant certificate	15.06.2021
6.	P6	Original chartered accountant certificate for the brand AROKYA	17.03.2016 to 15.06.2021
7.	P7	Photocopy of the ISO certificates obtained by the plaintiff	14.10.2018
8.	P8	Photocopy of the FSSAI certificates obtained by the plaintiff for its various plants for 09.12.2018 to 03.06.2021	
9.	P9	Printout of invoices for advertisement expenses incurred by the plaintiff company for the year 2000 to 2013	
10.	P10	Printout of the advertisement / pamphlets of the plaintiff company	
11.	P11	Printout of the plaintiff's Advertisement published in Newspapers and Journals	
12.	P12	Printout of the list of distribution channel of the plaintiff	
13.	P13	Printout of the invoices raised against	



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		orders made for the plaintiff's product AROKYA from the year 1991 to 2021	
14.	P14	Printout of the screen shots of the television advertisement of the plaintiff company	
15.	P15	Printout of the plaintiff's product package AROKYA	
16.	P16	Original defendant's product package AROGYA	
17.	P17	Printout of the details available online regarding the defendant's product	
18.	P18	Printout of the order passed by the Trademark registry	08.03.2019
19.	P19	Office copy of the cease and desist notice issued on behalf of the plaintiff along with postal receipts	15.10.2021
20.	P20	Office copy of the cease and desist notice issued on behalf of the plaintiff along with postal receipts	11.10.2022
21.	P21	Original non-starter report issued by the State Legal Services Authority	25.01.

Material object marked on the side of the plaintiff

SL.No	Exhibit	DESCRIPTION OF DOCUMENTS
1.	M.O.1	Original Compact Disc containing videos of various advertisement promoting the trademark AROKYA

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