



C.S (Comm. Div.) No.235 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2024

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.S (Comm. Div.) No.235 of 2023

M/s.Vasantha Bhavan Hotels India Private Limited

Represented by its Director

Mr.Anand Krishnan

Having its office at No.34

Developed Plots (South Phase)

Industrial Estate, Guindy, Chennai - 600 032

... Plaintiff

Vs.

Sri Vasantha Bhavan

No.244, Dindivanam, New Bypass Road

So, Kilnachipattu

Tamil Nadu-606611

... Defendant

Prayer: The plaint is filed under Order VII Rule 1 C.P.C. read with Order IV Rule 1 of High Court O.S. Rules and Section 134 and Section 135 of the Trademarks Act, 1999, praying to pass judgment and decree against the defendant as follows:



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a) Granting a permanent injunction restraining the Defendant, their men, servants, agents or anyone claiming through or under them from in any manner **Infringing** the Plaintiff Trade Mark and Trading style "**VASANTA BHAVAN**" by using the offending Trade Mark and Trading style "**SRI VASANTHA BHAVAN**" or any other mark or marks which are similar or in any way deceptively similar to or a colorable imitation of the Plaintiff's Trade Mark "**VASANTA BHAVAN**".

b) Granting a permanent injunction restraining the Defendant, their men, servants, agents or anyone claiming through or under them from in any manner **Passing-off** the Plaintiff Trade Mark and Trading style "**VASANTA BHAVAN**" by using the offending Trade Mark and Trading style "**SRI VASANTHA BHAVAN**" or any other mark or marks which are similar or in any way deceptively similar to or a colorable imitation of the Plaintiff's Trade Mark "**VASANTA BHAVAN**".

c) Directing the Defendant to render a faithful account of the profits earned by them through the sale of food products bearing the offending trade mark "**SRI VASANTHA BHAVAN**" and directing paying of such profits to the plaintiff by way of damages for infringement committed by the defendant.

d) Directing the Defendant to surrender to Plaintiff the entire stock of unused offending goods with Trade Mark "**SRI VASANTHA BHAVAN**" with name boards, labels, wrappers, boxes, covers, bags, packets, cartons, bills, advertisements, materials, reports, envelope, brochures, printing blocks, etc., bearing the offending Trademark for



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destruction; and

e) Directing the defendant to pay the plaintiff the costs of the suit.

For Plaintiff : Mr. Vijayan Subramanian
For Sole Defendant : Set Ex-parte on 08.01.2024

JUDGMENT

This suit is filed for permanent injunction from infringing and Passing-off the plaintiff's Trade Mark and Trading style "VASANTA BHAVAN"; direction to the defendant to render a faithful account of the profits earned by them through the sale of food products bearing the offending trade mark "SRI VASANTHA BHAVAN" and to pay such profits to the plaintiff by way of damages for infringement committed by the defendant and also to surrender to plaintiff the entire stock of unused offending goods with Trade Mark "SRI VASANTHA BHAVAN" and for costs of the suit.



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2. The averments made in the plaint is that, Late Mr. Muthukrishnan, father of M. Ravi and grandfather of Mr.Anand Krishnan/plaintiff herein, commenced hotel business in the year 1974 under the name "VASANTA BHAVAN". The plaintiff engaged in the business of running chain of hotels, serving delicious varieties of vegetarian foods at Chennai and all over the world mainly in Tamil Nadu. The Plaintiff also running restaurants along with the prefix Namma Veedu "Vasanta Bhavan". The essential feature of plaintiff's trademark is "Vasanta Bhavan". On account of long continuous and extensive use of the unique trademark "VASANTA BHAVAN", tremendous amount of goodwill and reputation has accrued in favour of the plaintiff's trade mark "Vasanta Bhavan" and no one had used the trade mark "Vasanta Bhavan" or any other mark nearly resembling the said trade mark, prior to the plaintiff's usage of the mark "Vasanta Bhavan". The "Vasanta Bhavan" run by the plaintiff has been the subject matter of several articles published in a wide variety of magazines in



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circulation in the State of Tamil Nadu and several newspapers/magazines have carried articles about the plaintiffs Hotel "Vasanta Bhavan" which state that several political leaders and celebrities have patronized the Hotel. The plaintiff's trade mark "Vasanta Bhavan" used in conjunction with the hotel business, was widely known. Due to the tireless efforts of the plaintiff and the predecessors and the quality of food served at the hotel, "Vasanta Bhavan", plaintiff's trademark "Vasanta Bhavan" has become very popular among the public. The plaintiff invested a substantial sum of money in order to create the awareness among the public with regard to the high quality hotel "Vasanta Bhavan" and due to long, continuous and uninterrupted use of the trade mark "Vasanta Bhaan" it has come to be associated exclusively with the plaintiff. The turnover of the plaintiff in running the hotel named "Namma Veedu Vasanta Bhavan" is Rs.7,00,44,76,986/- from the assessment year 2003-2004 to 2020-2021 and therefore, it is clear that the trademark and trading style "Vasanta Bhavan"



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has acquired the secondary meaning to denote and connote the product of the plaintiff which assures to the public a unique taste and standard in the food preparations. The plaintiff's hotel has acquired goodwill and reputation and the same is proven by the turnover of the Plaintiff's hotel to a sum of Rs. 7,00,44,76,989/- from 2003 to 2021.

2(i). The plaintiff, by virtue of the wide, extensive, continuous, uninterrupted use of the Trade Mark "Vasanta Bhavan" for the past almost 50 years, the trademark enjoys considerable goodwill and reputation in the market. The untiring efforts and the high quality of food served at the hotel under the trade mark "Vasanta Bhavan" has become a valuable intellectual property of the Plaintiff. The food preparations made and served in "Vasanta Bhavan" hotel has acquired enormous popularity throughout the world mainly in Tamil Nadu and other states by virtue of extensive tourist flow through the Chennai City. The name "Vasanta Bhavan" is so popular that it has become the household name throughout Tamil Nadu and there is



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extensive reference to this name even in TV shows and chat shows. The trademark "Vasanta Bhavan" for the common man refers to the unique taste and quality. The plaintiff is maintaining the unique taste and quality by meticulous efforts. The plaintiff has also taken steps to protect the trademark and trading style by applying for registration of the trademark and trading style "Vasanta Bhavan". The Registrar of Trade Marks, Government of India, Mumbai has issued the certificate of registration on 15/07/2021 for the mark "Vasanta Bhavan" in the name of the plaintiff. The Plaintiff has obtained the legal usage certificate dated 19/04/2022 from the Trademark Registry, Intellectual Property building, Guindy, Chennai. It is clearly mentioned in the said legal usage certificate that the plaintiff's trademark "Vasanta Bhavan" was used since 30/10/1974 and the said registration is valid till 15/07/2031. The plaintiff has also taken steps to protect the trademark and trading style by applying for registration of the trademark and trading style "Namma Veedu Vasanta Bhavan". The



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Registrar of Trade Marks, Government of India, Mumbai has issued the certificate of registration on 27/01/2012 for the mark "Namma Veedu Vasanta Bhavan" in the name of the plaintiff. The Plaintiff has obtained the legal usage certificate dated 19/04/2022 from the Trademark Registry, Intellectual Property building, Guindy. Chennai wherein, it is clearly mentioned in the said legal usage certificate that the plaintiff's trademark "Namma Veedu Vasanta Bhavan" was used since 30/10/1974 and the said registration is valid till 27/01/2032. Therefore, it is clear that the trademark of the Plaintiff is a "WELL KNOWN TRADEMARK".

2 (ii). The plaintiff is also planning to open 10 more branches in India and all over the world. Some unscrupulous traders who want to take illegal advantage and enrich themselves at the popularity and reputation of the plaintiff, are now resorting to adopt the said trademark and trading style "Vasanta Bhavan" or "Vasantha Bhavan" or "Vasantham" for their hotels and restaurant business. But, they have no manner of right either to



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adopt or use the said trademark and/or trading style "Vasanta Bhavan". The trademark and trading style "Vasanta Bhavan" come to mean and refer the food products and services of the plaintiff and their predecessors. Except the plaintiff, no one has any right to use the said trademark and trading style. The obvious intention of the unscrupulous traders is only to take advantage of the enormous popularity of the trademark and trading style "Vasanta Bhavan" hotel and to enrich themselves at the well- and hard-earned reputation of the Plaintiff and their predecessors. Earlier many players in the market adopted similar steps to market their Restaurant. However, Suits were filed before this Court against those defendants. The defendants in those suits have withdrawn the similar name to that of the plaintiff.

2 (iii). Now defendant herein had commenced adopting identical or deceptively similar trademark and trading style "SRI VASANTHA BHAVAN" in respect of their hotel business. The defendant has adopted



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the identical trademark and trading style "SRI VASANTHA BHAVAN" to deceive the general public and to make them believe the food preparations served at the defendant place has the connection with the plaintiff's hotel and the defendant is associated with the plaintiff. The defendant has no manner of right to adopt and use the said offending trademark and/or trading style "SRI VASANTHA BHAVAN". In view of the extensive popularity and reputation of the trademark and trading style "Vasanta Bhavan", a negligible and irrelevant change in the last letter of the name both in Tamil and English or adding prefix & suffix would make no difference and deceive the general public and make them to think and believe that the food served by the defendant is from the plaintiff which in fact is not factually correct and thus would amount to an passing off/Infringement offending action by the defendant. If the defendant is allowed to continue the illegal acts in adopting the plaintiff's celebrated trade mark "Vasanta Bhavan" and vend food preparations under the



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offending trade mark, the plaintiff would be put to very serious loss, hardship & injury. Apart from the loss that is being caused to the plaintiff, the plaintiff also fear that well-earned reputation would be spoiled by the substandard foods being served at the defendants business premises. Further, there is serious danger of hard-earned goodwill and reputation of the plaintiff being ruined if the Defendant is allowed to continue with the illegal business with the offending trade mark. That apart there is also danger of the public being cheated by the defendant by adopting the offending trade marks by misleading the public to believe the food preparations being sold at defendant's hotel/restaurant is that of plaintiffs or the defendant is some way connected or associated with the plaintiff. The acts of the defendant also constitute criminal offences under the Trade Mark act, 1999.

2 (iv) The plaintiff herein is keeping high standards and traditional taste which has been passed on to them by their ancestor. The defendant,



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by using the sub-standard foodstuff and also not keeping with the taste and method of preparation of the food preparations like that of the plaintiff, and by virtue of such acts and serving inferior food preparations is likely to damage the goodwill and reputation earned by the plaintiff over the years for the food preparations served under the trademark and trading style "VASANTA BHAVAN". The plaintiff is the prior user of the mark and long and continuous user of the mark and the plaintiff has acquired goodwill and reputation and the same is proven as stated supra.

2(v). The Plaintiff's trademark "VASANTA BHAVAN" is a registered trademark. Section 28 (1) of the Trademarks Act, 1999 states that the registration of a trade mark shall, if valid, give to the registered proprietor of the trade mark the exclusive right to the use of the trade mark in relation to the goods or services in respect of which the trade mark is registered and to obtain relief in respect of infringement of the trade mark in the manner provided by this Act. Section 29 (2)(c) of the Trademarks Act, 1999 states



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that identity with the registered trade mark and the identity of the goods or services covered by such registered trade mark, is likely to cause confusion on the part of the public, or which is likely to have an association with the registered trade mark, then Section 29 (3) states that in any case falling under Section 29 (2)(c), the Court shall presume that it is likely to cause confusion on the part of the public.

2(vi). The plaintiff after getting to know that the defendant in the present suit have been running a restaurant name SRI VASANTHA BHAVAN which is structurally, visually, phonetically and deceptively identical to that of the plaintiff's Trade Mark VASANTA BHAVAN, immediately sent a legal notice dated 06/04/2023 and the same was received by the defendant. The defendant had neither sent a reply notice nor had taken steps to change their hotel's name. The mark "SRI VASANTHA BHAVAN" for an ordinary man would mean to be the one of the plaintiff's "VASANTA BHAVAN". The plaintiff's hotel has become a



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common household name for the quality of food served in the chain of hotel over the years. Subsequently the plaintiffs hotel "VASANTA BHAVAN" has created enormous goodwill and reputation in the hotel industry. The defendant is continuing to use the trademark "SRI VASANTHA BHAVAN" for their hotel after giving sufficient opportunity to cease and desist from using the infringing mark. Therefore, the plaintiff herein has filed the present suit for injuncting the defendant from using the infringing mark "SRI VASANTHA BHAVAN". The mark of the plaintiff is registered before the concerned authority and the rights acquired by the plaintiff under the said registered trade mark would be absolute and no one except plaintiff can have exclusive right of use of such trade mark and now the defendant is infringing the plaintiffs trademark which is not permissible under law and the plaintiff is entitled to get an injunction restraining the defendant from using the offending Trade name "SRI VASANTHA BHAVAN".



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3. Despite service of summons and printing of name in the cause list, no one entered appearance on behalf of the defendant and therefore, the sole defendant was set ex-parte by this Court on 08.01.2024.

4. In order to substantiate the case of the plaintiff, one Ravi, one of the directors of the plaintiff's Hotel was examined as P.W.1 and he has reiterated the averments made in the plaint in his proof affidavit and marked 45 documents as Ex.P.1 to Ex.P.45 in which, Ex.P.1 is the photocopy of the Lease Deed to run the restaurant named Vasanta Bhavan along with clean copy dated 26.10.1974; Ex.P.2 is the printout of the Paper advertisement in Dinamani of the Inauguration of Plaintiff's restaurant at Egmore, Chennai dated 30.10.1974; Ex.P.3 is the photocopy of the Lease Deed to run the restaurant named Vasanta Bhavan dated 19.10.1979; Ex.P.4 the printout of the Paper advertisement in The Hindu Paper dated 06.04.1984; Ex.P.5 is the photocopy of the Lease Deed to run the restaurant named Vasanta Bhavan dated 04.10.1984; Ex.P.6 is the printout



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of the Paper Advertisement in Maalai Malar dated 15.07.1987; Ex.P.7 is the photocopy of the Receipt received by Krishna Agro Industries Corporation in the name of Vasanta Bhavan dated 14.12.1987; Ex.P.8 is the photocopy of the Receipt received by Krishna Agro Industries Corporation in the name of Vasanta Bhavan dated 15.12.1987; Ex.P.9 is the photocopy of the Letter issued by Krishna Agro Industries Corporation in the name of Vasanta Bhavan dated 15.12.1987; Ex.P.10 is the printout of the Paper Advertisement in The Hindu dated 20.10.1989; Ex.P.11 is the photocopy of the Lease Deed to run the restaurant named Vasanta Bhavan dated 15.10.1989; Ex.P.12 is the photocopy of the Complaint filed by M.S. Tourist Homes Private Limited (along with clean copy) dated 02.01.1995; Ex.P.13 is the photocopy of the Vasanta Bhavan inauguration advertisement (along with clean copy) dated 19.09.1997; Ex.P.14 is the photocopy of the Incorporation Certificate of Plaintiff dated 07.11.2003; Ex.P.15 is the photocopy of the Advertisement bill issued by Amudha Surabhi dated



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10.11.2004; Ex.P.16 is the printout of the Advertisement for Vasanta Bhavan in Dinamalar Newspaper dated 01.01.2005; Ex.P.17 is the printout of the Advertisement for Vasanta Bhavan in Dinamalar Newspaper dated 13.02.2005; Ex.P.18 is the printout of the Advertisement for Vasanta Bhavan in Maalai Murasu Newspaper dated 16.03.2005; Ex.P.19 is the printout of the Advertisement for Vasanta Bhavan in Maalai Malar Newspaper dated 17.03.2005; Ex.P.20 is the photocopy of the Advertisement bill issued by Maalai Malar dated 17.03.2005; Ex.P.21 is the printout of the Advertisement for Vasanta Bhavan in Maalai Murasu Newspaper dated 13.04.2005; Ex.P.22 is the photocopy of the Advertisement bill issued by Maalai Murasu dated 13.04.2005; Ex.P.23 is the printout of the Advertisement for Vasanta Bhavan in Maalai Murasu Newspaper dated 18.04.2005; Ex.P.24 is the photocopy of the Advertisement bill issued by Maalai Murasu dated 18.04.2005; Ex.P.25 is the printout of the Advertisement for Vasanta Bhavan in Maalai Malar



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Newspaper dated 24.03.2005; Ex.P.26 is the photocopy of the Advertisement bill issued by Maalai Malar dated 24.03.2005; Ex.P.27 is the photocopy of the Advertisement bill for Vasanta Bhavan in Maalai Malar Newspaper dated 19.05.2005; Ex.P.28 is the printout of the Advertisement for Vasanta Bhavan in Maalai Murasu Newspaper dated 25.05.2005; Ex.P.29 is the photocopy of the Advertisement bill issued by Maalai Murasu dated 25.05.2005; Ex.P.30 is the printout of the Advertisement for Vasanta Bhavan in The Hindu Newspaper dated 02.07.2005; Ex.P.31 is the printout of the Advertisement for Plaintiff Hotel for the year 2005; Ex.P.32 is the printout of the Advertisement for Plaintiff Hotel for the year 2005; Ex.P.33 is the printout of the Certificate issued in the name of the Plaintiff by Tamil Nadu Food Safety and Drugs and Administration Department dated 23.01.2018; Ex.P.34 is the printout of the ISO Certificate issued in the name of Vasanta Bhavan dated 22.08.2018; Ex.P.35 is the printout of the Trademark Registration Certificate in the



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name of Vasanta Bhavan dated 23.12.2021; Ex.P.36 is the original Board Resolution dated 21.03.2024; Ex.P.37 is the printout of the Legal usage Certificate in the name of Vasanta Bhavan dated 19.04.2022; Ex.P.38 is the printout of the Legal usage certificate in the name of Namma Veedu Vasanta Bhavan dated 19.04.2022; Ex.P.39 is the photocopy of the Certificate issued by the Chartered Accountant with regard to the turnover from 2003 to 2021 dated 08.08.2022; Ex.P.40 is the photocopy of the Cease and Desist notice sent by the Plaintiff to the Defendant dated 06.04.2023; Ex.P.41 is the photocopy of the Inauguration Photo of the Plaintiff Hotel by Actor Rajinikanth; Ex.P.42 is the photocopy of the Inauguration photos of Plaintiff Hotel "Vasanta Bhavan" by Politicians, Celebrities and Businessman; Ex.P.43 is the printout of the Photograph of the Plaintiff Hotel; Ex.P.44 is the printout of the Photograph of the Defendant Hotel; Ex.P.45 is the printout of the Comparison chart of Plaintiff and Defendant hotel.



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

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(1/2)

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

Ravi - P.W.1

List of documents marked on the side of the plaintiff : 45 documents

S.No.	Exhibits	Dated	Description of Documents
1	Ex.P.1	26.10.1974	photocopy of the Lease Deed to run the restaurant named Vasanta Bhavan along with clean copy
2	Ex.P.2	30.10.1974	printout of the Paper advertisement in Dinamani of the Inauguration of Plaintiff's restaurant at Egmore, Chennai
3	Ex.P.3	19.10.1979	photocopy of the Lease Deed to run the restaurant named Vasanta Bhavan



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S.No.	Exhibits	Dated	Description of Documents
4	Ex.P.4	06.04.1984	printout of the Paper advertisement in The Hindu Paper
5	Ex.P.5	04.10.1984	photocopy of the Lease Deed to run the restaurant named Vasanta Bhavan
6	Ex.P.6	15.07.1987	printout of the Paper Advertisement in Maalai Malar
7	Ex.P.7	14.12.1987	photocopy of the Receipt received by Krishna Agro Industries Corporation in the name of Vasanta Bhavan
8	Ex.P.8	15.12.1987	photocopy of the Receipt received by Krishna Agro Industries Corporation in the name of Vasanta Bhavan
9	Ex.P.9	15.12.1987	photocopy of the Letter issued by Krishna Agro Industries Corporation in the name of Vasanta Bhavan
10	Ex.P.10	20.10.1989	printout of the Paper Advertisement in The Hindu
11	Ex.P.11	15.10.1989	photocopy of the Lease Deed to run the restaurant named Vasanta Bhavan
12	Ex.P.12	02.01.1995	photocopy of the Complaint filed by M.S. Tourist Homes Private Limited (along with clean copy)
13	Ex.P.13	19.09.1997	photocopy of the Vasanta Bhavan inauguration advertisement (along with clean copy)
14	Ex.P.14	07.11.2003	photocopy of the Incorporation Certificate of Plaintiff



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S.No.	Exhibits	Dated	Description of Documents
15	Ex.P.15	10.11.2004	photocopy of the Advertisement bill issued by Amudha Surabhi
16	Ex.P.16	01.01.2005	printout of the Advertisement for Vasanta Bhavan in Dinamalar Newspaper
17	Ex.P.17	13.02.2005	printout of the Advertisement for Vasanta Bhavan in Dinamalar Newspaper
18	Ex.P.18	16.03.2005	printout of the Advertisement for Vasanta Bhavan in Maalai Murasu Newspaper
19	Ex.P.19	17.03.2005	printout of the Advertisement for Vasanta Bhavan in Maalai Malar Newspaper
20	Ex.P.20	17.03.2005	photocopy of the Advertisement bill issued by Maalai Malar
21	Ex.P.21	13.04.2005	printout of the Advertisement for Vasanta Bhavan in Maalai Murasu Newspaper
22	Ex.P.22	13.04.2005	photocopy of the Advertisement bill issued by Maalai Murasu
23	Ex.P.23	18.04.2005	printout of the Advertisement for Vasanta Bhavan in Maalai Murasu Newspaper
24	Ex.P.24	18.04.2005	photocopy of the Advertisement bill issued by Maalai Murasu
25	Ex.P.25	24.03.2005	printout of the Advertisement for Vasanta Bhavan in Maalai Malar Newspaper
26	Ex.P.26	24.03.2005	photocopy of the Advertisement bill issued by Maalai Malar
27	Ex.P.27	19.05.2005	photocopy of the Advertisement bill for Vasanta Bhavan in Maalai Malar Newspaper



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S.No.	Exhibits	Dated	Description of Documents
28	Ex.P.28	25.05.2005	printout of the Advertisement for Vasanta Bhavan in Maalai Murasu Newspaper
29	Ex.P.29	25.05.2005	photocopy of the Advertisement bill issued by Maalai Murasu
30	Ex.P.30	02.07.2005	printout of the Advertisement for Vasanta Bhavan in The Hindu Newspaper
31	Ex.P.31		printout of the Advertisement for Plaintiff Hotel for the year 2005
32	Ex.P.32		printout of the Advertisement for Plaintiff Hotel for the year 2005
33	Ex.P.33	23.01.2018	printout of the Certificate issued in the name of the Plaintiff by Tamil Nadu Food Safety and Drugs and Administration Department
34	Ex.P.34	22.08.2018	printout of the ISO Certificate issued in the name of Vasanta Bhavan
35	Ex.P.35	23.12.2021	printout of the Trademark Registration Certificate in the name of Vasanta Bhavan
36	Ex.P.36	21.03.2024	original Board Resolution
37	Ex.P.37	19.04.2022	printout of the Legal usage Certificate in the name of Vasanta Bhavan
38	Ex.P.38	19.04.2022	printout of the Legal usage certificate in the name of Namma Veedu Vasanta Bhavan
39	Ex.P.39	08.08.2022	photocopy of the Certificate issued by the Chartered Accountant with regard to the turnover from 2003 to 2021



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S.No.	Exhibits	Dated	Description of Documents
40	Ex.P.40	06.04.2023	photocopy of the Cease and Desist notice sent by the Plaintiff to the Defendant
41	Ex.P.41		photocopy of the Inauguration Photo of the Plaintiff Hotel by Actor Rajinikanth
42	Ex.P.42		photocopy of the Inauguration photos of Plaintiff Hotel "Vasanta Bhavan" by Politicians, Celebrities and Businessman
43	Ex.P.43		printout of the Photograph of the Plaintiff Hotel
44	Ex.P.44		printout of the Photograph of the Defendant Hotel
45	Ex.P.45		printout of the Comparison chart of Plaintiff and Defendant hotel

List of witnesses examined on the side of the defendant - **Nil**

List of documents marked on the side of the defendant – **Nil**

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Index : Yes / No

Speaking Order : Yes / No

Neutral Case Citation : Yes/No

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