



WEB COPY



C.S.(COMM DIV) No.172 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.S.(COMM DIV) No.172 of 2024

Mr. M. Anees Ahmed
Sole Proprietor,
M/s Ambur Star Briyani,
Having its office at No. 116/1,
Arcot Road, Vadapalani,
Chennai – 600 026.

.... Plaintiff

vs

Star Ambur Briyani,
M.C. Road,
Ambur,
Tamil Nadu - 635 802.

.... Respondent

PRAYER : PLAINT UNDER ORDER VII RULE 1 OF CPC READ WITH ORDER IV RULE 1 OF HIGH COURT O.S. RULES AND SECTION 134 AND SECTION 135 OF THE TRADE MARKS ACT, 1999 for the following reliefs :-

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 "AMBUR STAR BRIYANI" by using the offending Trade Mark and Trading style "STAR AMBUR BRIYANI" or any other mark or marks which are similar or in any way deceptively similar to or a colorable imitation of the Plaintiffs Trade Mark "AMBUR STAR BRIYANI"



C.S.(COMM DIV) No.172 of 2024

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 "AMBUR STAR BRIYANI" by using the offending Trade Mark and Trading style "STAR AMBUR BRIYANI" or any other mark or marks which are similar or in any way deceptively similar to or a colorable imitation of the Plaintiffs Trade Mark "AMBUR STAR BRIYANI".

c) Directing the Defendant to surrender the Plaintiff the entire stock of unused offending goods with Trade Mark "STAR AMBUR BRIYANI" with name boards, labels, wrappers, boxes, covers, bags, packets, cartons, bills, advertisements, materials, reports, envelopes, brochures, printing blocks, etc., bearing the offending Trademark for destruction.

d) Directing to the Defendant to pay the Plaintiff the costs of the suit

For Plaintiff : Mr.Vijayan Subramanian

JUDGMENT

The suit has been filed for infringement and passing off.

2. The plaintiff is the registered Proprietor of the trademark "AMBUR STAR BRIYANI". The plaintiff claims that they are having several restaurants all over India as well as in abroad under the name & style of "AMBUR STAR BRIYANI". In the plaint, they have disclosed



the details of various restaurants run by them under the name and style of **“AMBUR STAR BRIYANI”**. In the plaint, they have also disclosed the trademark registrations obtained by the plaintiff for their trademark **“AMBUR STAR BRIYANI”** under class 43. A device of the plaintiff's trademark has also been registered under the Trademarks Act. The plaintiff claims that they came to know recently that the defendant has adopted the plaintiff's trademark by using its tradename as STAR AMBUR BRIYANI. According to the plaintiff through their long usage of the registered trademark **“AMBUR STAR BRIYANI”**, they have acquired distinctiveness for their trademark and the said trademark is exclusively associated only with them. The plaintiff has also issued a cease and desist notice to the defendant calling upon them not to use the name STAR AMBUR BRIYANI for their restaurant as it is deceptively similar to the plaintiff's trademark **“AMBUR STAR BRIYANI”**. However according to the plaintiff despite the same, the defendant continues to use the name STAR AMBUR BRIYANI for their restaurant at Ambur. The learned counsel for the plaintiff has stated that the reply sent by the defendant to the cease and desist is an untenable reply. The suit summons was served to the defendant, but despite the same, they



have chosen not to enter appearance in the suit. They have been set ex-parte by this Court on 04.12.2024. Thereafter the plaintiff has recorded the ex-parte evidence. The plaintiff's Proprietor Mr.M.Anees Ahmed has been examined as a witness on the side of the plaintiff before the Additional Master III of this Court. A proof affidavit has also been filed by the said Anees Ahmed (PW1) in support of the plaint averments.

3. Through PW1, the following documents were marked as Exhibits on the side of the plaintiff :

1. Ex.P1 is the Photocopy of the Dinathanthi newspaper Article. Photo showing Applicant's father and his elder brother Mr.Muneer Ahmed receiving the award for star Briyani, as the best Briyani hotel in Ambur from Gnanasekar, MLA.

2. Ex.P2 is the Photocopy of the Article published in Tamil Murasu about Star Briyani.

3. Ex.P3 is the Photocopy of the Article published in Anandha Vikatan about Star Briyani.

4. Ex.P4 is the Photocopy of the Photo showing the applicant of Star Briyani and the video telecasted in Jaya TV dated 15.03.2006.



WEB COPY

5. Ex.P5 is the Photocopy of the Certificate issued by labour Department dated 19.03.2003.

6. Ex P6 is the Photocopy of the Certificate of registration issued by the Commercial Tax Officer dated 04.05.2005.

7. Ex.P7 is the Photocopy of the Acknowledgement issued by the Department of Industries and Commerce dated 12.10.2008.

8. Ex.P8 is the Photocopy of the Fire service license issued by the Fire and Rescue Service Department dated 23.02.2009.

9. Ex. P9 is the Photocopy of the License issued by the Corporation of Chennai dated 12.06.2009.

10. Ex.P10 is the Photocopy of the Receipt issued by BSNL dated 10.08.2009.

11. Ex.P11 is the Photocopy of the Bill issued by Shree Traders dated 13.06.2011.

12. Ex. P12 is the Photocopy of the Certificate of Registration issued by Commercial Tax Department dated 16.10.2012.



WEB COPY

13. Ex.P13 is the Photocopy of the Certificate of Registration issued by Commercial Tax Department dated 16.10.2012.

14. Ex.P14 is the Photocopy of the Acknowledgement issued by the Department of Industries and Commerce dated 04.11.2013.

15. Ex.P15 is the Photocopy of the Certificate issued by the Department of Industries and Commerce dated 04.11.2013.

16. Ex.P16 is the Photocopy of the ISO certificate dated 17.10.2015.

17. Ex.P17 is the Photocopy of the Certificate issued by Bharat Sevak Samaj dated 21.02.2017.

18. Ex.P18 is the Photocopy of the Trademark registration certificate in the name of the plaintiff dated 01.08.2018.

19. Ex.P19 is the Photocopy of the Article issued in Kungumam magazine about Ambur Star Briyani dated 15.02.2019.

20. Ex.P20 is the Photocopy of the Legal usage certificate issued in the name of the plaintiff dated 26.06.2023.

21. Ex.P21 is the Photocopy of the ISO certificate issued



WEB COPY

for the present assessment year dated 14.09.2020.

22. Ex.P22 is the Photocopy of the Udyam Registration Certificate dated 19.09.2020.

23. Ex.P23 is the Photocopy of the GST Registration certificate dated 16.07.2022.

24. Ex.P24 is the Photocopy of the Legal Notice issued by Plaintiff to Defendant along with Tracking Receipt dated 06.01.2024.

25. Ex.P25 is the Photocopy of the Reply Notice sent by the defendant to the plaintiff dated 16.02.2024.

26. Ex.P26 is the Photocopy of the Order passed in OA.No. 1009 and 1010 of 2019 in CS.(Com.Div) No.648 of 2019 dated 11.11.2019.

27. Ex.P27 is the Photocopy of the Order passed in OA.No. 1096 and 1097 of 2019 in CS.(Com Div) No.694 of 2019 dated 03.01.2020.

28. Ex.P28 is the Photocopy of the Order passed in OA No.171 and 172 of 2020 in CS.(Com.Div). No. 129 of 2020 dated 18.03.2020.

29. Ex.P29 is the Photocopy of the Order passed in



C.S.(COMM DIV) No.172 of 2024

OA.No.581 and 582 of 2023 in CS (Com.Div), No. 162 of 2023

WEB COPY dated 27.06.2023.

30. Ex.P30 is the Photocopy of the Order passed in OA. No.28 and 30 of 2024 in CS (Cam.Div). No. 12 of 2024 dated 12.01.2024

31. Ex. P31 is the Photocopy of the Judgment passed by the Hon'ble High Court in CS.(Com.Div) No.43 of 2024 dated 26.04.2024.

32. Ex.P32 is the Photocopy of the Photograph of the Plaintiff Hotel.

33. Ex.P33 is the Photocopy of the Photograph of the Defendant Hotel

34. Ex.P34 is the Photocopy of the Comparison chart of Plaintiff and Defendant hotel.

4. As seen from the Exhibits marked on the side of the plaintiff, it is clear that the plaintiff is the registered Proprietor of the trademark **“AMBUR STAR BRIYANI”**. The plaintiff in the plaint has also given details as to how the trademark **“AMBUR STAR BRIYANI”** came to be associated with the plaintiff. Several exhibits have been marked on



the side of the plaintiff to prove the plaintiff's credentials with regard to

their trademark **“AMBUR STAR BRIYANI”**. The plaintiff has also

filed exhibits which contains the permissions / licences obtained from

various statutory authorities for their restaurants to use their trading style

as **“AMBUR STAR BRIYANI”**. The trademark registration certificate

standing in the name of the plaintiff for their trademark **“AMBUR**

STAR BRIYANI”, dated 01.08.2018 has also been marked as Ex.P18.

The legal usage certificate in respect of the plaintiff's trademark

“AMBUR STAR BRIYANI”, dated 26.06.2023 has also been marked

as Ex.P20. On the side of the plaintiff certain other exhibits have also

been marked viz., orders passed by this Court in respect of other

infringement suits filed by the plaintiff involving the very same

trademark **“AMBUR STAR BRIYANI”**. The photographs of the

plaintiff's hotel and the defendant's hotel have also been marked as

exhibits on the side of the plaintiff viz., Exs.P32 and P33 respectively.

A comparison chart of the plaintiff and the defendant hotel has also been

marked as Ex.P34 on the side of the plaintiff. As seen from Exs.P32,

P33 and P34, it is clear that the defendant by using the name STAR

AMBUR BRIYANI for their restaurant at Ambur has copied the



C.S.(COMM DIV) No.172 of 2024

plaintiff's trademark **“AMBUR STAR BRIYANI”** and its trading style and trade dress.

5. After giving due consideration to the plaint averments as well as the documents marked as Exhibits on the side of the plaintiff through PW1, this Court is of the considered view that the suit claim has been proved by the plaintiff as prayed for. Accordingly, the suit is decreed insofar as prayer (a) & (b) of paragraph No.31 of the plaint are concerned. Since the plaintiff has not produced any evidence before this Court to prove that the infringing materials are still available with the defendant, the prayer (c) in paragraph 31 of the plaint is rejected by this Court. However, since the defendant has infringed the plaintiff's trademark, the defendant is liable to pay costs to the plaintiff. Accordingly, the suit is decreed as prayed for in favour of the plaintiff insofar as (a) & (b) of the plaint are concerned and insofar as (c) is concerned, the same is rejected and the suit is partly decreed with costs.

18.12.2024

Index: Yes/ No
Speaking order / Non speaking order
Neutral citation : Yes / No
vsi2



WEB COPY



C.S.(COMM DIV) No.172 of 2024

ABDUL QUDDHOSE, J.

vsi2

C.S.(COMM DIV) No.172 of 2024

18.12.2024