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C.S. (Comm. Div.) No.285 of 2023

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.S. (Comm. Div.) No.285 of 2023

and

O.A. No.998 and 999 of 2023

and

A. 6223 of 2023

1. Aqua Pump Industries
Rep. by its Managing Partner
Mr.Ramaswamy Kumaravelu

2. Aqua Sub Engineering
Rep. by its Managing Partner
Mr.Ramaswamy Kumaravelu

.... Plaintiffs

Vs

Majestic Pride Industry,
Rajkot,
Gujarat – 384 002.

... Defendant

Prayer : PLAINT FILED UNDER ORDER IV RULE 1 O.S. RULES AND ORDER VII, RULE 1 OF THE C.P.C. READ WITH SEC. 27, 134 & 135 OF THE TRADE MARKS ACT 1999 to grant a judgment and decree on the following terms :

a) granting a permanent injunction, restraining the Defendant, by itself, their servants, agents, distributors, or anyone claiming through them from manufacturing, selling, advertising and offering for sale using the Trade Mark TEXMO as such or prefix or suffix in any Electric Motors,



pumps and Agriculture Machines, etc. included in Class 7 or in any other goods manufactured and sold by the Defendant or its trading style or in any media and use the same in invoices, letter heads and visiting cards or by using any other trade mark which is in any way visually, or phonetically identical or deceptively similar to the Plaintiffs registered Trade Mark TEXMO or in any manner infringing the Plaintiffs Registered Trade Mark Nos. 315049 (SP-I), (SP-II) & 315050 (SP-I), (SP-II) renumbered as 2702778, 2702779, 2702780 & 2702781 respectively and other registrations in para 8 of the plaint.

b] granting a permanent injunction, restraining the Defendant, by itself, their servants, agents, distributors, or anyone claiming through them from manufacturing, selling, advertising and offering for sale using the Trade Mark TEXMO as such or with prefix or suffix in any Electric Motors, pumps and Agriculture Machines, etc. included in Class 7 or in any other goods manufactured and sold by the Defendant and its trading style or in any media and use the same in invoices, letter heads and visiting cards or by using any other trade mark which is in any way visually, or phonetically identical or deceptively similar to the Plaintiffs Trade Mark TEXMO or in any manner pass off the Plaintiffs' goods.

c) directing the Defendant to surrender to the Plaintiffs all the goods, packing materials, cartons, advertisement materials and hoardings, letter-heads, visiting cards, office stationery and all other materials containing/bearing the Trade Mark TEXMO or other deceptively similar mark to the Plaintiffs' Trademark TEXMO,



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d) directing the Defendant to render an account of profits made by them by the use of the impugned trademark TEXMO on the goods Electric Motors, pumps and Agriculture Machines, etc. Included in Class 7 and decree the suit for the profits found to have been made by the Defendant, after the Defendant has rendered account and

e) directing the Defendant to pay to the Plaintiffs the costs of the suit

For Plaintiffs	: Ms. Gladys Daniel
For Defendant	: Mr. Vijayakumar for Ms.N.Devi

JUDGEMENT

Both the parties have arrived at a settlement. The settlement terms which is recorded in the Memorandum of Compromise between the plaintiffs and the defendant, which is dated 13.12.2023 is placed on record. However, the said Memorandum of Compromise has been signed only by the defendant and their counsel, but has not been signed by the plaintiffs. It has been signed by the learned counsel for the plaintiffs alone. The learned counsel for the plaintiffs also submits that on instructions that the plaintiffs are agreeable to the terms of settlement as found in the Memorandum of Compromise, dated 13.12.2023 which has been signed by the defendant and its counsel. However, she would



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submit that since the plaintiffs representative is at Coimbatore, she could not get the signature today itself. However, she has no objection, if the terms of the settlement are recorded in this Court's judgment and a decree be passed in terms thereof. Accordingly, the Memorandum of Compromise, dated 13.12.2023 which is placed on record, today is incorporated in this Court's judgment and it reads as follows :-

**MEMORANDUM OF COMPROMISE BETWEEN THE
PLAINTIFFS AND THE DEFENDANT**

The Plaintiffs and the Defendant have agreed to compromise the matter in the following terms:

.....



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1. The terms Plaintiffs and Defendant shall mean and include their heirs, executors, administrators, successors and assignees of each party.

2. The Defendant acknowledges that the Plaintiffs are the prior users and registered proprietors of the Trademarks **TEXMO** (Word)

and  (Device).

3. The Defendant submits to a Judgment and Decree as below:-

a] granting a permanent injunction, restraining the Defendant, by itself, their servants, agents, distributors, or anyone claiming through them from manufacturing, selling, advertising and offering for sale using the Trade Mark **TEXMO** as such or prefix or suffix in any Electric Motors, pumps and Agriculture Machines, etc. included in Class 7 or in any other goods manufactured and sold by the Defendant or its trading style or in any media and use the same in invoices, letter heads and visiting cards or by using any other trade mark which is in any way visually, or phonetically identical or deceptively similar to the Plaintiffs' registered Trade Mark **TEXMO** or in any manner infringing the Plaintiffs Registered Trade Mark Nos. 315049 (SP-I), (SP-II) & 315050 (SP-I), (SP-II) renumbered as 2702778, 2702779, 2702780 & 2702781 respectively and other registrations in para 8 of the plaint.

b] granting a permanent injunction, restraining the Defendant, by itself, their servants, agents, distributors, or anyone claiming through



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them from manufacturing, selling, advertising and offering for sale using the Trade Mark **TEXMO** as such or with prefix or suffix in any Electric Motors, pumps and Agriculture Machines, etc. included in Class 7 or in any other goods manufactured and sold by the Defendant and its trading style or in any media and use the same in invoices, letter heads and visiting cards or by using any other trade mark which is in any way visually, or phonetically identical or deceptively similar to the Plaintiffs Trade Mark **TEXMO** or in any manner pass off the Plaintiffs' goods.

4. The Defendant undertakes not to use the Trademark **TEXMO** as such or with prefix or suffix in any Electric Motors, pumps and Agriculture Machines, etc. included in Class 7 or in any other goods manufactured and sold in any manner including export by the Defendant and its trading style or in any media.

5. The Defendant shall not make any application for registration of

the Trademark **TEXMO**/  (word) or (device) as such or with prefix or suffix in any goods manufactured and sold by the Defendant and they do not intend to use the mark in future.

6. The Defendant undertakes hereby not to assert any right in respect of the expression **TEXMO** or other marks deceptively

similar to the Plaintiffs' Trademarks **TEXMO**/  by filing



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Trademark Applications or using the same or similar sounding expression or its logo for any goods in future.

7. The Defendant also undertakes to withdraw any Application in



respect of **TEXMO/** (word) or (device) any other similar sounding marks that have already been filed that is not within the knowledge of the Plaintiffs.

8. The Defendant undertakes not to oppose or initiate any Rectification proceedings against the Plaintiffs' Trademark Applications or their Registered Trademarks.

In view of the decree for permanent injunction, the Plaintiffs have given up the reliefs contained in prayers [c], [d], [e] & [f] in para 22 of the suit including cost of the suit.

Dated at on this the 13th day of December 2023



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WEB COPY 2. In terms of the above settlement this suit is decreed. Consequently
connected applications are closed.

05.01.2024

Index: Yes/ No

Speaking order / Non speaking order

Neutral citation : Yes / No

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ABDUL QUDDHOSE, J.

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