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C.S.No.288 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2024

CORAM

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

C.S.(Comm.Div).No. 288 of 2023

Paulsons Beauty and Fashion Private Limited
Represented by its Authorized Signatory,
Aneesh Gopinathan
Having registered address at
No. 12, Halls Road, Kilpauk
Chennai-600 010.

...Plaintiff

Versus

Jona's Cafe

... Defendant

Prayer: Civil Suit filed under Order VII Rule 1 of CPC read with Order IV Rule 1 High Court O.S.Rules and Sections 134 and 135 of the Trade Marks Act, 1999, prays;

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 "JONAH'S" by using the offending Trade Mark and Trading style "JONAH'S".



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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 "JONAH'S" by using the offending Trade Mark and Trading style "JONAH'S" or any other mark or marks which are similar or in any way deceptively similar to or a colourable imitation of the Plaintiffs Trade Mark "Jonah's".

C) Directing the defendant to render a true and faithful account of the profits earned by them through the sale of food products bearing the offending trade mark "Jona's" and directing payment of such profits to the plaintiff by way of damages for infringement committed by the defendant; and D) Directing the defendant to pay the plaintiff the costs of the suit.

For Plaintiff : Mr.Vijayan Subramanian
For Defendant : Set ex-parte on 24.01.2024

JUDGMENT

This Civil Suit has been filed for the relief of 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 "JONAH'S" by using the offending Trade Mark and Trading style "JONAH'S", B) Granting a permanent injunction restraining the defendant, their men, servants, agents or anyone claiming



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through or under them from in any manner Passing-off the Plaintiff Trade Mark and Trading style "JONAH'S" by using the offending Trade Mark and Trading style "JONAH'S" or any other mark or marks which are similar or in any way deceptively similar to or a colourable imitation of the Plaintiffs Trade Mark "Jonah's", C) Directing the defendant to render a true and faithful account of the profits earned by them through the sale of food products bearing the offending trade mark "Jona's" and directing payment of such profits to the plaintiff by way of damages for infringement committed by the defendant and D) Directing the defendant to pay the plaintiff the costs of the suit

2. The case of the plaintiff is that the plaintiff has been engaged in various business activities including but not limited to food chain restaurants, salon and gym, predominantly in South India. The plaintiff had commenced a restaurant under the name and style of "**JONAH'S**" in the month of August, 2014 and serving several delicious varieties of food both vegetarian and non vegetarian. The plaintiff has been using the trademark continuously and extensively which results in earning good



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reputation among the customer and its competitors. It is also to be noted that trademark has not been used by anyone prior to the petitioner. It is also pertinent to note that the plaintiff's efforts, the quality of food being served at the plaintiff's restaurant along with the good reputation attached to the trademark, **"JONAH'S"** is well known among the customers and its competitors. It has recently come across a restaurant run by the defendant under the name, **"JONA'S"** at Beasant Nagar which is structurally, visually, phonetically and deceptively similar to the plaintiff's trademark. The defendant has no manner of right to adopt and use the said trademark and for trading style **"JONAH'S"**. The defendant even copied the font style of the registered trademark of the plaintiff. The defendant's restaurant is situated within 800 meters from one of the branch of the plaintiff's restaurant named **"JONAH'S"** situated at Besant Nagar. In view of the extensive popularity and reputation of the trademark and trading style **"JONAH'S"**, a negligible and irrelevant change by removing **"H"** **"JONA'S"** of the name both in English and other languages would make no difference and deceive the general public and make them to think and believe that the restaurant operated by the



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defendant is from the plaintiff which in fact is not factually correct and thus would amount to a passing off/infringement offending action by the defendant. The deliberate action of the defendant has shown the obvious intention are only to take advantage of the enormous popularity of the trademark and trading style **"JONAH'S"** and to enrich themselves at the well and hard earned reputation of the plaintiff and their predecessors. Therefore, the defendant has violated his rights by adopting the similar Trade Mark with respect to the identical business. It is submitted that the plaintiff is a prior user and registered proprietor of the Trade Mark, **"JONAH'S"**. It is submitted that in an action for passing-off generally for deciding the question of deceptive similarity the following factors to be considered. The mark **"JONAH'S"** being predominant part of the trade mark and use of the essential part or predominant part of trade mark is an act of trademark infringement. The plaintiff is trademark **"JONAH'S"** is a registered trademark. It is submitted that Sec. 28 (1) of the Trademark 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



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trade mark is registered and to obtain relief in respect of infringement of the trade mark, in the manner provided by this Act. The defendant has no right to use the said trade mark **JONA'S** with respect to the aforementioned restaurant/cafe business. It is submitted that the said action of the defendant amounts to infringement and passing off the trademark. Therefore, the plaintiff has filed the present suit.

3. The defendant though served has not entered appearance to contest the claim.

4. In order to prove the case of the plaintiff, the authorized signatory of the Plaintiff Company was examined as PW1 and he filed proof affidavit for chief examination. The following documents are marked as exhibits. Ex.P1, Ex.P3, Ex.P4 and Ex.P5 are the online copy of the newspaper advertisement (Certificate u/s 65-B of I.E. Act produced). Ex.P2 is the online copy of the trademark registration certificate of plaintiff for the trademark "Jonah's" (Certificate u/s 65-B of I.E. Act produced). Ex.P6 is the online copy of the legal usage certificate



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of the plaintiff's trademark "Jonah's". Ex.P7 is the legal notice sent by the plaintiff to the defendant along with the acknowledgement. Ex.P8 is the authorization letter. Ex.P9 is the photocopy of the certificate issued by the chartered accountant with regard to the turnover from 2018-2023 dated 14.10.2023. Ex.P10 is the photocopy of the reply notice sent by the defendant. Ex.P11 is the pictures showing the inauguration of the plaintiff's restaurant "Jonah's" by celebrities. Ex.P12 is the photocopy of the plaintiff's restaurant. Ex.P13 is the photo of the defendant's restaurant and Ex.P14 is the photo of the Comparison Chart of plaintiff's and defendant's Restaurant.

5. A perusal of the above documents demonstrates that the plaintiff is the Proprietor of the Trademark "JONAH'S" written in a particular manner and printed with a particular colour scheme. The copies of the Trademark Registration Certificate of plaintiff for the trademark "JONAH'S" and Photocopy of the Certificate issued by the Chartered Accountant in respect of turnover from 2018-2023, pictures showing the inauguration of the plaintiff's restaurant "JONAH'S" by



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celebrities and photo of the comparison chart of the plaintiff and the defendant restaurant has been produced as Ex.P2, Ex.P9, Ex.P11 and Ex.P14. A perusal of these documents would show that the manner in which the plaintiff trademark and trading style "JONAH'S" by using the offending trademark and trading style "JONA'S" or any other mark or marks which are similar or in any way deceptively similar to or a colourable imitation of the plaintiff's trademark "JONAH'S". The accounts of the profits earned by them through the sale of food products bearing the offending trade mark "JONA'S" and payment of such profits to the plaintiff by way of damages for infringement committed by the defendant. The letters are written and the colour scheme of the sale wrappers and packing materials of the defendant are substantially similar to that of the plaintiff and are capable of causing confusion in the minds of the consumers, regarding the identity of the manufacturer. It is also seen that the deceptive similarity would definitely create a confusion in the minds of the consumer who is a person of average intelligence with imperfect recollection. There is a very strong likelihood of the goods of the defendant being passed off as the goods of the plaintiff, if the



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injunctive reliefs are not granted. In the light of the above discussion, I am of the opinion that the plaintiff is entitled to a decree as prayed for in the suit.

6. The suit is therefore decreed as prayed for. The plaintiff would be entitled to costs of the suit also. Consequently, the connected applications are closed.

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Index : No

Internet : Yes

Speaking order



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

PW1 – Mr.Aneesh

List of Exhibits marked on the side of the plaintiff :

<i>Sl. No.</i>	<i>Exhibits</i>	<i>Dated</i>	<i>Description of documents</i>
1	Ex.P1	28.08.2014	Online copy of the Newspaper Advertisement
2	Ex.P2	08.04.2015	Online copy of the Trademark Registration Certificate of Plaintiff for the Trademark "Jonah's"
3	Ex.P3	29.05.2015	Online copy of the Newspaper Advertisement
4	Ex.P4	29.07.2015	Online copy of the Newspaper Advertisement
5	Ex.P5	11.06.2016	Online copy of the Newspaper Advertisement
6	Ex.P6	28.07.2023	Online copy of the legal usage certificate of the plaintiff's trademark "Jonah's"
7	Ex.P7	30.09.2023	Photocopy of the legal notice sent by the plaintiff to the defendant along with the acknowledgement
8	Ex.P8	10.10.2023	Certified true copy of the Authorization Letter
9	Ex.P9	14.10.2023	Photocopy of the certificate issued by the Chartered Accountant with regard to the turnover from 2018-2023.
10	Ex.P10	27.10.2023	Photocopy of the Reply notice sent by the defendant



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<i>Sl. No.</i>	<i>Exhibits</i>	<i>Dated</i>	<i>Description of documents</i>
11	Ex.P11	--	Pictures showing Inauguration of the plaintiff's restaurant "Jonah's" by celebrities.
12	Ex.P12	--	Photo of the plaintiff's restaurant
13	Ex.P13	--	Photo of the defendant's restaurant
14	Ex.P14	--	Photo of the comparison chart of plaintiff and the defendant restaurant

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P. VELMURUGAN, J

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