



C.S.(Comm Div) No.317 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2024

CORAM

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.S.(Comm Div) No.317 of 2023

Wipro Enterprises Private Limited,

Having office at,

“Wipro House”,

No 8, 7th Main, 80 Feet Road,

Koramangala 1st Block,

Bangalore 560 034,

Karnataka

and also at

S15, Industrial Estate,

Guindy, Chennai 600032.

Represented by Ms.Dhivya Menon, Senior Manager-Legal.

... Plaintiff

Vs.

1. E & M Pro Manufacturer LLC,

923, E Arlee Pl, Anaheim, CA 92805,

United States of America.



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2. [second defendant is removed
as per order dated 05.03.2024 in
O.A.Nos. 1085 to 1087 of 2023
and A.No. 6732/2023].

3. Amazon Technologies Inc.
410, Terry Avenue North,
Seattle, Washington 98109,
United States of America.

... Defendants

PRAYER:

The Complaint filed under Order IV Rule 1 of Original Side Rules of this Court read with Order VII Rule 1 of C.P.C., read with Sections 27, 134 & 135 of the Trademarks Act y 1999 and numbered as C.S.(Comm Div) No.317 of 2023 praying for judgment and decree against the defendants as follows:

(a) Granting a permanent injunction, restraining the 1st and 2nd Defendants, by himself, his servants, agents, distributors, or anyone claiming through him from manufacturing, selling, advertising and offering for sale using the mark/name **SOFT TOUCH** or any other



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similar Trademark name or similar sounding expression in any media, e-commerce websites, mobile applications and internet advertising and use the same in name board, invoices, letter heads and visiting cards, e-commerce websites, mobile applications and internet advertising or by using any other trademark/name which is in any way visually or deceptively or phonetically similar to the plaintiff's trademark/name WIPRO SOFTOUCH and use the same in pouches, packets or cartons of any toiletry preparations or any other personal care or home care products or use the mark in invoices, letter heads, visiting cards, e-commerce websites and internet advertising or on any other literature or catalogue by using any other trademark which is in any way visually or phonetically similar to the plaintiff's registered Trademark No.3492426 or in any manner infringing the plaintiff's other registered Trade Marks.

(b) Granting a permanent injunction restraining the first and second defendants by itself, its agents, or servants or anyone claiming through or under him any business marketing, selling or advertising using trade literature, menu cards, invoices, name boards, e-commerce



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websites, mobile applications, and internet advertisements under the mark/name SOFT TOUCH in relation to any toiletry preparations or any other personal care or home care products or on any other business which is in any manner deceptively or phonetically confusingly similar to the plaintiff's Trademark/name WIPRO SOFTOUCH or in any other manner pass off their business or goods as and for that of the plaintiff.

(c) Mandatory injunction directing the third defendant to remove or take down the offensive images and descriptions related to the first and second defendant's impugned product bearing the trademark “SOFT TOUCH” from the online databases, web and mobile applications of the third defendant's e-commerce platform as provided under the following URL

<https://www.amazon.in/SoftTouchDisinfectableWashableDoubleSided/dp/B09QY184Z3/ref=sr13?crid=RCY6PR03B3T7&keywords=SOFT=TOUCH=GRINDER=FOOT=FILE7qid=1674558387&prefix=soft+touch=grinder+foot+file%2Caps%2C298&sr+8.3>



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in relation to any toiletry preparations or any other personal care or home care products or any other similar businesses in any manner so as to cause confusion to the public with respect to the plaintiff's Trade Mark/name WIPRO SOFTOUCH.

d) directing the first and second defendants to surrender to the plaintiff all the packing material, cartons, advertisement materials and hoardings, letter-heads, visiting cards, office stationery and all other materials containing/bearing the name “SOFT TOUCH” or other identical trademark used in the pouches and packets bearing the name “SOFT TOUCH”.

e) directing the defendants to render an account of profits made by them by the use of the impugned trademark name “SOFT TOUCH” on the goods referred and decree the suit for the profits found to have been made by the defendants, after defendants have rendered accounts and

f) directing the defendants to pay to the plaintiff the costs to the suit.



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For Plaintiff : Mr.Gladys Daniel

For D1 & D3 : Set exparte on 19.06.2024

For D2 : removed from the array of parties

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J U D G M E N T

The plaintiff has filed the suit for permanent injunction as against the defendants.

2. It is the case of the plaintiff that the plaintiff is the proprietor of various trademarks. The products manufactured by the plaintiff are highly valued for its quality and reliability. The plaintiff had registered one of its trademark WIPRO SOFTOUCH under registration No.3492426 dated 23.02.2027. Whiles, in January 2023, the first and second defendants sold their products under the trademark “SOFT TOUCH” which is phonetically identical with that of the plaintiff's registered trademark “WIPRO SOFTOUCH”. The defendant's have copied the plaintiff's trademark with a view to take advantage of the



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good will and reputation that have been built up by the plaintiff. Hence the plaintiff put to irreparable loss of business and reputation. Hence, the plaintiff has filed the present suit.

3. Already the second defendant was removed from the array of party to the suit vide order of this Court dated 05.03.2024 passed in O.A.Nos. 1085 to 1087/2023 and A.No. 6732/2023. Despite service of summons, the defendants 1 and 3 did not appear and they remained exparte vide order of this Court dated 19.06.2024. In order to substantiate the case of the plaintiff, Executive Legal of the plaintiff's Company ,who is the authorised Signatory of the plaintiff was examined as P.W.1. On the side of the plaintiff, 14 documents were marked as Exs.P1 to P14. Ex.P1 is the Original Board resolution dated 20.10.2023. Ex.P2 is the Photocopy of the order dated 01.03.2023 of the Hon'ble High Court of Karnataka in Co.P.No.8/2013 & Co.P.No.9/2013 and Co.P.No.10/2013. Ex.P3 is the Printout of the Fresh certificate of Incorporation of Wipro Enterprises Private Limited dated 22.05.2015. Ex.P4 is the Printout of plaintiff's website. Ex.P5 is the Printout of the



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plaintiff's website showing the plaintiff's product WIPRO SOFTOUCH.

Ex.P6 is the Printout of images of the plaintiff's product. Ex.P7 is the Photocopy of the legal use certificate of Trademark No.3492426 dated 23.02.2017. Ex.P8 is the Photocopy of the Chartered Accountant certificate dated 20.09.2023. Ex.P9 is the Printout of Sample Sale invoices from 2017-2023. Ex.P10 is the Printout of the offending product found on the impugned link on the third defendant's e-commerce platform. Ex.P11 is the Print out of the invoice showing sale of impugned goods in Chennai. Ex.P12 is the Printout of the images of the defendant product. Ex.P13 is the Office copy of the Cease and Desist notice dated 03.01.2023 sent by the plaintiff to the first and second defendants with postal receipt, acknowledgement card and online track consignment. Ex.P14 is the Office copy of the cease and desist notice dated 03.01.2023 and 24.03.2023 sent by the plaintiff to the third defendant with postal receipt and online track consignment.



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4. On a perusal of the pleadings namely, the plaint and the oral evidence namely the proof affidavit of P.W.1, and documentary evidence namely Exs.P1 to P14, and upon hearing the learned counsel for the plaintiff, this Court finds that the plaintiff proved its claim.

5. In view of the same, the Civil Suit is decreed exparte, as prayed for, as against the defendants with costs.

09.07.2024
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Plaintiff's witness: P.W.1 – Mr.N.Pradyumna Kumar

Defendants' witness: Nil

Documents exhibited by the plaintiff:

SNo	Exhibit	Date	Description of the document
1	Ex.P1	20.10.2023	Original Board resolution dated 20.10.2023
2	Ex.P2	01.03.2023	Photocopy of the order dated 01.03.2023 of the Hon'ble High Court of Karnataka in Co.P.No.8/2013 & Co.P.No.9/2013 and Co.P.No.10/2013



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3	Ex.P3	22.05.2015	Printout of the Fresh certificate of Incorporation of Wipro Enterprises Private Limited dated 22.05.2015
4	Ex.P4	-	Printout of plaintiff's website
5	Ex.P5	-	Printout of the plaintiff's website showing the plaintiff's product WIPRO SOFTOUCH
6	Ex.P6	-	Printout of images of the plaintiff's product
7	Ex.P7	23.02.2017	Photocopy of the legal use certificate of Trademark No.3492426 dated 23.02.2017
8	Ex.P8	20.09.2023	Photocopy of the Chartered Accountant certificate dated 20.09.2023
9	Ex.P9	-	Printout of Sample Sale invoices from 2017-2023
10	Ex.P10	-	Printout of the offending product found on the impugned link on the third defendant's e-commerce platform
11	Ex.P11	-	Print out of the invoice showing sale of impugned goods in Chennai
12	Ex.P12	-	Printout of the images of the defendant product
13	Ex.P13	03.01.2023	Office copy of the Cease and Desist notice dated 03.01.2023 sent by the plaintiff to the first and second defendants with postal receipt, acknowledgement card and online track consignment.
14	Ex.P14	03.01.2023 and 24.03.2023	Office copy of the cease and desist notice dated 03.01.2023 and 24.03.2023 sent by the plaintiff to the third defendant with postal receipt and online track consignment.



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WEB COPY ***Documents exhibited by the Defendant: Nil***

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P.VELMURUGAN, J.

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