



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON
30.10.2024

PRONOUNCED ON
19.12.2024

CORAM :

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

C.S.(Com.Div)No.329 of 2023

1.Ashok Kumar Sethi
Propreitor,
Abhinav Export Corporation
Residing at C-2, No.1 & 3
Swarup Heritage, II Street,
Kasthuri Estate, Poes Garden,
Chennai – 600 086.

2.Abhinav Sethi
Proprietor,
Seegreen Cosmetics
Residing at C-2, No.1 & 3
Swarup Heritage, II Street,
Kasthuri Estate, Poes Garden,
Chennai – 600 0865.

... Plaintiffs

VS.

Amazon Technologies INC.,
410, Terry Avenue North,
Seattle,
Washinton 98109,
USA

... Defendant

Prayer : Civil Suit filed under Order IV Rule 1 CPC of of Original Side Rules and Order VII, Rule 1 of CPC read with Sections 54, 55 and 62 of the Copyright Act, 1957 and Section 27(2) R/W Sections 134 & 135 of the Trademarks Act, 1999 praying for judgment and decree for:

a) granting a permanent injunction, restraining the defendant by

itself, their servants, agents, distributors, or anyone claiming through



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them from listing the following sellers:

- 1.RDE Home Care
- 2.Sai Rainbow
- 3.Satyadeva Enterprises
- 4.Padmavati Enterprises
- 5.S R Enterprises
6. Beauty hut Cosmetics

or any other unknown sellers who are selling, offering for sale and advertising their 'inferior goods' using the plaintiff's Copyright Black Gold and Copyright Amin's as shown in document Nos.1 & 2 respectively in the defendant's website www.amazon.in or by using any other Copyright which is in any way visually, phonetically or deceptively similar to the plaintiff's Copyright or in any manner infringing the Plaintiff's Copyright in Black Gold under No.A-130111/2019 and Plaintiff's Copyrights in AMIN's under Nos.A-129763/2019 & A-128804/2019 as shown in Document Nos.1&2 respectively.

b) granting a permanent injunction, restraining the defendant by itself, their servants, agents, distributors, or anyone claiming through them from listing the following sellers:

- 1.RDE Home Care
- 2.Sai Rainbow



3.Satyadeva Enterprises

4.Padmavati Enterprises

5.S R Enterprises

6.Beauty hut Cosmetics

or any other unknown sellers who are selling, offering for sale and advertising their goods using Black Gold and Amin's as shown in Document Nos.1 & 2; respectively in the defendant's website www.amazon.in or any other in any manner passing off the plaintiffs products Black Gold and AMIN's

c) mandatory injunction directing the defendant to take down or block or remove or delist all the 'inferior goods' of the following sellers:

1.RDE Home Care

2.Sai Rainbow

3.Satyadeva Enterprises

4.Padmavati Enterprises

5.S R Enterprises

6.Beauty hut Cosmetics

or any other unknown sellers/dealers that infringe the Plaintiff's Copyrights in Black Gold and AMIN's and pass off the Plaintiff's Trademarks/Copyrights in Black Gold and AMIN's



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d) directing the defendant to furnish the details including the complete name, designation and address of the following sellers:

- 1.RDE Home Care
- 2.Sai Rainbow
- 3.Satyadeva Enterprises
- 4.Padmavati Enterprises
- 5.S R Enterprises
- 6.Beauty hut Cosmetics

or any other sellers who are infringing the plaintiff's Copyrights in Black Gold and AMIN's and passing off the plaintiff's Trademarks Black Gold and AMIN's

e) directing the defendant to render an account of profits made by them by the use of the plaintiffs Trade Marks/Copyright Black Gold and AMIN's in the course of their business and decree the suit for the profits found to have been made by the defendant, after the defendant has rendered accounts;

f) directing the defendant to pay to the plaintiff's the costs of the suit, and

g) pass such further or other order, as this Court may deem fit and proper in the circumstances of the case.

For Plaintiff : Ms.Gladys Daniel for Daniel

For defendant : Sole respondent set ex-parte on 01.07.2024



J U D G M E N T

The case of the first plaintiff is that the first plaintiff had commenced the business in the year 1992 and had been one of the leading manufacturers and marketer of dye based products in India and offering products in the Trademarks “Black Gold and Amin's” and that the first plaintiff had entered into a license seizure agreement with the second plaintiff for the use of Trade Mark/Copyright. The first plaintiff is also the owner of the Copyright in the artistic work in pouch and cartoon of the product Black Henna bearing Trademarks Black Gold since 1992 and also wants a Copyright in the artistic work of Black Gold “Black Henna” which has also been duly registered in the year 2019. Further as regards the Trade Marks Amin's the same had been used by the first plaintiff from the year 1998 and owns a Copyright in the artistic works in Amin's (Herbal based Black Henna) having registered the same in the year 2019 and AMIN's Golden pack also in the year 2019. It is the case of the Plaintiffs that as to 2022-23 as a turn over running into several crores. During June 2023, when the plaintiffs had visited the defendant's e-commerce platform, the plaintiffs were shocked to see that there are several sellers trading and dealing with the similar to plaintiffs' product by exploiting the copyrights and the Trademarks of the plaintiffs. Hence, the Plaintiffs has caused a legal notice to the defendant on 19.06.2023 calling upon the defendant to immediately cease and desist from allowing the dealers/sellers who were trading in the Trademark and Copyrights of the plaintiffs. Since no action had been initiated on the side



of the defendant, pursuant to the legal notice issued by the plaintiffs, the plaintiffs have approached this Court in filing the present Suit for various reliefs.

2.The defendant had set exparte by order dated 01.07.2024 and thereafter, evidence had been recorded by the plaintiffs through one of his authorized signatory who was examined as PW-1 and Exs.P1 to P11 were marked on the side of the plaintiffs.

3.Ms.Gladys Daniel, learned counsel appearing for the plaintiffs would contend that the first plaintiff has been in business of manufacturing and marketing of dye based products under the Trademarks “Black Gold and AMIN” and substantiate that they have been in the market, she had placed reliance upon the deposition of the PW-1 and particularly Ex.P.8 and P.9 and contend that the plaintiffs swayed in the business from the year 1993. She would further contend that the plaintiffs have been benefited with the Copyrights Certificates in respect of the Trademarks and the Artistic Work with regard to the said Trademarks under Exs.P.5 and P.6. She would also rely upon Ex.P.2 to drive home the contention that the first plaintiff had licensed to the second plaintiff for use of the Trademark and Copyright which had been conceived by the first plaintiff. She had also placed reliance upon the Ex.P.10,



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defendant had been permitting the use of its platform for the manufacturers and sellers to deal with similar products of the plaintiff by using the deceptively similar Trademark which the plaintiffs have been using from 1993-94 for which the plaintiffs also hold the Copyright under Exs.P.5 & P.6. The learned counsel would further submit that inspite of the legal notice calling upon the defendant to cease and desist from permitting such third party sellers from using the platform of the defendant infringing the Trademarks and passing off their products deceptively similar to that of the plaintiffs, the defendant had neither had taken down the usage of said web links by the sellers indicated in the legal notice nor they had complied with the legal notice by furnishing the information regarding to such sellers using the platform of the defendants. Hence, she prays this Court to grant the orders as prayed for by the plaintiff.

4.I have considered the submissions made by the learned counsel appearing on behalf of the plaintiffs.

5.Under Exs.P.8 and P9, the plaintiffs have substantiated that they have been in manufacturing and marketing of dye based products in the name and style of “Black Gold Amin's, Black Gold (Black Henna) Amin's (herbal based Black Henna) Amin's Golden Pack”. Ex.P.7, certificate issued by the Chartered Accountant also substantiate the turn over claimed by the plaintiffs. Exs.P.5 and



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the Copyrights in the artistic works of the trademarks used by the plaintiff. The plaintiffs have also substantiated under Ex.P.11 that they had infact called upon the defendant to cease and desist from permitting the infringers therein from using the platform of the defendant and had also called upon the defendant to furnish the details of the sellers for the plaintiffs to take action under both Trademarks Act as well as the Copyrights Act. The defendant had not replied to the same and had also not responded to the Court notice that had been served upon it which had led this Court to set the defendant *ex-parte* in its order dated 01.07.2024.

6.In view of the aforesaid findings and reasoning, I am of the considered view that the plaintiffs had substantiated their case and are entitled for the following reliefs:-

a) the defendant is injuncted permanently either by itself, their servants, agents, distributors, or anyone claiming through them from listing the following sellers:

- 1.RDE Home Care
- 2.Sai Rainbow
- 3.Satyadeva Enterprises
- 4.Padmavati Enterprises
- 5.S R Enterprises
6. Beauty hut Cosmetics

or any other unknown sellers who are selling, offering for sale and

<https://www.mhc.tn.gov.in/judis> advertising their 'inferior goods' using the plaintiff's Copyright “Black



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Gold and Amin's" or in any manner using any other Copyright which is deceptively similar to the plaintiffs Copyright granted under No.A-130111/2019, Nos.A-129763/2019 & A-128804/2019.

b) the defendant is restrained by injunction permanently either by itself, their servants, agents, distributors, or anyone claiming through them from listing the following sellers:

- 1.RDE Home Care
- 2.Sai Rainbow
- 3.Satyadeva Enterprises
- 4.Padmavati Enterprises
- 5.S R Enterprises
- 6.Beauty hut Cosmetics

or any other unknown sellers who from advertising their goods using "Black Gold and Amin's" in its website www.amazon.in or any other in any manner passing off the plaintiffs products "Black Gold and AMIN's".

c) the defendant is directed to take down or block or remove or desist all the following sellers:

- 1.RDE Home Care
- 2.Sai Rainbow
- 3.Satyadeva Enterprises
- 4.Padmavati Enterprises
- 5.S R Enterprises
- 6.Beauty hut Cosmetics

or any other unknown sellers/dealers that infringes the Plaintiffs



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Copyrights in “Black Gold and AMIN's” and pass off the Plaintiffs
Trademarks/Copyrights in “Black Gold and AMIN's”;

d) the defendant is directed to furnish the details of the
following sellers to the plaintiffs within a period of three (3) months
from the date of receipt of a copy of this judgment:

- 1.RDE Home Care
- 2.Sai Rainbow
- 3.Satyadeva Enterprises
- 4.Padmavati Enterprises
- 5.S R Enterprises
- 6.Beauty hut Cosmetics

*e) the defendant shall also render the details of the product
sold by the aforesaid sellers or any other person who have sold their
products using the Trade Marks/Copyright Black Gold and AMIN's;*

7.In fine, the Suit is decreed. However, there shall be no order as to costs.

19.12.2024

Index : Yes / No
Internet :Yes / No
Pbn



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Pre-Delivery Judgment in
C.S.(Com.Div)No.329 of 2023