

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 18.08.2025

CORAM :

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

O.A.Nos.713 to 715 of 2025
in C.S.(Comm.Div)No.178 of 2025

In all the three OAs:

1. G B Pachaiyappan

Door No.21/1, C.P. Kovil Street, Kutchery Road,
Mylapore, Chennai, Tamil Nadu, India.

2.Thondai Mandala Saandror Dharma Paribalana Sabai

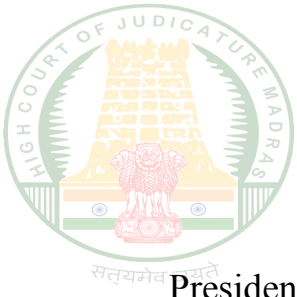
Rep. by its Trustee Mr. G. B. Pachaiyappan,
Door No.21/1, C.P. Kovil Street,
Kutchery Road, Mylapore, Chennai,
Tamil Nadu, India.

... Applicants/Plaintiffs

VS.

1. Tamilaga Vettri Kazhagam,
Rep. by its President Mr.Vijay,
Having Office at
104, Wallahjah Road,
Mount Road,
Chepauk, Triplicane,
Chennai, Tamil Nadu-600002.

2. Mr.Vijay



President, Tamilaga Vettri Kazhagam, S/o, Mr. Chandrasekhar,
Plot No. 275, Seashore Town, 8th Avenue,
Panaiyur, Chennai-600119.

..Respondents/ Defendants

Prayer in O.A.No.713 of 2025 : Application is filed under Order XIV Rule 8 of the Original Side Rules Read With Order XXXIX Rule 1 & 2 of the C.P.C., 1908 to grant an ad interim injunction restraining the Respondents, all their principal officers, staff, men, agent, servants, successors, assigns in business, representatives and any other persons from infringing the trade mark by using the flag



or any other word/words/device that are identical or deceptively similar to the said registered trade mark “



of the Applicants in Class 45 in respect of personal and Respondents from in any manner infringing the registered trade mark by using infringing flag



, pending disposal of the main suit.

Prayer in O.A.No.714 of 2025 : Application is filed under Order XIV Rule 8 of the Original Side Rules Read With Order XXXIX Rule 1 & 2 of the C.P.C., 1908 to grant an ad interim injunction restraining the Respondents, all their principal officers, staff, men, agent, servants, successors, assigns in business, representatives and any other person from passing off their goods by using the infringing flag



, which is deceptively similar as registered trade mark “



of the Applicants in Class 45, or any other word/words/device/logo/artistic work/design/device that are identical or deceptively similar to the said registered trade mark of the applicants in Class 45 in respect of personal and



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social services, and thereby restraining the respondents in any manner from passing off, pending disposal of the main suit.

Prayer in O.A.No.715 of 2025 : Application is filed under Order XIV Rule 8 of the Original Side Rules Read With Order XXXIX Rule 1 & 2 of the C.P.C., 1908 to grant an ad interim injunction restraining the Respondents, all their principal officers, staff, men, agent, servants, successors, assigns in business, representatives and any other persons from infringing the copyright of the Applicants by using the artistic work, trade dress and colour combination, which are identical and deceptively similar to that of the Applicants' artistic works and colour combinations; or any other logo/artistic work/design/device/trade dress that are identical or deceptively similar to the said copyright of the Applicants, pending the disposal of the main suit.

In all the three OAs.

For Applicants/Plaintiffs : Mr.Ramesh Ganapathy

For Respondents/Defendants : Mr.Vijay Narayan, Senior Counsel
for Mr.K.Gowtham Kumar
Mr.S.Arivazhagan



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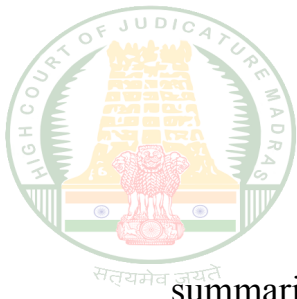
Mr.A.P.Balaji

Ms.Radha Bhujel

COMMON ORDER

The 2nd plaintiff is a trust created under trust deed dated 07.08.2023 to provide *inter alia* educational and other social welfare services to the public. The 1st plaintiff is the founder and trustee of the 2nd plaintiff. The 1st defendant is a political party and the 2nd defendant is the President of the 1st defendant. The plaintiffs assert proprietorship over a trade mark, which was registered under Trade Mark No.6200332 with effect from 28.11.2023. The plaintiffs also assert that the flag created by them qualifies as an artistic work under Section 2(c) of the Copyright Act, 1957 (the Copyright Act). By further asserting that the adoption and use of the impugned flag by the defendants constitutes trade mark infringement, copyright infringement and passing off, the present suit was filed seeking remedies in respect thereof. Applications for interim relief to restrain infringement and passing off were filed and such applications are disposed of by this common order.

2. The contentions of learned counsel for the plaintiffs may be



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summarised as under:

(i) The 2nd plaintiff trust was created under trust deed dated 07.08.2023. The said trust adopted a flag as its mark. Even before the formation of the trust, such flag was used, as evidenced by Facebook posts. After the trust was founded, the plaintiffs have continued using the flag.

(ii) The registration of the trade mark is in Class 45, which relates to provision of social services and informational services.

(iii) Because the flag is an original creation of the plaintiffs, it qualifies as an artistic work under Section 2(c) of the Copyright Act.

(iv) The defendants have copied the plaintiffs' flag in adopting the flag for the 1st defendant political party. The defendants have also copied the colour combination by adopting and using an identical colour combination for scarves worn by party leaders and workers.

(v) As the prior users of the mark, the plaintiffs are entitled to remedies both under statute and common law.

3. In support of the above contentions, learned counsel for the



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plaintiffs filed a compilation of authorities. From and out of the said compilation, emphasis was placed on the following judgments:

(i) *Kirithavar Vazhvurimai Iyakkam, represented by its President, Prof. Dr. Deva Sahayam v. Indhiya Jananayaka Katchi, 2020 SCC OnLine Mad 600 (Kirithavar Iyakkam)*, particularly paragraphs 17 to 19 & 24 thereof;

(ii) *Burge v. Haycock, (2002) R.P.C. 28*, particularly at pages 91, 94 & 95 of the compilation;

(iii) *Parle Products (P) Ltd. v. J.P. and Co., Mysore, (1972) 1 SCC 618 (Parle Products)*, particularly paragraph 9 thereof;

(iv) *Midas Hygiene Industries (P) Limited v. Sudhir Bhatia and others, (2004) 3 SCC 90*, particularly paragraph 5 thereof;

(v) *Colgate Palmolive Company and another v. Anchor Health and Beauty Care Pvt. Limited, 2003 SCC OnLine Del 1005*, particularly paragraphs 59 & 60 thereof; and

(vi) *Societe des Produits Nestle S.A. v. Cadbury UK Limited, (2022) EWHC 1671 (Ch)*, particularly at pages 108 & 110 of the compilation.

4. The above contentions were refuted by learned senior counsel for



the defendants. His submissions may be summarised as follows:

(i) Neither the plaintiffs nor the defendants are engaged in trade.

Section 2(1)(z)(b) of the TM Act uses the phrase “a connection in the course of trade” while defining a trade mark. Therefore, the plaintiffs are not entitled to assert proprietorship over the flag as a trade mark under the Trade Marks Act, 1999 (the TM Act).

(ii) On comparison of the two flags, several material differences are clearly discernible. The defendants' flag uses the maroon colour at the top and bottom end, and the yellow section contains a pictorial depiction of two dancing elephants on either side of an oval device. The said oval device incorporates the Vaagai flower, which is encircled by multiple stars.

(iii) The income and expenditure statement of the plaintiffs reveals that the plaintiffs received a total income of Rs.2,15,000/- in financial year 2024-2025. It also reveals that a substantial portion thereof was expended towards office expenses, educational help, food expenses, etc. This is insufficient to establish reputation and goodwill.

(iv) The plaint contains insufficient pleadings with regard to alleged



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losses incurred by the plaintiffs.

(v) In view of the completely divergent nature of activities carried on by the plaintiffs and defendants, there is no likelihood of deception or confusion among the public.

(vi) After pointing out that the judgment in *Kirithavar Iyakkam* was stayed by the Division Bench, the recent judgment of the Hon'ble Supreme Court in *Pernod Ricard India Private Limited and another v. Karanveer Singh Chhabra*, Civil Appeal No.10683 of 2025, judgment dated 14.08.2025, particularly paragraph 31 thereof, was relied upon.

5. By taking into account the above contentions, I first propose to deal with the claim for interim relief in respect of alleged copyright infringement. Undoubtedly, as contended by learned counsel for the plaintiffs, remedies for copyright infringement are available under Section 55 of the Copyright Act even in relation to an unregistered copyright. For interlocutory purposes, in the absence of any evidence to the contrary, I will proceed on the basis that plaintiffs' flag qualifies as an artistic work under the Copyright Act. This leads to the question whether the defendants' flag is a copy thereof. For



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purposes of preliminary assessment, it is necessary to set out the two flags and the same are as under:

Plaintiffs' flag:



Defendants' flag:



6. Without doubt, it is not necessary that the two flags be identical to succeed in an action for copyright infringement. It is, however, necessary for the plaintiffs to establish at least substantial copying of their flag by the defendants. If minor differences are incorporated in an otherwise infringing work for purposes of defeating an action for copyright infringement, a finding



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of infringement may be drawn. In this case, it is noticeable that both flags use red/maroon followed by yellow in the middle and red/maroon at the lower end. Apart from the use of this colour combination/scheme, the two flags also contain central devices. The plaintiffs' flag contains a circle or sphere. Within such circle, the images of a fish and leaping tiger are seen on the left and right, respectively. The image of a bow and arrow is seen at the upper end of the circle. The word elements “ வாழ்க தமிழ் வளர்க தலைமுறை ” are seen beneath the fish and tiger at the lower end of the circle.

7. In comparison, only in the yellow segment of the defendants' flag, an oval device is seen in the centre. On either side, there is an image of an elephant in motion. On *prima facie* comparison, it cannot be said that the defendants' flag is a substantial copy of the plaintiffs' flag. Therefore, I reject the claim for relief in respect of copyright infringement.

8. I turn next to alleged trade mark infringement. Learned senior counsel for the defendants contended that neither the plaintiffs nor the defendants carry on trade and that, therefore, the plaintiffs are not entitled to

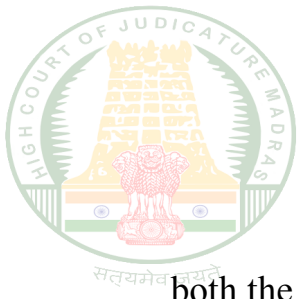


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relief under the TM Act. On examining Section 2(1)(z)(b) of the TM Act, the phrase “a connection in the course of trade between the goods or services” finds place therein. The word 'trade' is not defined in the TM Act and after considering evidence on whether not-for-profit services were provided by the plaintiffs, the question the said expression would embrace such services could be appropriately decided. Therefore, at the interlocutory stage, I do not intend to enter any definitive findings with regard to whether the plaintiffs' mark qualifies as a trade mark under Section 2(z)(b) or not.

9. Proceeding on the assumption that the plaintiffs' trade mark is valid by virtue of the registration thereof for interlocutory purposes, as per Section 28(1) of the TM Act and, consequently, entitled to protection, the next question that arises is whether the plaintiffs' trade mark has been infringed by use of the impugned flag. Learned counsel for the plaintiffs relied upon the judgment of the Supreme Court in *Parle Products* to contend that the essential features of the two marks should be considered and that minor differences should be disregarded. There can be no quarrel with this proposition.

10. As noticed above, while dealing with copyright infringement,



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both the marks are composite in nature. Significantly, the plaintiffs do not have a separate registration for the colour combination. By virtue of Section 17 of the TM Act, consequently, the protection is confined to the composite mark and does not extend to the elements or constituents thereof. It is, no doubt, true that the essential features of a mark may be considered even in a composite mark notwithstanding the anti-dissection rule. Even so, on *prima facie* comparison, I find that the colour scheme cannot be characterised as the essential feature. While minute comparison is not warranted, even when examined from the perspective of a person of average intelligence and imperfect recollection potentially availing of the services of the plaintiffs, it cannot be said that the use of the impugned flag is likely to cause deception or confusion. While arriving at this conclusion, I also take note of the nature of services provided by the 2nd plaintiff in comparison with those provided by the 1st defendant. All that remains to be considered is the request for relief for alleged passing off.



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11. In order to sustain an action for passing off, it is necessary for the plaintiffs to establish the classical trinity of goodwill and reputation, misrepresentation and damage to such goodwill and reputation. By relying on *Dhariwal Industries Ltd. and another v. M.S.S. Food Products, (2005) 3 SCC 63*, learned counsel for the plaintiffs contended that the plaintiffs should not be denied relief solely because plaintiffs operate on a small scale. While this proposition is sound, nonetheless, in a passing off action, the evidence of reputation and goodwill is required to be considered. The 2nd plaintiff trust was formed on 07.08.2023. The registration of the trade mark was obtained on a “proposed-to-be-used” basis. The income and expenditure statement for the year ended on 31.03.2024 of the 2nd plaintiff shows that a total sum of Rs.2,15,000/- was received as donation. The plaint does not contain details of the number of beneficiaries of the trust. In light of this evidence, it is not possible to conclude that the plaintiffs have established reputation and goodwill in relation to the plaintiffs' flag. On the basis of evidence adduced, at this stage, an inference of misrepresentation also cannot be drawn. For such reasons and for other reasons set out while declining relief in respect of trade mark infringement, the request for relief in relation to alleged passing off is also



declined.
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12. For reasons set out above, these applications are rejected. For the avoidance of doubt, however, it is clarified that these observations are tentative and intended solely for disposal of these interim applications.

18.08.2025

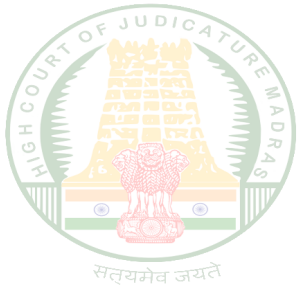
Index : Yes / No (1/2)

Internet : Yes / No

Neutral Citation : Yes / No

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SENTHILKUMAR RAMAMOORTHY,J.



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