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OA NOs. 872, 873, 874 of 2024
C.S.(Comm Div) No.228 of 2024 and A.No.5890 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-03-2025

CORAM

THE HONOURABLE MR JUSTICE SENTHILKUMAR RAMAMOORTHY

OA NOs. 872, 873, 874 of 2024

C.S.(Comm Div) No.228 of 2024 and A.No.5890 of 2024

M/s THE CORONATION FIREWORKS
FACTORY
7-A, Chairman A. Shanmugam Road, Post Box.
278, Sivakasi-626 123

Applicant(s)

Vs

The Gemini Fireworks
No.152,-D, Everest Building, Sevvalpatti, New
Road, Kovilpatti - 628 501, India.

Respondent(s)

For Applicant(s):

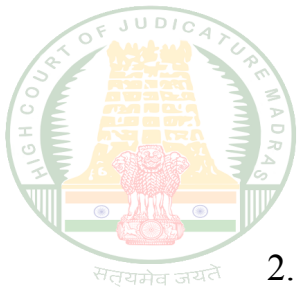
M/s.Avinesh V

For Respondent(s):

No appearance

COMMON ORDER

In a suit seeking relief in respect of the alleged infringement of trademark and copy right, and passing off, by these applications, the plaintiff seeks interim relief to prevent alleged infringement of trademark and copy right, and passing off.



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2. On 18.11.2024, notice was issued in the interim applications. Upon receipt of notice, Mr.A.Santhana Sinakarthan, learned counsel, entered appearance on behalf of the sole respondent/defendant and took time to file a counter. At the hearing on 05.02.2025, learned counsel for the defendant requested for time to obtain instructions as to whether the defendant is willing to modify the label. At the hearing on 10.03.2025, learned counsel for the defendant took further time to obtain instructions. The defendant was directed to file the counter latest by 17.03.2025.

3. At today's hearing, the counter has not been filed and the defendant is not presented. Therefore, the matter is proceeded with in the absence of the defendant.

4. Learned counsel for the plaintiff submits that the plaintiff is a registered partnership firm which was established in the year 1974. By referring to invoices placed on record by the plaintiff, learned counsel submits that the plaintiff adopted and used the following device mark in relation to fire crackers produced by the plaintiff:



10 GREEN NAZI

CORNATION

NAZI

GREEN

UNBEATABLE

With Timing Fuse

REGD NO 1688260 1688261

Authorised Name : ATOM BOMBS

Class - 7
Division - 2
Sub Division - 152

cornationfireworks@gmail.com

License - EMOITY-35-994 (E 32152)

Whd by : Sri Cornation Fireworks, Anaiyur.
Marketed by :
Sri Cornation Fireworks (P) Ltd., Sivakasi.

10 GREEN NAZI

Chemical Composition

Perchlorate Nitrate	2.00%	4.40%
Ammonium Perchlorate	1.50%	2.10%
Sulfur	1.50%	2.10%
CSR NEEDLE ADDITIVE	0.10%	1.10%
Other	1.00%	1.00%

NO CHILD LABOUR EMPLOYED

KEEP YOUR CITY CLEAN

WARNING: FLAMMABLE EXPLODES WITH SOUND ON THE GROUND. LIGHT FUSE AND GET AWAY. USE ONLY UNDER ADULT SUPERVISION FOR OUTDOOR USE ONLY.

EVERY CHILD IS OUR CUSTOMER. NO CHILD IS OUR WORKER.

Identification Number : 70
Product Name : NAZI GREEN
Box Contains : 10 Pcs
Mfg. R.P.S. : 046/00
MFG. Date : Mar 23
Exp. Date : 2028 Dec

Legal Machinery (P) Ltd. No. : TKN/MS/PC/20-09945

70

NAZI

GREEN

10

PIECES

Whd by : Sri Cornation Fireworks, Anaiyur.
Marketed by :
Sri Cornation Fireworks (P) Ltd., Sivakasi.
Customer Care - The Manager - Ph : 04562 - 225935

8190603819007061

Identification Number : 70
Product Name : NAZI GREEN
Box Contains : 10 Pcs
Mfg. R.P.S. : 046/00
MFG. Date : Mar 23
Exp. Date : 2028 Dec

Legal Machinery (P) Ltd. No. : TKN/MS/PC/20-09945

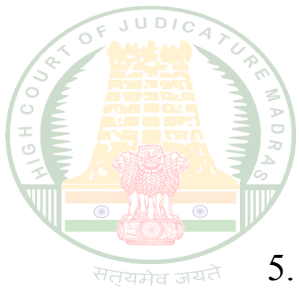
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NAZI

GREEN

10

PIECES



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5. By further relying on the legal user certificate in relation thereto, learned counsel submits that the document discloses that the plaintiff has used the mark since 01.01.1979. By referring to the impugned label of the defendant, learned counsel submits that the defendant has adopted a deceptively similar label containing the image of a gorilla with a machine gun. He also points out that the colour scheme is identical. In addition to the trademark registration, learned counsel points out that the label was registered as an artistic work under the Copyright Act, 1957.

6. The plaintiff has placed on record invoices indicating the sale of fire crackers since 10.10.1981. Such sales have been effected under the name Coronation Fire Works Factory. The plaintiff has also placed on record the legal user certificate in relation to the device mark set out above. Such device mark has been registered with effect from 16.05.2008. The certificate indicates use since 01.01.1979.

7. Before filing the suit, the plaintiff issued lawyer's notice dated 19.09.2024. The said notice was replied to by the defendant on 09.10.2024. In the reply, in relevant part, the defendant stated as under:-



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“ 17, Your client has provided erroneous information about my client and constrained you to send an indecorous legal notice. The alleged label bearing the name 'GEMINI SHIKARI' does not belong to my client. Only the name 'GEMINI SHIKARI' belongs to my client. That name has achieved a tremendous name and fame amongst the people and the traders all around India. By that name my client selling flower pots alone. Without knowing this fact, your client has given false information that my client is carrying on atom bomb sale through the label as shown in your legal notice”.

8. In effect, the defendant has taken the stand that he is the proprietor of the mark 'GEMINI SHIKARI', but, does not use the following impugned label:



SHIKARI BOMB 10 Pcs.

GEMINI

SHIKARI

GREEN

CHALLENGER

JR

THE GEMINI FIRE WORKS
KOVILPATTI-628 501

SHIKARI BOMB 10 Pcs.

Warning: For outdoor use only, use only under adult supervision. Use properly lighted squibbers to fire the fuse with extended hand and get away immediately. SOUND LEVEL WITHIN LIMIT.

Obey Central Government Order Use Fireworks All Effects Within The Statutory Limit.

All OUR products are Manufactured by Adult workers only.

Max Retail Price Rs. 308-00 (Inclusive of all Taxes)
Date of Mfg: MAY
Date of Exp: 12-2030

MFG BY: JEVA FIRE WORKS, K.V.P.

CHEMICAL COMPOSITION APPROX

K(No.)	60%
S	20%
Al	20%
	100%

Marketed by:
THE GEMINI FIRE WORKS
KOVILPATTI - 628 501



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9. The plaintiff has, however, placed on record the label used by the plaintiff and that used by the defendant. On examining these two labels, it appears that the defendant has adopted a deceptively similar label insofar as the image of the gorilla with a machine gun is concerned. The two labels are also similar with regard to the colour scheme. In these circumstances, especially by taking into account the reply of the defendant, a strong *prima facie* case has been made out to restrain use of the impugned label at page No.33 of the typed set (supra at paragraph 8). Unless interim relief is granted, irreparable hardship would be caused to the plaintiff, whereas, the defendant would be in a position to continue to market its goods using the mark 'GEMINI SHIKARI', albeit by modifying the label.

10. Therefore, these applications are disposed of by restraining the defendant from directly or indirectly using the impugned label at page No.33 of the typed set or any other deceptively similar label. For the avoidance of doubt, it is made clear that this order does not restrain the defendant from using the mark 'GEMINI SHIKARI' in relation to sale of fire crackers.

17-03-2025

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SENTHILKUMAR RAMAMOORTHY.J.,

sr

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17.03.2025