



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04-02-2026

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THE HON'BLE MR JUSTICE SENTHILKUMAR RAMAMOORTHY

**OA Nos. 1021 & 1022 of 2025 in
C.S.(Comm Div) No.276 of 2025**

In both O.As.

CavinKare Private Limited
12, Poonthamallee Road, Ekkatuthangal,
Chennai-600 032

..Applicant(s)

Vs

Maha Aqua, trading as Mahalakshmi Aqua or Maa
Aqua
No.32-345/1, Natesh Mudaliyar Street,
Bye-Pass Road, Murukambut,
Chittoor, Andhra Pradesh-517127

..Respondent(s)

PRAYER IN O.A.No.1021 of 2025: Judge's summons is filed under Order XIV Rule 8 of Original Side rules read with Order XXXIX rules 1 & 2 of CPC praying to grant an interim injunction restraining the Respondent, by itself, its partners, men, servants, agents, distributors, stockiest, representatives or any one claiming through or under them from in any manner infringing the applicant's registered trademark MAA under No.1109946 and 6453733 in Class 32 by using an identical trademark MAAS or any other trademark deceptively similar to the applicant's registered trademark or in any other manner whatsoever, pending disposal of the suit.

PRAYER IN O.A.No.1022 of 2025: Judge's summons is filed under Order XIV Rule 8 of Original Side rules read with Order XXXIX rules 1 & 2 of CPC praying to grant an interim injunction restraining the Respondent, by itself, its



partners, men, servants, agents, distributors, stockiest, representatives or any one claiming through or under them from in any manner passing off and/or enabling others to pass off the Respondent's products under trademark MAAS as and for the applicant's products by manufacturing, selling, or offering to sell, distributing, displaying, printing, stocking, using, advertising their products with a trademark MAA or any other trademark which is identical or similar to the applicant's trademark MAA or in any other manner whatsoever, pending disposal of the suit.

In both OAs:

For Applicant(s): Mr.R.Sathish Kumar

For Respondent(s): Mr.K.Pattabhi

ORDER

In a suit seeking remedies in respect of alleged trademark infringement and passing off, the plaintiff has presented two original applications seeking interim relief. An order of ad-interim injunction was granted in both the applications on 05.11.2025. The said order remains in force as on date.

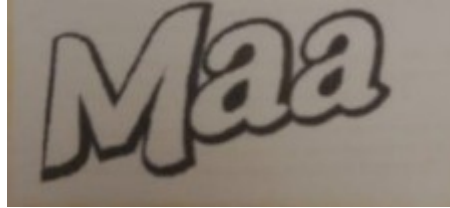
2. The contentions of learned counsel for the plaintiff in support of these applications may be summarised as under:

(i) The word mark 'Maa' was registered with effect from 07.06.2002 by the predecessor-in-interest of the plaintiff. Pursuant to order dated 20.07.2012, the plaintiff has been brought on record as the subsequent proprietor of the trademark. Therefore, the plaintiff is the registered proprietor of trademark No.1109946.



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(ii) The plaintiff is also the registered proprietor of the following label mark:



This trademark was registered in the plaintiff's name with effect from 28.05.2024.

(iii) Both these marks are applied in relation to soft drinks.

(iv) The defendant sells soft drinks under the mark 'Maas', The 's' is written inconspicuously in a much smaller font.

(v) The pre-institution mediation failed because the defendant filed a memo stating that the defendant is not willing to settle the matter.

(vi) Considering the near identical nature of the impugned mark and the fact that these marks are applied in relation to identical products, the ad-interim orders are liable to be made absolute.

(vii) Because the plaintiff carries on business in Chennai, the plaintiff is entitled to institute the suit before this Court in terms of Section 134(2) of the Trade Marks Act, 1999 (the TM Act). The judgment of the Division Bench of this Court in *Wipro Limited and Others v. Oushadha Chandrika Ayurvedic India (P) Limited and Others*, 2008 2 LW 430 (DB) ("*Wipro*"), is relied upon.



3. These contentions were responded to by learned counsel for the defendant as follows:

(i) The plaintiff has not pleaded that the institution of the suit is authorised by a board resolution. A copy thereof has not been filed. The judgment of the Delhi High Court in *Nibro Ltd. v. National Insurance Co. Ltd.*, 1990 SCC OnLine Del 65 is relied on in this regard.

(ii) The plaintiff is a registered user and not a registered proprietor. The requirements of Section 52 of the TM Act have not been satisfied in relation to the institution of the suit by the registered user.

(iii) The plaintiff has failed to obtain leave to sue. Therefore, the suit is not maintainable. The order dated 21.10.2021 in *A.No.3185 of 2021 in C.S.No.162 of 2019, M/s.Simpson & Company Limited v. Shri Rhythm Agarwal ("Simpson)*, is relied upon in support of this contention.

(iv) On comparison of the two labels, any consumer would be in a position to distinguish between the two products and it will not lead to deception or confusion.

(v) The judgment of this Court in the *Procter @ Gamble Company v. IPI India Private Limited and Another*, order dated 06.01.2022 in OP(TM) Nos.48, 49 & 50 of 2024, is relied upon.

4. In the plaint, the plaintiff asserts that products bearing the trademark 'Maa' are sold all over India. The lineage of the mark is traced back to



07.06.2002 when trademark No.1109946 was registered in the name of the predecessor-in-interest of the plaintiff. Evidence that the plaintiff's name has been recorded in the register is available in the form of the history data recorded in the legal use certificate relating to trademark No.1109946. The plaintiff is also the registered proprietor of the label mark under trademark No.6453733.

5. In the counter affidavit of the defendant, any reference to the date of first use of the mark 'Maas' is conspicuous by its absence. Therefore, there is sufficient basis to proceed with these applications by treating the plaintiff as the prior user. The defendant has raised two preliminary objections. The first objection is that the plaintiff has not filed the board resolution. On perusal of the plaint, it is noticeable that the plaint has been verified by Mr.R.Thazhalan, General Manager - Legal and Secretarial and Authorised Signatory. Even assuming that the board resolution was not filed along with the plaint, it is clearly a curable defect. Therefore, this objection does not carry the defendant far while adjudicating these interlocutory applications.

6. The second objection is on the ground that leave to sue was not obtained. Section 134(2) of the TM Act reads as under:

"134. Suit for Infringement, etc., to be instituted before the District Court-

(2)For the purpose of clauses (a) and (b) of sub-section (1), a "District



Court having jurisdiction" shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or any other law for the time being in force, include a District Court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or proceeding, or, where there are more than one such persons any of them, actually and voluntarily resides or carries on business or personally works for gain.

Explanation. – For the purposes of sub-section (2), "person" includes the registered proprietor and the registered user."

7. Although learned counsel for the defendant relied on the judgment of this Court in *Simpson* to contend that leave to sue is necessary, on perusal of the judgment of the Division Bench in *Wipro*, it appears that the Division Bench has taken a view that leave to sue is not necessary when a plaintiff institutes the suit for infringement by relying on Section 134(2) of the TM Act. This action is a rolled-up action for infringement and passing off. Therefore, the plaintiff has also filed an application for joinder of causes of action. In the said affidavit, it is stated that both the actions for infringement and passing off relate to the use of the mark 'Maas' by the defendant and that joinder is necessary in order avoid multiplicity of the proceedings. Considering these aspects, this preliminary objection is overruled.

8. Whether the two marks are deceptively similar falls for consideration next. The plaintiff has depicted products bearing the rival marks at paragraph 10



of the plaint. Both the marks are used in relation to nearly identical products.

The plaintiff's mark is 'Maa' and defendant's mark is 'Maas'. A much smaller font has been used for the letter 's'. *Prima facie*, when viewed from the perspective of a consumer of average intelligence and imperfect recollection, the use of the rival mark is likely to cause deception or confusion. The plaintiff has provided *prima facie* evidence that it entered the market through its predecessor-in-interest in 2002. The defendant has failed to produce any evidence as to when products bearing the impugned mark were first placed in the market. Therefore, the balance of convenience is in favour of the plaintiff and it is likely that irreparable injury would be caused if the impugned mark is continued to be used pending disposal of the suit. Therefore, the orders of ad-interim injunction are made absolute and these applications are allowed.

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SENTHILKUMAR RAMAMOORTHY, J.

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