
(2014) 02 IPAB CK 0001

In the Intellectual Property Appellate Board

Case No : ORA/270/2010/TM/CH

A. Manickavel Trading As Bharathi Soap Works

APPELLANT

Vs

P. Govardhanamma, Trading As Vijayalakshmi Soaps &
Chemes And Registrar Of Trademarks, Office Of The Trade
Marks Registry

RESPONDENT

Date of Decision : 17-02-2014

Acts Referred:

Citation : (2014) 02 IPAB CK 0001

Hon'ble Judges : K.N. Basha, J;S. Usha, J

Bench : Division Bench

Advocate : L. Ramprasad, V. Sivakumar

Final Decision : Disposed Of

Judgement

K.N. Basha, J

1 . The learned counsel for the applicant Mr. Arun C. Mohan as well as the learned counsel for the respondent Mr. V. Sivakumar submitted before the Board that the matter was amicably settled between the parties before the Hon'ble High Court of Madras in C.S. No. 1003 of 2008 on the basis of certain terms and conditions.

2. Today the learned counsel for the respondent would produce the judgement copy of the Hon'ble High Court of Madras dated 03/07/2013 in C.S. No. 1003 of 2008. It is seen that the suit was filed for permanent injunction restraining the defendant by themselves, their proprietor/partners/directors as the case may be, their associate companies, heirs, legal representatives, successors in business, assigns, servants, agents, transporters, distributors, printers, stockists, wholesalers, dealers, retailers or any one claiming through or under them from committing acts of infringement of plaintiff's registered trademark SILVER FOAM XXX package/wrapper/label by use of a similar trademark XLENT in their SUPER FOAM XLENT package/wrapper/label or an other mark similar thereto or in any

other manner whatsoever.

3. The applicant before this Board is the plaintiff and the respondent before this Board is the defendant in the above said suit. It is pertinent to note that a joint memo of compromise dated 03/07/2013 was taken on record by the Hon'ble High Court of Madras which reads as follows:--

The defendant was using Xlent label/wrapper, a specimen whereof is annexed hereto and marked as Annexure-A. In view of the compromise arrived at the defendant has changed the colour scheme and get up of Xlent label/wrapper. The amended Xlent label/wrapper is annexed hereto and marked as Annexure-B.

The defendant has agreed to subject itself to an order of permanent injunction as prayed for in prayers (b) and (c) of the plaint:--

(b) a temporary ad-interim, interim injunction restraining the defendant by themselves, their proprietor/partners/directors as the case may be, their associate companies, heirs, legal representatives, successors in business, assigns, servants, agents, transporters, distributors, printers, stockists, wholesalers, dealers retailers or any one claiming through or under them from committing acts of copyright infringement by making substantial reproduction of the plaintiff's registered artistic work SILVER FOAM XXX LABEL by use of identical colour scheme of red, white and yellow with blue background for their SUPER FOAM XXX package/wrapper or in any other manner whatsoever;

(c) a temporary ad-interim, interim injunction restraining the defendants by themselves, their proprietor/partners/directors as the case may be, their associate companies, heirs, legal representatives, successors in business, assigns, servants, agents, transporters, distributors, printers, stockists, wholesalers, dealers, retailers or any one claiming through or under them from committing acts of passing off and enabling others to pass off by manufacturing, distributing, marketing, selling, offering for sale, advertising or in any other manner dealing in detergent powder, detergent cake, washing powder etc. or any other product bearing the trademark XLENT and/or package, wrapper, container, carton, label with colour scheme, getup, layout which are similar to plaintiff's trade dress in XXX package/wrapper; The plaintiff concedes that the suit may be dismissed as far as the prayer a, d, e & f and agrees for a decree to be passed accordingly.

The parties shall bear their own costs.

4. Apart from the above said terms of compromise the defendant had also undertaken to file fresh application in respect of new label before the Copyright Board as per the judgement of Hon'ble High Court of Madras as here under:

Besides the above compromise, the defendant undertakes to file a fresh application before the Copyright Board in respect of the new label and as a consequence the plaintiff will withdraw his complaint on the old label, which will not be used by the defendant. Since the defendant has undertaken not to use

the old label and file a fresh application before the Copyright Board in respect of the new label with the new colour scheme, the proceedings before the Copyright Board shall be withdrawn by the plaintiff giving liberty to the defendant to file a fresh application before the Copyright Board in respect of the new label.

5. Thereafter the Hon'ble High Court of Madras disposed of the suit as per the terms of joint memo of compromise dated 03/07/2013 and also on the basis of undertaking given by the plaintiff and the defendant, as recorded in the said judgement above mentioned.

6. It is submitted today by the learned counsel for both sides that they have to receive the decree copy from the Hon'ble High Court. In view of the above said fact of compromise arrived between the parties there is no need to keep the matter pending on the file of this Board. It is suffice for this Board to direct the Registrar of Trademarks to substitute the label as per the terms of compromise arrived between the parties on receipt of original judgement and decree copy dated 03/07/2013 in C.S. No. 1003 of 2008 and on the production of the order copy of this Board passed today. It is made clear that the Registrar of Trademark shall complete the exercise of substituting the label as per the terms of compromise arrived between the parties within a period of two months from the receipt of judgement and decree copy of Hon'ble High Court of Madras as well as the order copy of this Board. Accordingly, the application is disposed of with the above said direction.