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C.S(COMM.DIV.)No.444 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	10.01.2023
Pronounced on	24.05.2023

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.S(COMM.DIV.)No.444 of 2019

M/s.D.R.Raanka Bros.,
Door No.151, 1st Floor, N.S.C.Bose Road,
Chennai – 600 079.
Represented by its Partner,
Mr.Kapil Ranka.

... Plaintiff

vs.

Mr.Om Prakash,
trading as Sri Mahalakshmi DRR Velli Maligai,
329, Kamaraj Street,
Villupuram – 605 602.

.. Defendant

PRAYER : Civil Suit filed under Order IV Rule 1 O.S.Rules read with Order VII Rule 1 of CPC and Section 7 of the Commercial Courts Act, 2015 along with Sections 27, 28, 29, 134 & 135 of the Trade Marks Act, 1999 praying to pass :

a) Granting a permanent injunction restraining the defendant by itself, its servant, agents or any one claiming through it from in any



C.S(COMM.DIV.)No.444 of 2019

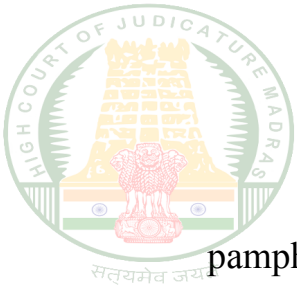
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manner infringing the Plaintiff's registered Trade Marks D.R.RAANKA and D.R., by using the identical and offending mark D.R.R. or any other mark or marks which are in anyway identical, deceptively similar to or a colorable imitation of the Plaintiff's said registered Trade Marks, either by manufacturing or selling or offering for sale or advertising or in any manner using the same as or as part of its trademark / trade name / trading style / business name or in any other manner whatsoever;

b) Granting a permanent injunction restraining the defendant by itself, its servant, agents or any one claiming through it from in any manner passing off its products or business or services under the offending mark D.R.R. as and for the plaintiff's products / business / services under the Marks D.R.RAANKA / D.R./ D.R.R. by use of the said offending mark as or as part of its trademark / trade name / trading style / business name and / or in any other manner whatsoever;

c) Directing the defendant to render a true and faithful account of the profits earned by them by use of the offending mark D.R.R. as or as part of its trademark / trade name / trading style / business name and direct payment of such profits to the plaintiff for the acts of infringement and passing off committed by the defendant.

d) Directing the defendant to surrender to the plaintiff the entire stock of offending labels, name boards, hoardings, placards,



C.S(COMM.DIV.)No.444 of 2019

pamphlets, stickers, stationery or any other materials bearing the offending mark D.R.R. along with the blocks and dyes, for destruction.

e) Directing the defendant to pay to the plaintiff the cost of the suit.

For Plaintiff : Mr.Rajesh Ramanathan

For Defendant : Mr.A.K.Rajaraman

JUDGMENT

This Suit has been filed by the plaintiff against the defendant for the following relief:-

- i. For grant of a permanent injunction restraining the defendant by itself, its servant, agents or any one claiming through it from in any manner infringing the plaintiff's registered Trade Marks "D.R.RAANKA" and "D.R." by using the identical and offending Mark "D.R.R." or any other Mark or Marks which are in anyway identical, deceptively similar to or a colorable imitation of the plaintiff's said registered Trade Marks, either by manufacturing or selling or offering for sale or advertising or in any manner using the same as or as part of its trademark / trade name / trading style / business name or in any other manner whatsoever;



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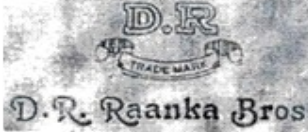



C.S(COMM.DIV.)No.444 of 2019

- ii. For grant of a permanent injunction restraining the defendant by itself, its servant, agents or any one claiming through it from in any manner passing off its products or business or services under the offending mark “D.R.R.” as and for the plaintiff’s products / business / services under the Marks “D.R.RAANKA / D.R. / D.R.R.” by use of the said offending mark as or as part of its trademark / trade name / trading style / business name and/or in other any manner whatsoever;
 - iii. For a direction to the defendant to render a true and faithful account of the profits earned by them by use of the offending mark “D.R.R.” as or as part of its trademark / trade name / trading style / business name and to direct the payment of such profits to the plaintiff for the acts of infringement and passing off committed by the defendant;
 - iv. For a direction to the defendant to surrender to the plaintiff the entire stock of the offending labels, name boards, hoardings, placards, pamphlets, stickers, stationery or any other material bearing the offending mark “D.R.R.” along with the blocks and dyes, for destruction;
 - v. For a direction to the defendant to pay the plaintiff to the cost of the suit; and
 - vi. To pass such other order or orders as may be deemed fit and proper to the circumstances of the case.
2. The plaintiff is the registered proprietor of few trademarks



which have been registered both as devices marks and word marks as detailed below:-

Table No.1 (plaintiff's Trade Marks)

I		II		III	
Sl. No	Class	Trade Mark No. (Device Mark)	Device Mark	Trade Mark No. (Associated Word Marks)	Word Mark*
1	14	2649395		-	-
2	35	2649396		-	-
3	35	1920306		2649392	D.R.RAANKA BROS
4	14	1781895		2649394	DR
5	14	1659962		2649393	DR
6	14	1920307		2649391	D.R.RANKAA BROS



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C.S(COMM.DIV.)No.444 of 2019

****Word Marks in column III have been registered as associated marks corresponding to the Device Marks in column II***

3. The above registration certificates of the plaintiff have been marked as Ex.P3 Series during trial.

4The defendant has adopted the offending word mark 'D.R.R.' vide Ex.P14 T.M.A.No.4024615 under Class 35 for retail stores and wholesale outlets with regard to Silver Jewellerys. The application for registration of the offending word mark 'D.R.R.' was filed by the defendant on 12.12.2018 for products falling under Class 35. Details of the offending mark of the defendant in Ex.P14 is as under:-

5. **Table No.2 (Defendants Trade Mark)**

Sl. No.	T.M.A.No.*	Class	Nature	Description
1	4024615	35	Word Mark	D.R.R

****Trade Mark Application Number***



6. At the time of filing of Ex.P14 T.M.A.No. 4024615 in class 35 for the Word Mark 'D.R.R' the defendant had declared that the aforesaid word mark was proposed to be used. The name of the proprietorship in the Ex.P.14 Trade Mark Application No.4024615 was that of the defendant. The status that was given was that of a partnership concern between Mr.D.Omprakash (1st defendant) and his son Mr.O.Rahul.

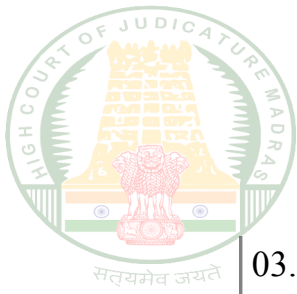
7. Ex.P14 Trade Mark Application is subsequent to the registration of Ex.D5 Partnership Deed dated 05.12.2018 signed between these two persons. After the registration of Ex.D5 Partnership Deed, Partnership Firm of the defendant was also registered under the provisions of the Partnership Act, 1932 w.e.f. 07.12.2018 *vide* Ex.D6, Registration Certificate. Thereafter, the Ex.P.14 Trade Mark Application No.4024615 was filed on 12.12.2018. The status of the aforesaid application indicates that the trademark is yet to be registered and has been opposed.



8. In support of the suit, the plaintiff marked Ex.P1 to Ex.P14 and examined Mr.Kapil Ranka as PW1. Mr.Kapil Ranka is the Managing Partner of the plaintiff.

Table No.3

<i>Date</i>	<i>Exhibits</i>	<i>Nature of Documents</i>
11.08.2021	Ex.P.1	Original Authorization letter issued by the partnership firm in favour of the deponent
01.04.2016.	Ex.P.2	Photocopy of Partnership deed of Plaintiff's firm
-	Ex.P.3	Certified copy of trademark registrations in the name of plaintiff for mark D.R.Raanka, D.R. And D.R.Raanka Bros. (6 No's)
-	Ex.P.4	Chartered accountant certificate for sales turnover and sales promotion expenses of the Plaintiff
-	Ex.P.5	Promotional materials including Newspaper advertisements of the plaintiff
06.06.2019	Ex.P.6	Awards and recognitions received by the plaintiff
20.12.2017	Ex.P.7	Photocopy of Criminal complaint filed by Plaintiff with Deputy Inspector General of Police, crime Branch, Villupuram along with receipt
03.10.2018	Ex.P.8	Photocopy of Criminal complaint filed by Plaintiff with Deputy Inspector General of Police, crime Branch, Villupuram
31.12.2018	Ex.P.9	Photocopy of First Information Report issued by Inspector of Police, DCB, Villupuram on the complaint given by the Plaintiff against Defendant
December 2017	Ex.P.10	Certified copy of plaint filed in O.S. No.4 of 2018 before District Court, Villupuram



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C.S(COMM.DIV.)No.444 of 2019

03.10.2018.	Ex.P.11	Photocopy of order passed by the District court, Villupuram in IA.No.110/2018 in O.S.No.4 of 2018
-	Ex.P.12	Photograph of Plaintiffs name board (with 65 B)
-	Ex.P.13	Photograph of Defendant's shop front (with 65 B).
-	Ex.P.14	Legal User Certificate in Application No.4024615 in Class 35 filed by the defendant

9. The plaintiff is a partnership concern which is purported to have started in the year 1944 under the name and style of 'D.R.RAANKA'. The plaintiff claims to be in the business of buying, manufacturing and selling of silver items for more than 70 years from all over the country and abroad also. According to the plaintiff, 'D.R.RAANKA' is shortly referred to as 'DR / DRR' among the trade and public. The plaintiff claims to sell products such as anklets, pooja articles, ornaments etc. exclusively made of silver under the trade name / trading style / trademark 'D.R.RAANKA / D.R. / D.R.R.' The plaintiff has applied for and obtained registration of several marks, the first of which was applied as early as 21.11.1949 under No.391305. However, by the oversight the said mark was renewed till the year 2006 not thereafter.



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10. It is the case of the plaintiff that the defendant had earlier commenced business under the name and style of 'D.R. Velli Maligai' in 2018 and thus misused the mark 'D.R.RAANKA/D.R.' of the plaintiff in the same business. Therefore, the plaintiff issued several legal notices dated 23.11.2017, 24.11.2017 and has also lodged Ex.P7 complaint dated 20.12.2017 before the Deputy Inspector of Police, Crime Branch Villupuram to take action for infringement of trademark by the defendant.

11. Since the defendant continued to use the offending trade name, incorporating the word 'DR' the plaintiff filed Ex.P10 O.S.No.4 of 2018 before the District Court, Villupuram for the infringement of plaintiff's trademarks 'D.R.RAANKA/D.R.' In that proceedings, the defendant has remained *ex parte*. Therefore, the District Court, Villupuram, vide order dated 03.10.2018, has granted *ex parte* interim injunction against the defendant.

12. Thereafter, in October 2018, the defendant had changed their trade name from 'D.R. Velli Maligai' to the present "Shri



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Mahalakshmi D.R.R. Velli Maaligai' which also carries the trademark of the plaintiff 'D.R.R.'. Therefore, the plaintiff once again approached the police authorities and gave Ex.P8 complaint dated 03.10.2018 and thereafter Ex.P9 FIR was issued on 31.12.2018. The said complaint is still under investigation.

13. However, the defendant continues to use the trademark. It is submitted that use of the offending Trade Mark 'DRR' is intended to cause confusion and will lead to a conclusion that the defendant's shop is one of the plaintiff's shop. Though several legal actions were taken by the plaintiff against the defendant, the defendant continued to use the trademark and therefore, the present suit has been filed.

14. It is submitted that products of both the plaintiff and the defendant are bought by people from all walks of life as silver articles are used almost on a day to day basis and therefore, customers of such products include ill-literates and semi-literate people who would not be able to readily identify the origin of the defendant's products under the identical trademark / trading style D.R.R.



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15. It is also submitted that in Paragraph No.4 of Ex.D3 Reply Notice dated 15.12.2017, the defendant admitted that they were buying silver in bulk from the plaintiff and therefore, the defendant is well known about the plaintiff and the trademark. However, on being questioned during cross examination, the defendant attempted to gloss over this fact by claiming that bulk purchase would have been done by his erstwhile partner and that he personally did not have any knowledge of the plaintiff.

16. It is submitted that after the suit was filed, the defendant filed Ex.P14 Trade Mark Application No.4024615 in Class 35 for registration of Trade Mark 'D.R.R.' with the intention to defeat the present suit. It is submitted that on account of identity of registered trade mark and identity of goods, the use of the impugned letters 'D.R.R.' by the defendant falls within the scope of infringement as defined in Section 29(2)(c) of the Trade Marks Act, 1999 and in case of such use, the Court is required to presume confusion vide Section 29(3) of the Act.



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17. It is submitted that the use of the plaintiff's trade mark or trade name by the defendant violates the rights of the plaintiff. A reference is made to the decision to the Delhi High Court in **P.P.Jewellers Pvt. Ltd. Vs. P.P.Buildwell Pvt. Ltd.**, 2009 SCC OnLine Del 3037, wherein, it has been held that "Letter marks which are a combination of alphabets do not admit of easy acceptance as distinctive marks. It is true that on account of long usage in a line of trade letter marks can attain a formidable reputation and considerable goodwill."

18. It is submitted that the Madras High Court in **CSG Holding Company Limited Vs. Saint-Gobain Glass France**, 2019 SCC OnLine Mad 23939 has held that the mark SGG and the different mark SG not only phonetically similar but also visually similar in respect of the same goods and the Plaintiff has obtained registration in the year 2000 itself.

19. It is submitted that the added elements "Shri Mahalakshmi" & "Velli Malligai" are purely descriptive and irrelevant as it is not sufficient to distinguish either the name or the goods of the defendant



from that of the plaintiff. It is therefore submitted that visual appearance of both the marks are similar and it would lead to confusion among the customers. Therefore, the plaintiff prays for a Judgment and Decree against the defendant.

20. On behalf of the defendant, the defendant marked Ex.D1 to Ex.D6 and examined Mr.Om Prakash as DW1. Mr.Om Prakash is the Partner of defendant firm “Shri Mahalakshmi D.R.R Velli Maligai”

Table No.4

Date	Exhibits	Nature of Documents
23.11.2017	Ex.D.1	Photocopy of Legal notice issued on behalf of the Applicant
24.11.2017	Ex.D.2	Photocopy of 2nd Legal notice issued on behalf of the Applicant
15.12.2017	Ex.D.3	Photocopy of reply notice issued on behalf of the Respondents to the legal notices
04.01.2018	Ex.D.4	Photocopy statement of Mr.Om Prakash as recorded by Villupuram Police
05.12.2018	Ex.D.5	Photocopy of partnership deed of the Respondent Firm
07.12.2018	Ex.D.6	Photocopy of the Registration certificate of the Respondent Firm with Register of Firms



21. The learned counsel for the defendant submits that this is the second round of litigation initiated by the plaintiff against the defendant even after the defendant had adopted necessary changes in their trade name after O.S.No.04 of 2018 was filed by the plaintiff. The earlier round of litigation was against the defendant restraining them from using the plaintiff's registered trademark "DR" and "DR Raanka Bros". After the *exparte* interim injunction was granted in the suit on 03.10 2018 and the statement given by the defendant before the villupuram police station to the complaint given by the plaintiff, the defendant changed their trade name as "Shri Mahalakshmi DRR Velli Maligai". After the changes made, the plaintiff has filed the present suit claiming a new set of proprietary right over the term 'DRR'.

22. It is submitted that, while the complaint was filed before the Villupuram Police Station, the plaintiff has no right over the English alphabets 'DRR' as the defendant has not used the alphabets 'DRR' as a trademark. It is submitted that pleadings, deposition and documents filed by the plaintiff clearly established the plaintiff is not the registered proprietor of the trademark 'DRR' adopted by the defendant.



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23. It is submitted that anti dissection rule squarely applies to both parties. While comparing marks, one should compare conflicting composite marks by looking at them as a whole, rather than breaking the marks up into their component parts for comparison. This is the anti-dissection rule. The rationale for the rule is that the commercial impression of a composite trademark on an ordinary prospective buyer is created by the mark as a whole, not by its component parts. Reference is made to the decision of the Hon'ble Supreme Court in **Kaviraj Pandit Durga Dutt Sharma Vs. Navaratna Pharmaceutical Laboratories**, AIR 1965 SC 980, wherein, it has been held that in an action for infringement, only the rival marks are to be compared by the court if the defendant's mark is closely, visually, and phonetically similar. It is submitted that plaintiff's trade mark 'DR' and 'DR.RAANKA BROS', cannot be dissected into parts and are also not visually, phonetically or conceptually similar to the defendant's trademark 'Shri Mahalakshmi Velli Malligai' at any stretch of imagination.



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24. A reference is also made to the decision of the Delhi High Court in **Stiefel Laboratories Vs. Ajanta Pharma Ltd.**, 211 (2014) DLT 296, wherein, it has been held as under:-

41. The anti-dissection rule which is under these circumstances required to be applied in India is really based upon nature of customer. It has been rightly set out in McCarthy on Trademarks and Unfair Competition about the said rule particularly in Para 23.15 which is reproduced hereunder:

“23.15 Comparing Marks :Differencesv.Similarities

[1] The Anti-Dissection Rule

[a] Compare composites as a Whole Conflicting composite marks are to be compared by looking at them as a whole, rather than breaking the marks up into their component parts for comparison. This is the “anti-dissection” rule. The rationale for the rule is that the commercial impression of a composite trademark on an ordinary prospective buyer is created by the mark as a whole, not by its component parts. However, it is not a violation of the anti-dissection rule to view the component parts of conflicting composite marks as a preliminary step on the way to an ultimate determination of probable customer reaction to the conflicting composites as a whole. Thus, conflicting marks must be compared in their entireties. A mark should not be dissected or split up into its component parts and each part then compared with corresponding parts of the conflicting mark to determine the likelihood of



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C.S(COMM.DIV.)No.444 of 2019

confusion. It is the impression that the mark as a whole creates on the average reasonably prudent buyer and not the parts thereof, that is important. As the Supreme Court observed: “The commercial impression of a trademark is derived from it as a whole, not from its elements separated and considered in detail. For this reason it should be considered in its entirety.” The anti-dissection rule is based upon a common sense observation of customer behavior : the typical shopper does not retain all of the individual details of a composite mark in his or her mind, but retains only an overall, general impression created by the composite as a whole. It is the overall impression created by the mark from the ordinary shopper's cursory observation in the marketplace that will or will not lead to a likelihood of confusion, not the impression created from a meticulous comparison as expressed in carefully weighed analysis in legal briefs. In litigation over the alleged similarity of marks, the owner will emphasize the similarities and the alleged infringer will emphasize the differences. The point is that the two marks should not be examined with a microscope to find the differences, for this is not the way the average purchaser views the marks. To the average buyer, the points of similarity are more important than minor points of difference. A court should not engage in “technical gymnastics” in an attempt to find some minor differences between conflicting marks.

However, where there are both similarities and differences in the marks, there must be weighed against one another to see which predominate.

The rationale of the anti-dissection rule is based upon this assumption: “An average purchaser does not retain all the details of a mark, but rather the mental impression of the mark creates in its totality.



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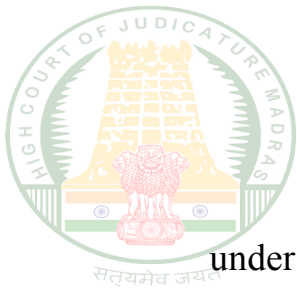


C.S(COMM.DIV.)No.444 of 2019

It has been held to be a violation of the anti-dissection rule to focus upon the “prominent” feature of a mark and decide likely confusion solely upon that feature, ignoring all other elements of the mark. Similarly, it is improper to find that one portion of a composite mark has no trademark significance, leading to a direct comparison between only that which remains.”

25. It is submitted that in view of the above Judgment and a reading of the above principle, it is scintillatingly clear, beyond pale of doubt, that the principle of ‘anti dissection’ does not impose an absolute embargo upon the consideration of the constituent elements of a composite mark. It is submitted that the said elements may be viewed as a preliminary step on the way to an ultimate determination of probable customer reaction to the conflicting composites as a whole. Thus, the principle of ‘anti-dissection’ and identification of ‘dominant mark’ are not antithetical to one another and if viewed in a holistic perspective, the said principles rather complement each other.

26. It is submitted that in the present case, the plaintiff has not proved that the term ‘DRR’ perse is dominant feature of their trademark. The person who claims or asserts has to prove the same as contemplated



under provision of Section 101 of the Evidence Act. But, in this case, there are no evidences produced by the plaintiff to establish the use of the mark 'DRR' perse as their dominant mark.

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27. A reference was made to the decision of the Division Bench of this Court (I was one of the Authors) in **Pathanjali Ayurved Limited Vs. Arudra Engineers Private Limited**, dated 02.02.2021 in O.S.A.No.169 of 2020, wherein, referring a decision of the Hon'ble Supreme Court in **Registrar of Trade Marks Vs. Ashok Chandra Rakhit Ltd.**, (1955) 2 SCR 252: AIR 1955 SC 558, this Court held as under:-

“71. The Supreme Court in the above decision, ultimately held that the distinct label registered as a whole cannot possibly give any exclusive statutory right to the proprietor of the trade mark in close any particular word the name contained therein apart from the mark as a whole.”

28. This Court further held as follows:-

“78. Mere registration of a composite consisting several features namely a device, a word and disclaimed alpha numerals 92 B and 213 SPL cannot confer any right to file a suit for infringement under Section 29(4) of the Trade Marks Act, 1999.



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C.S(COMM.DIV.)No.444 of 2019

79. Further, even under Section 17 of the Trade Marks Act, 1999, protection is only afforded to the entire trademark as registered, and not to mere parts of the trade mark.”

29. It is submitted that the plaintiff’s attempt to split their composite mark ‘D.R.Raanka Bros’ as ‘DRR’ is against their own registration and while the plaintiff filed separate application to secure the part of their mark ‘DR’, the plaintiff failed to file for ‘DRR’. This failure is not advertent.

30. It is submitted that the application of anti defection rule also applies to the case of the defendant, wherein, the trademark has been used as a composite feature as “Shri Mahalakshmi DRR Velli Maaligai’. It is submitted that neither in the firm registration certificate nor in their trading style, the defendant’s usage of the trademark is not dissected into two parts.



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31. It is submitted that with respect to the passing off, the following three elements have to be proved to bring charge on the said tort action, which were also referred as 'classical trinity' in **Harrods Vs.**

Harrodian School, (1996) RPC 698:-

- 1) Reputation,
- 2) Deception, and
- 3) Damage once a misrepresentation is established it is reasonable to infer that the customers of the goods them on that misrepresentation unless there is evidence to the contrary.

32. It is submitted that the plaintiff has not proved any of the above ingredients. It is submitted that being the alleged mark 'DRR' had not been put to use by the plaintiff, the goodwill and reputation to same will not on count at any stretch of imagination. The first principle of the passing off which stands on the actual use of the trademark naturally and automatically fails. It is submitted that the second principle of the passing off which is nothing but off-shot of misrepresentation, will not arise, as the trademark 'DRR' had never been used by the plaintiff in the course of trade.



33. It is submitted that the plaintiff had never used the mark 'DRR' perse, the defendant cannot be alleged to have caused deception in the minds of trade and public. The third principle of the passing off i.e., loss or damage to the reputation will also not arise, since there is no deceptive similarity being established by the plaintiff comparing the mark as a whole and on its entirety.

34. In respect of deceptive similarity between the marks, the learned counsel for the defendant referred to Section 2(1)(h) of the Trade Marks Act, 1999 which defines “deceptively similar” as follows:-

“A mark shall be deemed to be deceptively similar to another mark if it so nearly resembles that other mark as to be likely to deceive or cause confusion.”

35. It is submitted that the in the present case, whether the mark of the defendant is deceptively similar with the plaintiff's mark shall be adjusted by comparing the marks on their entirety. A reference is made to the decision of the Hon'ble Supreme Court in **Kaviraj Pandit Durga Dutt Sharma Vs. Navaratna Pharmaceutical Laboratories**, AIR 1965 SC 980.



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36. It is submitted that the burden of proof of deceptive similarity has to be proved and established by the plaintiff. A reference is made to the following decisions:-

- i. ***Kaviraj Pandit Durga Dutt Sharma Vs. Navaratna Pharmaceutical Laboratories, AIR 1965 SC 98;***
- ii. ***Corn Products Refining Co. Vs. Shangrila Food Product Ltd., (1960) 1 SCR 968;***
- iii. ***Amritdhara Pharmacy Vs. Satya Deo Gupta, AIR 1963 SC 449;***
- iv. ***Johann A. Wulfing Vs. Chemical Industrial and Pharmaceutical Laboratories and others, 1984 (4) PTC 81 (Bom.);***
- v. ***F.Hoffmann-la Roche & Co. Ltd. Vs. Geoffrey Manner & Co. Pvt. Ltd., 1982 (2) PTC 335 (SC).***

37. It is therefore prayed for dismissal of the present suit.

38. The following issues were framed by this court on 06.07.2021:-

- i. *Whether the defendant has infringed the plaintiff's registered trademark D.R.RAANKA and D.R?*
- ii. *Whether there is any infringement of plaintiff's trademark by the defendant?*



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C.S(COMM.DIV.)No.444 of 2019

- iii. *Whether the defendant is passing off its goods using the registered trademark of the plaintiff?*
- iv. *Whether the plaintiff is entitled to the relief of rendition of accounts by the defendant ?*
- v. *Whether the defendant is liable to surrender the stocks of offending labels, name, boards, hoardings, placards, pamphlets, stickers, stationery or any other material bearing the offending mark D.R.R?*
- vi. *What other relief the parties are entitled for?*

39. I have considered the arguments advanced by the learned counsel for the plaintiff and the defendant. I have perused the Proof Affidavit, Exhibits and documents filed by both parties and their respective depositions.

40. There are no disputes on facts. The plaintiff is a partnership concern and has been registered as '**D.R.Ranka Bros**'. The plaintiff is the registered proprietor of six different label/device marks as detailed in column II of **Table-1**.



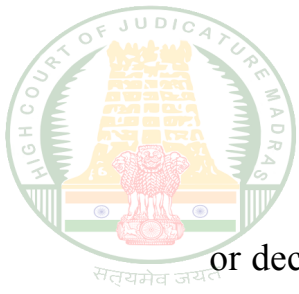
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41. The plaintiff is also the proprietor of four different associated word marks as detailed in column II the same Table. The issue that arises in consideration is whether use of the alphabets “**DRR**” by defendant in his trade name Viz., “**Shri Mahalakshmi D.R.R. Velli Maligai**” offends any of the registered trademark of the plaintiff in **Table -1** particularly the word mark “**DR**” and “**D.R RAANKA BROS**”.

42. The plaintiff has alleged both infringement of its registered trademarks and the passing off by the defendant.

43. Passing off is a common law remedy which is now recognized under the provisions of the Trade Marks, 1999. A remedy against a person passing off his or her or their goods and/or services can be injuncted by way of a suit under Section 134 and Section 135 of the Trade Marks, 1999.

44. A registered trademark is said to be infringed by a person who, not being a registered proprietor, or a person, using by way of permitted use, uses in the course of trade, a mark which is identical with,



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or deceptively similar to the trademark in relation to goods or services in respect of which the trademark is registered, and in such manner, as to render the use of the mark likely to be taken as being used as a trademark

45. The Hon'ble Supreme Court in **Kaviraj Pandit Durga Dutt Sharma Vs. Navaratna Pharmaceutical Laboratories**, AIR 1965 SC 980 has brought out the difference in para 28 and 29 regarding infringement and passing off. The Hon'ble Supreme Court in **Kaviraj Pandit Durga Dutt Sharma Vs. Navaratna Pharmaceutical Laboratories**, AIR 1965 SC 980 has laid the test in the context of section 21 of Trade Marks Act,1940. Section 21 of the repealed Trade Marks Act, 1940 is *pari materia* with Section 28 of the Trade Marks Act,1999. For the sake of convenience, they are reproduced below:-

Table No.5

Trade Marks Act,1940	Trade Marks Act,1999
Section 21- Right conferred by Registration-	section 28-Rights conferred by registration.-
(1)Subject to the provisions of sections 22, 25 and trade mark in respect of any goods shall ** give	(1) Subject to the other provisions of this Act, the registration of a trade mark shall, if valid, give to the



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to that person the exclusive right to the use of the trade mark in relation to those goods and, registration without prejudice to the generality of the foregoing provision, that right shall be deemed to be infringed by any person who, not being the proprietor of the trade mark or a registered user thereof using by way of the permitted use, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion, in the course of trade, in relation to any goods in respect of which it is registered, and in such manner as to render the use of the mark likely to be taken either-

(a) as being used as a trade mark:or

(b) to import a reference to some person having the right either as a proprietor or as registered user to use the trade mark or to goods with which such a person as aforesaid is connected in the course of trade.

(2) A person registered in any Acceding state of a non Acceding State to which section 82A for the time being applies, as proprietor of a trade mark shall have the same rights in respect thereof as are conferred by this section on a

registered proprietor of the trade mark the exclusive right to the use of the trade mark in relation to the goods or services in respect of which the trade mark is registered and to obtain relief in respect of infringement of the trade mark in the manner provided by this Act.

(2) The exclusive right to the use of a trade mark given under subsection (1) shall be subject to any conditions and limitations to which the registration is subject.



person registered under this Act as proprietor of a trade mark.

(3) Where two or more persons are registered proprietors of trade marks, which are identical with or nearly resemble each other, the exclusive right to the use of any of those trade marks shall not (except so far as their respective rights are subject to any conditions or limitations entered on the register) be deemed to have been acquired by any one of those persons as against any other of those persons merely by registration of the trade marks but each of those persons has otherwise the same rights as against other persons (not being registered users using by way of permitted use) as he would have if he were the sole registered proprietor.

46. Para 28 and 29 of **Kaviraj Pandit Durga Dutt Sharma**

Vs. Navratna Pharmaceuticals, laboratories, AIR, 1965 SC 980 are

reproduced below:-

28. The other ground of objection that the findings are inconsistent really proceeds on an error in appreciating the basic differences between the causes of action and right to relief in suits for passing off and for infringement of a registered trade mark and in equating the essentials of a passing off action with those in respect of an action complaining of an infringement of a registered trade mark. We have already pointed out that the suit by



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C.S(COMM.DIV.)No.444 of 2019

*the respondent complained both of an invasion of a statutory right under Section 21 in respect of a registered trade mark and also of a passing off by the use of the same mark. The finding in favour of the appellant to which the learned counsel drew our attention was based upon dissimilarity of the packing in which the goods of the two parties were vended, the difference in the physical appearance of the two packets by reason of the variation in the colour and other features and their general get-up together with the circumstance that the name and address of the manufactory of the appellant was prominently displayed on his packets and these features were all set out for negating the respondent's claim that the appellant had passed off his goods as those of the respondent. These matters which are of the essence of the cause of action for relief on the ground of passing off play but a limited role in an action for infringement of a registered trade mark by the registered proprietor who has a statutory right to that mark and who has a statutory remedy for the event of the use by another of that mark or a colourable imitation thereof. While an action for passing off is a Common Law remedy being in substance an action for deceit, that is, a passing off by a person of his own goods as those of another, that is not the gist of an action for infringement. **The action for infringement is a statutory remedy conferred on the registered proprietor of a registered trade mark for the vindication of the exclusive right to the use of the trade mark in relation to those goods**" (Vide Section 21 of the Act). The use by the defendant of the trade mark of the plaintiff is not essential in an action for passing off, but is the sine qua non in the case of an action for infringement. No doubt, where the evidence in respect of passing off consists merely*



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C.S(COMM.DIV.)No.444 of 2019

*of the colourable use of a registered trade mark, the essential features of both the actions might coincide in the sense that what would be a colourable imitation of a trade mark in a passing off action would also be such in an action for infringement of the same trade mark. But there the correspondence between the two ceases. **In an action for infringement, the plaintiff must, no doubt, make out that the use of the defendant's mark is likely to deceive, but where the similarity between the plaintiff's and the defendant's mark is so close either visually, phonetically or otherwise and the court reaches the conclusion that there is an imitation, no further evidence is required to establish that the plaintiff's rights are violated. Expressed in another way, if the essential features of the trade mark of the plaintiff have been adopted by the defendant, the fact that the get-up, packing and other writing or marks on the goods or on the packets in which he offers his goods for sale show marked differences, or indicate clearly a trade origin different from that of the registered proprietor of the mark would be immaterial; whereas in the case of passing off, the defendant may escape liability if he can show that the added matter is sufficient to distinguish his goods from those of the plaintiff.***

*29. When once the use by the defendant of the mark which is claimed to infringe the plaintiff's mark is shown to be "in the course of trade", the question whether there has been an infringement is to be decided by comparison of the two marks. Where the two marks are identical no further questions arise; for then the infringement is made out. **When the two marks are not identical, the plaintiff would have to establish that the mark used by the defendant so nearly resembles the plaintiff's registered trade***

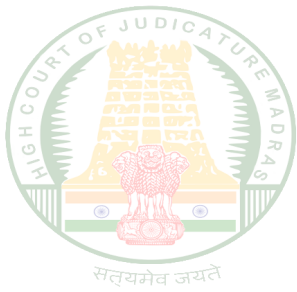


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C.S(COMM.DIV.)No.444 of 2019

mark as is likely to deceive or cause confusion and in relation to goods in respect of which it is registered (Vide Section 21). A point has sometimes been raised as to whether the words “or cause confusion” introduce any element which is not already covered by the words “likely to deceive” and it has sometimes been answered by saying that it is merely an extension of the earlier test and does not add very materially to the concept indicated by the earlier words “likely to deceive”. But this apart, as the question arises in an action for infringement the onus would be on the plaintiff to establish that the trade mark used by the defendant in the course of trade in the goods in respect of which his mark is registered, is deceptively similar. This has necessarily to be ascertained by a comparison of the two marks — the degree of resemblance which is necessary to exist to cause deception not being capable of definition by laying down objective standards. The persons who would be deceived are, of course, the purchasers of the goods and it is the likelihood of their being deceived that is the subject of consideration. The resemblance may be phonetic, visual or in the basic idea represented by the plaintiff's mark. The purpose of the comparison is for determining whether the essential features of the plaintiff's trade mark are to be found in that used by the defendant. The identification of the essential features of the mark is in essence a question of fact and depends on the judgment of the Court based on the evidence led before it as regards the usage of the trade. It should, however, be borne in mind that the object of the enquiry in ultimate analysis is whether the mark used by the defendant as a whole is deceptively similar to that of the registered mark of the plaintiff.



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47. The Hon'ble Supreme Court in paragraph 30 referred to a passage from **Kerly on Trademarks, eighth edition, 407** which read as under:-

“where common marks are included in the trade marks to be compared or in one of them, the proper course is to look at the marks as wholes and not to disregard the parts which are common”.

48. The decision in **S.M.Dyechem Ltd. v. Cadbury (India) Ltd, (2000) 5 SCC 573** was rendered Section 29 of Trade and Merchandise Marks Act, 1958 was in force. In, **S.M.Dyechem Ltd. v. Cadbury (India) Ltd, (2000) 5 SCC 573** the Hon'ble Supreme court has laid the following three test for infringement :-

*“37. The first question therefore is as to what, on the facts, are the essential features of the plaintiff's mark? It is clear that apart from the word piknik, the essential features are also the special script of these words in block letters and the curve in which these words are inscribed and the caricature of the boy with a hat occurring between the words (sic) 'K' and 'N' on the plaintiff's mark. On the other hand, the defendant's mark contains the word picnic in a straight line, the script is normal and the word “Cadbury” is written above the word picnic. Neither the peculiar script nor the curve nor the boy with a hat are found in the defendant's mark. **It is true that there is phonetic similarity and (sic in)***



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C.S(COMM.DIV.)No.444 of 2019

use of the word picnic. But what is the effect of the dissimilarities?

This is the crucial part of the case. It is here that sufficient care is to be taken in applying the principles. In our opinion, in the present case, three tests to which reference has been made above, have to be applied. The first one is this: is there any special aspect of the common feature which has been copied? The second test will be with reference to the “mode in which the parts are put together differently”. That is to say whether the dissimilarity of the part or parts is enough to mark (sic make) the whole thing dissimilar (Kerly, para 17.17 referred to above). The third test is whether when there are common elements, should one not pay more regard to the parts which are not common, while at the same time not disregarding the common parts. What is the first impression?

*39. As to the **first test**, whether there are any peculiar features of the common part which have been copied, it is seen that the peculiar aspects of the common features of piknik namely the peculiar script and the curve have not been copied; then, as to the **second test**, we have to see the dissimilarity in the part or parts and if it has made the whole thing dissimilar. Absence of the peculiar script in the letters, the curve and the absence of the caricature of the boy with a hat, in our view, have made the whole thing look dissimilar. Then, as to the **third test**, the above three dissimilarities have to be given more importance than the phonetic similarity or the similarity in the use of the word picnic for piknik. **That is how these three tests have to be applied in this case.** On first impression, we are of the view that the dissimilarities appear to be clear*



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C.S(COMM.DIV.)No.444 of 2019

and more striking to the naked eye than any similarity between the marks. Thus, on the whole, the essential features are different.

....

Deceive or confuse

42. Our discussion under this head is again in the context of the relevant strength of the case of the parties and for the purposes of the temporary injunction as laid down in Palmolive [(1999) 7 SCC 1].

43. Section 29 uses the words “deceptively similar” and Section 2(1)(d) defines “deceptively similar” as situations where one is “deceiving” others or “confusing” others. We have to keep in view the distinction between the words “deceive” and “confuse” used in Section 2(1)(d). These words which occur in the various trademark statutes have been explained in Parker-Knoll v. Knoll International [1962 RPC 265 (HL)] [RPC (pp. 273-74)] by Lord Denning as follows:

“Looking to the natural meaning of the words, I would make two observations: first, the offending mark must ‘so nearly resemble’ the registered mark as to be ‘likely’ to deceive or cause confusion. It is not necessary that it should be intended to deceive or intended to cause confusion. You do not have to look into the mind of the user to see what he intended. It is its probable effect on ordinary people which you have to consider. No doubt, if you find that he did not intend to deceive or cause confusion, you will give him credit for success in his intentions. You will not hesitate to hold that his use of it is likely to deceive or cause confusion. But if he had no such



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C.S(COMM.DIV.)No.444 of 2019

intention, and was completely honest, then you will look carefully to see whether it is likely to deceive or cause confusion before you find him guilty of infringement.

Secondly, 'to deceive' is one thing. To 'cause confusion' is another. The difference is this: when you deceive a man, you tell him a lie. You make a false representation to him and thereby cause him to believe a thing to be true which is false. You may not do it knowingly, or intentionally, but still you do it, and so you deceive him. But you may cause confusion without telling him a lie at all, and without making any false representation to him. You may indeed tell him the truth, the whole truth and nothing but the truth, but still you may cause confusion in his mind, not by any fault of yours, but because he has not the knowledge or ability to distinguish it from the other pieces of truth known to him or because he may not even take the trouble to do so."

The latter part of the above passage has been quoted by this Court in Roche v. Geoffrey Manner [(1969) 2 SCC 716 : AIR 1970 SC 2062] (AIR at p. 2064 : SCC at pp. 719-20, para 7)

44. Therefore if, in a given case, the essential features have been copied, the intention to deceive or to cause confusion is not relevant in an infringement action. Even if, without an intention to deceive, a false representation is made, it can be sufficient. Similarly, confusion may be created unintentionally but yet the purchaser of goods may get confused for he does not have the knowledge of facts which can enable him not to get confused.

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C.S(COMM.DIV.)No.444 of 2019

48. *Here the point is in relation to relative strength of the parties on the question of “passing off”. As discussed under Point 5, the proof of resemblance or similarity in case of passing off and infringement are different. In a passing-off action, additions, get-up or trade-dress might be relevant to enable the defendant to escape. In infringement cases, such facts do not assume relevance. [See Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories [AIR 1965 SC 980] , Ruston & Hornsby Ltd. v. Zamindara Engg. Co. [(1969) 2 SCC 727 : AIR 1970 SC 1649] and Wander Ltd. v. Antox India (P) Ltd. [1990 Supp SCC 727]]*

49. *It is possible that, on the same facts, a suit for passing off may fail but a suit for infringement may succeed because the additions, the get-up and trade-dress may enable a defendant to escape in a passing-off action. A somewhat similar but interesting situation arose in a dispute between two companies. In National Sewing Thread Co. Ltd. v. James Chadwick & Bros. Ltd. [AIR 1948 Mad 481 : (1948) 1 MLJ 303] the passing-off action failed. But thereafter James Chadwick Co. succeeded in an appeal arising out of the registration proceedings and the said judgment was confirmed by this Court in National Sewing Thread Co. Ltd. v. James Chadwick & Bros. Ltd. [AIR 1953 SC 357] It was held that the judgment in the passing-off case could not be relied upon by the opposite side in latter registration proceedings.*

50. *In the same tone, Halsbury (Trade Marks, 4th Edn.,1984, Vol. 48, para 187) says that in a passing-off action the degree of similarity of the name, mark or other features concerned is important but not*



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C.S(COMM.DIV.)No.444 of 2019

necessarily decisive, so that an action for infringement of a registered trademark may succeed on the same facts where a passing-off action fails or vice versa”.

As to vice versa, Kerly says (para 16.12), an infringement action may fail where the plaintiff cannot prove registration or that its registration extends to the goods or to all the goods in question or because the registration is invalid and yet the plaintiff may show that by imitating the mark or otherwise, the defendant has done what is calculated to pass off his goods as those of the plaintiff.

51. In Schweppes Ltd. v. Gibbens [(1905) 22 RPC 601 (HL)] Lord Halsbury said, while dealing with a passing-off action that “the whole question in these cases is whether the thing — taken in its entirety, looking at the whole thing — is such that in the ordinary course of things a person with reasonable comprehension and with proper insight would be deceived”.

49. Section 29, as it stood under the repealed Trade and Merchandise Marks Act, 1958 is materially different from Section 29 of the Trade Marks Act, 1999 which is in force. For comparison, they are reproduced below:-

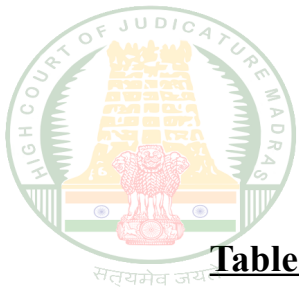
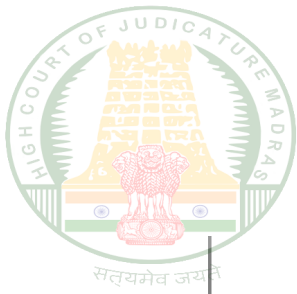


Table No.6

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Trade and Merchandise Marks Act, 1958	Trade Marks Act, 1999
<p>29. Infringement of trade marks. (1) A registered trade mark is infringed by a person who, not being the registered proprietor of the trade mark or a registered user thereof using by way of permitted use, uses in the course of trade a mark which is identical with, or deceptively similar to, the trade mark, in relation to any goods in respect of which the trade mark is registered and in such manner as to render the use of the mark likely to be taken as being use as a trade mark.</p> <p>(2) In an action for infringement of a trade mark registered in Part B of the register an injunction or other relief shall not be granted to the plaintiff if the defendant establishes to the satisfaction of the court that the use of the mark of which the plaintiff complains is not likely to deceive or cause confusion or to be taken as indicating a connection in the course of trade between the goods in respect of which the trade mark is registered and some person having the right, either as registered proprietor or as registered user, to use the trade mark.</p>	<p>29. Infringement of registered trade marks.—(1) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which is identical with, or deceptively similar to, the trade mark in relation to goods or services in respect of which the trade mark is registered and in such manner as to render the use of the mark likely to be taken as being used as a trade mark.</p> <p>(2) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which because of-</p> <ul style="list-style-type: none">(a) its identity with the registered trade mark and the similarity of the goods or services covered by such registered trade mark; or(b) its similarity to the registered trade mark and the identity or similarity of the goods or services covered by such



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C.S(COMM.DIV.)No.444 of 2019

registered trade mark; or

(c) its identity with the registered trade mark and the identity of the goods or services covered by such registered trade mark, is likely to cause confusion on the part of the public, or

which is likely to have an association with the registered trade mark.

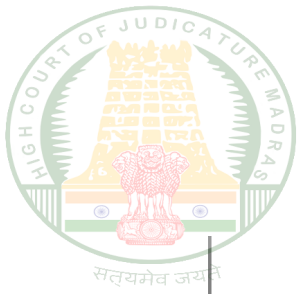
(3) In any case falling under clause (c) of sub-section (2), the court shall presume that it is likely to cause confusion on the part of the public.

(4) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which-

(a) is identical with or similar to the registered trade mark; and

(b) is used in relation to goods or services which are not similar to those for which the trade mark is registered; and

(c) the registered trade mark has a reputation in India and the use of the mark without due cause takes unfair advantage of or is



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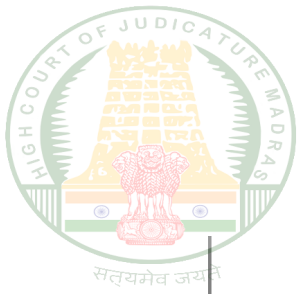
C.S(COMM.DIV.)No.444 of 2019

detrimental to, the distinctive character or repute of the registered trade mark.

(5) A registered trade mark is infringed by a person if he uses such registered trade mark, as his trade name or part of his trade name, or name of his business concern or part of the name, of his business concern dealing in goods or services in respect of which the trade mark is registered. (6) For the purposes of this section, a person uses a registered mark, if, in particular, he-

- (a) affixes it to goods or the packaging thereof;
- (b) offers or exposes goods for sale, puts them on the market, or stocks them for those purposes under the registered trade mark, or offers or supplies services under the registered trade mark;
- (c) imports or exports goods under the mark; or
- (d) uses the registered trade mark on business papers or in advertising.

(7) A registered trade mark is infringed by a person who applies such registered trade mark to a material intended to be used for



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C.S(COMM.DIV.)No.444 of 2019

labeling or packaging goods, as a business paper, or for advertising goods or services, provided such person, when he applied the mark, knew or had reason to believe that the application of the mark was not duly authorised by the proprietor or a licensee.

(8) A registered trade mark is infringed by any advertising of that trade mark if such advertising-

(a) takes unfair advantage of and is contrary to honest practices in industrial or commercial matters; or (b) is detrimental to its distinctive character; or

(c) is against the reputation of the trade mark.

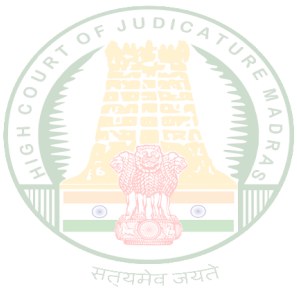
(9) Where the distinctive elements of a registered trade mark consist of or include words, the trade mark may be infringed by the spoken use of those words as well as by their visual representation and reference in this section to the use of a mark shall be construed accordingly.



50. Sub clause 2 and 4 of Section 29 of the Trade Marks Act, 1999, deal with a separate species and instances of infringement which was not recognized under Section 29 of the Trade and Merchandise Marks Act, 1958. They reads as under:-

Table No. 7:-

Section 29(2)	Section 29(4)
<p>(2) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which because of -</p> <p>(a) its identity with the registered trade mark and the similarity of the goods or services covered by such registered trade mark; or</p> <p>(b) its similarity to the registered trade mark and the identity or similarity of the goods or services covered by such registered trade mark; or</p> <p>(c) its identity with the registered trade mark and the identity of the goods or services covered by such registered trade mark, is likely to cause confusion on the part of the public, or which is likely to have an association with the registered trade mark.</p>	<p>(4) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which</p> <p>(a) is identical with or similar to the registered trade mark; and</p> <p>(b) is used in relation to goods or services which are not similar to those for which the trade mark is registered; and</p> <p>(c) the registered trade mark has a reputation in India and the use of the mark without due cause takes unfair advantage of or is detrimental to, the distinctive character or repute of the registered trade mark.</p>



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51. Sub clause 5 to Section 29 of the Trade Marks, 1999 deals with the situation which is under contemplation. As per Section Sub clause 5 to Section 29 of the Trade Marks, 1999, a registered trademark is infringed by a person, if he uses such registered trademark, as his trade name, or part of his trade name, or name of his business concern or part of the name of his business concern, dealing in goods or services in respect of which the trademark is registered. Sub clause (5) to section 29 of the Trade Marks, reads as under:-

“(5) A registered trade mark is infringed by a person if he uses such registered trade mark, as his trade name or part of his trade name, or name of his business concern or part of the name, of his business concern dealing in goods or services in respect of which the trade mark is registered.”

52. The expression used is “if he uses such registered trade mark”. The registered word marks of the plaintiff are “**DR**” and “**D.R. RAANKA BROS**” and not “**DRR**”. Therefore, the plaintiff cannot claim exclusive rights on the offending English alphabet “**DRR**” used by the defendant along with “**Shri Mahalakshmi**” and “**Velli Malligai**”



53. Flanking of the English alphabets, “**DRR**” between ‘**Shri Mahalakshmi**’ and ‘**Velli Malligai**’ by the defendant cannot be construed as an infringement of the Trademark(wordmark) Nos. 2649391, 2649392, 2649393, 2649394 of the plaintiff as detailed in column III.

54. That apart, as per section 17(1) of the Trade Marks Act, 1999, when a trademark consists of several matters, it’s registration shall confer on the proprietor an exclusive right to use of the trademark taken as a whole. This is the general rule. In other words, where there is a composite registered mark, the composite trademark, has to be seen as a whole and should not to be dissected to infer any infringement.

55. However, an exception to Section 17(1) is provided in section 17 (2). It starts with a non-obstante clause. Section 17(1) and Section 17(2) of the Trade Mark Act, 1999 are reproduced below to discern the exception to the general rule:-



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Table No.8:-

Section 17(1)	Section 17(2)
(1) When a trade mark consists of several matters, its registration shall confer on the proprietor exclusive right to the use of the trade mark taken as a whole.	(2) Notwithstanding anything contained in sub-section (1), when a trade mark - (a) contains any part— (i) which is not the subject of a separate application by the proprietor for registration as a trade mark; or (ii) which is not separately registered by the proprietor as a trade mark; or (b) contains any matter which is common to the trade or is otherwise of a non-distinctive character, the registration thereof shall not confer any exclusive right in the matter forming only a part of the whole of the trade mark so registered.

56. Section 17(2) of Trade Marks Act, 1999 enables a registered proprietor to claim exclusive right over both whole and part of the composite mark subject to certain conditions.



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57. Section 17 (2) of the Trade Marks, 1999, can be understood

as follows:-

Notwithstanding anything contained in Section 17 (1), when a trademark:

- i. contains any part which is not the subject matter of a separate application by the proprietor for registration as a trademark; or
- ii. contains any part which is not is separately registered by the proprietor as trademark; or
- iii. contains any matter which is :

a) common to the trade, or

b) otherwise is of a non-distinctive character, the registration thereof shall not confer any exclusive right in the matter forming only a part of whole of the trademarks or registered.

58. In other words, if a registered proprietor of a mark has either filed a separate application for registration of the part of the mark or has a separate registration for the part of the mark separately, then the said proprietor can claim monopoly over the part of the registration. Therefore, a composite trademark can be said to be infringed, if any part of such composite mark is either

- 1) registered as a separate trademark or
- 2) if an application for registering such part has been filed by the proprietor.



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59. The plaintiff can claim exclusive right over that part of the mark in respect of which the plaintiff has a separate registration only, if the use of the word ‘**DRR**’ in the offending trade name “**Shri Mahalakshmi D.R.R. Velli Maligai**” can be said to be deceptively similar to that of the registered trademark of the plaintiff. However, this test will apply if “**DRR**” was used as a Trade Mark by the defendant. In the present case, English alphabets “**DRR**” has been used by the defendant as a part of its trade by flanking it in between the Indian Goddess name “**Shri Mahalakshmi**” and the Tamil words “**Velli Maligai**” viz. Silver Palace.

60. In my view, although the plaintiff has obtained registration for the word marks for the alphabets, ‘**DR**’ vide Trade Mark No.264394, in class 35 and Trade Mark No.264393 in class 14, and for “**D.R.RAACA BROS**” vide Trade Mark No.2649392 in class 35 and Trade Mark No.264391 in class 14 they are to be read in conjunction with their associated Device marks as detailed in column II of **Table-1** .



61. Though both the plaintiff and the defendant are engaged in the same trade and business in the sale of silver articles, it cannot be construed that the use of the offending alphabets, '**DRR**' in conjunction with the words "**Shri Mahalakshmi**" and "**Velli Maligai**" by the defendant infringes the plaintiffs aforesaid registered trademarks of the plaintiff.

62. Had the defendant confined the use of the English alphabets "**DR**" registered as TM.No. 264394 in class 35 or registered as TM.No.2649393 in class 14, it may have been possible for the plaintiff to argue that the use of the English alphabets "**DR**" by the defendant may have attracted the sting under section 29 (5) of the Trade Marks Act, 1999. The defendant has used only the English alphabets "**DRR**" and not "**DR**" along with the common Indian goddess name '**Shri Mahalakshmi**' and Tamil words '**Velli Malligai**' Viz., Silver Palace. Therefore it cannot be said that there was infringement of the plaintiffs registered trademarks. Accordingly, Issue No.1&2 are answered against the plaintiff.



C.S(COMM.DIV.)No.444 of 2019

63. In my view, there is a marked difference in the trading style of the plaintiff and the defendant, although both are engaged in the same trade. There is no scope for any confusion. Therefore, it cannot be said that the attempt of the defendant is to pass-off his goods as that of the plaintiff.

64. Issue No.3 is therefore answered against the plaintiff. Consequently, rest of the Issues Nos.4, 5 and 6 are also to be answered against the plaintiff. Therefore the suit of the plaintiff fails and is liable to be dismissed and is accordingly dismissed. Parties are directed to bear their own cost.

24.05.2023

Speaking Order/Non-Speaking Order
Index : Yes/No
Neutral Citation : Yes/No
rgm



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C.S(COMM.DIV.)No.444 of 2019

C.SARAVANAN, J.

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C.S(COMM.DIV.)No.444 of 2019

24.05.2023