



WEB COPY



C.S.No.968 of 2000

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2022

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR
RAMAMOORTHY**

C.S.No.968 of 2000

MRF Ltd.,
124, Greams Road,
Chennai - 600 006.

... Plaintiff

VS.

1.Speedways Rubber Company
Suchi Pind Road,
G.T.Road, Byepass,
Jalandhar - 4, Punjab.

2.Pritpal Singh
Speedways Rubber Company
Suchi Pind Road,
G.T.Road, Byepass,
Jalandhar - 4, Punjab.

3.Kisan Tyre House,
Narayan Ganj, Garh Road,
Hapur - 245 101.

... Defendants



C.S.No.968 of 2000

PRAYER: Plaintiff filed under Order VII Rule 1 CPC Order IV Rule 1 OS Rules, Sections 28, 29, 105 and 106 of the Trade and Merchandise Marks Act, 1958, prayed for Judgment and Decree:-

(a) Granting a permanent injunction restraining the defendants by themselves or their servants, agents, dealers or anyone claiming through them from manufacturing, selling, stocking, advertising or offering for sale their tyres, tubes and any other parts or fittings for vehicles, using the trade mark 'MAHA PEHALWAN' or 'PEHALWAN' or any other trade mark which is identical with or deceptively / phonetically similar to the plaintiff's registered trade mark 'PAHALWAN' registered under the Trade & Merchandise Marks Act, 1958, under Registration No.542604 in Class 12.

(b) Granting a permanent injunction restraining the defendants by themselves or their servants, agents, dealers, distributors, representatives or anyone claiming through them from manufacturing, selling, offering to sell or advertising their tyres and other allied goods bearing the trade mark



C.S.No.968 of 2000

'MAHA PEHALWAN' or 'PEHALWAN' or any other trade mark which is identical with or deceptively similar to the plaintiff's trade mark 'PAHALWAN' and passing off or enabling others to pass off the defendants' tyres and allied goods as and for those of the plaintiff.

(c) Directing the Defendants to surrender to the plaintiff, all representations in any material form and all their ADV tyres and other goods, sales promotion material, advertising material and visiting cards, office stationery and all other material containing / bearing the trade mark 'MAHA PEHALWAN', for destruction.

(d) For a preliminary decree in favour of the Plaintiff, directing the Defendants to render an account of profits made by them by the use of the trade mark 'MAHA PEHALWAN' on tyres and other allied goods of the Defendants, or in any other manner and a final decree in favour of the Plaintiff for the amount of the profit found to have been made by the Defendants, after the Defendants have rendered accounts; and



C.S.No.968 of 2000

WEB COPY (e) Directing the Defendants to pay to the Plaintiff the costs of the suit.

For Plaintiff : Mr.Madhan Babu
for M/s.Kurian and Kurian

J U D G M E N T

The suit was filed in respect of alleged trademark infringement and passing off. In spite of service of suit summons, the defendants did not enter appearance. Therefore, by order dated 20.07.2021, the defendants were set *ex parte* and the suit was posted for recording *ex parte* evidence on behalf of the plaintiff. The plaintiff examined Mr.George Samuel, its Senior Manager - Sales, as P.W.1. In course of the examination-in-chief of P.W.1, 10 documents were exhibited as Exs.P1 to P10. Ex.P9 is the legal user certificate under Class 12 for the mark PAHALWAN in relation to tyres. Ex.P10 is the renewal certificate. The renewal certificate indicates that the



C.S.No.968 of 2000

registration was renewed for the period of 10 years from 28.10.2014. Ex.P9 also discloses that the registration is with effect from 28.12.1990. The plaintiff has exhibited the sales invoices relating to the purchase of a tyre bearing the infringing mark as Ex.P8. Ex.P6 is a certificate dated 04.10.2000 issued by a notary public disclosing that the tyre was purchased from a dealer on 04.10.2000 and that a yellow plastic sticker bearing the word MAHA PAHALWAN was affixed thereon.

2. On considering the pleadings and the evidence recorded by the plaintiff, and, in particular, on comparing the plaintiff's registered trademark and the impugned mark, the plaintiff has established its entitlement to the reliefs prayed for in prayer (a), (b) and (c) of paragraph 19 of the plaint. As regards the relief prayed for in prayer (d) of the said paragraph, since the defendants have not entered appearance, it is not possible to obtain accounts or direct payment of additional Court fee in respect of the claim for damages. Therefore, prayer (d) is rejected. On the costs-follow-the-event principle, the plaintiff is also entitled to costs.



C.S.No.968 of 2000

WEB COPY

3. In the result, the suit is decreed in terms of prayers (a), (b) and (c) of paragraph 19 of the plaint. As regards prayer (e), the defendants are directed to pay a sum of Rs.2,00,000/- as costs. This sum includes Court fees, reasonable lawyer's fees and other expenses.

29.06.2022

rna

Index : Yes / No

Internet : Yes / No

Plaintiff side Witness:

P.W.1 - George Samuel

Plaintiff side Documents:

<i>Exhibits</i>	<i>Documents</i>
Ex.P1	Original Authorization Letter dated 30.07.2021.
Ex.P2	Office copy of the Letter from the plaintiff District Manager, Meerut to the plaintiff regarding the purchase of the tyre dated 10.11.2000.
Ex.P3	Photocopy of the Registration Certificate in favour of the plaintiff for the trademark 'PAHALWAN' under Registration No.542604 for tyres dated 28.12.1990. (Compared with original, verified and returned back)



C.S.No.968 of 2000

<i>Exhibits</i>	<i>Documents</i>
Ex.P4	Office copy (photo copy) of the application for renewal of registration No.542604 for the plaintiff's trademark 'PAHALWAN' dated 12.01.2000.
Ex.P5	Original of the Chartered Accountant certificate enclosing audited sales figures of plaintiff's PAHALWAN tyres dated 09.11.2000.
Ex.P6	Original Notary Certificate regarding Sale of Defendants Impugned tyre dated 04.10.2000.
Ex.P7	Original estimated issued in Hindi with translation version in English by 3rd defendant for 1st defendant's impugned tyre dated 04.10.2000.
Ex.P8	Original of the Cash memo issued by 3rd defendant for sale of 1st defendant's Impugned tyre dated 04.10.2000.
Ex.P9	Series of photocopy of Legal user certificate of TM No.542604. (original produced, verified and returned)
Ex.P10	Series of photocopy of Renewal Certificate of T.M.No.542604 (2 pages). (original produced, verified and returned)



WEB COPY



C.S.No.968 of 2000

SENTHILKUMAR RAMAMOORTHY,J

rna

C.S.No.968 of 2000

29.06.2022