

**IN THE COURT OF THE PRINCIPAL COMMERCIAL JUDGE,
THIRUVANANTHAPURAM**

Present:- Smt. Mariam Salomi, Principal Commercial Judge

On Saturday 21st day of December 2024/30th day of Agrahayana, 1946

C. S. No. 169/2022

Plaintiff:-

The Kerala Co-operative Milk Marketing
Federation Limited, Milma Bhavan, Pattom,
Thiruvananthapuram, Kerala-695004,
Represented by its Managing Director,
Dr.Patil Suyog Subhashrao, aged 37 years,
S/o Subhasrao Patil, residing at Forest Complex,
PTP Nagar, Thiruvananthapuram.

By Advs.V. Ajakumar, Sri.Sidharth.A.Menon,
Sri. Thejan Raj, Sri.P.Ravikumar, Sri. Jishnu Nair
Sri. Bharath V. Gopal, Sri.Indrajith.I,

Defendant:-

Jose George,
Pazhiyankal, Vallichira (PO),
Pala, Kottayam, Kerala- 686574

No representation

This suit having been finally heard on 16/11/2024 and the court on
21/12/2024 delivered the following:

JUDGMENT

1. Suit is for perpetual prohibitory injunction and for realisation of damages from the defendant.
2. The plaint averments in brief are as follows: The suit is filed by the plaintiff praying for a decree of perpetual injunction restraining the defendant and his agents from marketing, offering for sale, advertising for sale etc any milk or milk products or allied product using plaint C schedule marks, trade mark or trade cover/dress which is deceptively similar to plaint A schedule trademarks and B schedule trade dress/packing which absolutely belongs to the plaintiff in India by any means whatsoever and for recovery of damages from the defendant. The plaintiff Kerala Cooperative milk marketing federation Limited (herein after referred to as the plaintiff), popularly known by its flagship brand name “milma” was incorporated in 1980 as a Kerala State adjunct of the National Dairy Program which aimed at securing the

socio-economic progress of the diary farmers through the production, procurement, processing and marketing of milk and milk products in the state. The plaintiff is one of the most successfully run and profitable Co-operatives in the State of Kerala and is also engaged in channeling the marketable surplus milk from rural areas to the urban deficit areas. The plaintiff assures maximum returns to the producer and ensures quality milk and milk products to the consumers thereby securing a constant market and stable price to the diary farmers for their produce. The plaintiff has been successfully thriving in the diary industry for nearly four decades and is currently the front runner in the supply of milk and the milk products across the state of Kerala. The plaintiff is registered under the Kerala Co-operative Societies Act, 1969 and the Managing Director is competent to represent the plaintiff in all legal proceeding and he is duly authorised by the board of directors to Institute and prosecute the suit for and on behalf of

the plaintiff. The defendant is a businessman doing business in milk marketing and is stationed in the above said address and is presently marketing milk and milk products infringing the registered trade marks belongs to the plaintiff and is making huge profit out of the same. The plaintiff works in close association with the National Diary Development Board, Diary Development Department, Animal Husbandry Department and Kerala Livestock Development Board of the State of Kerala. The plaintiff's value and integrated approach and commitment to the high standards of quality of production and goods has enabled the State of Kerala to not only become self sufficient in milk production but has also resulted in the said trademarks along with its word mark "MILMA" and its variants (hereinafter collectively referred to as the plaintiff's Trademarks) garnering a formidable market reputation and recall value in the minds of the consumer and members of trade alike. At this juncture it is pertinent to mention that on

account of the extensive and continuous use of the plaintiff's trademarks they have become synonymous with the goods and services of the plaintiff to the exclusion of all others but have also resulted in the said trademarks acquiring a secondary meaning in the minds of both the ordinary consumer and the members of trade alike. It is also pertinent to mention that the plaintiff's trademarks and its products and services provided under the said trademarks have attained extensive popularity and familiarity among the consuming public and members of trade alike and has acted a well known status among the same. The formidable goodwill and reputation associated with the plaintiff's trademarks through their continuous use have thus been able to be channelised and has taken the plaintiff's from merely being the principal producers and suppliers of milk to a household name in the dairy industry. The plaintiff's riding the wave of their reputation have expanded their business domain to the manufacturer and market of various other dairy

and dairy derivative products such as curd, clarified butter, butter, cheese, ice creams, desserts, milk -based sweets and chocolates, drinking water, other milk and fruit-based drinks etc. Thus, plaintiff's goods sold under their well established trademarks on account of their consistently high standards of quality, process optimisation and increased efficiency have accorded them a leading position amongst the players in the dairy industry. All the dairy units of Milma are ISO Certified. The plaintiff submits that the name MILMA was considered the Soubriquet of the Kerala Co-operative Milk Marketing Federation. The first three letters of trademark "MILMA" are taken from the word milk and the last two letters are taken from the word marketing. It is therefore an invented word completely distinctive in nature. It is further pertinent to mention that the plaintiff is the honest, first and prior adopter of the plaintiff's trademarks. The plaintiff has honestly coined and adopted the mark as early as in the year 1983 after taking

due diligence in ascertaining that there were no other competing marks with an identical or similar name. The aforesaid trademark was registered under the Trade and Merchandise Marks Act, 1958, with trademark No.437327 with effect from 06/05/1985 and the same is valid till 06/05/2026. Over the years, several variations of the said brand have been used as well as registered and thus the plaintiff has established proprietary and legal rights over the trademark “MILMA” and its variants. Furthermore, the three regional milk producers’ unions, viz (I) Thiruvananthapuram Regional Co-operative Milk Producers’ Union Ltd. (TRCMPU), (ii) Ernakulam Regional Co-operative Milk Producers’ Union Ltd. (ERCMPU) and (iii) Malabar Regional Co-operative Milk Producers’ Union Ltd.(MRCMPU) which are constituents of the plaintiff are also using the mark along with its word mark “MILMA” and its variants, under authorization from the plaintiff. The plaintiff is the owner and

proprietor of the said trademarks on account of honest, bonafide and prior adopter and registrant of the trademark. The plaintiff has been continuously and uninterruptedly using their flagship mark along with its word mark “MILMA” and its variants, in relation to the various goods and services provided by the plaintiff. The plaintiff’s products are highly in demand in the market on account of the strict quality standards maintained by them and the consistent high quality of their products, this coupled with their continuous and uninterrupted use of their registered trademark “MILMA” and its variants have garnered a formidable reputation and goodwill associated therewith. Due to this acclaimed and well recognized credibility, the plaintiff’s trademarks have been enviously viewed upon. The plaintiff adopted the trademarks, and its variants, along with its distinctive font and stylization in a bonafide manner. The plaintiff’s trademarks owing to its continuous and extensive use for the past four decades is well

established in the minds of the consuming public and members of trade alike and has come to be associated with the goods of the plaintiff to the exclusion of all others. Furthermore, the distinctive font and stylized manner of the plaintiff's products are highly in demand in the market on account of the strict quality standards maintained by them and the consistent high quality of their products, this coupled with their continuous and uninterrupted use of their registered trademark "MILMA" and its variants have garnered a formidable reputation and goodwill associated therewith. The font in which the word "MILMA" is written is also unique to the plaintiff's registered trademarks and enjoys a substantial recall value amongst its consumers and members of trade. The plaintiff's trademarks and its variants have secured trademark registrations in multiple classes. The registrations are valid, subsisting and existing in force. The plaintiff's products are highly in demand in the market on account of the strict quality standards

maintained by them and the consistent high quality of the plaintiff's products are highly in demand in the market on account of the strict quality standards maintained by them and the consistent high quality of their products, this coupled with their continuous and uninterrupted use of their registered trademark "MILMA" and its variants have garnered a formidable reputation and goodwill associated therewith. The plaintiff's products are highly in demand in the market on account of the strict quality standards maintained by them and the consistent high quality of their products, this coupled with their continuous and uninterrupted use of their registered trademark "MILMA" and its variants have garnered a formidable reputation and goodwill associated therewith. The plaintiff's products are highly in demand in the market on account of the strict quality standards maintained by them and the consistent high quality of their products, this coupled with their continuous and uninterrupted use of their registered

trademark “MILMA” and its variants have garnered a formidable reputation and goodwill associated therewith. products, this coupled with their continuous and uninterrupted use of their registered trademark “MILMA” and its variants have garnered a formidable reputation and goodwill associated therewith. legal use certificates of the above said 37 items of trademarks in favour of the plaintiff’s products are highly in demand in the market on account of the strict quality standards maintained by them and the consistent high quality of their products, this coupled with their continuous and uninterrupted use of their registered trademark “MILMA” and its variants have garnered a formidable reputation and goodwill associated therewith. plaintiff are produced along with plaint. The 37 items of registered trademarks with its special style, figures, pictures and colour combination are clearly described and depicted in the plaint in plaint A schedule. The plaintiff maintains the highest standards of quality under the

aforementioned trademarks. Thus, owing to the uncompromising quality of its products, that are researched and tested in the specialty laboratories by highly qualified, experienced and dedicated teams of technical experts, the quality of its products is always stable and consistent. The plaintiff has been a significant player in the dairy industry since 1980 and their products are renowned for their purity and strict quality standards. The plaintiff's products are highly in demand in the market on account of the strict quality standards maintained by them and the consistent high quality of their products, this coupled with their continuous and uninterrupted use of their registered trademark "MILMA" and its variants have garnered a formidable reputation and goodwill associated therewith. as well as its competitive pricing which has enabled the plaintiff's products sold under their well-established trademarks to gain a substantial market share and an enviable trans-border reputation. The plaintiff is

also the recipient of several awards and accolades with regard to the safety and quality standards maintained by them with regard to all their dairy and dairy derivative products as follows:

Sl. No.	Awards
1.	Factories& Boilers Safety award 2016 from Government of Kerala
2.	Pollution Control Awards from the Pollution Control Board of Kerala 2015
3.	Kerala State Business Excellence Award 2015
4.	Industrial Safety Award -2012-2013
5	Kerala State Pollution Control Board, Awards for the year 2012

3. The plaintiff has promoted and popularized the plaintiff's trademarks through diverse media including newspapers, magazines, hoardings and banners etc. The plaintiff's products are highly in demand in the market on account of the strict quality standards maintained by them and the consistent high quality of their products, this coupled with their continuous

and uninterrupted use of their registered trademark “MILMA” and its variants have garnered a formidable reputation and goodwill associated therewith. thereby enhancing the visibility of their well-established trademarks. These activities have generated recognition in the minds of the public of the plaintiff’s product range and their impeccable quality associated therewith. The plaintiff adopted and has been continuously using the plaint A schedule trademark in a distinctive design, font, layout and get up as its trade dresses/labels and the said trade dresses/labels have become exclusively associated with the plaintiff’s products. The plaintiff’s products are highly in demand in the market on account of the strict quality standards maintained by them and the consistent high quality of their products, this coupled with their continuous and uninterrupted use of their registered trademark “MILMA” and its variants have garnered a formidable reputation and goodwill associated therewith.

website 'www.milma.com' also contains promotions and advertisements of their products bearing the plaintiff A schedule trademarks as well as the product packaging along with the detailed information about its various products thereby enhancing public awareness about the plaintiff's products. The reputation acquired by the plaintiff in respect of the plaintiff A schedule registered trademarks are so enormous that the use of any similar mark by others would result in confusion and deception in the minds of the consumer and members of trade as well as amount to dilution of the plaintiff's formidable brand value and market reputation. Consequently, there is a very high likelihood that the public will be misled into believing that goods using identical or deceptively similar marks or trade dress as that of the plaintiff's well established trademarks, have either originated from or have some nexus with the plaintiff. The formidable reputation and market share enjoyed by the plaintiff's products sold under the plaintiff A

schedule trademarks is evidenced by the fact that the plaintiff's turnover from the sales and marketing of their products under the said plaintiff A schedule trademarks has consistently grown from year on year. The plaintiff's products are highly in demand in the market on account of the strict quality standards maintained by them and the consistent high quality of their products, this coupled with their continuous and uninterrupted use of their registered trademark "MILMA" and its variants have garnered a formidable reputation and goodwill associated therewith. plaintiff has spent and continues to invest huge sums of money on marketing and promotion of their products and services under their aforesaid well-established trademark. Furthermore it is repeated and reiterated that by virtue of extensive sales and sales promotion activities carried on by the plaintiff, the plaintiff A schedule trademarks are exclusively associated with the plaintiff and have acquired an enviable reputation and goodwill. The

plaintiff's trademarks have been in the limelight for so many decades and have been used on an extensive scale, so much so that the use of the words "MILMA" or any deceptively similar mark would always be associated only with the plaintiff and their products to the exclusion of all others. There is and has always been a strong consumer association between the plaintiff and the said Trademarks and the plaintiff so much so that the consumers recognize the said trade mark as uniquely originating from the plaintiff. The uniqueness of the design of the aforesaid packaging coupled with the use of the plaintiff's trademarks, the ordinary consumer with imperfect recollection and members of trade alike to identify the products as originating from the plaintiff while also creating an assumption in the minds of the consumer regarding the high quality associated with the products of the plaintiff sold under their trademarks. The above mentioned packaging and the associated colour combination for different categories of milk

has become a strong source identifier among the sellers and consumers of the plaintiff's products. Hence the plaintiff schedule B registered trademarks coupled with its unique colour scheme and its variants are inherently distinctive and exclusively associated with the products of the plaintiff. Thus the plaintiff is entitled to enjoy an exclusive right over the usage of the same. The distinctive font and the stylized manner in which the word "MILMA" is represented is also unique to the products of the plaintiff and enjoys substantial recall value amongst the consuming public and members of trade alike. The design and the colour scheme appearing on the packaging of the plaintiff's products are also unique in nature and constitute an artistic work that has been created with great care and precision and exhibiting an originality in creation of the same. The packaging design/label and layout of the plaintiff's products are also the subject matter of copy right and hence no leniency may be provided for those

infringing the same. During September 2021, it has come to the attention of the plaintiff that the defendant is engaged in the processing, packaging and marketing of milk under the name “MILNNA”(hereinafter referred to as the “Impugned Mark”) . It is pertinent to mention that the defendant has not only slavishly imitated the plaintiff A and B schedule registered, well established trademarks and packing/trade dress being used by the plaintiff but has also without application of any mind copied the unique packaging design and colour combination of the plaintiff’s products. The plaintiff is prior, honest and bonafide adopter of the plaintiff A and B schedule trademarks and the defendant’s impugned mark has been adopted with the malafide intention of misleading the members of trade and consuming public alike and thereby wrongfully gain from the plaintiff’s well-established market reputation and good will. The impugned mark used by the defendant is a slavish imitation of the plaintiff’s trademark and

trade dress which is likely to deceive or cause confusion in the minds of an ordinary consumer with imperfect recollection, with regard to the source of origin of the defendant's products. The use of the impugned mark which is phonetically as well as visually deceptively similar to that of the plaintiff's trademarks would cause undue hardship, loss of reputation and loss of business to the plaintiff. The packaging consists of the impugned mark 'Milnna', written in the same stylized font along with the device of cow as well as the identical colour combination as that of the products of the plaintiff. The 'device of the cow' and 'the product specification' on the defendant's packaging is placed in exactly the same position as that of the plaintiff. The packaging and trade dress of the defendant's product including the specific colour scheme, device of cow and the unique layout was originally created and adopted by the plaintiff in the year 2018 and officially launched in 2019 with respect to its products. The plaintiff's

extensive market share and goodwill the defendant's use of the identical and/or deceptively similar impugned mark as well as trade dress would lead both the members of trade and consumers alike into believing that the defendant's products either originate from or have some nexus with the plaintiff, thereby diluting the brand value and goodwill of the plaintiff's well-established trademarks. The impugned mark used by the plaintiff is detailed under plaint C schedule. The defendant has created the word 'Milnna' with the dishonest intention to deceive the customers of the plaintiff's milk and milk products to purchase the milk and milk products marketed by the defendant and to further induce the consumers purchase the product of the defendant under the mistaken belief that they are purchasing the reputed products being produced and marketed by the plaintiff. It is very difficult to detect the deception for an ordinary customer as the manner in which the combination of letters 'nn' in Milnna is used deceptively

similar to the 'm' in Milma. The font used by the defendant in depicting the impugned mark 'Milnna' coupled with the trade dress, is also identical and cannot be identified easily from products sold by the plaintiff. The channels of trade as well as the target audience of both the plaintiff and the defendant is identical. Thus exponentially increasing the likelihood of confusion between the good originating from the defendant and those originating from the plaintiff. The impugned mark and the defendant's products associated herewith are both phonetically as well as visually identical and /or deceptively similar to that of the plaintiff's trade marks. In all probability, the consumers of the plaintiff's milk and milk products will be misled to purchase the milk and milk products being marketed by the defendant using plaint C schedule impugned mark and trade dress as the same are identical and/or deceptively similar. The plaintiff received information about the illegal acts of the defendant for the first time, on 18/09/2021, when

one of its employees Mr. Abeymon Francis, Assistant Marketing Officer, purchased the defendant's products and reported about the illegal marketing of the milk and milk products at various districts in the State of Kerala by the defendant using the plaintiff C schedule trade mark which is identical and/or deceptively similar with the registered plaintiff A schedule trademarks and plaintiff B schedule trade dress belonging to the plaintiff. Though enquires were made, the exact location of the factory, quantum of trade, details of origin of milk etc could not be detected. It has come to the notice of the plaintiff, that on 11th December 2021, a video by Focus News TV was posted on face book which inter alia showed that consumers were sold the defendant's products bearing the impugned mark along with the plaintiffs' products, thus misleading the consumer into believing that the defendant's products bearing the impugned mark originate from the plaintiff or have some nexus therewith. The link for

the video is: <https://m.facebook.com/story.php?story-fbid=710365549942180&id=100029062239323&sfns=wiwspwa>.

It is easily evidence from the contents of the video, the plaintiff's market value and reputation are being misused by the defendant. It is also evidence of the defendant gaining illegal profits from the illegal activities of manufacturing and marketing their products in a malafide manner under the identical/deceptively similar impugned mark. The defendant has no reason for adoption of the impugned mark. The malafides of the defendant are brought out by the fact that the only reason for the adoption of the impugned mark by the defendant is to ride upon the coat tails of the formidable market reputation and goodwill of the plaintiff's well-established trademark and unfairly gain therefrom, to the detriment of the plaintiff's business, brand value, market reputation and goodwill. The plaintiff submits that they shall continue to suffer irreparable loss and injury to their business

as well their reputation on account of the acts of the defendant amounting to infringement, unless an appropriate order of injunction is passed restraining the defendant from using the impugned mark as contained in plaint C schedule. Furthermore, the element of public deception involved in the matter should be taken into consideration, as the members of the public would be banking on the brand name and goodwill of the plaintiff Trademarks and not expecting to fall victim to the deception perpetuated by the acts of the defendant. Therefore the public at large gets misled in the process and the consequent loss will be solely sustained by the plaintiff. The infringement and passing off is causing significant financial loss to the plaintiff and the defendant is liable to account for the same and compensate the plaintiff. The defendant is also liable for punitive damages of infringement of trademark and passing off. In the aforesaid circumstances, the plaintiff is let with no other remedy but to approach the court to protect its

own rights and interests as granted by law. The defendant is presently misusing the plaintiff's well established registered trademark in the course of trade to ride upon the reputation and goodwill to make illegal profit which is a clear case of infringement of plaintiff's registered trademark under Section 29 of the Trade Marks Act 1999. The reputation and the goodwill enjoyed by the plaintiff for the last several decades would be diluted by the use of the deceptively similar mark by the defendant. The members of trade and general public associate the well established plaintiff A schedule trademarks always with the plaintiff and any use of identical or similar marks by the defendant for identical or deceptively similar set of goods will violate plaintiff's rights in the plaintiff A schedule Trademarks and would be detrimental to the distinctive character and reputation of the plaintiff's well established trademark. The balance of convenience is in favour of the plaintiff and against the defendants, as the plaintiff is the

registered proprietor of plaintiff A schedule trademarks and is continuously and extensively using the same. Due to which the plaintiff's trademarks have gathered an enviable reputation, goodwill and market share. The reputation and good will of the plaintiff shall continue to suffer irreparable damage on account of the acts of the defendant. They are entitled to get the decree of perpetual injunction restraining the defendant and his agent from marketing, offering for sale, advertising for sale and selling any milk or milk products or allied products using plaintiff C schedule marks or trade marks, trade dress/cover which is deceptively similar to plaintiff A schedule registered trade mark and B schedule trade dress packing belongs to the plaintiffs in India by any means whatsoever. The plaintiff is also entitled to get the cost of the suit which includes, the court fee and other expenses for institution of the suit including drafting fee and advocate fee and other allied expenses like clerical fee, etc. The plaintiff estimates that the

loss sustained to the plaintiff due to infringement of its registered A schedule trademarks by the defendant and the resultant loss of goodwill, reputation etc at Rs.1,00,00,000/- as the market value of the plaintiff A schedule registered trademarks, good will, reputation etc value much above the same. The plaintiff is thus entitled to recover an amount of Rs.1,00,00,000/- from the defendant and his assets as compensation for the loss sustained by the plaintiff towards loss of reputation, good will etc due to the illegal use of the plaintiff A schedule registered trademark owned by the plaintiff, by the defendant. Hence the suit.

4. Here the summons of the suit was served to the defendant but he did not appear or file any written statement. Therefore the Manager Director of the plaintiff is examined as PW1. From the side of the plaintiff Exts.A1 to A11 documents are marked.
5. PW1 has filed affidavit in lieu of examination in chief in tune with the pleadings in the plaint. He is the Managing Director

of the plaintiff. The true copy of the original board resolution authorising him the managing director to act on behalf of the plaintiff is produced and marked as Ext.A1. The true copy of the resolution authorizing the former Managing Director to institute and prosecute the suit on behalf of the plaintiff is marked as Ext.A2. The plaintiff Kerala Co-operative milk marketing federation Limited popularly known by its flagship brand name “milma” was incorporated in 1980. The true copy of the certificate dated 21/02/1980 of plaintiff’s registration under the Co-operative Society Act is marked as Ext.A3. He deposed that their aim is to secure the socio-economic progress of the dairy farmers through the production, procurement, processing and marketing of milk and milks products in the State. The plaintiff is one of the most successfully run and profitable co-operatives in the State of Kerala and is also engaged in channeling the marketable surplus milk from rural areas to the urban deficit areas. He

deposed that the suit is for declaration that the defendant is infringing our registered trade marks and packaging /trade-dress and for passing a permanent injunction order against infringement of the registered trademark, and for passing orders for payment of damages and other consequential reliefs. The plaintiff assures maximum returns to the producer and ensures quality milk and milk products to the consumers thereby securing a constant market and stable price to the diary farmers for their produce. The plaintiff has been successfully thriving in the diary industry for nearly four decades and is currently the front runner in the supply of milk and the milk products across the state of Kerala. The plaintiff is registered under the Kerala Co-operative Societies Act, 1969 and the Managing Director is competent to represent the plaintiff in all legal proceeding and he is duly authorised by the board of directors to Institute and prosecute the suit for and on behalf of the plaintiff. The defendant is a business man

doing business in milk marketing and is presently marketing milk and milk products infringing the registered trade marks belongs to the plaintiff and is making huge profit of the same.

The plaintiff works in close association with the National Dairy Development Board, Dairy Development Department, Animal Husbandry department and Kerala Livestock Development Board of the State of Kerala. The plaintiff's value and integrated approach and commitment to the high standards of quality of production and goods has enabled the State of Kerala to not only become self sufficient in milk production but has also resulted in the said trademarks along with its word mark "MILMA" and its variants (hereinafter collectively referred to as the plaintiff's Trademarks) garnering a formidable market reputation and recall value in the minds of the consumer and members of trade alike.

6. The plaintiff's trademarks and its products and services provided under the said trademarks have attained extensive

popularity and familiarity among the consuming public and members of trade alike and has acquired a 'well-known' status among the same. The formidable goodwill and reputation associated with the plaintiff's trademarks through their continuous use have thus been able to be channelized and has taken the plaintiff's from merely being the principal producers and suppliers of milk to a household name in the dairy industry. The plaintiff's riding the wave of their reputation have expanded their business domain to the manufacturer and market of various other dairy and dairy derivative product such as curds, clarified butter, butter, cheese, ice creams, deserts, milk based sweets and chocolates, drinking water, other milk and fruit-based drinks etc. The plaintiff's goods sold under their well-established trademarks on account of their consistently high standards of quality, process optimization and increased efficiency have accorded them a

leading position amongst the player in the dairy industry. All the dairy units of milma are ISO certified.

7. The plaintiff submits that the name MILMA was considered the sobriquet of the Kerala Co-operative Milk Marketing Federation. The first three letters of trademark 'MILMA' are taken from the word 'milk' and the last two letters are taken from the word 'marketing'. Therefore the word MILMA is a coined word using a combination of letters to represent the term 'Milk Marketing'. The plaintiff has honestly coined and adopted the mark as early as in the year 1983 after taking due diligence in ascertaining that there were no other competing marks with an identical or similar name. The three regional milk producers' unions, viz (i) Thiruvananthapuram Regional Co-operative Milk Producers' Union Ltd. (TRCMPU), (ii) Ernakulam Regional Co-operative Milk Producers' Union Ltd. (ERCMPU) and (iii) Malabar Regional Co-operative Milk Producers' Union Ltd.(MRCMPU) which are constituents of

the plaintiff are also using the mark along with its word mark “MILMA” and its variants, under authorization from the plaintiff.

8. The plaintiff is the owner and proprietor of the said trademarks on account of honest, bonafide and prior adopter and registrant of the trademark. The plaintiff has been continuously and uninterruptedly using their flagship mark along with its word mark “MILMA” and its variants, in relation to the various goods and services provided by the plaintiff. The plaintiff’s products are highly in demand in the market on account of the strict quality standards maintained by them and the consistent high quality of their products, this coupled with their continuous and uninterrupted use of their registered trademark “MILMA” and its variants have garnered a formidable reputation and goodwill associated therewith. Due to this acclaimed and well recognized credibility, the plaintiff’s trademarks have been enviously viewed upon.

9. The plaintiff has been a significant player in the dairy industry since 1980 and their products are renowned for their purity and strict quality stands as well as its competitive pricing which has enabled the plaintiff's products sold under their well- established trademarks to gain a substantial market share and an enviable trans-border reputation. The plaintiff's official website 'www.milma.com' also contains promotions and advertisements of their products bearing the plaintiff's trademarks as well as the products packaging along with the detailed information about its various products thereby enhancing public awareness about the plaintiff's products.
10. The packaging design /label and layout of the plaintiff's products are also the subject matter of copyright and hence no leniency may be provided for those infringing the same. During September 2021, it has come to the attention of the plaintiff that the defendant is engaged in the processing,

packaging and marketing of milk under the name 'MILNNA' (hereafter referred to as the 'Impugned Marked'). The defendant has not only slavishly imitated the plaintiff A and B schedule registered, well established trademarks and packing/trade dress being used by the plaintiff but has also without application of any mind copied the unique packing design and colour combination of the plaintiff's products. The mala fide intention of the defendants to trade upon the coat tails of the plaintiff's formidable reputation is further evidenced by the fact that the Impugned Mark is not only visually identical to the plaintiff's well-established trademarks but is also phonetically identical. He deposed that an ordinary consumer will be misled into believing that the defendant's product sold under identical and / or deceptively similar impugned mark and packaging has either originated from or has some nexus with the plaintiff or their goods.

11. The defendant has blatantly copied the well-established plaintiff A schedule trademarks, thereby trying to confuse the unwary consumers with imperfect recollection to believe that the goods sold under the impugned mark and the goods sold under the well-established plaintiff's trademarks and its variants are originating from a single source. The use of the impugned mark which is phonetically as well as visually deceptively similar to that of the plaintiff's trademark would cause undue hardship, loss of reputation and loss of business to the plaintiff.
12. The packaging consists of the impugned mark 'Milnna', written in the same stylized font along with the device of cow as well as the identical colour combination as that of the products of the plaintiff. The 'device of the cow' and 'the product specification' on the defendant's packaging is placed in exactly the same position as that of the plaintiff. The packaging and trade dress of the defendant's product including

the specific colour scheme, device of cow and the unique layout was originally created and adopted by the plaintiff in the year 2018 and officially launched in 2019 with respect to its products. The impugned mark used by the plaintiff is detailed under plaint C schedule. He deposed that the defendant has created the word 'Milnna' with the dishonest intention to deceive the customers of the plaintiff's milk and milk products, to purchase the milk and milk products marketed by the defendant and to further induce the consumers purchase the product of the defendant under the mistaken belief that they are purchasing the reputed products being produced and marketed by the plaintiff. It is very difficult to detect the deception for an ordinary customer as the manner in which the combination of letters 'nn' in Milnna is used deceptively similar to the 'm' in Milma. The font used by the defendant is depicting the Impugned mark 'Milnna' coupled with the trade dress, is also identical and cannot be

identified easily from products sold by the plaintiff. At this juncture it is pertinent to point out that the channels of trade as well as the target audience of both the plaintiff and the defendant is identical. The plaintiff received information about the illegal acts of the defendant for the first time on 18/09/2021, when one of its employees Mr. Abeymon Francis, Assistant Marketing Officer, purchased the defendant's products and reported about the illegal marketing of the milk and milk products at various districts in the State of Kerala by the defendant using the plaintiff C schedule trade mark which is identical and /or deceptively similar with the registered plaintiff A schedule trademarks and plaintiff B schedule trade dress belonging to the plaintiff. He deposed that the defendant has no reason for adoption of the impugned mark. The malafides of the defendant are brought out by the fact that the only reason for the adoption of the impugned mark by the defendant is to ride upon the coat tails of the formidable

market reputation and good will of the plaintiff's well established trademark an unfairly gain therefrom, to the detriment of the plaintiff's business, brand value, market reputation and good will. The plaintiff has invested a huge amount of their time, resources and money for the same through uninterrupted, continuous and extensive use of plaintiff A schedule trademarks over the years. The defendant's impugned mark 'Milnna' is a blatant copy of the prior registered trademark of the plaintiff and the adoption and use of such a deceptively similar mark showcases a malafide intent behind the same. The defendant is unjustly enriching at the cost of the plaintiff and is profiting off the goodwill and reputation earned by the plaintiff.

13. He deposed that the plaintiffs shall continue to suffer irreparable loss and injury to their business as well their reputation on account of the acts of the defendant amounting to infringement, unless an appropriate order of injunction is

passed restraining the defendant from using the impugned mark as contained in plaint C schedule. The infringement and passing off is causing significant financial loss to the plaintiff and the defendant is liable to account for the same and compensate the plaintiff. The defendant is also liable for punitive damages of infringement of trademark and passing off. The defendant is presently misusing the plaintiff's well established registered trademark in the course of trade to ride upon the reputation and good will to make illegal profit which is a clear case of infringement of plaintiff's registered trademark under Section 29 of the Trade Marks Act 1999. The reputation and the goodwill enjoyed by the plaintiff for the last several decades would be diluted by the use of the deceptively similar mark by the defendant. The plaint A schedule trademarks have always been associated with the plaintiff and no one else and the use of the impugned mark by the defendant amounts to clear and flagrant violation of the

trademark rights of the plaintiff and thus needs to be restrained by an order of the court.

14. The plaintiff estimate that the loss sustained to the plaintiff due to infringement of its registered A schedule trademarks by the defendant and the resultant loss of goodwill, reputation etc at Rs.1,00,00,000/- as the market value of the plaint A schedule registered trademarks, goodwill, reputation etc value much above the same. The plaintiff is entitled to recover an amount of Rs.1,00,00,000/- from the defendant and his assets as compensation for the loss sustained by the plaintiff towards loss of reputation, goodwill etc due to the illegal use of the plaint A schedule registered trademark owned by the plaintiff, by the defendant. The plaintiff is entitled to get the prayers allowed in favour of the plaintiff and the suit may be decreed as prayed for.
15. Ext.A1 is the true copy of the original board resolution authorising PW1 the present Managing Director to act on

behalf of the plaintiff. The true copy of the resolution authorizing the former Managing Director to institute and prosecute the suit on behalf of the plaintiff is marked as Ext.A2. Ext.A3 is the true copy of the certificate of registration issued under Sec.8 of Kerala Co-operative Society Act 1969 dated 21/02/1980. Ext.A4 is the copy of the ISO certification of the plaintiff. Ext.A5 is the copy of the minutes of the board of directors of Kerala Co-Operative Milk Marketing Federation held on 18/01/1990. The legal use certificates of the trademarks for 37 items standing in favour of the plaintiff is produced and marked as Ext.A6. The copy of awards obtained by the plaintiff is marked as Ext.A7. The auditors certificate certifying the plaintiff's turnover for their products sold under their registered trademark MILMA and its variants for the years 2011-2021 is marked as Ext.A8. The auditors certificate certifying promotional expenses undertaken by the plaintiff for the years 2011-2021 is marked

as Ext.A9. Ext.A10 is the print out of packaging of the plaintiff's milk packets. The print out of packaging of the defendants products bearing the impugned mark and identical trade dress are marked as Ext.A11.

16. I have gone through the pleadings and evidence before me. The plaintiff is a reputed society registered under the Kerala Co-Operative Societies Act, 1969. The plaintiff popularly known by its flagship brand name MILMA which ensures quality milk and milk products to the consumers securing a constant market and stable price to the dairy farmers for their produce. The defendant is a businessman doing business in milk marketing is presently marketing milk and milk products infringing the registered trade marks that belongs to the plaintiff and is making huge profit out of the same. In this case the defendant has not challenged the pleading and evidence of the plaintiff. Though the defendant received summons he did not appear before the court or challenge the claim of the

plaintiff. There is nothing on record to disbelieve the case of the plaintiffs as it remains unchallenged. The evidence of PW1 is that the plaintiff's products are highly in demand in the market on account of the strict quality standards maintained by them and the consistent high quality of their products, this coupled with their continuous and uninterrupted use of their registered trademark "MILMA" and its variants have garnered a formidable reputation and goodwill associated therewith. The defendant is carrying on the milk marketing under the name and style 'Milnna' which resembles the trademark of the plaintiff. The defendant's impugned mark 'Milnna' is a blatant copy of the prior registered trademark of the plaintiff and the defendant is unjustly enriching at the cost of the plaintiff and is profiting off the goodwill and reputation earned by the plaintiff. The evidence of the plaintiff shows that the defendant is infringing the registered A schedule trade mark and B schedule trade dress/packing the goodwill and reputation

acquired by the plaintiff to the A schedule trade mark and B schedule trade dress/packing. Thus the plaintiff claims that it is entitled to realise Rs.1,00,00,000/- with future interest @ 14.5% from the defendant and charged on all assets of the defendant for infringing the registered A schedule trade mark and B schedule trade dress/packing and for damaging the reputation and goodwill of the plaintiff. The defendant did not attempt to disprove the case of the plaintiff and it was not even challenged by the defendant. The non appearance of the defendant shows that he is not opposing the claim of the plaintiff. The evidence of the plaintiff before the court seems to be convincing and cogent. I could not find any reason to discard the evidence led by the plaintiff.

17. From the pleadings and evidence of the plaintiff, it is found that the plaintiff is entitled for a decree of perpetual prohibitory injunction restraining the defendant and his agents from marketing, offering for sale, advertising for sale and

selling any milk or milk products or allied products using plaint C schedule marks or trademarks, trade dress/cover which is deceptively similar to plaint A schedule registered trademarks and B schedule trade dress packing belongs to the plaintiff in India. The defendant is also directed to pay Rs.1,00,00,000/- with future interest thereon at the rate of 6 % per annum from the date of decree till date of realisation along with the costs of suit.

In the result, the suit is decreed as follows:

(a) The defendant and his agents are restrained from marketing, offering for sale, advertising for sale and selling any milk or milk products or allied products using plaint C schedule marks or trademarks, trade dress/cover which is deceptively similar to plaint A schedule registered trademarks and B schedule trade dress packing belongs to the plaintiff in India by a decree of perpetual prohibitory injunction.

(b) Defendant is directed to pay a sum of Rs.1,00,00,000/- with interest at the rate of 6% from date of decree till the date of realisation for the aforesaid amount for infringing the trade mark of the plaintiff .

(c) The defendant shall pay the costs of the suit to the plaintiff.

Dictated to the Confidential Asst. typed by her, corrected and pronounced by me in open court on this the 21st day of December, 2024.

Sd/-
Mariam Salomi
Principal Commercial Judge

Appendix

Exhibits for Plaintiff

A1	-	Dated Nil	-	The true copy of the original board resolution
A2	-	Dated Nil	-	The true copy of the resolution authorizing the former Managing Director to institute and prosecute the suit
A3	-	21/02/1980	-	The true copy of the certificate of registration issued under Sec.8 of Kerala Co-operative Society Act,1969

A4	-	Dated Nil	-	Copy of ISO certification of the plaintiff
A5	-	18/01/1990	-	Copy of minutes of the board of directors of Kerala Co-operative Milk Marketing Federation .
A6	-	Dated Nil	-	The legal use O' certificate of the trade marks for 37 items
A7	-	Dated Nil	-	Copy of awards obtained y the plaintiff
A8	-	Dated Nil	-	The auditors certificate certifying the plaintiff' turnover for their products sold under their registered trade mark MILMA and its variants for the years 2011-2021.
A9	-	Dated Nil	-	The auditors certificate certifying promotional expenses under taken by the plaintiff for the years 2011-2021
A10	-	Dated Nil	-	Print out of packaging of the plaintiff's milk packets.
A11	-	Dated Nil	-	Printout of packaging of the defendants products bearing the impugned mark and identical trade dress.

Exhibits for Defendant :- Nil

Court Exhibits :- Nil

Witness for Plaintiff :-

PW1 16/02/2023 Asif.K.Yusuf

Witness for Defendant :- Nil

//True Copy//

Id/-
Principal Commercial Judge

Principal Commercial Judge

Sk Comp :FCS

COPY OF JUDGMENT

IN CS.169/2022

DATED:21/12/2024