

IN THE COURT OF XVIII ADDL.CITY CIVIL JUDGE,
AT BENGALURU CITY [CCH.NO.10]

Dated this 30th day of August, 2022

PRESENT

Sri. Padma Prasad, B.A.L., LL.B.
XVIII Addl.City Civil Judge.

O.S.No.610/2018

PLAINTIFF:

SHISHAM HINDUJA

Daughter of Sri Bihari Hinduja,
Aged about 35 years,
Proprietorix of **HAPPY BELLY BAKES**,
Having her place of business at
No.15/1, Clarke Road, Richards Town,
Bengaluru – 560 005.

(By Sri. S.R. Kamalcharan.,Advocate)

/VS/

DEFENDANTS:

1.CLOUDTAIL INDIA PRIVATE LIMITED

A Company incorporated under the provisions of the Companies Act, 1956 and existing under the provisions Of the Companies Act, 2013, having its registered office at Ground Floor Rear Portion, H-9, Block B-1, Mohan Co-operative Industrial Area, Mathura Road, New Delhi, 110 044, and also an office at 6th and 7th Floors, Wing-B, Divyashree Chambers, O' Shaughnessy Road, Akkithimmanahalli, Bengaluru – 560 025, represented herein by its Director

2. AMAZON SELLER SERVICES PRIVATE LIMITED

A Company incorporated under the provisions of the Companies Act, 1956 and existing under the provisions Of the Companies Act, 2013, having its registered office at No.26/1, 8th Floor, Brigade World Trade Center, Brigade Gateway, Dr. Rajkumar Road, Malleshwaram, Bangalore – 560 055, Represented herein by its Director

3. AMAZON TECHNOLOGIES INC.,

A company organized and existing under The laws of the State of Delware, USA, Having its office at 410, Terry Avenue N., Seattle, Washington 98109-5210 Represented herein by its Director.

(Defendants 1 & 3 by Sri. M.V. Sundararaman, defendant No.2 by Sri. Vikram Unni Rajagopal., Advocate)

Date of institution of suit	23-01-2018
Nature of the suit (Suit on pronote, suit for declaration and possession suit for injunction, etc.	PERMANENT INJUNCTION
Date of the commencement of recording of the evidence.	08-03-2021
Date on which the Judgment was pronounced.	30/8/2022

Total duration:	Year/s	Month/s	day/s
	04	07	07

(PADMA PRASAD)
XVIII Addl.City Civil Judge, Bangalore.

J U D G M E N T

Suit for Injunction.

2. The case of the plaintiff in nutshell is that the plaintiff has commenced the business of chocolate making in the year 2008 under her proprietary concern,"Regalar" and since then her business grown many folds. The plaintiff specifically claimed that on 02/06/2010 she has conceived, coined and adopted the mark "HAPPY BELLY BAKES" for her business in place of Regalar and since then the plaintiff has been using the mark "HAPPY BELLY BAKES" for her business continuously and without any interruption. Plaintiff further claim that she has emerged into an organization catering to individuals, restaurants and corporates, apart from commencing her own food cafes at Richards Town since 2011 and at Primrose Road since August 2017. The

entire plaintiff business runs under the name and style of "HAPPY BELLY BAKES", the plaintiff has added a range of products to her business that includes cakes, cookies, chocolates, cupcakes, deserts, gateaux, brownies, breads, coffee, tea, hot chocolates, shakes, smoothies, all day breakfast, pasta, pizza, granolas, nut butters, crackers, sourdough breads, spiced nuts, caramelized and chocolates coated nuts and the products of plaintiff all carry with the name "HAPPY BELLY BAKES". The plaintiff claimed that she is supplying her products to Cafe Mondo, Rouge Elephant, Oregano, Driven Cafe, Chug Garage, Ants Cafe, Nandos and Opus are few of the top restaurants apart from the corporates such as Microlabs, Hewlett Packard, Anand Rathi, Tommy Hilfiger, Emirates, Deutsche Bank, Capital Float, Surfa Coars, Yahoo who regularly buy plaintiff's products under the trade mark HAPPY BELLY BAKES. The plaintiff also claimed that she has her own website namely www.happybellybakes.com since 06-09-2009 and also the product of plaintiff is listed in food applications such as

Swiggy, Zomoto and Google Business. The plaintiff achievement has been covered in various news papers, magazines etc. The plaintiff in para No.10 of the plaint stated about her income from 01/04/2010 to 31/10/2017 total amounting to 4,75,79,041/-. Plaintiff further claimed that for better protection of the trademark/brand name "HAPPY BELLY BAKES" filed applications on 14/07/2015 in Class 30 and 43 of the Trademark Act, 1999 with the trademark registry seeking trademark registration. The trademark registry issued the registration infavour of plaintiff on 19/10/2016 in Class 30 vide trademark No.3007535 valid till 14/07/2025, on 20/10/2016 in Class 43 through trade mark No.3007536 valid till 14/07/2025. The plaintiff filed an application seeking registration of trade mark HAPPY BELLY BAKES under Class 35 and which is pending and that has been described in page No.6 of the plaint. The plaintiff further claims that in a month of November-December 2017, the plaintiff was flooded with enquiries from her customers and friends and clientele during Christmas and New Year festivities

asking whether her products under the brand name "HAPPY BELLY BAKES" are sold on the online web portal/website/www.amazon.in. Immediately the plaintiff search, on the concern web portal that 1st defendant company cloudbail India Pvt Ltd through the 2nd defendant companies on online shopping portals/website www.amazon.in is selling grocery and gourmet foods on the web page www.amazon.in/Happy-Belly under the name 'HAPPY BELLY' which is deceptively similar to the plaintiff's trademark and thereby infringing the plaintiff's registered trade mark "HAPPY BELLY BAKES". The plaintiff further claims that on further verification the plaintiff learnt that the 3rd defendant company also made an application with trademark registry vide application No.3261806 & No. 3261807 dated 17.5.2016 seeking registration of the mark HAPPY BELLY under Class 39 covering classes 29,30,31,32 & 33 of the Trademarks Act claiming user as "proposed to use" etc. Further claim of the plaintiff is that the 3rd defendant vide application No. 3310785 & 3310786, dtd.16.7.2016 has also sought

registration of the mark "HAPPY BELLY " under Class 99 covering Class 29, 30, 31, 32 & 33, 35 and 43 of the Trademark Act 1999 and all the said applications are pending consideration before the trademark registry. The plaintiff further claimed the defendant No.1 to 3 under the common management and work for common, the 1st defendant selling the various products and gourmet foods under the impugned mark "HAPPY BELLY" on the online market portals/website www.amazon.in owned and run by 2nd defendant and the 3rd defendant has applied for registration in India of the same impugned mark "HAPPY BELLY" and the plaintiff has also produced the packaging materials of the plaintiff's trademark "HAPPY BELLY BAKES" and "HAPPY BELLY". The plaintiff also claims that the defendants in order to piggy bag the reputation and goodwill of the plaintiff has used the deceptively similar and identical impugned mark "HAPPY BELLY" that is negatively effecting the market, reputation and goodwill of the plaintiff under the trademark "HAPPY BELLY BAKES". The plaintiff also claims that the defendants

have adopted the mark "HAPPY BELLY" which is essential part of the plaintiff's register trademark that to for similar products and have caused infringement of the registered trademark "HAPPY BELLY BAKES". The plaintiff further claimed that impugned trademark "HAPPY BELLY" is phonetically similar and used the same words that are the part of registered trademark of the plaintiff. The defendant adoption of the mark "HAPPY BELLY for its products is dishonest adoption and total violation of law and the rights granted to the registered owner of the trademark. The plaintiff further claimed that the trademark adopted by the defendants namely "HAPPY BELLY" is deceptively similar to the plaintiff's trademark "HAPPY BELLY" bakes. Further it is stated that the mark is so deceptively similar that even a common man with ordinary providence will get deceive by its similarities and the common man may not be able to distinguish the products/brand on the 1st look and among other grounds the plaintiff prayed for the relief claimed in the suit.

3. The defendant No.1 and 3 filed a written statement together wherein it is stated that defendant No.3 was the original/proprietor/ owner of the mark "HAPPY BELLY" including the word marks, device marks and other variations thereof in several jurisdictions across the world and also claimed that it has filed the registration of the mark under Classes 29, 30, 31, 32, 33, 35 and 43 in India. It is further stated that the defendant No. 3 merged with Amazon technologies INC. (APTI) whereof 17-02-2017. The defendant also produced the certificate of merger of the company defendant No.3 with IT. It is also claimed that defendant No.1 is operating under the control and supervision of its own and independent management and the defendants are engaged in the business of buying and selling, and otherwise dealing in goods and merchandise of around 8 crore products including those related to health and personal care, dish wash bars, computers and accessories, clothing books, home and kitchen, baby products, shoes handbags, luggage and bags, toys and games, sports, fitness and

outdoors car and motorbike, office products, grocery and gourmet foods, jewelries etc. The defendant No.1 is a licensee of the defendants marks and it has been authorized to use the defendants marks including for the purpose of marketing and distributing of various products by the defendants. The present suit filed by the plaintiff alleging infringement and passing off the label "HAPPY BELLY BAKES" by the defendant marks in the present suit are completely false and incorrect. The defendant also claims that the plaintiff has suppressed the material facts, misleading the court and also claimed that the plaintiff has not approached the court with clean hands. The defendant No.1 to 3 also claimed that plaintiff averments itself show that the trademark of plaintiff and defendant are totally different and dis-similar from each other and also claimed that it is settled legal possession that even if marks are similar, no claim of infringement may lie if the marks are used for different kind service and business as per Sec. 29(4) of the Trademark Act 1999. The defendant No.1 and 3 also claims that the plaintiff

has made false and misleading statements about the knowledge of defendants marks claiming that the plaintiff had the knowledge of the 3rd defendant's application No. 3261806 and 3261807 as early as October, 2016 and not in the month of November December 2017 as claimed in the plaint. The defendant also claimed that on 21/10/2016, the trademark registry had cited the aforementioned trademark applications in its examination report for plaintiff's application No.3274059 seeking registration of the mark "HAPPY BELLY BAKES" in Class 35. The defendant specifically claimed that the plaintiff has the knowledge about the defendant's trademark as per her response dated 24/10/2016 to the trademark application submitted by the defendant. The defendant also claimed that the plaintiff falsely claimed in her plaint that her application No.3274059 is pending instead of objected by the registry and accordingly claimed that the plaintiff has mislead the Hon'ble Court about its claimed marks. The defendant also claimed that the plaintiff has two registration numbers bearing 3007535 and 3007536

that pertain to label marks containing the word “HAPPY, BELLY and BAKES” together and one application No.3274059 in Class 35 is pending. Accordingly claimed that the label of plaintiff is registered as a whole, such registration cannot possibly given an exclusive statutory right to the use of any particular word or name contained therein by the proprietor, unless the word or name contained therein by the proprietor, is registered separately. Accordingly claims that the plaintiff cannot claim right over the use of words “HAPPY and BELLY. The defendant's have also claimed that the label used by the defendant is totally different from the label of plaintiff and they are not identical or deceptively similar. The defendant also claimed that the plaintiff filed the applications for registration of the word mark “HAPPY BELLY BAKES” in Class 30, 35 and 43 just 10 days prior to the filing of this suit and suppressed the said fact from the court. The defendant also claimed that the plaintiff has obtained the trademark on her label as such the plaintiff cannot claim any infringement of her label

trademark that containing the words “HAPPY, BELLY and BAKES” which is not similar or deceptively similar to the “HAPPY BELLY of defendant's mark. Accordingly claimed that the plaintiff also failed to prove the passing off plaintiff's label marks by the defendant. The defendant further claimed that the defendant No.1 is currently using the defendant's mark in relation to cashews, almonds and raisins, i.e dry fruits only and the dry fruits fall within Class 29 under the Trademark Rules. The defendant also claimed that the income shown by the plaintiff under IT returns at document No.9 is the personal income and not the income generated by the “HAPPY BELLY BAKES”. The defendant also claims that there is no likelihood of confusion in the minds of consumers that the defendant No.1's products are associated with the plaintiff, or the defendant no.1's products have damaged the goodwill and reputation of the plaintiff. The claim of plaintiff's is based on the biased customer reviews. The defendant no.1 and 3 specifically claims that they are the bonafide users of the “HAPPY BELLY” and other defendant marks

claiming that the defendant No.3 has obtained registrations of their mark "HAPPY BELLY" in five foreign jurisdictions namely Australia, Mexico, Great Britain, New Zealand and a community mark in the European Union and has applied for registration in several other jurisdictions. The defendant further claimed that the defendant No.3 has adopted, used and licensed the marks in relation to food products world wide. The defendant No.3 has independently adopted the mark on a global scale. Per contra the plaintiff uses her mark in a limited to specific geographic areas within a single city, Bangalore and accordingly claimed that the defendant no.1 has acquired substantial goodwill and reputation all over the world and sold inventory worth crores. It is also stated that the defendant No.1 has also invested Rs.11,36,031/- in advertisement and marketing of its products during October 2017 to January 2018. The defendant denied all other plaint averments and prayed for dismissal of suit.

4. The defendant No.2 filed a separate written statement wherein it has denied the plaint case stating that the suit is not maintainable under law or on facts. The defendant no.2 claims that it is the owner and operator of the web hotel www.amazon.in which is the largest online market place in India where thousands of seller and buyers interact and transact, customers using the defendant No.2 online market place can choose from a range of close to 1070 million products provided by more than 48,500/- registered seller across a broad range of categories including books, (physical and digital), computers and accessories, mobiles and accessories, consumer electronics, toys and games and all type of goods etc. The defendant No.2 has millions of active visitors on its cite from all over the country. As such the business of defendant No.2 is neither similar nor in competition with plaintiff's business/services. The defendant No.2 is a intermediary as such claim of plaintiff that defendant No.2 has used the "HAPPY BELLY mark is not maintainable and the Act of defendant is protected

under Sec.2(1) (w) of the Information Technology Act 2000. As the defendant No.2 merely provides a platform by means of which buyers and sellers may interact and transact but does not actively participate in the transaction that occur on its platform. The defendant No.2 does not itself manufacture, procure, list, price or sell the products made available on its online market place. The Mere display of marks on the platform does not amount to the adoption of trademark by the defendant No.2 as per the aforesaid provision and the Act of the defendant is also protected under Sec.79 of the Information and Technology Act, 2000. The defendant No.2 also claims that it is following the due diligence requirements laid down under the information/technology (intermediary guidelines) rules 2011 and the defendant No.2 has also stated about the provisions of law relied by in the written statement. Further the defendant No.2 also claimed that the it has established a grievance redressal mechanism in accordance with Rule 6 (3) of intermediary guidelines as such the plaintiff has to approach the said

Reddral mechanism. Further it is stated that the police cannot take on the online market place. The defendant No.2 further claimed that it is a separate legal entity as such it cannot be colluded with other defendants in the suit and also claimed that the defendant No.2 being a intermediary is not a necessary or proper party to the suit. The suit against defendant No.2 is not maintainable under law or on facts and also the claim of the defendant regarding the infringement of trademark is not maintainable against defendant No.2 in view of the aforesaid provision of laws and among other grounds prayed for dismissal of suit.

5. On the basis of above pleading the court framed following;

ISSUES

1. Whether the plaintiff prove that it is the registered owner of trademark "HAPPY BELLY BAKES" ?

2. Whether the plaintiff proves that its products are being sold online by 1st and 2nd defendant without any authority from the

plaintiff and thereby the defendants have passes off and infringed plaintiff's trademark?

3. Whether defendant No.1 and 3 proves that defendant No.3 is the original proprietor of the mark "HAPPY BELLY" and defendant No.1 has been authorized to use the defendant;s mark?

4. Whether defendant No.2 proves that it is an intermediary for providing online market services and not liable for the data information or communication hosted by third parties?

5. Whether the plaintiff is entitled for the relief of permanent injunction as sought for?

6. Whether the plaintiff is entitled for the relief of mandatory injunction as sought for?

7. What order or decree?

ADDITIONAL ISSUE:

1. Whether the plaintiff proves that she is the 1st adopter of the trademark "HAPPY BELLY BAKES" as contended in the plaint?

6. The plaintiff in support of herself examined as PW.1 and 1 witness as PW.2 and got marked documents at Ex.P.1 to 392. The defendant 30, Ex.C.1 to 3.

7. Advocate for the parties advanced the lengthy arguments for hours together on 05/07/2022, 16/07/2022 and 18/07/2022 totally consuming afternoon session on all the days. Apart from that the respective parties to the suit also filed lengthy written arguments and also filed list with citations.

8. The advocate for the plaintiff relied on following citations in support of his arguments.

(2004) 3 SCC 90 Head Note and para 5.

(2004) 6 SCC 145, Para 13 to 16 and 23,

(2006) 8 SCC 726, Para 82 to 99

(1968) 2 SCC 727, Para 6

(2000) 5 SCC 573, Para 22, 25, 31, 34, 43, 44, 49 to 57

(2006) 9 SCC 41, Para 31

(2010) 42 PTC 461, Para 20

AIR 1972 SC 1359, Para 9

(2001) 5 SCC 73 Para 15, 16, 19 and 42

(2012) 56 PTC 433, Para 29, 31, 32 and 33

(1969) 2 SCC 131, Head note, Para 3, 4, 6 and 10

(2016) PTC 504, Para 11 to 13

(1965) 1 SCR 737, Para 20 to 30

(2016) 2 SCC 672

(2002) 3 SCC 65, Para, 7, 8,11 and 15

(1997) PTC SUPPL (1) 720 Para 12 and 14

9. The counsel for the defendant no.1 and 3 relied on a decisions reported in (2022) 2 SCC 25 (Para 26-27), 2012 SCC Online Delhi 2092 Para 20-23, ILR 2016 KAR 4162, Para 11 and 13, (1995) 2SCR 252 , Para 16, (2016) 233 DLT-25 Para 7, 8,11, AIR 1981 MADRAS Para 8, 2021 SCC Online Delhi 1539, Para 21 (3) , 78, 79 (i) 79 (ii), AIR 2018 SC 3516 Para 26.7, (2016) 5 Bombay CR 100, para 13, 19 and 20, (2018) 73, PTC 115, AIR 2008 SC 2737, 2021 SCC Online KAR 14700, AIR 2001 SC 1952, AIR 1994 Bombay 231, (2003) 26 PTC 175, Para 9, 5 and 13, (1997) 4 SCC 201, Para 47 and 48, AIR 2018 SC 3516, Para 26.7.

10. I have gone through the aforesaid citations as well as the relevant paragraphs in the judgment relied by the parties. There is no second opinion about the principles laid down by the Apex Court and various Courts in the aforesaid citations. Now, it is to be considered along with the facts and dispute as well as materials placed before the court in respect of the respective defence and claim of the parties.

11. Heard the arguments. Perused the materials placed on record along with the citations relied by the parties. On that basis my findings on the above issues are as follows:

Issue No.1 - In the affirmative;

Issue No.2 - In the affirmative;

Issue No.3 - In the negative;

Issue No.4 - Partly in affirmative;

Issue No.5 - In the affirmative;

Issue No.6 - Partly in affirmative;

Addl.Issue No.1- In the affirmative;

Issue No.7- As per final order for the following:

REASONS

12. Before proceeding further in the case it is just and necessary to note the certain facts in this case. The specific case made out by the plaintiff in the suit is that plaintiff is running a business under a name and style of "HAPPY BELLY BAKES". Originally plaintiff claims that she started the business in the year 2007 in the name of regular and she has coined and adopted the mark "HAPPY BELLY BAKES" for her business on 02/06/2010. The plaintiff also claimed that she is the registered trademark owner of "HAPPY BELLY BAKES" and she has filed the application for registration of trademark on 14/07/2015 under Class 30 and 43. Accordingly trademark registry has issued the trademark on 19/10/2016 that is valid till 14/07/2025.

13. The claim of the defendant No.1 and 3 is that the plaintiff's trade mark is a device mark and not a word mark. The defendant No.1 and 3 are using the word mark "HAPPY BELLY" for their products world wide with the claim that the business of the plaintiff is restricted to

only Bangalore locality. The defendant also claimed that style of the word and writing style as well as pictorial mark of the words of plaintiff and defendant are not similar or identical to each other. Further it is also claimed by the defendant that the “HAPPY BELLY BAKES” is a device mark not a word mark relating to bakery business and plaintiff is doing the business after the receipt of order. Per contra defendant is selling the pre-packaged foods and there are several types of customers online. Apart from that the defendant also claimed that the customers are the educated customers, hence the question of confusion or deceptively using the word does not arise. The defendant No.1 and 3 also claimed that the defendant has the knowledge of defendant using the word mark as early as October 2016 when the plaintiff caused a reply.

14. The specific claim of the defendant No.2 in the case is that it is a intermediary and it is the largest online market place in India wherein thousands of sellers and buyers interact and transact. The Act of the defendant

No.2 is protected under Sec.2(1) (W) and Sec.79 of the Information Technology Act and governed by the intermediary guidelines. Accordingly prayed for dismissal of suit.

15. With the aforesaid pleadings, claim and defence of the parties, the material placed before the court has to be appreciated.

16. Issue No.1 and Additional issue No.1: The issue No.1 is framed on the contention of plaintiff that it is the registered owner of trademark "HAPPY BELLY BAKES" and the additional issue No.1 has been framed on the contention of plaintiff that it is the prior user of the trademark "HAPPY BELLY BAKES". These two issues are interlinked with each other hence they are taken up-together in order to avoid the repetition in the Judgment.

17. The specific case made out by the plaintiff in the plaint that she has commenced her business under the name Regalar in the year 2008 and she has specifically claimed that on 02/06/2010 she has conceived, coined and adopted the mark "HAPPY BELLY BAKES" for her

business in place of Regalar and since then the plaintiff has been using the mark “HAPPY BELLY BAKES” for her business continuously and without any interruptions. The plaintiff also claimed that she has obtained the registered trademark by filing applications as on 14/07/2015 in Class 30 and 43 of the Trademarks Act. In support of the said contention, the plaintiff has produced the documents at Ex.P.16, Ex.P.17, Ex.P.352 and Ex.P.353. Similarly the plaintiff relied on the document produced by the defendant at Ex.D.1 and 2. Ex.P.16 and 17 are the legal use certificate that disclose that the plaintiff for the first time applied for the registration of trademark “HAPPY BELLY BAKES” as on 14/07/2015 and trademark registry has issued the registration certificate as on 20/10/2016. In the said application it is specifically claimed that the plaintiff is using the said trademark since 02/06/2010. The said applications are filed for trademark in Class 30 and 43. These two documents sufficiently shows that the plaintiff claims that it she is using the word “HAPPY BELLY BAKES” for her business since 02/06/2010. The

invoices produced by the plaintiff also substantiate the said fact. The plaintiff also produced the trade license certificate at Ex.P.22 which disclose that the plaintiff has obtained the license as on 19/08/2010 to run a business in the name of "HAPPY BELLY BAKES". The said document also sufficiently shows that the plaintiff is using the word "HAPPY BELLY BAKES" for her business since 2010.

18. The plaintiff claims that she is the registered owner of the trademark "HAPPY BELLY BAKES". As per Ex.P.17 and 18, the trademark registry has issued the registration certificate of word mark "HAPPY BELLY BAKES" as on 20/10/2016. As per the said document the application filed for registration of trademark as on 14/07/2015. As per Sec.23 of Trademarks Act the registration of trademark has to be considered from the date of filing of the application when the trademark has been registered. Therefore in the case on hand it can be safely accepted the claim of plaintiff that she is the registered trademark owner HAPPY BELLY BAKES from

14/07/2015. The said trademark of plaintiff is valid till 14/07/2025 in Class 43 and 30.

19. The defendant using the “HAPPY BELLY” for their products. The defendant No.1 and 3 claims that they are the owners of trademark “HAPPY BELLY” on various countries, however the materials on record clearly shows that in India the defendants have filed application for registration of their trademark “HAPPY BELLY” under application No.3261806 and 3261807 dated 17/05/2016 seeking the registration of mark “HAPPY BELLY”. This application itself shows that the defendant filed a application for the trademark “HAPPY BELLY” as on 16/07/2016. The said fact is evident from the evidence of DW.1 and 2 during the course of their cross examination has they have admitted the filing of trademark application as on 16/07/2016. DW.1 denying his cross-examination at page 14 admitted that the defendant no.3 has adopted ‘Happy Belly’ in the year 2016 and DW.2 in the evidence affidavit at para 6 specifically stated that “I state that the licensed mark was honestly and independently adopted by

defendant no.3 on global basis on 16/5/2016'. The DW.2 in her evidence affidavit in between paragraph 6 and 7 given the particulars of the third defendant's trademark worldwide for about 26 pages and produced documents at Ex.D15 to Ex.D176 reveals that, the defendant no.3 obtained the registered trademark HAPPY BELLY in the year 2016 which is subsequent to the use of trademark HAPPY BELLY BAKES by the plaintiff. The application filed by the plaintiff for registration of trademark is on 14/07/2015 and the trademark registry has also issued the registration certificate about the word or device "HAPPY BELLY BAKES" in favour of the plaintiff. Therefore it is clear that the plaintiff is the registered trademark owner of the trademark "HAPPY BELLY BAKES" and the plaintiff is the prior user of the trademark "HAPPY BELLY BAKES". The material on record placed by the plaintiff as well as document produced by the plaintiff and defendant no. 1 and 3 along with admissions given by the parties during their evidence clearly establishes the fact that plaintiff is the prior user of the word "HAPPY BELLY BAKES" for her

business and she is the registered trademark owner of “HAPPY BELLY BAKES”. Accordingly issue No.1 and additional issue No.1 is answered in **affirmative**.

20. **Issue No.2 and 3:** This issue is regarding the infringement and passing off of the plaintiff’s trademark “HAPPY BELLY BAKES” by the defendant by using the deceptively similar trademark “HAPPY BELLY”. In the case on hand it is undisputed fact that the plaintiff is using the word “HAPPY BELLY BAKES” for her business similarly the defendants are using the trademark “HAPPY BELLY” for their products. Therefore the dispute between the parties regarding the use of words “HAPPY BELLY” in the respective trade name for their respective business and products. Now it is to be considered that whether the word used by the defendant i.e “HAPPY BELLY” is similar or deceptively similar to the word “HAPPY BELLY BAKES”. The word HAPPY BELLY used by the defendant is identical to the plaintiff’s trademark “HAPPY BELLY BAKES”. The defendant only removed the word BAKES for their business and only used “HAPPY BELLY”

as such certainly it is deceptively similar to the word mark or trademark of the plaintiff.

21. The defendant claims that the plaintiff has not obtained the trademark under a word but it is only a device mark. The Ex.P.17 and 18 clearly disclose that the registry has issued the registration wherein it is shown as a trademark type is a device but it is also stated that word mark is "HAPPY BELLY BAKES". The trademark Act nowhere distinguishes the obtaining of trademark for device or word. Sec.2(M) of the trademark reads as " Includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral shape of goods, packaging or combination of colour or any combination thereof". Sec.2 (2) In this Act, unless the context otherwise requires, any reference

a) to "trademark" shall include reference to "collective mark" "certification trademark"

b) to the use of a mark shall be constructed as a reference to the use of printed or other visual representation of the mark

c) to the use of a mark

(i) in relation to goods, shall be constructed as a reference to the use of the mark upon, or in any physical or in any other relation whatsoever, to such goods mark upon, or in any physical or in any other relation whatsoever, to such goods

(ii) in relation to services, shall be constructed as a reference to the use of the mark as or as part of any statement about the availability, provision or performance of such services.

22. The aforesaid provision nowhere disclose that there is a necessity to take a separate registration on device or trademark or label. It is relevant to note that even defendant no.3 in its trademark applications applied for the trademark under the category of '**device**' that is evident from the trademark applications filed by the defendant no.3. The plaintiff has produced the extract of said trademark applications at Ex.P392 and Ex.P393. The said document clearly reveals that even the defendant no.3 claimed the trademark type as a '**device**'. When the

defendant no.3 has claimed the trademark under the category of device, it cannot object the plaintiff has obtained the trademark for device and not word. Apart from that, if the defendant no.3 has applied for trademark in the category of word, certainly the contention of the defendant that the plaintiff has obtained the trademark only for the device would have been accepted by the court.

23. It is also relevant to note that either the defendant no.1 or the defendant no.3 till this date has not made any application for trademark under the category of 'word' and only application filed by the defendants for trademark under the category 'device', for which the plaintiff has already had the registered trademark in the name of HAPPY BELLY BAKES. At this juncture, it is pertinent to note that the plaintiff atleast applied for the trademark under the category of 'word' as per documents produced by the defendants at Ex.D6 to Ex.D10 in various classes mentioned therein. In view of all these facts, the claim of the defendant that the plaintiff has

obtained the trademark only under the category on device and not under the category of 'word' cannot be accepted particularly when the defendant no.3 also applied for the trademark under the category of device and not under the category of 'word'.

24. It is also much argued by defendant no.1 and 3 that registration of device mark does not confer any rights on the words contained therein. Certainly, this contention would have been accepted by the court if the defendant no.1 or 3 had obtained the registered trademark under the category of 'word' or it has applied for the trademark under the category of 'word' but even the defendant no.3 has applied the trademark under the category of 'device'. When the defendant no.1 and 3 are not either the registered trademark holder or applied for registration of trademark under the category of 'word', certainly their contention that registration of device mark does not confer any rights on the words contained therein cannot be accepted.

25. The other contention of the defendant in the suit is that the business of the plaintiff is restricted only to Bangalore and the business of the defendant is all over the world and the defendant has more number of customers than the plaintiff. Accordingly claims that its right has to be protected. The defendant also claimed that it has obtained the trademark registration on five different countries and also filed the application for registration of trademark in India. It is well settled principle of law that the trademark is having a territorial jurisdiction. The each nation has its own authority to issue the registration of trademark. Accordingly even in India there is a trademark registration authority that will issue the trademark to be used within the territory of India. If the trademark is not territorial, certainly there is no necessity for the defendant to apply the registration of trademark on different countries, as well as applying the registration of trademark in India. Merely because the defendant no. 3 used the word "HAPPY BELLY" for its product in different countries itself is not a ground to

accept its claim that it can use the word "HAPPY BELLY" for its business in India. It is also relevant to note that the trademark application filed by the defendant has been objected by the trademark registry itself claiming that the word "HAPPY BELLY" has been already in use in India. In respect of his said contention the plaintiff relied on the objections raised by the registering authority that has been marked before the court at Ex.C.1 to 3. Therefore the use of "HAPPY BELLY" by the defendant no.1 to 3 is objected by the trademark registry authority in India from the day the defendant no.3 filed application for the registration of trademark HAPPY BELLY under the category device.

26. The other contention raised by the defendant is that, the plaintiff is selling her product at Bangalore or the plaintiff has limited territorial jurisdiction for her products. It is also relevant to note that even the defendant no.1 is selling the product in India. Merely because the defendants are having a worldwide market or global market for their products is not a ground to reject the

registered trademark of plaintiff. The intention of the Legislators in introducing the trademarks Act is to protect the trademark of the prior user or registered trademark holder. As per the Constitution of India, all are equal before the law. When the registered trademark is in use, that cannot be deceptively used by the others. It is true that, the defendant has obtained the registration of its trademark HAPPY BELLY in various foreign countries. But, the defendant has not had any such registered trademark in India. Admittedly, the defendant no.3 has obtained the registered trademark HAPPY BELLY in several countries as per Ex.D15 to Ex.D176 in the year 2016 and the plaintiff in India using the trademark HAPPY BELLY BAKES for her products since 2010 and also obtained the trademark registration in the year 2015, which is much prior to the use of HAPPY BELLY by the defendant no.3 worldwide. As discussed earlier, the trademark has the territorial jurisdiction and each country has its own trademark registration authority and issues the trademark. The plaintiff legally applied for the

registration of her trademark and obtained the registration of the trademark. The plaintiff also using the said trademark for her business. As such, the trademark of the plaintiff is in use. Hence, the said trademark of plaintiff has to be protected under Section 29 of the Trademarks Act as the said trademark is valid till the year 2025.

27. The defendant also raised a contention that the suit of the plaintiff is to be dismissed at the outset in view of the plaintiff's admission that both the marks and services are different and dissimilar. The said claim of the defendant is based on the reply given by the advocate for the plaintiff at Ex.D5. Ex.D5 is the reply by the then plaintiff's advocate dated 24/10/2016 in a reply to the application no.3 to 7, 4059 in Class 35 in the name of Hinduja Shisham. It is relevant to note that in the year 2016, the plaintiff filed four applications for the registration of trademark under the category of 'word'. The said applications have been objected by the defendant no.3. In view of the said objections, trademark registry has caused a notice to the advocate for the plaintiff namely Sanjay H.

Sethia dated 21/10/2016. The said notice also includes the defendants trademark applications filed for the device. Therefore, in that context, the counsel for the defendant no.4 has issued the said reply. Even it is accepted that the said reply is binding on the plaintiff, it is to be accepted that the said admission at Ex.D5 is not given by the plaintiff to the trademark applications filed by the defendant no.3 under the category of device at Ex.P392 and Ex.P393. If at all, the said reply at Ex.D5 is in respect of the trademark applications of defendant no.3 at Ex.P392 and Ex.P393, then certainly the plaintiff is estopped from contending that her trademark is to be protected. Therefore, it is clear that the said reply at Ex.D5 to be considered with the background of the application filed by the plaintiff for registration of trademark HAPPY BELLY BAKES under the category of 'word'. Therefore, the contention of the defendant no.3 that there is a admission by the plaintiff that marks and services of plaintiff and defendants are different and dissimilar cannot be accepted.

28. The defendant also claimed that the rival marks are dissimilar in any event, a bare perusal of the rival marks indicates that the marks are dissimilar. In this context, the defendant claimed that the rival marks used completely different colour schemes claiming that the defendants marks use a black and white colour combination, whereas the plaintiff's marks uses brown, blue and white, the defendant's marks are unique as they contain a distinctive curve or smiley, but no such distinctive curve or smiley in the plaintiff's mark. It is also claimed that, the letter 'B' in the plaintiff's mark BELLY is tilted and is in blue colour, and other letters are not tilted and they are in white colour. The font size of letter 'B' is also bigger and larger letters. But, no such features are visible in defendant's marks. Further claimed that all these facts are admitted by the plaintiff during her cross-examination dated 8/7/2021. It is relevant to note that the suit of the plaintiff is that she is the registered trademark owner of HAPPY BELLY BAKES and the defendant is using her trademark just by removing the word 'BAKES'.

The material on record sufficiently shows that till this date, the defendant has not obtained registered trademark over HAPPY BELLY. It is also relevant to note that the application submitted by the defendant no.3 for the registration of HAPPY BELLY for their products has been rejected by the trademark registration authority. It is true that the defendant claims that they have filed a review petition or they have challenged the order of trademark registry rejecting their application for the trademark HAPPY BELLY. All these facts at this juncture sufficiently proves that competitive trade mark registration authority has rejected the application of defendants for the trademark HAPPY BELLY. Therefore, when the trademark application of defendant on HAPPY BELLY has been rejected, certainly they cannot claim that there is a dissimilarities or there is a difference in colour or writing style etc., cannot be accepted.

29. The defendant also claimed that the plaintiff has no goodwill and reputation. This fact cannot be accepted because the plaintiff is running the business since 2008. If

there is no goodwill or reputation, certainly she would not have continued her business till this date. The plaintiff also claimed that the plaintiff has entered into a limited liability partnership agreement in the name of HAPPY BELLY BAKES LLP on 30/5/2019 i.e., subsequent to the filing of the suit and they are running the restaurants in the said name. Even the said fact sufficiently shows that the plaintiff or her subsequently formed partnership firm acquired goodwill and reputation. Hence, the contention of defendant that there is no goodwill or reputation for the plaintiff firm cannot be accepted and the said contention shows the arrogance of defendants.

30. The defendant also claimed that there is no misrepresentation by the defendants and also there is no damage incurred by the plaintiff due to the use of HAPPY BELLY mark by the defendant. The said fact cannot be accepted because it was not the intention of Legislators to introduce the trademark registration.

31. The other claim made by the defendant no.3 in the suit is bank. That the defendant no.3 is the original

proprietor of the mark HAPPY BELLY and defendant no.1 has been authorised to use the defendants mark. It may be true that the defendant no.3 has permitted the defendant no.1 to use the trademark HAPPY BELLY. But, certainly the defendant no.3 is not the original proprietor of the mark HAPPY BELLY as the defendant coined the word HAPPY BELLY for the first time in the year 2016 and the plaintiff has used the said mark HAPPY BELLY along with word BAKES in the year 2010 itself.

32. The plaintiff also claimed that there is a delay in filing of the current suit. But what is the delay in filing the suit is not explained and there is no material on record to show that the suit has to be filed within particular time from the date of knowledge as per the provisions of Trademarks Act. If the general provisions under the Limitation Act is accepted, the suit to be filed within 3 years from the date of knowledge. Even according to the claim of the defendant, this plaintiff has the knowledge of defendants trademark HAPPY BELLY in the year 2016 particularly on 21/10/2016. The present suit is filed on

9/8/2018 which is within three years from the said knowledge. Hence, the claim of the defendant that the suit is bad by limitation cannot be accepted.

33. The admission given by the DW.2 during the cross-examination shows that they have stopped the selling of products under the name of HAPPY BELLY since from the year 2018, and also they have not got the registration of trademark HAPPY BELLY. As discussed earlier, the plaintiff is the registered owner of trademark HAPPY BELLY BAKES though on device. But, the defendant has not obtained any such trademark in India and even the application filed by the defendant for the registration of trademark HAPPY BELLY has been rejected by the competent trademark registration authority. As such, the use of trademark HAPPY BELLY is certainly infringing and passing off of the plaintiff's trademark. The defendant no.3 also failed to prove that it is the original proprietor of the mark HAPPY BELLY. As such, mere authorizing the defendant no.1 to use the trademark HAPPY BELLY by defendant no.3 will not

make any difference. Accordingly, this court is of the humble opinion that the plaintiff has sufficiently proved that the defendant no.1 and 3 have sold the products by infringing and passing off of the plaintiff's trademark, and the defendant no.1 and 3 failed to prove that it is the original proprietor of the mark HAPPY BELLY. Accordingly, Issue No.2 is answered in **affirmative** and Issue no.3 is answered in **negative**.

34. **ISSUE NO.4:** This issue is framed on the contention of defendant no.2 that it is an intermediary for providing online market services and not liable for the data information or communication hosted by the third parties. The defendant no.2 in the written statement also claimed that it is not a necessary party to the proceedings as it is an intermediary and it is a platform for a sellers and buyers of the goods online claiming that it is the largest online market place in India where thousands of sellers and buyers interact and transact. The specific claim of the defendant no.2 is that, it will come under the definition "**Intermediary**" under Section 2(1) (w) and

Section 79 of The Information and Technology Act. The defendant no.2 further claimed that it is governed by intermediary guidelines. The said fact is not at all disputed by the plaintiff though claimed that all the defendants are liable for illegal act. The material placed before the court sufficiently shows that defendant no.2 is the largest online market place and defendant no.2 is a bridge between the buyer and sellers and it has no products of its own. The buyers and sellers are using the platform of defendant no.2 for the transactions. Under such circumstances, the defendant no.2 certainly cannot be held responsible for violation of any act claimed by the plaintiff. This is also evident from the principle laid down by Hon'ble Apex Court in a case of *Shreya Singhal* reported in (2015) 5 SCC 1. Further, if the defendant no.1 and 3 are restrained from using the impugned trademark, certainly the said trademark or trade name will not appear in the platform of defendant no.2.

35. It is relevant to note that the defendant no.3 has obtained the trade name "HAPPY BELLY" in several other

countries but not obtained trademark in India and the application filed by the defendant no.3 for the registration of the trademark HAPPY BELLY has been rejected. Therefore, the defendant no.2 to be restrained using of the “HAPPY BELLY” in its platform in India in respect of the products of defendant no.1 and 3 as the plaintiff has obtained the registered trademark namely “HAPPY BELLY BAKES”. Accordingly, the claim of the defendant no.2 to be considered in this case with the direction to the defendant no.2 not to entertain the trade name “HAPPY BELLY” of defendant no.1 and 3 in the platform of defendant no.2 in India. Accordingly, this issue is answered **partly in the affirmative.**

36. **POINT NO.5 AND 6:** These two issues are regarding the plaintiff’s entitlement for the relief of permanent injunction and mandatory injunction claimed in the suit. In view of my finding on Issue No.1 to 4, certainly the plaintiff is entitled for the relief claimed in prayer (a) and (b) of the plaint. The third prayer claimed in the plaint is to direct the defendants to deliver the materials, labels,

cartons, unsold goods in stock, delivery challans, invoices, goods in transit or warehouse etc., with the mark / name / label HAPPY BELLY with similar name, font, design, getup, pattern etc., It is relevant to note that except in India, the defendant no.3 had the registered trademark "HAPPY BELLY". Under such circumstances, the defendant can only be restrained the use of HAPPY BELLY for its products in India only and the defendants have every right to use the said trade name for their products in various countries wherein they have obtained the registered trademark HAPPY BELLY.

37. The defendant also claimed for the rendition of accounts, but the material on record sufficiently disclose that immediately after the order from the court, the defendant stopped the using of the trade name / mark HAPPY BELLY. There is no material on record to show that even after the order of court, the defendant 1 and 3 used the trade name HAPPY BELLY for their products. Similarly, the defendants has obtained the trade name worldwide except in India. Under such circumstances,

certainly the plaintiff is not entitled for rendition of accounts. Of course, plaintiff is entitled for the cost of the suit. Accordingly, Issue No.5 is answered in **affirmative** and Issue No.6 is answered **partly in affirmative**.

38. **Issue No.7:** In the result, I proceed to pass the following:

ORDER

Suit of the plaintiff is hereby partly decreed with costs in following terms.

The defendant no.1 and 3 or anybody claiming under them are hereby permanently restrained from infringing or passing off of the plaintiff's trademark "HAPPY BELLY BAKES" under the mark / name /label 'HAPPY BELLY' or with the similar name, get up that are both visually and phonetically, deceptively similar for their business of manufacturing, selling, marketing, distributing and in any manner trading with products, goods or services.

The defendant no.2 is directed to remove any products deceptively similar to the plaintiff's trademark in its online platform in India.

The prayer of plaintiff for rendition of accounts and direction to produce the labels, cartons, unsold goods in stock, delivery challans,

invoices, goods in transit or warehouse etc., with the mark / name/ label 'HAPPY BELLY' is hereby dismissed.

Draw decree accordingly.

* * *

(Dictated to Stenographer, transcribed by her, revised by me and after corrections, pronounced in open Court on this the 30th day of August 2022.)

(PADMA PRASAD)
XVIII ADDL. CITY CIVIL AND
SESSIONS JUDGE, BENGALURU

ANNEXURE

1. No.of witnesses examined on behalf of plaintiff/s:

PW1 : Shisham Hinduja

PW2 : Satish Makhija

2. No.of documents marked on behalf of plaintiff/s:

Exp.1 to 11	11 photographs of plaintiffs products and packaging (marked subject to production of CD and receipt)
Exp.12 to 15	4 Invoices
Exp.16 and 17	2 Legal use certificates
Exp.18 to 21	Packaging covers of Product box (4 in numbers)

Ex.P.22 and 23	Trade license certificate and renewal certificate dated 28.02.2013 and 13.07.2019
Ex.P.24 and 25	Registration certificate of establishment dated 22.06.2017 and 13.07.2019
Ex.P.26 to 28	License issued by food safety and standards authority dated : 24.09.2020 (3 in Numbers)
Ex.P.29 and 30	License issued by food safety and standards dated : 23.05.2020 and 25.09.2020
Ex.P.31	LLP agreement dated 30.05.2019
Ex.P.32	License agreement dated 24.06.2020.
Ex.P.33 to 43	Debit commission note (11 in numbers)
Ex.P.44 and 45	Purchase orders raised on the plaintiff by Micro-labs (2 in numbers)
Ex.P.46 to 245	Invoices (200 in numbers)
Ex.P.246	Certificate issued by plaintiff's Chartered accountant dated 10.03.2021
Ex.P.247 to 257	ITR-V forms (11 in numbers)
Ex.P.258 to 278	Form -VAT -100 (21 numbers)
Ex.P.279	Audit report of chartered accountant
Ex.P.280	License dated 06.05.2017
Ex.P.281	One line printout copy of Listing of plaintiff's cafe on Amazon food delivery app.

Ex.P.282 to 289	Packaging covers of plaintiff's products. (8 in numbers)
Ex.P.290 to 335	46 invoices
Ex.P.336 to 349	14 online News paper Articles
Ex.P.350	Instagram profile Screen shot with promotional insights.
Ex.P.351 and 351(a)	One Magazine and the relevant portion (page No.25)
Ex.P.352 to 354	Legal use certificates (3 in numbers)
Ex.P.355 to 357	GST certificates (3 in numbers)
Ex.P.358	Order copy on defendant No.3 trademark application No.3310785 dated 04.01.2021.
Ex.P.359 to 362	Tax invoices (4 in numbers)
Ex.P.363 to 369	Web Site printout copies (7 in numbers)
Ex.P.370 & 371	Reply to examination report (2 in numbers)
Ex.P.372	Internet copy of plaintiff's web sites in numbers)
Ex.P.373 & 374	Internet copies of swiggy and zomato web sites
Ex.P.375	Internet copies of Google my business
Ex.P.376	Internet copies of article published on yourstory.com website
Ex.P.377	Internet copies of article published on lequirk.com website

Ex.P.378	Internet copies of article published on the platesmemories.com website
Ex.P.379	Internet copy of company master data
Ex.P.380 & 381	Trademark application status of 3261806 and search report
Ex.P.382 & 383	Trademark application status of 3261807 and search report
Ex.P.384 & 385	Trademark application status of 3310785 and search report
Ex.P.386	Trademark journal number 1816 dated 25.09.2017
Ex.P.387	Internet copies of alleged 1 st defendant's website
Ex.P.388 to 390	Invoices (3 in numbers)

3. No. of material objects examined on behalf of plaintiff:

MO No.1 to 3	Materials objects (3 in numbers)
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4. No. of witnesses examined on behalf of defendant/s:

DW1 : G.S. Arjun Kumar

DW2 : Ms.Priyanka Ramachandran

5. **No. of documents marked on behalf of defendant/s:**

- Ex.D.1 to3 :Colour copies of the applications filed before trademark registry for trademark registration
- Ex.D.4 :Downloaded copy of objection received in respect of application No.3274059
- Ex.D.5 :Reply to Exam report dated:24/10/2016
- Ex.D.6 to 10 :Downloaded copies of trademark applications
- Ex.D.11 :Letter of authorization dated 11/08/2020 along with printout of certificate dated 27/02/2018
- Ex.D.11(a) Annexure to delegation of authority dated 09/05/2018
- Ex.D.12 :Letter dated 22/02/2018
- Ex.D.13 :Certificate issued by CA dated:21/0/2018
- Ex. D.14 Authorisation Letter in the favour of Ms. Priyanka Ramachandran
- Ex.D.15 Australia Trade Mark Registration Certificate No. 1771157
- Ex.D.16 Australia Trade Mark Registration Certificate No. 1783589
- Ex.D.17 Australia Trade Mark Registration Certificate No. 1783590
- Ex.D.18 Australia Trade Mark Registration Certificate No. 1771156
- Ex.D.19 Australia Trade Mark Registration Certificate No. 1870094

- Ex.D.20 Australia Trade Mark Registration Certificate No. 1870101
- Ex.D.21 Australia Trade Mark Registration Certificate No. 1870096
- Ex.D.22 Great Britain Trade Mark Registration Certificate No. UK00915648041
- Ex.D.23 Great Britain Trade Mark Registration Certificate No. UK00003171553
- Ex.D.24 Great Britain Trade Mark Registration Certificate No. UK00003174433
- Ex.D.25 Great Britain Trade Mark Registration Certificate No. UK00003171554
- Ex.D.26 Great Britain Trade Mark Registration Certificate No. UK00003174432
- Ex.D.27 New Zealand Trade Mark Registration Certificate No. 1043138
- Ex.D.28 New Zealand Trade Mark Registration Certificate No. 1046642
- Ex.D.29 New Zealand Trade Mark Registration Certificate No. 1043139
- Ex.D.30 New Zealand Trade Mark Registration Certificate No. 1046641
- Ex.D.31 European Union Trade Mark Registration Certificate No. 015648041
- Ex.D.32 China Trade Mark Registration Certificate No. 20024408A

Ex.D.33	China Trade Mark Registration Certificate No. 20641719A
Ex.D.34	China Trade Mark Registration Certificate No. 20641722A
Ex.D.35	China Trade Mark Registration Certificate No. 20641715A
Ex.D.36	China Trade Mark Registration Certificate No. 20641725
Ex.D.37	China Trade Mark Registration Certificate No. 20641713
Ex.D.38	China Trade Mark Registration Certificate No. 20024407A
Ex.D.39	China Trade Mark Registration Certificate No. 20641723
Ex.D.40	China Trade Mark Registration Certificate No. 20641720
Ex.D.41	China Trade Mark Registration Certificate No. 20641721
Ex.D.42	China Trade Mark Registration Certificate No. 20641715
Ex.D.43	China Trade Mark Registration Certificate No. 20641717
Ex.D.44	China Trade Mark Registration Certificate No. 20766015
Ex.D.45	China Trade Mark Registration Certificate No. 20766013

Ex.D.46	China Trade Mark Registration Certificate No. 20766009
Ex.D.47	China Trade Mark Registration Certificate No. 20024412
Ex.D.48	China Trade Mark Registration Certificate No. 20641719
Ex.D.49	China Trade Mark Registration Certificate No. 20024410
Ex.D.50	China Trade Mark Registration Certificate No. 20024415A
Ex.D.51	China Trade Mark Registration Certificate No. 20641716
Ex.D.52	China Trade Mark Registration Certificate No. 20641714
Ex.D.53	China Trade Mark Registration Certificate No. 20641712A
Ex.D.54	China Trade Mark Registration Certificate No. 20024411
Ex.D.55	China Trade Mark Registration Certificate No. 20024408
Ex.D.56	China Trade Mark Registration Certificate No. 20024415
Ex.D.57	China Trade Mark Registration Certificate No. 20766012
Ex.D.58	China Trade Mark Registration Certificate No. 20766014

Ex.D.59	China Trade Mark Registration Certificate No. 20024407
Ex.D.60	China Trade Mark Registration Certificate No. 20024417
Ex.D.61	China Trade Mark Registration Certificate No. 20641722
Ex.D.62	China Trade Mark Registration Certificate No. 20641724
Ex.D.63	China Trade Mark Registration Certificate No. 20641718
Ex.D.64	China Trade Mark Registration Certificate No. 20024414
Ex.D.65	China Trade Mark Registration Certificate No. 20766011
Ex.D.66	China Trade Mark Registration Certificate No. 20766010
Ex.D.67	China Trade Mark Registration Certificate No. 20641712
Ex.D.68	China Trade Mark Registration Certificate No. 20024419
Ex.D.69	China Trade Mark Registration Certificate No. 20024416
Ex.D.70	China Trade Mark Registration Certificate No. 20024418
Ex.D.71	China Trade Mark Registration Certificate No. 20024420

Ex.D.72	China Trade Mark Registration Certificate No. 20024409
Ex.D.73	China Trade Mark Registration Certificate No. 20024413
Ex.D.74	Austria Trade Mark Registration Certificate No. 297918
Ex.D.75	Benelux Trade Mark Registration Certificate No. 0201712
Ex.D.76	Cyprus Trade Mark Registration Certificate No. 87660
Ex.D.77	Cyprus Trade Mark Registration Certificate No. 87661
Ex.D.78	Cyprus Trade Mark Registration Certificate No. 87663
Ex.D.79	Cyprus Trade Mark Registration Certificate No. 87662
Ex.D.80	Cyprus Trade Mark Registration Certificate No. 87664
Ex.D.81	Cyprus Trade Mark Registration Certificate No. 87665
Ex.D.82	Cyprus Trade Mark Registration Certificate No. 87659
Ex.D.83	Malta Trade Mark Registration Certificate No. 57816
Ex.D.84	Malta Trade Mark Registration Certificate No. 57817

Ex.D.85	Malta Trade Mark Registration Certificate No. 57818
Ex.D.86	Malta Trade Mark Registration Certificate No. 57819
Ex.D.87	Malta Trade Mark Registration Certificate No. 57820
Ex.D.88	Malta Trade Mark Registration Certificate No. 57821
Ex.D.89	Malta Trade Mark Registration Certificate No. 57822
Ex.D.90	Japan Trade Mark Registration Certificate No. 5934243
Ex.D.91	Japan Trade Mark Registration Certificate No. 5956394
Ex.D.92	Japan Trade Mark Registration Certificate No. 5956393
Ex.D.93	Japan Trade Mark Registration Certificate No. 5934242
Ex.D.94	Japan Trade Mark Registration Certificate No. 5933952
Ex.D.95	Japan Trade Mark Registration Certificate No. 5953607
Ex.D.96	Japan Trade Mark Registration Certificate No. 5933953
Ex.D.97	Estonia Trade Mark Registration Certificate No. M201800068

- Ex.D.98 Denmark Trade Mark Registration Certificate No. vR 2018 01615
- Ex.D.99 Slovenia Trade Mark Registration Certificate No. 201870104
- Ex.D.100 Slovak Republic Trade Mark Registration Certificate No. 252902
- Ex.D.101 Hungary Trade Mark Registration Certificate No. 225787
- Ex.D.102 Romania Trade Mark Registration Certificate No. 157767
- Ex.D.103 Ireland (Republic Of) Trade Mark Registration Certificate No. 259982
- Ex.D.104 Portugal Trade Mark Registration Certificate No. 597094
- Ex.D.105 Spain Trade Mark Registration Certificate No. 3.701.735
- Ex.D.106 France Trade Mark Registration Certificate No. 184437331
- Ex.D.107 Greece Trade Mark Registration Certificate No. 850
- Ex.D.108 Germany (Federal Republic of) Trade Mark Registration Certificate No. 302018003174
- Ex.D.109 Finland Trademark Registration Certificate No. 274321
- Ex.D.110 Italy Trademark Registration Certificate No. 302018000012315

- Ex.D.111 Czechia Trademark Registration Certificate No. 368726
- Ex.D.112 Croatia Trademark Registration Certificate No. Z20180066A
- Ex.D.113 Poland Trademark Registration Certificate No. R-330457
- Ex.D.114 Canada Trademark Registration Certificate No. TMA1070922
- Ex.D.115 Canada Trademark Registration Certificate No. TMA1070247
- Ex.D.116 Canada Trademark Registration Certificate No. TMA1,066,903
- Ex.D.117 Canada Trademark Registration Certificate No. TMA1,066,972
- Ex.D.118 Lithuania Trademark Registration Certificate No. 80283
- Ex.D.119 Trinidad and Tobago Trademark Registration Certificate No. 51181
- Ex.D.120 Trinidad and Tobago Trademark Registration Certificate No. 51182
- Ex.D.121 Trinidad and Tobago Trademark Registration Certificate No. 51092
- Ex.D.122 United States of America Trademark Registration Certificate No. 5706559
- Ex.D.123 Mexico Trademark Registration Certificate No. 1746794

Ex.D.124	Mexico Trademark	Registration	Certificate	No.
	1751318			
Ex.D.125	Mexico Trademark	Registration	Certificate	No.
	1752892			
Ex.D.126	Mexico Trademark	Registration	Certificate	No.
	1767411			
Ex.D.127	Mexico Trademark	Registration	Certificate	No.
	1751316			
Ex.D.128	Mexico Trademark	Registration	Certificate	No.
	1695559			
Ex.D.129	Mexico Trademark	Registration	Certificate	No.
	1694679			
Ex.D.130	Mexico Trademark	Registration	Certificate	No.
	1746795			
Ex.D.131	Mexico Trademark	Registration	Certificate	No.
	1739246			
Ex.D.132	Mexico Trademark	Registration	Certificate	No.
	1695560			
Ex.D.133	Mexico Trademark	Registration	Certificate	No.
	1751317			
Ex.D.134	Mexico Trademark	Registration	Certificate	No.
	1767410			
Ex.D.135	Mexico Trademark	Registration	Certificate	No.
	1751315			
Ex.D.136	Mexico Trademark	Registration	Certificate	No.
	1705465			

Ex.D.137	Mexico Trademark	Registration	Certificate	No.
	1705466			
Ex.D.138	Mexico Trademark	Registration	Certificate	No.
	1754955			
Ex.D.139	Mexico Trademark	Registration	Certificate	No.
	1742128			
Ex.D.140	Mexico Trademark	Registration	Certificate	No.
	1746793			
Ex.D.141	Mexico Trademark	Registration	Certificate	No.
	1677569			
Ex.D.142	Mexico Trademark	Registration	Certificate	No.
	1742130			
Ex.D.143	Mexico Trademark	Registration	Certificate	No.
	1739245			
Ex.D.144	Mexico Trademark	Registration	Certificate	No.
	1694680			
Ex.D.145	Mexico Trademark	Registration	Certificate	No.
	1751462			
Ex.D.146	Mexico Trademark	Registration	Certificate	No.
	1746685			
Ex.D.147	Mexico Trademark	Registration	Certificate	No.
	1742129			
Ex.D.148	Mexico Trademark	Registration	Certificate	No.
	1677570			
Ex.D.149	Brazil Trademark	Registration	Certificate	No.
	No.911322698			

Ex.D.150	Brazil Trademark No.911322248	Registration	Certificate
Ex.D.151	Brazil Trademark No.911322230	Registration	Certificate
Ex.D.152	Brazil Trademark No.911322760	Registration	Certificate
Ex.D.153	Brazil Trademark No.911322191	Registration	Certificate
Ex.D.154	Brazil Trademark No.911322604	Registration	Certificate
Ex.D.155	Brazil Trademark No.911044272	Registration	Certificate
Ex.D.156	Brazil Trademark No.911044531	Registration	Certificate
Ex.D.157	Brazil Trademark No.911044558	Registration	Certificate
Ex.D.158	Brazil Trademark No.911044760	Registration	Certificate
Ex.D.159	Brazil Trademark No.911044736	Registration	Certificate
Ex.D.160	Brazil Trademark No.911044710	Registration	Certificate
Ex.D.161	Brazil Trademark No.911044680	Registration	Certificate
Ex.D.162	Brazil Trademark No.911322442	Registration	Certificate

Ex.D.163	Brazil Trademark No.911322175	Registration	Certificate
Ex.D.164	Brazil Trademark No.911322566	Registration	Certificate
Ex.D.165	Brazil Trademark No.911322655	Registration	Certificate
Ex.D.166	Brazil Trademark No.911044469	Registration	Certificate
Ex.D.167	Brazil Trademark No.911044639	Registration	Certificate
Ex.D.168	Brazil Trademark No.911044671	Registration	Certificate
Ex.D.169	Brazil Trademark No.911322213	Registration	Certificate
Ex.D.170	Brazil Trademark No.911322159	Registration	Certificate
Ex.D.171	Brazil Trademark No.911322477	Registration	Certificate
Ex.D.172	Brazil Trademark No.911322116	Registration	Certificate
Ex.D.173	Brazil Trademark No.911044337	Registration	Certificate
Ex.D.174	Brazil Trademark No.911044825	Registration	Certificate
Ex.D.175	Brazil Trademark No.911044507	Registration	Certificate

- Ex.D.176 Brazil Trademark Registration Certificate
No.911044671
- Ex.D.177 Review petition No.1164614 filed by defendant
No.3
- Ex.D.178 Oppositions filed by defendant No.3 to the plaintiff's
Trade Mark Application Nos.4262858 and 3725919

(PADMA PRASAD)
XVIII ADDL. CITY CIVIL AND
SESSIONS JUDGE, BENGALURU

Judgment pronounced in the open court vide separate judgment. The operative portion of judgment reads thus:

ORDER

Suit of the plaintiff is hereby partly decreed with costs in following terms.

The defendant no.1 and 3 or anybody claiming under them are hereby permanently restrained from infringing or passing off of the plaintiff's trademark "HAPPY BELLY BAKES"

under the mark / name /label 'HAPPY BELLY' or with the similar name, get up that are both visually and phonetically, deceptively similar for their business of manufacturing, selling, marketing, distributing and in any manner trading with products, goods or services.

The defendant no.2 is directed to remove any products deceptively similar to the plaintiff's trademark in its online platform in India.

The prayer of plaintiff for rendition of accounts and direction to produce the labels, cartons, unsold goods in stock, delivery challans, invoices, goods in transit or warehouse etc., with the mark / name/ label 'HAPPY BELLY' is hereby dismissed.

Draw decree accordingly.

(PADMA PRASAD)
XVIII ADDL. CITY CIVIL AND
SESSIONS JUDGE, BENGALURU

