

(2013) 03 MAD CK 0174

Madras High Court

Case No: O.A. No. 835 to 837 of 2012 in C.S. No. 649 of 2012

ISSAC ISAAC Mathai (Dr.)

APPELLANT

Vs

Sowkhya Way2health P. Ltd.

RESPONDENT

Date of Decision: March 1, 2013

Citation: (2013) 56 PTC 537

Hon'ble Judges: Vinod K. Sharma, J

Bench: Single Bench

Judgement

Vinod K. Sharma, J.

The prayer made in each of the applications reads as under:

O.A. No. 835 of 2012:

This application has been filed for interim injunction restraining the defendant, its men, agents, partner, associate, officer, representative, servant from passing off their services as that of the applicants/plaintiffs" by using the mark "SOWKHYA" or the applicants/plaintiffs" trade mark "SOUKYA" or any other similar trade mark pending disposal of the suit.

O.A. No. 836 of 2012:

This application has been filed for interim injunction restraining the defendant, its men, agents, partner, associate, officer, representative, servant from infringing the applicants/plaintiffs registered Trade Mark "SOUKYA under registration Nos. 904710 and 1419160 in class 5 & 42 respectively of the applicants/plaintiff by manufacturing, use, advertisement, sale, offering for sale, exposing for sale of the trademark SOWKHYA or any other deceptively similar mark to SOUKYA.

O.A. No. 837 of 2012:

This application has been filed for interim injunction restraining the defendant, its men, agents, partner, associate, officer, representative, servant from passing off

their services as that of the applicants/plaintiffs" by using the domain name www.sowkhya.com or any other domain name identical or similar to the applicants/plaintiffs trademark "SOUKYA".

The applicant No. 1 is the Power of Attorney holder of Dr. Issac Mathai, the applicant No. 1/plaintiff and director of Soukya Indian Holistic Centre Private Limited, the applicant No. 2/plaintiff, a company registered under the Companies Act.

2. The plaintiffs/applicants have filed a suit for declaration that the defendant or any person drawing title through them are not entitled to infringe or attempt to infringe and pass off their services and business of the respondent/defendant by the use in connection therewith the trademark/trade name/domain name "SOWKHYA" or any manner whatsoever, in respect of services i.e. medicinal and beauty treatments similar to "SOUKYA".

3. Consequential relief sought for is permanent injunction restraining the defendant or anybody drawing title through him from infringing the applicant/plaintiffs" registered trademark "SOUKYA" under registration Nos. 904710 & 1419160 in class 5 and 42 respectively of the applicants/plaintiffs by manufacturing, use, advertisement, sale, offering for sale, exposing for sale of the trademark "SOWKHYA" or any other deceptively similar mark to "SOUKYA" with respect to services relating to medicinal and beauty treatments.

4. Permanent injunction is also sought for restraining the defendant from passing of their services as that of the applicants/plaintiffs by using the mark "SOWKHYA" or the applicants/plaintiffs mark "SOUKYA" or any other similar trademark, and also prayed for rendition of accounts of profit made by the defendant by using mark "SOWKHYA" towards damages.

5. The prayer has also been made for mandatory injunction directing the defendant to transfer the domain name www.sowkhya.com and all other variants of the same registered in the name of the defendant or its agents etc. that are deceptively similar to the applicants/plaintiffs" domain www.soukya.com. to the applicants/plaintiffs, besides claiming damages to the tune of Rs. 25,00,000/-(Rupees twenty five lakhs only) from the defendant.

6. The plaintiff/applicant No. 1 is a homeopathic doctor who has specialized in holistic medicine like homeopathy, yoga, acupuncture, etc. and began providing treatments and services relating to the said medicinal fields and complementary therapy, beauty care services, Holistic Health Clinic & Convalescent Home, Cosmetic Research Centre, Health Care Centre, Physiotherapy Centre, Massage Centre, Natural Medicine Medical Assistance, Natural Medicine Medical Clinic from the year 1998.

7. The plaintiff/applicant No. 1 in the year 1989, set up Bangalore Holistic Medical Centre at Bangalore and on 4.7.1996 incorporated the company "Indian Holistic

Health Centre Private Limited. In the year 1998, Dr. Mathai coined the word "SOUKYA" and set up Holistic Wellness Clinic in Bangalore. The first applicant/plaintiff thereafter in 2002 shifted his operations to Soukya International Holistic Health Centre which is also known as Soukya Dr. Mathai's International Holistic Health Centre in Whitefields, Bangalore.

8. The name of the company incorporated in the year 1996 was subsequently changed in the year 2008 to Soukya Indian Holistic Health Centre Private Limited, the second applicant/plaintiff herein. The first applicant/plaintiff on or about 21.2.2000, to obtain statutory right over the said mark, filed two applications for registration of the said mark under No. 904711 in Class 16 (Printed matters, photographs, stationary, artistic material, etc) and under No. 904710 in Class 05 (pharmaceutical, dietetic substance adapted for medical use, food for babies, etc.) before the Registrar of Trade Marks. The applications were allowed on 4.5.2005 and 29.11.2006 respectively.

9. That at the time of filing these applications, the provision of service class was not introduced in the provisions of Trade & Merchandise Marks Act, 1958 and when the service classes were introduced in the Trade Marks Act, 1999, the first applicant/plaintiff filed another application for registration of its famous trademark "SOUKYA" (label) under No. 1419160 in Class 42 for service provided by hospitals for integrated medicines and complementary therapy, beauty care services, Holistic Health Clinic & Convalescent Home, Cosmetic Research Centre, Health Care Centre, Physiotherapy Centre, Massage Centre, Natural Medicine Medical Assistance, Natural Medicine Medical Clinic. The Registration was granted for the said application on 22.8.2008.

10. Dr. Mathai set up a pilot project of "SOUKYA" under the name and style of Holistic Wellnes Clinic (also called Wellness Clinic) at Richmond Road, Bangalore and shifted operations to SOUKYA International Holistic Health Centre (also called SOUKYA Dr. Mathai's International Holistic Health Centre or SOUKYA Holistic Health Centre) at Whitefield, Bangalore. These Centres were set up to dispense holistic medicinal treatments such as Homeopathy, Ayurveda, Naturopathy and therapies such as Yoga, Acupuncture, Reflexology and complementary therapy, beauty care services, Holistic Health Clinic & Convalescent Home, Cosmetic Research Centre, Health Care Centre, Physiotherapy Centre, Massage Centre, Natural Medicine Medical Assistance, Natural Medicine Medical Clinic, etc.

11. The artwork and logo was got registered under No. 1419160 in Class 42 prepared through the advertising agency namely M/s. Creative Net Work and Dr. Mathai by making payment of Rs. 37,500/- (Rupees thirty seven thousand and five hundred only). This logo is extensively used by Dr. Mathai.

12. Owing to the excellent quality of the services, the first applicant/plaintiffs business grew rapidly and within a very short span "SOUKYA" acquired immense

popularity. The clientele of the first applicant/plaintiff included people all over the world and from India from varied walks of life. The impressive client roster includes Royalty like Prince Charles's wife, HRH Camilla, The Duchess of Cornwall, United Kingdom (UK), Mrs. Sarah Fergusson, The Duchess of York, U.K., Maharaja Gaj Singh, the King of Jodhpur, The Secretary to the erstwhile Governor of Karnataka, Nobel laureate Archbishop Desmond Tutu, Cape Town, South Africa, Politician like late Shri Ramakrishna Hegde, Shri S.M. Krishna and ex-Prime Minister, Shri H.D. Devegowda. Actors like Rajanikanth, Venkatesh, Vishnuvardhan; Businessman like Mr. Aroon Purie of India Today and Mr. Shiva Nadar of HCL.

13. That trademark "SOUKYA" symbolizes to the public a unique holistic high quality healthcare service and has become the household name in the field of Holistic health care. The applicant No. 1/plaintiff has also spent huge amount for propagating the mark "SOUKYA".

14. The plaintiffs/applicants have also developed a website i.e. www.soukya.com for advertising and providing information about their services to potential customers under the trademark "SOUKYA" which is accessible from any corner of the world including India.

15. In the year 2002, at "World Travel Market, 2002", in which State of Karnataka took part and State owned Corporation had invited the petitioner to take part in the said exhibition. In January, 2003, a summit was organized at Bangalore by the International Holistic Health Association under the name "Global Holistic Health Summit on Holistic and Integrated Medicine for the 21st Century. It was hosted by the plaintiff/applicant No. 2.

16. In 2008, the name of the company Indian Holistic Centre Pvt. Ltd. was changed to SOUKYA Indian Holistic Health Centre Pvt. Ltd. That the trademark "SOUKYA" has been continuously and extensively used since 2000 and popularized by the second applicant/plaintiff company and its predecessor in title as a permitter user. In order to formalize this relationship, the first applicant/plaintiff has now entered into a non exclusive license agreement with the second applicant/plaintiff company to permit the use of the trade mark "SOUKYA" vide license agreement, dated 30.5.2012.

17. The annual turnover of the second applicant/plaintiff from the year 1998 till date has been Rs. 33,51,57,648.30 (Rupees thirty three crores fifty one lakhs fifty seven thousand six hundred and forty eight and paise thirty only) which shows the popularity and reputation of the applicants/plaintiffs trademark. The total advertisement expenses incurred by the plaintiffs/applicants was Rs. 82,50,302.25 (Rupees eighty two lakhs fifty thousand three hundred and two and paise twenty five only).

18. On 26.8.2005 the applicant/plaintiff was shocked to see an article in the daily Bangalore newspaper "Deccan Herald" wherein there was an article titled "A Healthy Break" that featured one SOWKHYA, an Ayurvedic treatment Centre at

Kodaikanal, being the latest addition to the "Hill Country" Resort owned by one Mr. George Koshy. On further enquiry, it was established that the respondent/defendant had set up the said Centre in Chennai offering Ayurvedic beauty treatment which are cognate to services offered by the applicants/plaintiffs. That the respondent/defendant well aware about the SOUKYA Centre in Bangalore run by the applicants/plaintiffs.

19. A legal notice was sent on 12.9.2005 calling upon the defendant/respondent to desist from using the name "SOWKHYA". A reply was sent to the notice by stating that the word "SOWKHYA" is descriptive and therefore refused to accept the demand made by the applicant/plaintiff. Again in August, 2006, the first applicant/plaintiff came across the journal notification of the trademark "SOWKHYA WAY 2 HEALTH" applied for registration in respect of head massage, hair treatment, facial manuthikam, heranyaon, padmini, indukanthaem (F0 derengara, manicue and pedicure, body massage.

20. It is the stand of the plaintiff/applicant that the said notification of the Registrar shows that the defendant has no exclusive right to use the words "WAY2HEALTH" as the main feature of the respondent/defendant's mark is "SOWKHYA" which is almost identical to principal and only mark of the applicants/plaintiffs and the services involved therein also identical. The plaintiff/applicant has opposed the said notification of proposed registration of the mark "SOWKHYA WAY 2 HEALTH". The matter is pending before the Registrar for final adjudication under No. MAS 249953 to Application No. 1364342 in class 42.

21. The plaintiff/applicant prior to registration of mark "SOUKYA" under class 42 instituted a suit in O.S. No. 7198 of 2006 in the Hon"ble City Civil Court, Bangalore against Mr. George Koshy seeking permanent injunction restraining him from using the trade name/mark "SOWKHYA" or any other deceptively similar name and a direction to the defendant to furnish true accounts and pay to the first applicant/plaintiff the profits earned in the SOWKHYA WAY 2 HEALTH Ayurvedic Wellness Therapy Centre at Kodaikanal and Chennai. A temporary injunction was granted on 15.12.2006 in favour of the first applicant/plaintiff, against which first Appeal was filed in the Hon"ble High Court of Karnataka. Appeal was allowed on 1.12.2009 for want of territorial jurisdiction. The Hon"ble Karnataka High Court was pleased to hold that protection against infringement would only be against the Class in which the mark is registered and that the registration in Class 16 cannot benefit the applicant/plaintiff in respect of Class 42 which had not been registered. The Hon"ble Karnataka High Court therefore, was pleased to held that the applicant/plaintiff could not institute the suit at a place where it was carrying on business u/s 134(2) of the Trade marks Act, 1999. The plaintiff/applicant thereafter obtained registration on 22.8.2008 with effect from 6.2.2006 of the mark "SOUKYA" under Class 42.

22. It is the case of the applicant/plaintiff that use of offending mark by the respondent/defendant is infringement of applicant/plaintiff registered trademark and that the respondent/defendant by adopting identical or near identical trademark not only committed the tort of passing off, infringement and the statutory offences. It has also misrepresented to the public that its services are connected with that of the applicants/plaintiffs which according to the applicant/plaintiff is tremendous loss in terms of money and loss to the goodwill and reputation earned by the applicants/plaintiffs.

23. It is also the case of the plaintiffs/applicants that they suffered damage to its reputation, name, goodwill and business which cannot be compensated monetarily and therefore prays for grant of interim injunction.

24. Common counter affidavit has been filed. The stand taken in the counter reads as under:

That the respondent is a company incorporated under the provisions of the Indian Companies Act, 1956 and has its registered office in Chennai. The respondent is into the business of providing Ayurveda treatment prior to the incorporation of the respondent its promoter Mr. George Koshy commenced business in the year 2005 providing services pertaining to health, well being and treatment using Ayurveda.

25. That the respondent's promoter thought of and arbitrarily coined/choose and adopted the trademark/trade name and trading style of "SOWKHYA WAY 2 HEALTH" in relation to his business. The word "SOWKYA" is descriptive of wellness/wellbeing and/or good health, happiness, enjoyment, comfort, etc. in many languages viz., Sanskrit, Hindi, Telugu, Tamil, Malayalam, etc and is also commonly used in the related business by the trade and public.

26. That the service mark "SOWKHYA WAY 2 HEALTH" has been continuously and uninterruptedly used by the respondent since 2005. The mark was first used as a service mark, trade name and trading style of the proprietorship concern of Mr. George Koshy its Proprietor, who is the promoter and presently Managing Director of the respondent company. The proprietorship concern under the name and style of "SOWKHYA WAY 2 HEALTH" was converted into a private limited company in October, 2005.

27. Before incorporation of the respondent as a private limited company, its promoter Mr. George Koshy applied to the Registrar of Companies to check on the availability of the name "SOWKHYA WAY 2 HEALTH PRIVATE LIMITED" to the registered as the name of the respondent company. Reply, dated 6.4.2005 the Registrar of Companies, Madras communicated the availability of the said name to Mr. George Koshy. It was only thereafter application No. 1364342 in class 42 has been filed on 16.6.2005 by the respondent for registration of the mark "SOWKHYA WAY 2 HEALTH" as a label mark, as a service provider with respect to providing services pertaining to head massage, hair treatment, facial, manuthikam,

heranyaon, Padmini, indukanthaem (F), Derangara, masnicuri and pedicure and body massage. These services are provided in the ayurvedic treatment.

28. That the respondent is entitled to use its name in relation to its business as a trademark or trade name as provided u/s 35. In this case, the word "SOWKHYA" is a part of the trade name/trading style of the respondent. It also describes the quality of services offered by the respondent. Therefore, trademark/trade name or trading style "SOWKHYA WAY 2 HEALTH" is protected u/s 35 and is legally valid.

29. That the word "SOUKYA or SOUKHYA or SOWKHYA is a dictionary word and means wellness/well being or good health or happiness in Sanskrit and in Tamil and other languages. The services provided by the respondent pertain to well being/wellness and good health and wellness of a person availing them. The said word is also used largely by the trade and public in relation to the traditional systems of medicine.

30. That the respondent does not claim any right or protection over the word "SOWKHYA" per se. The respondent claims protection and registration for the mark "SOWKHYA WAY2HEALTH" as a whole and not for the word "SOWKHYA" per se. The essential and distinctive feature is the alpha numeric combination "WAY2HEALTH". The respondent in accordance with section 17 applied for and obtained registration under registration No. 1490164 in class 42.

31. In view of many entities using the generic, descriptive and common to trade word "SOWKHYA" the respondent is a concurrent and honest user of the word "SOWKHYA" as a part of its trade name/trade mark/trading style along with others and is entitled to protection u/s 12.

32. The host of other entities using the word "SOWKHYA" as part of their trade name/trade mark/trading style are as follows:

- a) SOWKHYA Ayurvedic, 26 Candler Mews, Twickenham, Middsex, TW1 3JF, U.K.
- b) SOWKHYA Herbal Natural Soap, The license company, by the Planet, Inc. 5111-A NW 13th St. Gainesville, FL 3269, USA
- c) Sahaja SOWKHYA Indian Foundation, #9/401, Indira Colony, Ramanayya Peta, Sarpavaram, Andhra Pradesh, India.
- d) SOWKHYA Sadan Home for aged men and Women, Chethicode, Ernakulam.
- e) SOWKHYA HIV/AIDS prevention prog. 1st Floor, Horticulture Office Road, V.P. Extension, Chitradurga 577 501, Karnataka.
- f) SOWKHYA Counselling services, 389, 9th Cross, Mahalakshmi Layout, Bangalore 86.
- g) SOWKYA Homeopathy Clinic, 11/04 South Street, Mylapore, Chennai 600 004.

- h) SOWKHYA Pharma, 86, South Street, Karur 639 001.
- i) SOWKHYA Institute of Nursing Science Near Sowkhya Nursing Home, N.H.17, Byndoor, Pin 576 214, Udupi District, Karnataka.
- j) SOWKHYA Nursing Home, N.H.17, Byndoor, Pin 576 214, Udupi District, Karnataka.
- k) SOWKHYA Institute of Paramedical, Ismail Complex, shamsuddin Circle, Bhatakl, Uttar Kannada.
- l) SOWKHYA College of Education, N.H.17, Opp. Forest Office, Bhatakl, Uttar Kannada.
- m) SOWKHYA Teacher Training College, N.H.17, Opp. Forest Office, Bhatakl, Uttar Kannada 581 320.
- n) SOWKHYA T.C.H. College, Main Road, Byndoor, Udupi Dist 576 214
- o) SOWKHYA Housing Pvt. Ltd.
- p) Hotel SOWKHYA Catering, Nellore.
- q) Jana SOWKHYA, Wayanand, Kerala.
- r) www.sowkhya.com.

Thus, the word "SOUKYA" per se is not distinct nor can be it capable of acquiring any distinctiveness through use or otherwise, in favour of the applicant. Further, the applicant by keeping quite since when they came to know of use by these entities have acquiesced their use.

33. That the first applicant's said registered trademark has been effectively used by the second applicant only from the year 2005 as evident from their own documents filed in these proceedings. Therefore, the applicants claim of user of the mark as registered from 1.1.1998 is absolutely false and their adoption is dishonest. The applicants have misled the Registrar of Trademarks with respect to their user of the mark "SOUKYA" and Logo as registered and thus played fraud on the Registrar of Trademarks in obtaining registration under No. 1419160 in class 42.

34. Further, the applicants are attempting to monopolies on a word which is generic, descriptive, a common dictionary word, is common to trade and public use in relation to well being, good mental and physical health and wellness, happiness and treatment.

35. That the Registrar of Trademarks raised absolute grounds of refusal of the applicants trade mark "SOUKYA" and Logo" during registration under all grounds u/s 9(1) of the Trade marks Act. In spite of it, the applicants have by suppression and fraud played on the Registrar of Trademarks as to the descriptive and common in use nature of the word "SOUKYA/SOWKHYA", managed to obtain registration in classes 5 and 42. The respondent has filed cancellation/rectification application

before the Intellectual Property Appellate Board, Chennai seeking cancellation of these two registrations of the applicants. Therefore, the validity of these trademark registrations is under challenge.

36. On the other hand, the Registrar of Trademarks had no objection whatsoever either u/s 9 or 11 or under any other relevant provision of the Trademarks Act, 1999 to the respondent's application for registration of its trademark "SOWKHYA WAY2 HEALTH". Therefore, the Registrar of Trademarks, the fact finding body and the competent authority to consider all relevant issues, determine and grant trademark registration had no objection whatsoever to the respondent's application in class 42 for registration of the Trademark "SOWKHYA WAY2HEALTH", and hence directed its advertisement in the Trademark Journal. Only thereafter, the applicants have with ulterior motives opposed the registration of the same.

37. The Registrar of Trademarks after examining the respondent's trademark application, found that the respondent's trademark "SOWKHYA WAY2HEALTH" did not conflict with the applicant's trademark "SOUKYA" and Logo" and thus, passed the order directing the respondent's trade mark application No. 1364342 in class 42 to be advertised in the Trademark Journal. Section 9 and 11 dealing with grounds of refusal are not attracted, as they were different.

38. That the respondent's said trade mark "SOWKHYA WAY2HEALTH and the applicant's trademark "SOUKYA" and Logo", when viewed and compared as a whole are totally different and there can be no conflict whatsoever between the two, given the fact that the word SOUKYA/SOWKHYA is descriptive of the services rendered under both marks and the word is also common to use among the trade and public.

39. That prima facie, no infringement arises in view of the above averments. There is no misrepresentation by the respondent. The applicants have not established misrepresentation. The respondent has never anywhere mentioned that its services are that of the applicants or of Dr. Mathai, its founder. It has never claimed any association or nexus with the applicant No. 2 or its said founder. Hence there is no misrepresentation and in view of that no passing off can arise.

40. As regards domain name usage, it is submitted that in addition to the above grounds, the website of the respondent clearly mentions that its services are all from the respondent. It never directly or indirectly claims any nexus or association with the applicants. Hence, there is no misrepresentation even in the respondent's website as to the origin and providing of services. Further, there is another entity using the domain name www.soukhya.com which is similar to the applicant's website www.soukya.com. The only difference being the addition of the letter "h". In view of the generic, descriptive & common trade use nature of the word "soukya/soukhya/sowkhya", and in view of settled law relating to use of generic, descriptive words, all entities will have to co-exist and the applicants can have no grievance over the same. The respondent is entitled to use the domain name

www.sowkhya.com and the applicants claim in this regard is ill founded and unsustainable.

41. Balance of convenience is in favour of the respondent and the respondent using the mark "SOWKHYA" for the past 7 years. Irreparable loss and hardship will be caused if the respondent is injuncted whereas no harm would be caused to the applicants, on the contrary. Furthermore, the applicants have instituted the suits only out of jealousy and market rivalry against the respondent as the respondent is having better facility and infrastructure in offering its services at Ooty and Kodaikanal. Therefore, filing of suit itself is not bonafide and the applicants have come to court with unclean hands and hence, they are not entitled to any relief more so, the equitable relief of interim injunction as prayed for in these applications.

42. The respondent made parawise comments on the averments made in the common affidavit filed in support of the applications and prays for dismissal of the applications.

43. In the rejoinder to the counter filed, the applicant/plaintiff denied the averments made in the counter and the plaintiffs/applicants reiterate the stand taken in the common affidavit filed in support of the applications.

44. The learned counsel for the plaintiffs/applicants vehemently contended that the plaintiffs/applicants spent a sum of Rs. 37,500/- (Rupees thirty seven thousand five hundred only) for creating design and artwork for Logo and subsequently, got it registered. The plaintiffs/applicants have placed on record, the certificate of registration showing that trademark "SOUKYA" is registered in the name of the applicants/plaintiffs with Logo.

45. The contention of the learned counsel for the plaintiffs/applicants therefore was, that once trademark was registered, it was not permissible for the respondent to use similar or deceptively similar trademark for the same set of services.

46. That the defendant/respondent fraudulently and mischievously using the same trademark to deceive the customers/services rendered by the defendant to be that of the plaintiffs/applicants.

47. It is also contended that service being provided both plaintiffs and defendant are same and therefore, it is not permissible for the defendant/respondent to use the word "SOWKHYA" which is deceptively similar to that of the plaintiffs/applicants' trademark, specially when the word "SOWKHYA" is prominently advertised.

48. Reference was also made to e-mail address furnished by the defendant in their advertisement, to contend that it was clear point to illegal attempts of the defendant to misled the customers to believe service rendered by the defendant/respondent as that of the plaintiffs/applicants.

49. The learned counsel for the plaintiffs/applicants also referred to the judgment of the trial Court in the suit filed against the defendant/respondent where injunction was granted which was vacated by the Hon"ble High Court of Karnataka for want of jurisdiction, without disturbing the finding of the trial Court. It may be mentioned here that the judgment of the trial Court of Karnataka is not a binding precedent on which reliance has been placed by the learned counsel for the applicant/plaintiff.

50. On the contention referred to above, the applicants/plaintiffs pray for grant of interim injunction against the defendant/respondent.

51. This contention is opposed by the learned counsel for the respondent/defendant by vehemently contending, that trademark used by the respondent/defendant is not "SOUKYA", but it is "SOWKHYA WAY2HEALTH" which is composite word and is totally different from that of the applicant.

52. That the trademark "SOUKYA" of the applicants/plaintiffs is generic mark and a word "SOUKYA" or "SOWKHYA" which is commonly used in trade and public, therefore, plaintiff/applicant cannot claim monopoly over this trademark.

53. It was also the contention of the learned counsel for the defendant/respondent that use of trademark "SOWKHYA WAY2 HEALTH" by the defendant is honest, bonafide and has been used after checking availability by the Registrar of Trademarks, before incorporating company.

54. It was vehemently contended that there is no confusion or deception in these two marks, as would be proved from the fact that the Registrar of Companies, who permitted the use of name "SOWKHYA", did not find it to be deceptively similar to that of the plaintiffs/applicants and allowed the name of company as proposed.

55. That the defendants have been using this mark since 2005 whereas applicant No. 2 changed its name only in 2008 and therefore, the defendants are prior user then the applicant No. 2. Therefore, no prima facie case is made out for grant of any interim injunction.

56. It is also the case of the defendant/non applicant that there is nothing has been placed on record to prove passing of trademark/trade name.

57. The applications are also challenged on the ground of delay and laches that the suit against defendant/respondent was filed in the year 2006 in City Civil Court, Bangalore, whereas the present suit has been filed in 2012 i.e. after 6 years and the plaintiffs/applicants are not entitled to discretionary relief.

58. On consideration, I find that these applications deserves to succeed. Once it is not disputed that the plaintiff/applicant is a registered owner of the word "SOUKYA" with Logo and got it registered under Class 16 and 42, it is not open to the defendant/respondent to have deceptively similar trademark with regard to same services.

59. The contention of the learned counsel for the defendant/respondent that there is a delay in moving the Court cannot be accepted, as the plaintiffs/applicants immediately on coming to know about the use of trademark by the defendant/respondent filed a suit in City Civil Court, Bangalore in which the plaintiff/applicant succeeded. It was only in the appeal, the order was set aside for want of territorial jurisdiction. The present suit has been filed immediately thereafter.

60. It may also be noticed here that act of the defendant/respondent is not bonafide, though they are claiming to use the trademark "SOUKYA WAY2HEALTH", but in all their letter heads and other documents displayed "SOWKHYA" prominently, whereas "WAY2HEALTH" is not that prominent. Besides, e-mail address is also deceptively similar to that of the plaintiffs/applicants, i.e. www.sowkhya.com.

61. It is well settled law that when there is phonetic similarity between the two names, then adding of one or two words does not make it distinct from similarity. It can therefore, be safely said that the defendants/respondents have deliberately infringed the registered trademark of the plaintiffs/applicants.

62. The plaintiffs/applicants have successfully made out a prima facie case for grant of interim injunction. The balance of convenience is also in favour of the plaintiffs/applicants and against the defendants/respondents. Consequently, applications in O.A. No. 835 to 837 of 2012 are ordered as prayed for. However, it is made clear that any observation made hereinabove, be not taken to be final opinion or expression on merit of the case, as the issues raised in the suit can be decided finally only after the parties lead evidence.

No costs.