

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2015

CORAM

THE HONOURABLE MR. **JUSTICE K.RAVICHANDRABAABU**

C.S.No.265 of 2015

and A.Nos.364 to 366 and 2487 of 2015

Hindustan Unilever Limited

An existing company registered under
the Companies Act, 1913

having its office at No.101, Santhome High Road,
Chennai – 600 028

Represented by its Authorised Signatory
Mr.Saif Jamali

... Plaintiff

vs.

K.Balashankar

... Defendant

Plaint filed under Order VII Rule 1 of C.P.C. read with
Order IV Rule 1 of O.S.Rules.

For plaintiff : Mr.K.Premchander

For defendant : Mr.C.Jagadish

JUDGMENT

Today, a memo of compromise entered into between the
plaintiff and the defendant dated 14.09.2015, signed by both the
parties as well as their counsels is filed before this Court wherein the

terms of the compromise reads as follows:

2. The Plaintiff instituted the instant suit against the defendant seeking following reliefs:

"56. The plaintiff therefore humbly prays that this Hon'ble Court may be pleased to pass a judgment and decree on the following terms:

A. A decree of permanent injunction restraining the defendant, its officer employees, servants and agents, from manufacturing, selling, offering for sale, advertising and directly or indirectly dealing under the mark ANANDIPURNA and/or any other mark deceptively similar in any product including Salt in packaging, including packets, sachets, labels and containers, as are a colourable imitation and substantial reproduction of the Plaintiff's ANNAPURNA's Label and packaging, amounting to an infringement of the Plaintiff's copyrights therein;

B. A decree of permanent injunction restraining the defendant, its officers, employees, servants and agents, from manufacturing, selling , offering for sale, advertising and directly or indirectly dealing under the mark ANANDIPURNA and/or any other mark deceptively similar in any product including Salt in packaging, including packets, sachets, labels and containers, as are a colourable imitation and substantial reproduction of the Plaintiff's trademark ANNAPURNA and ANNAPURNA's Label and packaging amounting to passing off of the product of the defendant as and for that of the Plaintiff's ANNAPURNA trademark;

C. To grant order of delivery up for destruction of all brochures, printed material, all banners, labels, dyes, blocks, moulds, screen prints, packing materials, and/or any

material which infringes plaintiff's registered trademarks under Nos.677242, 720333 & 835880 and its copyright in the Plaintiff's ANNAPURNA's Label and packaging;

D. To direct the defendant for rendition of accounts in respect of their alleged activities especially sale and promotion of products bearing the mark ANANDIPURNA in packaging, including packets, sachets labels and containers, as are a colourable imitation and substantial reproduction of the plaintiff's trademark ANNAPURNA;

E. Costs and such other relief as this Hon'ble Court may deem fit, in the circumstances of the case, in the interests of justice and equity."

3. Pursuant to order dated 13th April 2015 passed by this Hon'ble court in A.No.2488 of 2015 in C.S.No.264 of 2015 appointing an advocate commissioner to search and seize infringing products from the defendant, he has conducted a search on defendant's premises on 17th April 2015 and infringing products have been seized and the advocate commissioner has also filed his report dated 27th April 2015.

4. The defendant hereby agrees, admits and acknowledges that the Plaintiff is the registered proprietor of the Plaintiff's trademark ANNAPURNA and ANNAPURNA's label under nos.677242, 720333 & 835880 and has exclusive statutory rights by virtue of such registrations and proprietary and common law rights on account of prior, long and extensive use of the trade mark ANNAPURNA and ANNAPURNA's Label to the exclusion of

others.

5. The Defendant hereby agrees, admits and acknowledges that the Plaintiff's trademark ANNAPURNA and ANNAPURNA's Label is a well known mark.

6. The Defendant further hereby agrees, admits and acknowledges that the Plaintiff is the copyright owner of the artistic work in the ANNAPURNA's Label and packaging.

7. The Defendant agrees and undertakes that they/he shall not use the trademark ANNAPURNA and ANNAPURNA's label or any other similar mark or label and undertake not to use the mark ANNAPURNA or any other similar name as a trade mark, trade name, corporate name/trading style or in any other manner, in relation to any of his products, services and business, present or future.

8. The defendant agrees and undertakes that he shall not use ANNAPURNA and ANNAPURNA's Label or any other mark similar thereto in any of his advertising/ marketing/ promotional material in any form or domain, including hoardings, letter heads, invoices or any other material used in respect of his business.

9. The defendant agrees and undertakes that they/ he

shall not use any artistic work which amounts to a substantial reproduction of Plaintiff's ANNAPURNA's Label and packaging or any other similar artistic work in any manner whatsoever, in relation to any of his products, services and business, present or future.

10. The defendant undertakes that he shall never in the future make an application either by himself or through his agents before the Trademarks Registry or Copyright office for registration of the mark which is in any manner identical or similar to Plaintiff's ANNAPURNA and ANNAPURNA's Label or comprises the trade marks ANNAPURNA and ANNAPURNA's Label.

11. The defendant submits to judgment and decree as prayed for in terms of prayer (A) & (B) of para 56 of the plaint as follows:

A. A decree of permanent injunction restraining the defendant , its officers, employees, servants and agents, from manufacturing, selling, offering for sale, advertising and directly or indirectly dealing under the mark ANANDIPURNA and/ or any other mark deceptively similar in any product including salt in packaging, including packets, sachets, labels and containers, as are a colourable imitation and substantial reproduction of the Plaintiff's ANNAPURNA's Label and packaging, amounting to an infringement of the Plaintiff's copyrights therein.

B. A decree of permanent injunction restraining the defendant, its officers, employees, servants and agents, from

manufacturing, selling, offering for sale, advertising and directly or indirectly dealing under the mark ANANDIPURNA and/ or any other mark deceptively similar in any product including Salt in packaging, including packets, sachets, labels and containers, as are a colourable imitation and substantial reproduction of the Plaintiff's trademark ANNAPURNA and ANNAPURNA's Label packaging amounting to passing off of the product of the defendant as and for that of the plaintiff's ANNAPURNA trademark.

12. All the aforesaid undertakings will be binding henceforth on the said defendant, his legal heirs, successors in interest, successors-in-business, legal representatives, assignees, partners and directors.

13. It is therefore prayed that the present memorandum of compromise may be recorded and a decree in terms of paragraphs 56(A), 56(B) of the Complaint may be passed in favour of the Plaintiff and against the defendant by the Hon'ble Court, incorporating the terms of the settlement as a part thereof.

14. Should the Defendant be found to be in breach of the present Memorandum of Compromise at any future date, he agrees to be liable to pay a sum of INR 5,00,000 (Rupees Five Lakhs only) as liquidated damages and such other amount as may be calculated as unliquidated damages to the Plaintiff.

15. Subject to the aforesaid express undertakings by the Defendant, the Plaintiff agrees to give up the other reliefs claimed by them in the plaint.

2. Both the parties are present before this Court along with their respective counsels. Learned counsel appearing on either side pray for decreeing the suit in terms of the above Memorandum of Compromise.

3. Considering the above stated facts and circumstances, the Suit is decreed in terms of the above Memorandum of Compromise and the said Memorandum of Compromise shall form part of the record as well as the decree. Consequently, connected applications are closed. No costs.

15.09.2015

vsi

K.RAVICHANDRABAABU, J

vsi

C.S.No.265 of 2015

DATED: 15.09.2015