

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:29.07.2015

CORAM:

THE HONOURABLE MR. JUSTICE K. RAVICHANDRABAABU

C.S.No.513 of 2015
& O.A.Nos.643 to 645 of 2015
& A.Nos.4120, 4121 & 4759 of 2015

Hindustan Unilever Limited
101, Santhome High Road
Chennai-600 028.

..Plaintiff

-Vs.-

Niha Industries
SRP Road
Varkeri Beedi
Bannur-571 101
Mysore District
Karnataka

..Defendant

Prayer:- Suit filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of Civil Procedure Code and Sections 51,55 and 62 of Copy Right Act, 1952 praying for a judgment and decree

(i) for a perpetual injunction restraining the defendant, its distributors, printers, stockists, servants, agents, retailers, representatives, franchisees or any other person claiming through or under them from in any manner infringing the plaintiff's registered trademark in the "Star Burst Device" as contained in Plaint Document No.5 by printing, stocking, manufacturing, selling, offering for sale, stocking, advertising directly or indirectly, any

goods, and in particular washing powder or washing bar, under the label/artistic work as contained in Complaint Document No.6 or in any other manner whatsoever;

(ii) a perpetual injunction restraining the defendant, its distributors, stockists, servants, agents, retailers, representatives, franchisees or any other person claiming under them from in any manner manufacturing, selling, offering for sale, stocking, advertising directly or indirectly any products, and in particular washing powder or washing bar, under the label/mark as contained in Complaint Document No.6 or any label/mark which is identical with or deceptively similar to the plaintiff's label/mark filed as complaint document No.3, so as to pass off the defendant's goods as and for the goods of the plaintiff or in any other manner whatsoever connected with the plaintiff;

(iii) a perpetual injunction restraining the defendant, its distributors, stockists, servants, agents, retailers, representatives or any other person claiming under them from in any manner committing acts of copyright infringement by printing, stocking, manufacturing, selling, offering for sale, stocking advertising directly or indirectly, any goods, and in particular washing powder or washing bar, under the label/artistic work as contained in Complaint document No.6 or any other label/artistic work or colour scheme which is identical with or deceptively similar to the plaintiff's artistic work as contained in Complaint document No.3 or in any other manner whatsoever;

(iv) The defendant be ordered to surrender to the plaintiff for destruction of all banners, labels, dyes, blocks, moulds, screen prints, packing materials or other material bearing the label/trademark/ artistic work as contained in complaint document No.6; and a preliminary decree be passed in favour of the plaintiff directing the defendant to render true and proper accounts of sales made by sale of goods under the infringing label

filed as plaint document No.6 and a final decree be passed in favour of the plaintiff for the amount of sales generated found to have been made by the defendant after the latter have rendered accounts.

For Plaintiff : Mr.Sathish Parasaran

For Defendant : Mr.P.C.N. Raghupathy

J U D G M E N T

Today a joint memo of compromise dated 29.07.2015 signed by both parties as well as their respective counsels is filed before this Court. The terms of the compromise reads as follows:

" 1. The terms plaintiff and defendant shall mean and include its heirs, executors, administrators, successors and assigns of each party.

2. The defendant acknowledges that the marks SURF EXCEL; WHEEL; ACTIVE WHEEL labels used in respect of WHEEL AND ACTIVE WHEEL AND STAR BURST DEVICE are well known trade marks of the plaintiff as defined under Section 2(zg) of the Trade Marks Act, 1999.

3. The defendant hereby agrees to stop the manufacture/sale and/or distribution of any goods, and in particular washing powder and/or bar under

the label as shown in Annexure "A" or any variations thereof, either as front of pack or back of pack, as shown in Annexure "B" or " C" or part thereof or in any manner other manner whatsoever.

4. The defendant hereby undertakes to sell its UDAYA washing powder under the label as show in Annexure "E" .

5. The defendant submits to a decree as prayed for by the plaintiff in para 28(a), (b) and (c) of the plaint.

6. The defendant is also indulged in manufacturing and marketing washing powder under the trade mark "UDAYA EXCEL" (filed as Annexure "D") and acknowledges that the said mark is an infringement of the plaintiff's trademark "Surf excel". In order to avoid litigation, the defendant agrees to forthwith stop the manufacture/sale and/or distribution of any goods, and in particular washing powder and/or bar under the mark "Excel" either per se or in combination with any other trademark.

7. The defendant agrees to surrender to the plaintiff for destruction of all the packaging material and pouches under the label as shown in Annexure "A", either as front of pack or back-of-pack as shown in Annexure "B" and "C" or part thereof, which are stored in the premises of the defendant and under the custody of the Advocate Commissioner appointed by this Hon'ble Court.

8. Insofar as the used labels/packing material shown in Annexure "D" is concerned the defendant shall, on the same day the exercise is undertaken in clause 7 above and in the presence of the plaintiff's representative and to their satisfaction, remove the mark "Excel" from the labels/packing materials by applying a black paint/or by other agreeable modes. The defendant agrees to surrender to the plaintiff for destruction of the unused and empty packaging material and pouches shown in Annexure "D".

9. The plaintiff and defendant agree to open its premise at SRP Road, Varkeri Beedi, Bannur - 571 101, Mysore District under the lock and seal of the Advocate Commissioner in the presence of the plaintiff's representative at a time mutually convenient for both parties and empty the offending pouches containing the washing powder and deliver to the plaintiff the offending pouches (Annexure "A", "B" and "C") alone, along with all the unused offending pouches/labels as shown in Annexure 'A', 'B', 'C' and 'D' for destruction.

10. In view of the above, the plaintiff gives up its relief as prayed for in para 28(d), (e) and (f) of the plaint.

11. The parties shall bear their respective costs in respect of the suit and they shall have no further claims whatsoever against each other and the present compromise fully and finally settles all the

disputes forming subject matter of the present suit.

12. The suit shall be decreed on the terms of the present joint memorandum of compromise and the joint memorandum of compromise shall form part of the decree."

2. The learned counsel appearing for the both parties submits that a decree may be passed in the suit in terms of the above joint compromise memo. The parties who signed the compromise memo are also present before this Court.

3. The learned counsel for both parties also seek for return of the key, which is in the possession of the Advocate Commissioner to the plaintiff's counsel so that the parties will act as per the terms of compromise memo by opening the premises.

4. Considering the above stated facts and circumstances, the suit is decreed in terms of the joint compromise memo referred to supra, which shall form part of the decree.

5. The Advocate Commissioner is directed to hand over the keys to the learned counsel appearing for the plaintiff.

6. It is stated that the Advocate Commissioner has filed a report in this matter before the Registry. Considering the nature of work executed by the Advocate Commissioner the plaintiff is directed to pay a sum of Rs.25,000/- as additional remuneration to the Advocate Commissioner within a period of seven days from today. Consequently, the connected applications are closed.

Index:Yes/No
Internet: Yes/No

29.07.2015

Note:-

Registry is directed to draft the decree and issue the same within a period of four weeks.

Tr/

K. RAVICHANDRABAABU, J

Tr

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