

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT (L) NO. 382 OF 2016
WITH
NOTICE OF MOTION (L) NO. 1244 OF 2016

Hindustan Unilever Limited	...Plaintiff
<i>Versus</i>	
Shiv Enterprise	...Defendant

Mr. Himanshu Kane, *with Mr. Ashutosh Kane & Mr. Nikhil Sharma, i/b W.S. Kane & Co., for the Petitioner.*
Mr. V.A. Bhagat, *with Mr. Puneet Jani, i/b M/s. G.S. Hegde & V.A. Bhagat, for the Respondent.*
Mr. Jatin Patel (*Basida*), is present.
Mr. A.B. Malvankar, *Section Officer, High Court, Bombay, representative of the Court Receiver is present.*

CORAM: G.S. PATEL, J
DATED: 5th May 2016

PC:-

1. Mr. Bhagat appears for the Defendant. Mr. Jatin Patel, the proprietor of the Defendant is personally present in Court. On instructions, Mr. Bhagat says that the Defendant submits to a decree in terms of prayer clauses (a), (b) and (d), which read as follows:

“(a) the Defendant by itself, its proprietors, partners, servants, employees, agents, dealers, distributors

and all persons claiming under it be restrained by an order and perpetual injunction of this Hon'ble Court from infringing the Plaintiff's copyright in the artistic work comprised in the said artistic packaging/trade dress shown at Exhibit "B" hereto by reproducing, printing, publishing, using and/or communicating to the public the impugned packaging/ trade dress at Exhibit "F" hereto or any other work which is a reproduction of the artistic work comprised in Plaintiff's said artistic packaging/ trade dress shown at Exhibit "B" hereto or substantial part thereof or in any other manner whatsoever;

- (b) that the Defendant by itself, its proprietors, partners, servants, employees, agents, dealers, distributors and all persons claiming under it be restrained by an order and perpetual injunction of this Hon'ble Court from manufacturing, packaging, selling, exhibiting for sale, advertising, printing or otherwise dealing in detergent powder in the impugned packaging/ under the impugned trade dress shown at Exhibit "F" hereto or any other packaging/ trade dress deceptively similar to the Plaintiff's said well-known artistic packaging/trade dress shown at Exhibit "B" hereto so as to pass off or enable others to pass off the Defendant's detergent powder as and for the Plaintiff's well-known detergent powder or in any other manner whatsoever;
- (d) that the Defendant be ordered and decreed to deliver up to the Plaintiff for destruction the impugned goods, labels, wrappers, dies, blocks, packing material and things bearing the impugned packaging/ trade dress shown at Exhibit "F" hereto and/or any other packaging/ trade dress which is

a substantial reproduction of and/or closely and deceptively similar to the Plaintiff's said artistic packaging/trade dress at Exhibit "B" hereto;"

2. For the purpose of prayer clause (d), necessary destruction of the offending material will be carried out within a period of one month from today. The destruction of goods will be in the presence of the representatives of the Plaintiff. In view thereof, Mr. Kane does not press his prayer for damages.

3. The Suit is disposed of in these terms. Drawn up dispensed with. Refund of court fee, if any, in accordance with the Rules.

4. The Court Receiver to stand discharged without passing accounts but subject to payment of his costs, charges and expenses.

5. In view of disposal of the Suit, the Notice of Motion is infructuous and is disposed of accordingly.

6. Mr. Bhagat also states that the Defendant will, within a period of four weeks from today, withdraw the application for registration of the Defendant's trade mark. This statement is accepted as an undertaking to the Court. An acknowledgement of the application of withdrawal will be forwarded to Mr. Kane.

7. All concerned to act on an authenticated copy of this order.

(G. S. PATEL, J.)