

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED **15.11.2016**

Coram

The Hon'ble Mr.Justice **M.M.SUNDRESH**

**C.S.No.344 of 2016 and
connected Applications**

The Procter & Gamble Company
One Procter & Gamble Plaza Cincinnati
State of Ohio 45202-3315 U.S.A.
rep. by its Constituted Attorney
Mr.Shilyamanyu Singh

.. Plaintiff

Vs.

1.Aashish G.Chordia Trading as
Usha Marketing
178, Govindappa Naicken Street
Chennai 600 001.

2.P.Vikash Jain
Trading as Usha Marketing
178, Govindappa Naicken Street
Chennai 600 001.

3.T.Solaisamy Trading as Jil Home Care
2/257-3, Kundairuppu Road,
Sivakasi Bus Stand
Sivakasi 626 123.

4.Vankatesh Solaisamy
Trading as Sree Muralikrishna Soad Works
2/257-3, Kundairuppu Road
Sivakasi Bus Stand
Sivakasi 626 123.

.. Defendants.

Prayer :

Plaint filed under Order IV Rule 1 of O.S.Rules and Order VII Rule 1 of C.P.C. Sections 27, 134 & 135 of the Trade Marks Act, 1999 and Section 55 of the Copyright Act, 1957, for the relief as stated therein:

For Plaintiff .. Mrs.Pushpa Menon

For Defendants .. Mr.S.Balachandran
for Mr.K.Rajasekaran - R1 & R4

No appearance for R2 & R3

J U D G M E N T

The Suit has been filed for the following reliefs:

A) Permanent injunction against infringement of the plaintiff's registered trade marks under Nos.155340; 1922194 and 1465777 by restraining the Defendants, their promoters, assigns, successors- in-interest, licensees, franchisees, partners, directors, representatives, servants, distributors, employees agents etc. or anyone associated with them from using the objectionable trademarks/ packaging and/or any identical and/or deceptive variation of the Plaintiff's aforementioned trade marks singularly or in conjunction with any word/s or monogram/s/logo/s upon and in relation to their products/ business in any manner whatsoever;

B) permanent injunction restraining the Defendants, their promoters, assigns, successors-in-interest, licensees, franchisees. partners, directors, representatives, servants, distributors, employees agents etc. or anyone associated with them from infringing or causing infringement of the Plaintiff's copyright vesting in the artistic works INDIA TIDE PLUS BULLSEYE-2010 under registration No.A-101075m NEW TIDE PLUS under registration No.A-105000/2014 and other artistic works proprietor to the plaintiff and used in respect of its products under the trade mark TIDE including packaging thereof, by exposing for sale or using them or copying/reproducing or causing reproduction of the same in any packing or literature or any colourable limitation or substantial reproduction thereof in any manner whatsoever.

C) permanent injunction restraining the Defendants, their promoters, assigns, successors-in-interest, licensees, franchisees. partners, directors, representatives, servants, distributors, employees agents etc. or anyone associated with them from using objectionable trademarks/artworks/packaging/trade dress/get-up and/or any identical and/or deceptive variation of the Plaintiff's trade marks forming subject matter of registration Nos. 155340; 1922194 and 1465777 and/or artworks forming subject matter of registration Nos. A-101075/2013 and A-105000/2013 and other artistic works proprietary to the plaintiff and

used in respect of its products under the Trademark TIDE including packaging/trade dress/get-up thereof in any manner whatsoever so as to pass off or enable others to pass off their goods or business as that of the Plaintiff or in some way convey a connection with the Plaintiff;

D) direct the Defendants, heir promoters, assigns, successors-in-interest, licensees, franchisees, partners, directors, representatives, servants, distributors, employees agents etc. or anyone associated with them to deliver-up to stationaery, letterheads, signage, reprographic material, packaging, labels or any other material for advertising, selling or marketing any goods bearing the objectionable trademarks/artworks/ packaging/trade dress/get-up and/or any identical and/or deceptive variations of the Plaintiff's trade marks forming subject matter of registration Nos.155340; 1922194 and 1465777 and/or artworks forming subject matter of registration Nos. A-101075/2013 and A-105000/2013 and other artistic works proprietary to the plaintiff and used in respect of its products under the Trademark TIDE including packaging/trade dress/get-up thereof in any manner whatsoever;

E) direct the Defendants to render a true and faithful accounts of the profits made by using the objectionable trademarks, artworks and/or packaging/trade dress and the Defendants be further ordered and directed to pay to the Plaintiff such amount as may be found due on such account being taken;

F) direct the Defendants to pay to the Plaintiff cost of the Suit.

2. When the matter is taken up for hearing, based on the Memo of Compromise, dated 15.11.2016, seeking to invoke Order 1 Rule 10(2) of the Code of Civil Procedure, 1908 read with order 23 Rule 1 read with Section 151 of the Code of Civil Procedure, 1908 CPC, it is submitted by the learned counsel appearing on either side that the first defendant is actually Mrs.Kamaladevi Chordia, is the Proprietrix of M/s.Usha Marketing, No.178, Govindappa Naicken Street, Chennai 600 001 and therefore, the cause title has to be amended accordingly. In so far as the second defendant is concerned, it is submitted that the Suit may be dismissed as against the said defendant, as being not a necessary party. Coming to the third defendant, it is submitted that the said defendant is not available, as being a party not in existence. In such view of the matter, the said defendant is also to be struck off. In so far as the fourth defendant is concerned, it is submitted that, the name of the said defendant has to be amended as T.Solaisamy, Proprietor of Sree Muralikrishna Soap Works, as against Mr.Venkatesh Solaisamy.

3.The above facts have been mentioned in the Memo of Compromise, filed before this Court today. With the consent of the parties and duly attested by the learned counsel appearing on either side. The said Memo of Compromise, is extracted below:

"1. That Ms.Kamaladevi Chordia is the Proprietrix of M/s Usha Marketing #178, Govindappa Naicken Street, Chennai-600 001 and as on date the 1st and 2nd Defendants have no concern with M/s Usha Marketing. Accordingly, it is prayed that the 1st and 2nd Defendants be struck out from the array of parties and instead Ms.Kamaladevi Choridia, 178, Govindappa Naicken Street, Chennai-600 001, be joined as the Defendant in the matter.

2.The 4th Defendant states that Sree Muralikrishna Soap Works was formerly known as Muralikrishna Soap Works, Proprietary Concern of T.Solaisamy as per Central Sales Tax Registration Certificate obtained on 22.02.1983; copy of the Central Tax Registration dated 22/02/1983 is annexed as **Annexure A** hereto. Murali Krishna Soap Works was renamed as Sree Murali Krishna Soap Works. Copy of VAT registration dated 18/03/2008 as also copy of Industries and Commerce Department certificate dated 12/12/2008; are annexed as **Annexure B** hereto.

3.The 4th defendant further states that the 3rd Defendant namely JIL Home Care is a non-entity, used only as a web address by the 4th defendant as www.jilhomecare.com and also as their House mark (logo). Accordingly, it is prayed that the 3rd Defendant be struck out from the array of parties. Print out of the latest page of the website of the 4th defendant is annexed as **Annexure C** hereto.

4.The Defendants admit and acknowledged that the Plaintiff is the prior adopter and registered proprietor of the trade mark TIDE registered under Nos. 155340, 1922194, 1465777 (*hereinafter referred to as the trade mark TIDE*) and owner of copyright vesting in the artistic works under registration Nos.A-101074/2013 and A-105000/2013 and other artistic works proprietary to the Plaintiff and used in respect of its products under the trade mark TIDE including packaging thereof and undertake not to, at any time, resort to any proceedings in relation thereto including applying for rectification before the appropriate forum.

5.The Defendants undertake that they have already discontinued and shall not use in future the label/ packaging as reproduced by the Plaintiff on page 6 para 4 of the Plaint. Copy of the 4th

Defendant's label/packageging which they have ceased to use is annexed hereto as **Annexure D** hereto.

6.The Defendants further undertake not to use any trade mark label/packageging deceptively similar to the trade mark of the Plaintiff bearing the trade mark TIDE and copyright vesting in the artistic works under registration Nos. A-101074/2013 and A-105000/2013 and other artistic works proprietary to the Plaintiff and used in respect of its products under the trade mark TIDE including packageging thereof. The 4th Defendant has made significant changes to the packageging and their revised packageging is totally different from the packageging used in respect of the products under the trade mark TIDE. Copy of new label/packageging of the 4th Defendant is annexed as **Annexure E** hereto.

7.The Defendants undertake not to advertise the objectionable JIL label as averred by the Plaintiff in page 6 para 4 of the Plaint or advertise any other mark deceptively similar thereto or use the mark/label/packageging or any other visual variation of the mark/label/packageging in their pamphlets, catalogues, websites, promotional material, labels, cartons, packing materials or in any other manner whatsoever.

8. The 4th defendant further undertake that they have neither applied for the JIL label complained of nor they will file any application for the said trade mark label or for that matter any label deceptively similar to the plaintiff's registered trade marks/copyrights in future.

9. The 4th Defendant confirms that they have already put in circulation the revised JIL label as per Annexure E hereto and that they do not have any stock of labels, advertisements, bills, cartons, dyes, blocks, moulds, screen prints, promotional materials, packaging material carrying the offending JIL label as complained of by the plaintiff.

10. Subject to the above undertaking tendered by the Defendants, the plaintiff gives up its other claims and prays that the suit may be decreed in respect of relief claim in vide paragraph 44A, 44B and 44C of the plaint.

11. That this Memo of Compromise will be binding on the Parties hereto as also their promoters, assigns, successors-in-interest, licensees, franchisees, partners, directors, representatives, servants, distributors, employees, agents etc. or any of them claiming thereunder.

12. It is therefore prayed that this Memorandum of Compromise may be recorded and decree may be passed in favour of the Plaintiff and against the Defendants by this Hon'ble Court incorporating the terms of the Memorandum as stated above and thus render justice."

4. Accordingly, the Memo of Compromise filed today (15.11.2016) is taken on file. The Suit stands decreed in terms of the Memorandum of Compromise dated 15.11.2016. No costs. Consequently connected Applications are closed.

15.11.2016

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M.M.SUNDRESH,J.

Rpa

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