

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :29.09.2016

CORAM

THE HONOURABLE MR. **JUSTICE M.M.SUNDRESH**

C.S.No.496 of 2016

and

OA.Nos.611 to 613 and A.No.3704/2016

E.I.D.Parry (India) Ltd.,
"Dare House",
234, N.S.C.Bose Road,
Chennai – 600 001.
rep. By its Senior Manager – Legal
Mr.N.Kirubaker

... Plaintiff

VS.

Good Life Enterprises
D.No.55-1-6A, 100ft Road,
Industrial Estate, Auto Nagar,
Vijayawada – 520001.

...Defendant

PRAYER: Civil Suit is filed to grant a judgment and decree on the following terms

(a) a permanent injunction restraining the defendant by themselves, their directors/partners/proprietor as the case may be, legal representatives, successors in business, assigns, servants, agents, transporters, distributors, printers, stockists, wholesalers, dealers, retailers, advertisers or any one claiming through or under them from infringing plaintiff's registered trademark PARRY'S

label/pouch by manufacturing, distributing, marketing, selling, offering for sale, advertising or in any other manner dealing in sugar or any other product bearing the almost identical label and identical package, wrapper, container, carton, label with colour scheme, getup, layout which are almost identical to plaintiff's registered trade mark Parry's label/pouch in any manner whatsoever;

(b) a permanent injunction restraining the defendant by themselves, their directors/partners/proprietor as the case may be, their legal representatives, successors in business, assigns, servants, agents, transporters, distributors, printers, stockists, wholesalers, dealers, retailers, advertisers or any one claiming through or under them from committing acts of copyright infringement by making substantial reproduction of the plaintiff's registered copyright in the artistic work PARRY'S label by use of identical colour scheme of red, white and yellow with blue background for their SUGAR PEARLS label/package/wrapper or in any manner whatsoever;

(c) a permanent injunction restraining the defendant by themselves, their directors/partners/proprietor as the case may be, their legal representatives, successors in business, assigns, servants, agents, transporters, distributors, printers, stockists, wholesalers, dealers, retailers, advertisers or any one claiming through or under

them from committing acts of passing off and enabling others to pass off by manufacturing, distributing, marketing, selling, offering for sale, advertising or in any other manner dealing in sugar or any other product bearing the almost identical label, package, wrapper, with colour scheme, getup layout to plaintiff's trade dress & get up in Parry's label/package/wrapper in any manner whatsoever;

(d) the defendant be ordered to surrender to the plaintiff for destruction, all containers, pouches, prints, dies, blocks, moulds and plates, screen prints, packing and advertising material and any other material in their possession, bearing the almost identical SUGAR PEARLS label which is a substantial reproduction of the plaintiff's trade dress & get up and copyright in the artistic work PARRY'S label/package;

(e) a preliminary decree be passed in favour of the plaintiff directing the defendant to render account of profits made by use of trademark Parry's label and the identical artistic work therein and final decree be passed in favour of the plaintiff for the amount of profits thus found to have been made by the defendant, after the latter have rendered accounts;

(f) the defendant be ordered to pay to the plaintiff a sum of Rs.10,00,000/- as damages for their wrongful and illegal activities by

use of almost identical/package label and artistic work therein; and

(g) for costs of the suit.

For Plaintiff : Mr.Arun C. Mohan

For Defendant : No appearance

ORDER

This suit has been filed seeking for a decree of permanent injunction.

2. Though the applications are posted for hearing today, the learned counsel appearing for the plaintiff as well as the authorised representative of the defendant made a submission that in terms of the memorandum of compromise entered into between the parties, the civil suit may be decreed.

3. The memorandum of compromise duly signed by the parties and attested by their learned counsel is as follows:

"The plaintiff and defendant humbly beg to submit as follows:

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

1. The defendant agrees and acknowledges that

the plaintiff is the registered proprietor of the trademark PARRY'S label and has exclusive statutory rights by virtue of registration and proprietary rights in respect of the trademark PARRY'S label. The defendant also agrees that the use of the SUGAR PEARLS label by them is in violation of the intellectual property rights vested with the plaintiff and hereby undertakes not use the said SUGAR PEARLS label or any other label that is identical or deceptively similar to that of the plaintiff's registered mark PARRY'S label.

2. The defendant submits itself to a judgment and decree as prayed for in terms of prayers (a), (b) and (d) in para 28 of the plaint, as follows:

(a) a permanent injunction restraining the defendant by themselves, their directors/partners/proprietor as the case may be, legal representatives, successors in business, assigns, servants, agents, transporters, distributors, printers, stockists, wholesalers, dealers, retailers, advertisers or any one claiming through or under them from infringing plaintiff's registered trademark PARRY'S label/pouch by manufacturing, distributing, marketing, selling, offering for sale, advertising or in any other manner dealing in sugar or any other product bearing the almost identical label and identical package, wrapper, container, carton, label with colour scheme, getup, layout which are almost identical to plaintiff's registered trade mark Parry's label/pouch in any manner

whatsoever;

(b) a permanent injunction restraining the defendant by themselves, their directors/partners/proprietor as the case may be, their legal representatives, successors in business, assigns, servants, agents, transporters, distributors, printers, stockists, wholesalers, dealers, retailers, advertisers or any one claiming through or under them from committing acts of copyright infringement by making substantial reproduction of the plaintiff's registered copyright in the artistic work PARRY'S label by use of identical colour scheme of red, white and yellow with blue background for their SUGAR PEARLS label/package/wrapper or in any manner whatsoever;

(c) a permanent injunction restraining the defendant by themselves, their directors/partners/proprietor as the case may be, their legal representatives, successors in business, assigns, servants, agents, transporters, distributors, printers, stockists, wholesalers, dealers, retailers, advertisers or any one claiming through or under them from committing acts of passing off and enabling others to pass off by manufacturing, distributing, marketing, selling, offering for sale, advertising or in any other manner dealing in sugar or any other product bearing the almost identical label, package, wrapper, with colour scheme, getup layout to plaintiff's trade dress & get up in Parry's label/package/wrapper in any manner

whatsoever;

3. Further, in view of the above undertaking, the plaintiff agrees to give up other reliefs sought by them in para 28 (d), (e), (f) & (g) of the plaint as against the said defendant subject to the conditions as aforesaid.

4. The parties shall bear their own costs.”

The Civil Suit is decreed in terms of the aforesaid memorandum of compromise. Consequently, connected applications are closed. No costs.

gv

29.09.2016

M.M.SUNDRESH.,J.,
gv

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