

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.10.2016

CORAM

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

C.S.No.498 of 2016

and

O.A.Nos.616, 617 & 618 of 2016 &

A.Nos.3732, 3733 & 3734 of 2016

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

Represented by its Power of Attorney,
Mr.Saif Jamali

... Plaintiff

Vs

MSA International,
No.19/1, Near Adarha Farm,
Kuduregere, Alur Post,
Bangalore-562 162.

... Defendant

Plaint filed under Order IV Rule I of O.S. Rules r/w
Section 27, 134 and 135 of the Trade Marks Act, 1999.

For Plaintiff : Mr.R.Parthasarathy
For Defendant : Mr.Murugesh Kasivel

JUDGMENT

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The suit has been filed for the following reliefs:-

(a) A perpetual injunction restraining
the Defendant, its distributors, printer,
stockists, servants, agents, retailers,

representatives, franchisees or any other person claiming through or under them from in any manner infringing the plaintiff's registered trademarks SURF EXCEL, SURF or the splash devise or the star burst devise registered under Nos.1486107, 1486109 and 1740862 by manufacturing, selling offering for sale, stocking, advertising directly or indirectly, any goods, and in particular washing powder or washing bar or any other product, under the trademarks "Shurf Suprem" and/or "Sun Excel" and/or "Surya Excel" and/or the splash devise and/or the star burst devise as contained in **Plaint Document Nos.8, 14 and 15** or any other mark/devise which is identical with or deceptively similar to the plaintiff's registered trademarks SURF or the splash devise or the star burst devise or in any other manner whatsoever connected with the plaintiff;

(b) 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, goods under the label/artistic work as contained in **Plaint Document Nos.8, 14 and 15 (Defendant)** or any other label/artistic work which is identical with or deceptively similar to the plaintiff's label/artistic work as

contained in **Plaint Document Nos.3, 10, 12 and 13** which are substantial reproduction of plaintiff's label/artistic work or in any other manner whatsoever;

(c) A perpetual injunction restraining the Defendants, their distributors, stockiest, 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, washing powder or washing bar or any other product, under the "Shurf Suprem" and/or "Sun Excel" and/or "Surya Excel" and/or the splash devise and/or the star burst devise and/or the label as contained in **Plaint Document Nos, 8, 14 and 15 (Defendant)** or any other trademark/devise/label which is identical with or deceptively similar to the plaintiff's trademarks SURF Excel, SURF or the splash devise or the star burst devise or the plaintiff's label as contained in **Plaint Document Nos.4, 10, 12 and 13 (Plaintiff)** or so as to pass off the defendant's goods as and for the goods of the plaintiff's or in any other manner whatsoever connected with the plaintiff.

(Amended as per order dated 03.10.2016 in Appl.Nos.5100 to 5104 of 2016 in C.S.No.498 of 2016)

(d) The defendant be ordered to surrender

to plaintiffs for destruction all packed goods, labels, dyes, blocks, moulds, screen prints, packing materials and other materials employing the trademark "Shurf Suprem" and/or the devise as contained in **Plaint Document No.8**.

(e) A preliminary decree be passed in favour of the plaintiff directing the defendants to render true and proper accounts of sales made by employing the trademark "Shurf Suprem" and/or the devise as contained in **Plaint Document No.8** and a final decree be passed in favour of the plaintiff for the amount of sales generated found to have been made by the defendants after the latter have rendered accounts;

(f) for costs of the Suit;

2. When the matter is taken up for hearing, a joint compromise memo has been filed duly signed by the parties and attested by their counsel. The parties are also present before the Court.

3. Learned counsel for the plaintiff as well as the defendant submits that the Suit may be decreed in terms of the joint compromise memo, dated 21.10.2016. The terms and conditions of the said joint compromise memo read as under:-

"(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; SURF EXCEL; the splash devise; the star burst devise registered under Nos.1486107, 1486109 and 1740862 and the labels annexed hereto as **Annexure A, B, C** 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 labels as shown in **Annexure D, E or F** or any variations thereof.

(4) The Defendant submits to a decree as prayed for by the plaintiff in para 25 (a), (b) and (c) of the plaint filed in C.S.No.498 of 2016.

(5) The Defendant agrees to surrender to the Plaintiff for destruction all the packaging material and pouches under the label as shown in **Annexure-D, E and F** attached herewith, which are stored in the premises of the defendant and under the custody of the Advocate Commissioner appointed by this Hon'ble

Court.

(6) The defendant agrees to open its premise at No.19/1, Near Adarha Farm, Kuduregere, Alur Post, Bangalore-562 162 under the lock and seal of the Advocate Commissioner in the presence of the plaintiff's representative at a time mutually convenient for the parties and empty the offending pouches containing the washing powder and deliver to the plaintiff the offending pouches (Annexure D, E and F) alone along with all the unused offending pouches / labels as shown in **Annexure D, E and F** and for destruction.

(7) The defendant agrees to pay a sum of Rs.5,000/- (Rupees Five Thousands only) as damages and cost to the Plaintiff.

(8) In view of the above, the Plaintiff gives up its relief as prayed for in para 25 (d), (e) and (f) of the plaint filed in C.S.No.498 of 2016

(9) 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.

(10) 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"

4. The learned Advocate Commissioner shall hand over the key(s) of the premises to the defendant in which the goods of the plaintiff were kept, as agreed.

5. The payment of Rs.5,000/- as mentioned in the compromise memo is also acknowledged. A sum of Rs.25,000/- is fixed as additional remuneration to the learned Advocate Commissioner to be paid by the plaintiff directly to him.

6. Accordingly, the Suit stands decreed in terms of the joint compromise memo and the joint compromise memo shall form part of the decree. No costs. Consequently, connected applications are closed.

Sd/.M.M.S.J

21.10.2016

//Certified to be a true copy//

Dated this the day of 2016

S.s/08.11.2016

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.