

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.10.2016

CORAM

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

C.S.No.696 of 2016

and

O.A.Nos.846, 847, 848 of 2016 &
A.Nos.4885, 4886, 4887 of 2016

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

Represented by its Authorized Signatory

... 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 and
Section 51, 55, 58 and 62 of the Copyright Act, 1957.

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

JUDGMENT

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 WHEEL and ACTIVE Wheel by printing, stocking, manufacturing, selling, offering for sale, stocking, advertising directly or indirectly, any goods, an in particular washing powder or washing bar, employing the trademark "Action Wheez" either per se or in combination with other mark, and/or any other mark of devise either in English or any other language, which is identical / deceptively similar to the plaintiff's registered trademarks WHEEL or ACTIVE WHEEL or in any other manner whatsoever;

(b) 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 **Plaint Document No.8** or any label/mark which is identical with or deceptively similar to the plaintiff's label/mark filed as **Plaint 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;

(c) A perpetual injunction restraining the Defendant, its distributors, stockiest, 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 **Plaint Document No.8** 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 **Plaint Document No.3** or in any other manner whatsoever;

(d) The defendant be ordered to surrender to the plaintiff for destruction of all banners, labels, dyes, blocks, moulds, screen prints, packing materials and other materials bearing the label/trademark/artistic work as contained in **Plaint Document No.8**;

(e) A preliminary decree be passed in favour of the plaintiff directing the defendant to render true and proper accounts of sale made by sale of goods under the infringing label filed as **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 defendant 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 WHEEL and ACTIVE WHEEL and the label annexed hereto as **Annexure-A** 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 trademark "Action Wheez" or labels as shown in **Annexure-B** or any variations thereof.

(4) The Defendant submits to a decree as prayed for by the plaintiff in para 32(a), (b) and (c) of the plaint filed in C.S.No.696 of 2016.

(5) The Defendant agrees to surrender to the Plaintiff for destruction all the packaging material and pouches bearing the Trademark "Action Wheez" under the label as shown in **Annexure-B**. The packing materials and pouches bearing the trademark "Action Wheez" under the label as shown in **Annexure-B** are stored in the premises of the Defendant and under the custody of the Advocate Commissioner appointed by this Hon'ble Court in C.S.No.498 of 2016.

(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 C.S.No.498 of 2016 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-B)** alone along with all the unused offending pouches/labels as shown in **Annexure-B** 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 32 (d), (e) and (f) of the plaint filed in C.S.No.696 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.