

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **30..11..2016**

CORAM

THE HONOURABLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

C.S.No.327 of 2013

and

O.A.Nos.360 to 363 of 2013

and

Application Nos.2112 and 2113 of 2013

M/s.Kaleesuwari Refinery Pvt.Ltd.,
rep.by its Director Mr.K.Ashok Kumar
Mylapore, Chennai 600 004.

.. Plaintiff

Versus

1. M/s.Parisudham Oils Pvt.Ltd.
rep.by its Managing Director
Mrs.Rajamma Damodharan
Ernakulam, Kerala 686 662.
2. M/s.Damodar Coconut Product
MC Road, Koothattukulam
Ernakulam, Kerala

.. Defendants

PRAYER: Complaint filed under Order VII Rule 1 of the Code of Civil Procedure r/w Order IV Rule 1 of the Original Side Rules r/w Sections 134 and 135 of the Trade Marks Act, 1999 r/w Sections 61 and 62 of the Copyright Act, 1957 praying for a judgment and decree as against the defendant for the reliefs, stated therein.

For Plaintiff : Mr.C.Saravanan

For Defendants : Set exparte on 30.06.2014

J U D G M E N T

The plaintiff is one of the leading market leader in the refined edible sunflower oil sector and has been manufacturing and marketing their product with its reputed brand "Gold Winner" over a period of 19 years since 1994. The plaintiff manufactures and packs various edible oils with its well-known trade mark namely, "Gold Winner", "Gold Choice", "Cardia Life", etc.

2. It is the further case of the plaintiff that it maintains high standard and quality for its products since its inception and enjoys reputation and goodwill among the consumers. The plaintiff's "Gold Winner" label is very stylish and captivating and the artistic work of the said label is unique. It is also stated that the plaintiff is the registered proprietor of the well known trade mark "Gold Winner" for Refined Sunflower oil and allied goods falling under Class 29 of IV Schedule to the Trade and Merchandise Rules, 1958 as amended by Trade Marks Rules, 2002. The plaintiff had also obtained Trade Mark Registration vide Trade Mark No.TO5/03792F dated 23.03.2005. The

plaintiff's trademarks are printed on the pouch and packing material and that these trademarks are valid and subsisting.

3. The plaintiff had also stated that it had obtained copyright registration of the artistic work used in its well known and reputed "Gold Winner" label for Refined Sunflower Oil and till date the registrations are valid and subsisting. While that being so, the defendants had infringed the trade mark "GOLD WINNER" of the plaintiff, as "GOOD WINNER", which is deceptively and phonetically similar to that of the plaintiff and are marketing their products. Hence, the present Civil Suit has been filed seeking the following reliefs:

a) For a permanent injunction to restrain the defendants, its men, agents, associates and/or assignees or any person claiming rights from them from infringing the plaintiff's reputed and well known registered Trade Mark "Gold Winner" registered vide Trade Mark No.605323 dated 27.08.1993, Trade Mark No.1147963 dated 01.11.2002 and Trade Mark No.1399086 dated 16.11.2005 for Sunflower oil and Refined Sunflower oil in Class 29 of the IV Schedule to the Trade Marks Rules 1999 by using the offending Trade Mark "Good Winner" deceptively similar to the aforesaid Trade Mark of the plaintiff's for any edible oil marketed by the defendants, their men, agents, associates and /or assignees or any person

claiming rights from the defendants.

(ii) Permanent injunction restraining the defendants, their men, agents, assignee and/or associates or any person claiming rights from them from using the offending pouch/packing material bearing the offending words "Good Winner" and color scheme and get up deceptively similar to that of the plaintiff packing material/pouch used for their refined edible sunflower oil with distinct color scheme, get up with their reputed and well known trade mark "Gold Winner" for sunflower oil and refined sunflower oil registered vide Trade Mark No.605323 dated 27.08.1993, Trade Mark No.1147963 dated 01.11.2002 and Trade Mark No.1399086 dated 16.11.2005.

(iii) Permanent injunction restraining the defendants from violating the plaintiff's Copyright registered vide Copyright Registration No.A-63205/2003 dated 17.01.2003, Copyright Registration No.A-68242/2005 dated 27.01.2005, Copyright Registration No.A-68243/2005 dated 27.01.2005, Copyright Registration No.A-28244/2005 dated 27.01.2005, Copyright Registration No.78000/2006 dated 29.12.2006, Copyright Registration No.78004/2006 dated 29.12.2006 and Copyright Registration No.78063/2007 dated 09.01.2007 in the artistic work used in the plaintiff's packing material and for pouches for refined edible sunflower oil and other edible products bearing the reputed and well known registered trademarks "Gold Winner" by using the offending words "Good

Winner" with color scheme and get up in the offending pouches and packing material deceptively similar to that of the plaintiff's colour scheme and trade dress of the plaintiff's pouches and packing with the Trade Mark "Gold Winner" registered vide the above copyright registration certificates.

(iv) For a permanent injunction to restrain the defendants, its men, agents, associates and /or assignees or any person claiming rights from therein passing-off their inferior product as that of the plaintiff's "Gold Winner" edible refined sunflower oil by using the offending words "Good Winner" and offending packing material and pouch deceptively similar to the plaintiff trade mark "Gold Winner" and Trade dress for "Gold Winner".

(v) For preliminary decree directing the defendants to render true account of profits made by the defendant by unauthorizedly using the aforesaid offending label of "Good Winner".

(vi) to direct the defendant, their men, agents, assignees, dealers and/or retailers, distributor, to surrender to the plaintiff all offending pouch/packing material, label, advertising materials, hoarding, letter heads, office stationery and all other material containing/bearing offending mark/label "Good Winner" with distinct color scheme, get up or any other mark visually or phonetically similar to the plaintiff's well-known trademark "Gold Winner" label for destruction by an order of this Court.

(vii) for erasure, removal or obliteration from all infringing goods, materials or articles in the possession or control of the defendant with the offending mark/labels and pouches deceptively similar to the plaintiff's "Gold Winner" refined sunflower oil.

(viii) to pay for the costs of the suit."

4. The learned counsel for the plaintiff would submit that the defendants are marketing their product by substituting the word "Gold" in the plaintiff's Trade Mark "Gold Winner" with "Good" and are marketing their products in the name "Good Winner". It is further submitted that the second defendant is selling the products under the said name surreptitiously and clandestinely under the cover of the first defendant. It is further contended that the defendants trademark "Good Winner" is deceptively and phonetically similar to that of the plaintiff's trademark "Gold Winner". The adoption of the trademark "Good Winner" by the defendants is neither accidental nor coincidental but a deliberate, dishonest and fraudulent act to trade upon the goodwill of the plaintiff's well known product "Gold Winner" to make illegal gains. The learned counsel for the plaintiff would further contend that the defendant's mark is phonetically, visually and structurally identical to that of the plaintiff's trademark. If the

defendants are allowed to continue with infringing the trade mark of the plaintiff, it would lead to assumption that the plaintiff and the defendants have some trade connection and would lead the consuming public to think that the products manufactured and sold by the defendants are the products of the plaintiff. Hence, the suit.

5. Notice was effected on the defendants, despite which there was no representation on behalf of the defendants either in person or through the counsel. It is also seen from the records that even though the matter was listed under the caption "Undefended Board", the defendants did not appear. No written statement was also filed. Hence, the defendants were set ex parte on 30.06.2014. The learned Master has also recorded the ex-parte evidence of PW1, who is the Senior Manager(Legal) of the plaintiff company and through him Exs.P1 to P21 were marked.

6. The only question that has to be considered in the suit is whether the defendants have infringed the trade mark of the plaintiff, viz., "Gold Winner" and whether the plaintiff is entitled to the decree as prayed for?

7. Heard the learned counsel for the plaintiff and perused the records.

8. From the perusal of the pleadings, it is seen that the plaintiff is engaged in the business of manufacturing and marketing refined edible sunflower oil and are using the trademark "Gold Winner" for their products. It is also seen that the defendants, who are said to be engaged in the manufacturing and selling of the coconut oil products in Kerala State are using the trademark "Good Winner" for marketing their products, which is deceptively similar to that of the plaintiff's trademark. In order to prove the same, the Senior Manager-Legal of the plaintiff's company has examined himself as PW1 and marked the documents, Exs.P1 to P21. Further, this Court, vide order dated 30.04.2013 has also granted an interim order of injunction restraining the defendants from using their trademark "Good Winner" and also passing off the same. Further, since there was no representation on behalf of the defendants even after service of notice, the defendants were set exparte and an ex parte evidence was also recorded.

9. After careful consideration of the submissions made by the learned counsel for the plaintiff and considering the facts and

circumstances of the case in consonance with Exs.P1 to P21 and the evidence of PW1, this Court is of the view that the plaintiff has *prima facie* established its case for the grant of the reliefs sought for in the suit. Hence, the suit has to be decreed as prayed for in favour of the plaintiff.

10. Accordingly, the suit is decreed as prayed for with costs. Consequently, the connected applications are closed.

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Index : Yes/No
Internet : Yes

LIST OF WITNESSES EXAMINED ON THE SIDE OF THE PLAINTIFF

P.W.1 – Mr.George Thomas

LIST OF EXHIBITS MARKED ON THE SIDE OF THE PLAINTIFF

<i>Sl.No</i> <i>.</i>	<i>Exhibi</i> <i>ts</i>	<i>Description of documents</i>	<i>Date</i>
1	P-1	Certified true copy of the extract of minutes of Board of Directors of the plaintiff company held on 20.11.2014	--
2	P-2	Photocopy of the Certificate of Registration of Trademark for the trademark Gold Winner	27.08.1993

Sl.No	Exhibits	Description of documents	Date
		Sunflower Oil	
3	P-3	Photocopy of the Certificate of Registration of Trademark for the trademark Gold Winner Refined Groundnut oil	11.01.2002
4	P-4	Photocopy of the Certificate of Registration of Trademark for the trademark Gold Winner Refined Groundnut oil	11.01.2002
5	P-5	Photocopy of the Certificate of Registration of Trademark for the trademark Gold Winner Refined Sunflower oil	01.11.2002
6	P-6	Photocopy of the Certificate of Registration of Trademark for the trademark Gold Winner Vanaspathi	23.06.2003
7	P-7	Photocopy of the Certificate of Registration of Trademark for the trademark Gold Winner Vanaspathi	23.06.2003
8	P-8	Photocopy of the Certificate of Registration of Trademark for the trademark Gold Winner Refined Sunflower oil	16.11.2005
9	P-9	Photocopy of the extract from Register of copyrights for the artistic work Gold Winner	--
10	P-10	Photocopy of the extract from Register of copyrights for the artistic work Gold Winner Refined Sunflower oil	
11	P-11	Photocopy of the extract from Register of copyrights for the artistic work Gold Winner Refined Ground Nut oil	
12	P-12	Photocopy of the extract from Register of copyrights for the artistic work Gold Winner Refined Ground nut oil	
13	P-13	Photocopy of the extract from Register of copyrights for the artistic work Gold Winner Sree Gold Orid Dhall	
14	P-14	Photocopy of the extract from Register of copyrights for the artistic work Gold Winner	

<i>Sl.No</i> <i>.</i>	<i>Exhibi</i> <i>ts</i>	<i>Description of documents</i>	<i>Date</i>
		Sree Gold Moong Dhall	
15	P-15	Photocopy of the extract from Register of copyrights for the artistic work Gold Winner Sree Gold Toor Dhall	
16	P-16	Photocopy of the registration certificate issued by Registrar of Trademark, Singapore	
17	P-17	Print out of the first defendant's website	
18	P-18	Original CD containing the 1st defendant's website	
19	P-19	Print out of the Gold winner pouch of the plaintiff	
20	P-20	Photocopy of the defendant's pouch	
21	P-21	Original Plaintiff's pouch	

PUSHPA SATHYANARAYANA, J.

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