

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:21.03.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.779 of 2017**&****O.A.Nos.996 to 998 of 2017****&****A.Nos.6184 and 6185 of 2017**

- 1.M/s.Micro-Pak Ltd.,
Suite 2504, 25/F, Tower 6
The Gateway, Harbour City
9, Canton Road, TsimShaTsui
Kowloon, Hong Kong
Represented by its Power of Attorney Holder
Mr.SateeshJadhav
 2. M/s.Gantonde Leathers and Accessories P Ltd.,
Corium House, Alsa Garden Complex, A Block, V Floor
58, Harrington Road
Chetpet, Chennai – 600 031
Represented by its Managing Director
Mr.SateeshJadhav
- ... Plaintiffs

Vs

Kwality Chemicals Company
No.105, Kumaran Road
RPP Complex
Tiruppur- 641 601
Tamil Nadu, India

... Defendant

Plaint filed under Order IV Rule 1 of Original Side Rules read with Sections 27, 134 and 135 of the Trademarks Act, 1999 read with Sections 51, 55 and 62 of the Copyright Act, 1957 seeking perpetual injunction restraining the defendant, its distributors, stockists, servants, agents, retailers, representatives or any other person claiming under them from in any manner infringing the 1st plaintiff's registered trademark "Micro-Pak" by manufacturing, selling, offering for sale, stocking, advertising, anti-microbial stickers, or any moisture management and mould prevention products or any other stickers or product or goods using the Trade mark

Micro-Pak or any other trade mark/s which is/are identical with or deceptively similar to the 1st plaintiff's registered Trade Mark "Micro-Pak" or in any other manner whatsoever; perpetual injunction restraining the defendant, its distributors, stockists, servants, agents, retailers, representatives or any other person claiming under them from in any manner manufacturing, selling, offering for sale, stocking, advertising, anti-microbial stickers, or any moisture management and mould prevention products or any other stickers or product or goods under the trademark "Micro-pak" or any other trademark/s which is/are identical with or deceptively similar to the 1st plaintiff's Trade Marks, namely (i) Micro-Pak (word), (ii) Micro-Pak Green Label (filed as Plaintiff Document No.2) or (iii) Micro-Pak Trade Dress (filed as Plaintiff Document No.3) so as to pass off the Defendant's products as and for those of the first plaintiff's products or in any manner connected with the plaintiffs; perpetual injunction restraining the defendant, its distributors, stockists, servants, agents, retailers, representatives or any other person claiming under them from in any manner infringing the copyright of the first plaintiff by reproducing and/or using the plaintiff's said Artistic Works namely (i) Micro-Pak (word), (ii) Micro-Pak Green Sticker (filed as Plaintiff Document No.2) or (iii) Micro-Pak Trade Dress (filed as Plaintiff Document No.3) or any other artistic works which are a substantial reproduction of the 1st plaintiff's said artistic works or in any other manner whatsoever; to direct the defendant to surrender to plaintiff for destruction of the defendant's Counterfeit products, packets, labels, dyes, blocks, moulds, screen prints, packing materials and other materials bearing the 1st plaintiff's said trademarks/artistic works or any other trademark/artistic work which is/are deceptively similar to that of the 1st plaintiff's; for a preliminary decree in favour of the 1st plaintiff directing the defendant to render account of profits made by use of plaintiff's said Trademarks /Artistic works and the trade marks/artistic works and a final decree be passed in favour of the 1st plaintiff for the amount of profits thus found to have been made by the Defendant after the latter have rendered accounts; to direct the defendant to pay to the plaintiff a sum of Rs.25,01,000/- as damages for acts of passing off and infringement of copyright committed by the Defendant till date and for the costs of the suit.

For Plaintiff : Mr.Madhan Babu

For Defendant : Mr.M.R.Srinath

JUDGMENT

Mr.Madhan Babu, learned counsel on record is before this Commercial Division on behalf of both the plaintiffs. To be noted, there

are two plaintiffs in this suit.

2. On behalf of the sole defendant Mr.S.R.Srinath, counsel on record for the sole defendant is before this Commercial Division.

3. With regard to the litigants, both plaintiffs are companies. While plaintiff No.1 is a Public Limited Company, Plaintiff No.2 is a Private Limited Company. Both the companies are represented by Mr.SateeshJadhav, Managing Director of Plaintiff No.2 company who is also Power of Attorney holder of Plaintiff No.1 company. To be noted, Mr.SateeshJadhav, in these capacities, has also verified and signed the plaint. With regard to the sole defendant, I am informed that the sole defendant Kwalty Chemicals Company is a Proprietary concern and sole proprietrix Ms.Sudhapriya Sakthivel is before this Commercial Division.

4. Both the aforesaid learned counsel i.e, Mr.Madhan Babu and Mr.M.R.Srinath submit that the parties have arrived at a compromise and have entered into a memorandum of compromise. A memorandum of compromise dated 02.03.2018 duly signed by both the plaintiffs and the sole defendant as well as their respective counsel has been placed before me. This memorandum of compromise dated 02.03.2018 shall henceforth be referred to as 'said MOC' for the sake of brevity, convenience and clarity.

5. The said MOC has been entered into by the parties after substantial hearing on merits in the matter. In other words, this matter

was heard for some time before the parties arrived at a settlement and reduced the terms to said MOC. With regard to Clause 2 of said MOC, the same reads as follows:

"2.The Defendant acknowledges that the mark "MICROPAK", the Micropak Green Label and the Micropak Trade dress filed as Plaint Document Nos.2 and 3 and annexed hereto as Annexure -A and B are well known trademarks of the plaintiff as defined under Section 2(zg) of the Trademarks Act, 1999."

5. Before I record the Memorandum of Compromise, I make it clear that this clause touches upon a right in rem qua the plaintiffs and therefore, it is made clear that this being an action in personem, this clause will be enforceable only against the sole defendant herein.

6. With the above clarification, on the basis of the joint request made by both the learned counsel, on instructions, from their respective clients, I deem it appropriate to pass a decree in terms of said MOC. Said MOC reads as follows:

1.The terms Plaintiffs and Defendant shall mean and include the heirs, legal representatives, executors, administrators, successors and assigns as applicable of each party.

2.The Defendant acknowledges that the mark "MICROPAK", the Micropak Green Label and the Micropak Trade dress filed as Plaint Document Nos.2 and 3 and annexed hereto as Annexure -A and B are well known trademarks of the plaintiff as defined under Section 2(zg) of the Trademarks Act, 1999.

3.The Defendant hereby undertakes and agrees to not sell the infringing/counterfeit Micropak Sticker Rolls, anywhere in the

world, including India, in any manner whatsoever including through its website www.kwalitychemicals.in or under any other domain name.

4.The Defendant solemnly affirms and states though it had offer for sale the infringing/counterfeit Micropak Sticker Rolls on its website, it has actually not sold any of the said product till date and also does not have stock of the same.

5.The Defendant hereby that infringed goods were offered to the defendant for sale by one person from Belgaum namely Akshay Incorporation, at D-70, Angol Industrial Estate, Udyambag, Belgaum but the defendant has not received any consignment of infringed goods from the said person.

6.The defendant submits to a decree as prayed for by the plaintiff in Paragraph 34(A) to (C) of the plaint filed in C.S.No.779 of 2017.

8. In view of the above, the plaintiffs give up their relief as prayed for in Paragraph 34(D) to (E) of the plaint filed in C.S.No.779 of 2017.

10.The suit may be decreed in terms of the above.

11.Each party shall bear their own cost.

12.The suit shall be decreed on the basis of the present joint Memorandum of Compromise and the Joint Memorandum of Compromise shall form part of the decree."

7. There shall be a decree in terms of said MOC. Said MOC shall form part of the compromise decree along with self-attested photocopies of the Identity Cards of the aforesaid representative of the plaintiffs and defendant.

Suit decreed on above terms. Consequently, all connected interlocutory applications are closed.

21.03.2018

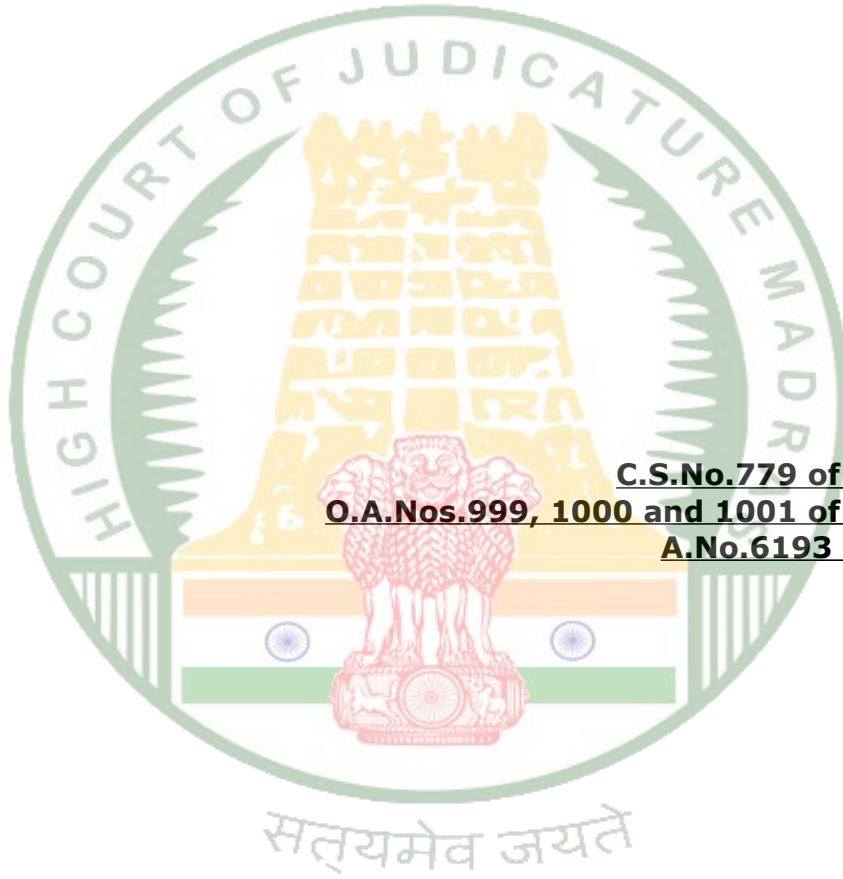
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M.SUNDAR.J.,

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**C.S.No.779 of 2017 &
O.A.Nos.999, 1000 and 1001 of 2017 &
A.No.6193 of 2017**

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