

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:28.02.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.246 of 2015

Hindustan Unilever Limited
101, Santhome High Road
Chennai – 600 028

.. Plaintiff

Vs.

1.S.S.Enterprises
No.43, SIDCO
Dindigul – 3

2. S.Sivakumar
Person-in-Charge
S.S.Enterprises
No.43, SIDCO
Dindigul - 3

.. Defendants

Civil Suit preferred, under Order IV Rule 1 of High Court Original Side Rules read with Sections 27, 134 and 135 of the Trademarks Act, 1999 seeking perpetual injunction restraining the defendants, its distributors, stockiest, servants, agents, retailers, representatives or any other person claiming under/through them from in any manner infringing the plaintiffs registered trademark 'RIN' and/or 'VIM' by manufacturing selling offering for sale stocking advertising either directly and/or indirectly any goods and in particular any washing powder/washing bars under the trademark WIN either per-se or in combination and/or any other mark either in English or Tamil or any other language, which is identical with and / or deceptively similar to plaintiffs registered trademarks "RIN" and/or "VIM" or in any other manner whatsoever; perpetual injunction restraining the defendants, its

distributors, stockiest, servants, agents, retailers, representatives or any other person claiming under/through them from in any manner manufacturing, selling, offering for sale, stocking, advertising, either directly and/or indirectly any goods and in particular any washing powder/washing bars under the trademark 'WIN' either per-se or in combination and/or any other mark either in English or Tamil or any other language, which is identical with and / or deceptively similar to plaintiffs registered trademarks "RIN" and/or "VIM" so as to pass off the defendants' products as and for the products of the plaintiff or in any other manner whatsoever connected with the plaintiff; to direct the defendants to surrender to plaintiff for destruction all packed goods, labels, dyes, blocks, moulds, screen prints, packing materials and other materials bearing the trademark 'WIN' either per se or in combination in English or Tamil or any other language; a preliminary decree be passed in favour of the plaintiff directing the defendant to render account of profits made by use of trademark 'WIN' and a final decree be passed in favour of the plaintiff for the amount of profits thus found to have been made by the defendants after the latter have rendered accounts and for the costs of the suit.

For Plaintiff : Mr.Madhan Babu

For Defendant : Mr.R.Sathish Kumar

JUDGMENT

Mr.Madhan Babu, leaned counsel is present before this Commercial Division on behalf of the sole plaintiff and Mr.R.Sathish Kumar, learned counsel is present before this Commercial Division on behalf of both the defendants. On behalf of plaintiff company, Ms.Vidya Chandrasekar, Manager of the plaintiff company is present along with a Power of Attorney Deed from the plaintiff company dated 26.07.2017. On the side of the

defendants, second defendant Mr.S.Sivakumar is present representing both the defendants.

2. It is represented that the plaintiff and defendants have entered into a joint memorandum of compromise dated 28.02.2018, which has been placed before me. Both the aforesaid individuals present in Court represent that the plaintiff and defendants are agreeable to a compromise decree being passed in terms of the joint memorandum of compromise dated 28.02.2018.

3. Learned counsel on both sides also make a joint request in this regard.

4. With regard to plaintiff, Photocopy of aforesaid Power of Attorney Deed dated 26.07.2017 and self-attested photocopy of an identify card are placed before this Court. On behalf of the defendant, a self-attested identity card i.e., Aadhar Card is placed before this Commercial Division.

5. The Joint Memo of Compromise dated 28.02.2018 reads as follows:

"The plaintiff and the defendants have agreed to compromise the matter in the following terms.

"1. The terms plaintiff and defendants shall mean and include its heirs, executors, administrators, successors and assigns of each party.

2. The Defendants acknowledges that the marks RIN inter-alia registered under Nos.214094, 409377, 409378, 722009, 1065244, 1251402, 1325307, 1330188 and 1550601; and VIM inter alia registered under nos.87122, 821896, 839123, 245627, 278457, 278458, 652464 and 1926435 are well known trade marks of the plaintiff as defined under Section 2(zg) the Trade Marks Act, 1999.

3. The Defendants hereby agrees to stop the manufacture/sale and/or distribution of any goods, and in particular washing powder and/or bar under the trademark WIN or any variations thereof.

4. The defendants submit to a decree as prayed for by the plaintiff in para 27 (a) and (b) of the plaint filed in C.S.No.246 of 2015.

5. The Defendants agrees to surrender to the plaintiff for destruction all the packaging material and pouches under the trademark WIN, which are stored in the premises of the defendants and under the custody of the Advocate Commissioner appointed by this Hon'ble Court.

6. The Defendants agree to open its premise at M/s.S.S.Enterprises No.43, SIDCO, Dindigul-3 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 labels containing the washing bar and deliver to the plaintiff the offending labels containing the offending mark WIN alone along with all the unused offending labels containing the offending mark WIN for destruction.

7. The defendants agrees to pay a sum of Rs.2,500/- (Rupees Two Thousand and Five Hundred 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 27(c), (d) and (e) of the plaint filed in C.S.No.246 of 2015.

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."

6. There shall be a decree in terms of the joint memorandum of compromise dated 28.02.2018, which shall form part of the decree. The aforesaid photocopy of Power of Attorney and photocopies of photo identify cards (self-attested) also shall form part of this decree.

The suit is disposed of on above terms.

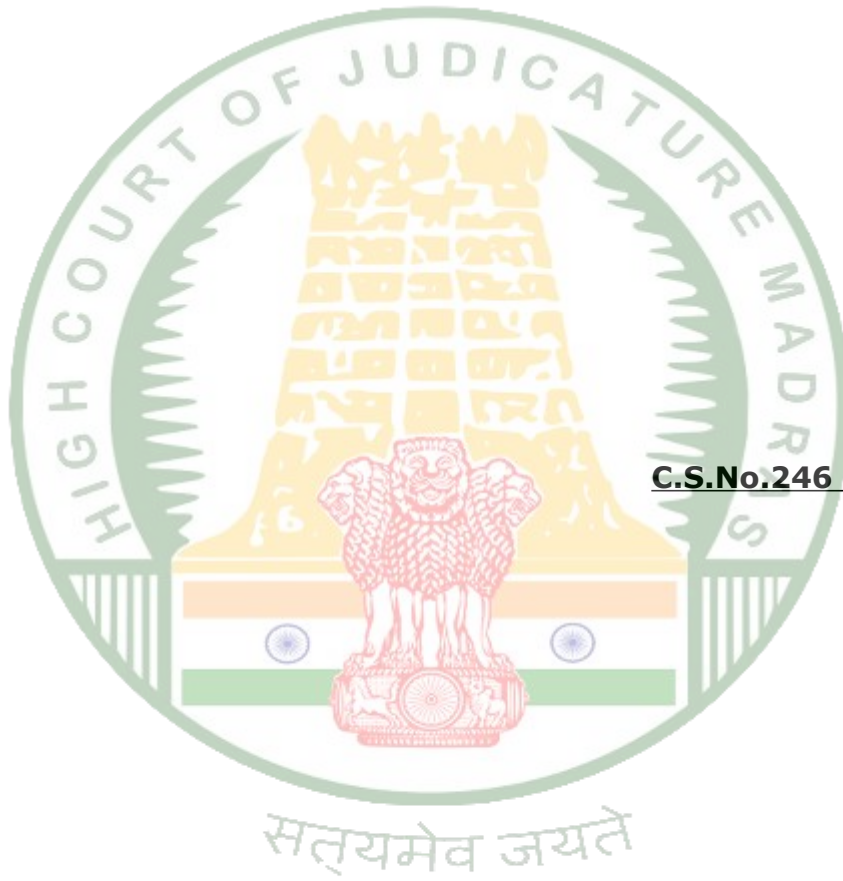
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