

HIGH COURT OF JUDICATURE AT MADRAS**DATED : 14.06.2019****CORAM :****THE HONOURABLE Mr.JUSTICE KRISHNAN RAMASAMY****C.S.No.252 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.Siva Kumar,
Person-in-charge
S.S.Enterprises
No.43, SIDCO,
Dindigul-3.
3. Jayaraj Pushbharagam Groups
Suresh Stores,
157, West Car Street,
Dindigul-624001.
4. Raja
5. Golden Graphics,
No.117 Viswanatham Road,
Sivakasi.
6. Shanmuga Sundara Rajan
Person-in-charge
Sri Golden Graphics
No.117 Viswanatham Road,
Sivakasi.

... Defendants

Suit filed under order IV RULE 1 of the O.S.Rules Read With Sections 27,134 and 135 of the Trademarks Act, 1999 and Sections 51,55,58 and 62 of the Copyright Act, 1957, praying for a judgment and decree (a) A perpetual injunction restraining the Defendant, their distributors, stockists, servants, agents, retailers, representatives, franchisees or any other person claiming under them from in any manner infringing the plaintiff's registered trademark SURF and/or SUNLIGHT by printing, stocking, manufacturing, selling, offering for sale, advertising directly or indirectly, any goods, and in particular washing powder or washing bar, under the trademark SUNGREEZ either per se or in combination with any other mark or any other mark or device either in English or any other language, which is identical/deceptively similar to the Plaintiff's registered mark SUN and/or SUNLIGHT or any other the trademark using the trademark SUN and/or SUNLIGHT as part thereof or in any other manner whatsoever;

(b)A perpetual injunction restraining the Defendant, its distributors, stockits, 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 trademark SUNGREEZ and/or the device and/or the label/trade dress as contained in **Plaint Document No.3** or any label/mark/device trade dress which is identical with or deceptively similar to the plaintiff's SURF EXCEL label/trade dress filed as

Plaint Document No.7 or apply or use the plaintiff's registered trademark SUN and/or SUNLIGHT, so as to pass of 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 Defendants, their 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/device/artistic work as contained in ***Plaint Document No.3*** or any other label/device/artistic work or colour scheme which is identical with or deceptively similar to the plaintiff's label/device/artistic work as contained in ***Plaint Document No.7*** or in any other manner whatsoever;

(d) The defendants be ordered to surrender to plaintiffs for destruction of all banners, labels, dyes, blocks, moulds, screen prints, packing materials and other materials bearing the trademark SUNGREEZ and/or the device and/or the label/trade dress as contained in ***Plaint Document No.3*** or any label/mark/device/trade dress which is identical with or deceptively similar to the plaintiff's trademark SUN and/or SUNLIGHT or the Plaintiff's SURF EXCEL label/trade dress filed as ***Plaint Document No.7;***

(e) A preliminary decree be passed in favour of the plaintiff directing the

defendants to render true and proper accounts of sales made by sale of goods under the infringing label filed as **Plaint Document No.3** 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;

For Plaintiff : Ms.R.Devi
for Mr.R.Parthasarathy

For Defendants : D3 to D6 set exparte on 28.03.2018
As against D1 and D2 suit was already
decreed in terms of Compromise
Memo

JUDGMENT

This Suit has been filed by the Plaintiff against the defendants praying for a perpetual injunction restraining the Defendants in any manner infringing the plaintiff's registered trademark SUN and/or SUNLIGHT by printing, stocking, manufacturing, selling any goods, and in particular washing powder or washing bar, under the trademark SUNGREEZ which is identical/deceptively similar to the Plaintiff's registered mark SUN and/or SUNLIGHT.

2. According to the Plaintiff, it is a multi-national company engaged in manufacturing and marketing Home, Personal Care products, Foods and

Beverages, soaps, detergents, hair and skin products, having an annual turnover in the order of Rs.28,000/- crore. Further, the Plaintiff Company is the proprietor of trademarks such as TAJ MAHAL, BRU, KISSAN, ANNAPURNA, LUX, WHEEL and SURF/SURF EXCEL, SUNSILK and DOVE etc.

3. The Plaintiff further states that they have been extensively manufacturing and marketing its washing powder/soaps under the trademark 'SURF' for over 65 years and has been intensively advertising the said trademark. The trademark 'SURF' has been registered as early in 1948 under No.132479 with the trademarks registry and the same is valid and subsisting till date. The details of few registrations obtained by the Plaintiff in respect of the trademark 'SURF' and 'SURF EXCEL' are filed collectively as **Exhibit P.2 (Series)**.

4. The Plaintiff is the owner of Copyright in a new unique and striking artistic work in respect of its trademark 'SURF EXCEL' for which it had engaged the services of M/s Linta India Pvt. Limited for the creation of artistic work. The said artistic work was created by Mr.Jitendra and the same was assigned to the plaintiff by a deed of assignment dated 20.02.2002 for a valuable consideration, which is filed and marked as **Exhibit P3**. The current wrapper used by the Plaintiff in respect of its product SURF EXCEL detergent bar is marked as **Exhibit P4**.

5. The Plaintiff also states that apart from being the proprietor of the trade dress/various label used in respect of SURF EXCEL detergent bar, it is the first owner of the copyright contained in the artistic works under the Copyright Act, 1957. The said label/artistic work comprises of a distinctive graphical creative elements, device, colour scheme, get up and layout.

6. The plaintiff is also the registered proprietor of the trademarks 'SUN' and 'SUNLIGHT' under nos.147011, 87099 since 1943, and has used the said trademark in respect of its detergent bars and the said mark has been continuously and uninterruptedly used by the plaintiff in respect of its soaps from 1888 and for detergent bar/powder since 1888. The details of registration in respect of 'SUN' and 'SUNLIGHT' trade mark are marked as **Exhibit P6(series)**. The Plaintiff has expended a huge sum towards the advertisement of its mark/label 'SUNLIGHT' detergent bar. The Plaintiff has spent approximately Rs.6783(Lakh) and has generated a sales turnover of approximately Rs.31004 (Lakh). The statement evidencing the sales turnover and advertisement expenses, as certified by the chartered accountant are filed and marked as **Exhibit 7 (series)**.

7. The Plaintiff's trademark SUN/SUNLIGHT and the label used in respect of its SURF EXCEL detergent bar (**Filed as Exhibit P4**) were being infringed by the defendants inasmuch as the detergent bars under the name

SUNGREEZ, was being sold in a label which is identical/deceptively similar to the plaintiff's SURF EXCEL detergent bar wrapper/label. A sample infringing SUNGREEZ detergent bar is filed and marked as ***Plaint Document No.8.***

8. The Plaintiff further states that the defendants were manufacturing and marketing the detergents under the infringing trademarks and labels with the *malafide* intention of deceiving the public and encashing upon the mammoth reputation and goodwill held by the plaintiff's SUNLIGHT trademark and SURF EXCEL label amongst the public.

9. The Defendants are also engaged in the business of manufacture and/or marketing of detergent powders and detergent bars under the following brand names:

Detergent Cakes: (i) Pritha; (ii) Pritha Gold (iii) Supreme; (iv) Ultra Max (Dishwash Bar)

Washing powder: (i) Premium Pritha; (ii) Pritha

A copy of the labels of the defendants are filed and marked collectively herewith as ***Plaint Document No.9 (series).*** Some of the labels used by the 1st defendant in respect of its detergent products were infringing the plaintiff's labels and marks. The following are the instances of unabashed infringement/passing off that has been committed by the Defendants in their product:

- i. The Defendant is selling its product under the brand name "SUNGREEZ" which is identical/deceptively similar to the Plaintiff's trademark "SUN/SUNLIGHT";
- ii. The word 'SUNGREEZ' appears in blue bold letters in a background of white;
- iii. The Colour scheme, get-up and trade-dress of the SUNGREEZ label is identical/deceptively similar to the Plaintiff's SURF EXCEL labels.

10. Further, the act of the defendants in adopting the trademark SUN GREEZ along with the infringing label in respect of its SUNGREEZ washing bar apart from amounting to the tort of passing off inter-alia actionable under Section 27 of the Trademarks Act, 1999, would also amount to infringement of the plaintiff's registered trademark SUN/SUNLIGHT as well as infringement of copyright contained in the artistic work employed in the SURF EXCEL label. A comparative overview of detergent bars being sold in the market, including those of the plaintiff as well as the infringing product, is also filed and marked as **Exhibit P10**.

11. Heard the learned counsel for the Plaintiff.

12. After the filing of the suit, suit summons were duly served on the defendants to their address. A Memorandum of Understanding dated

28.02.2018 was entered into between the plaintiff and the defendants 1 and 2 and this Court, recording the said Memorandum of Understanding, vide order dated 28.03.2018, decreed the suit in respect of the defendants 1 and 2.

11. Despite the summons being served on the defendants 3 to 6, they have not chosen to appear before this Court and therefore, the defendants 3 to 6 were set ex-parte on 28.03.2018 and the suit was posted for recording ex-parte evidence before the learned Additional Master-IV and the ex-parte evidence was recorded on 05.07.2018 and 11 documents i.e., Exs.P1 to P11 were marked.

12. In view of the aforesaid facts and circumstances of the case and also considering the submissions made on behalf of the Plaintiff, the court is of the view that the suit claim has been proved against the defendants 3 to 6. Accordingly, the plaintiff is entitled to decree as prayed for, as against the defendants 3 to 6.

13. In the result, the suit is decreed as prayed for. No costs.

14.06.2016

arr

Index:Yes/No

Internet:Yes/No

KRISHNAN RAMASAMY, J

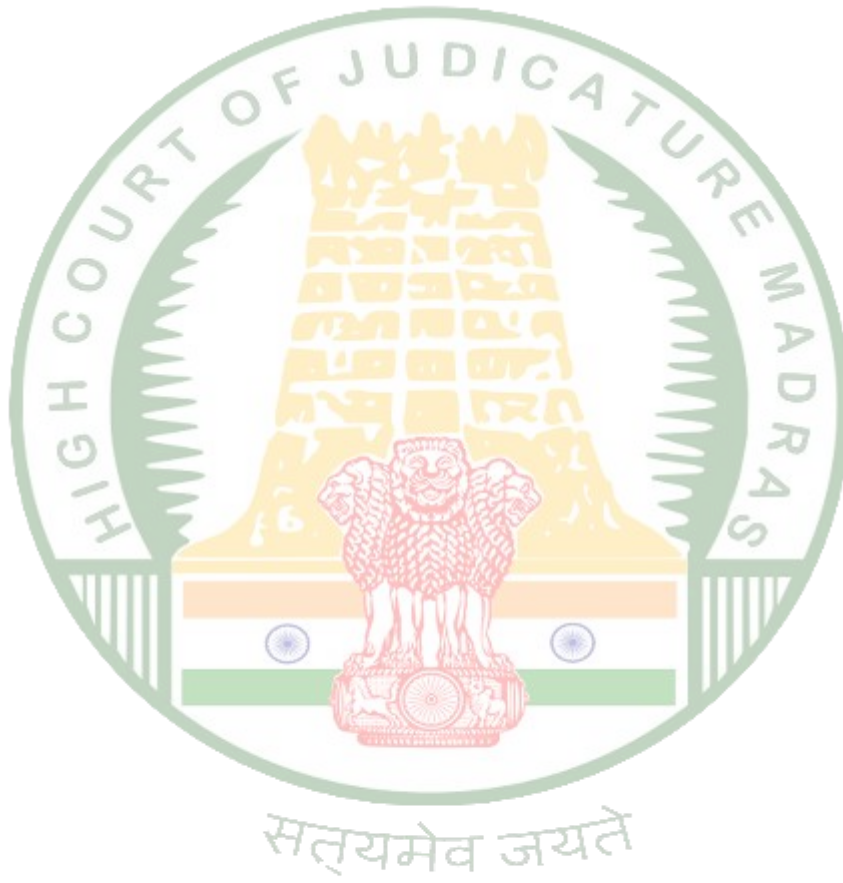
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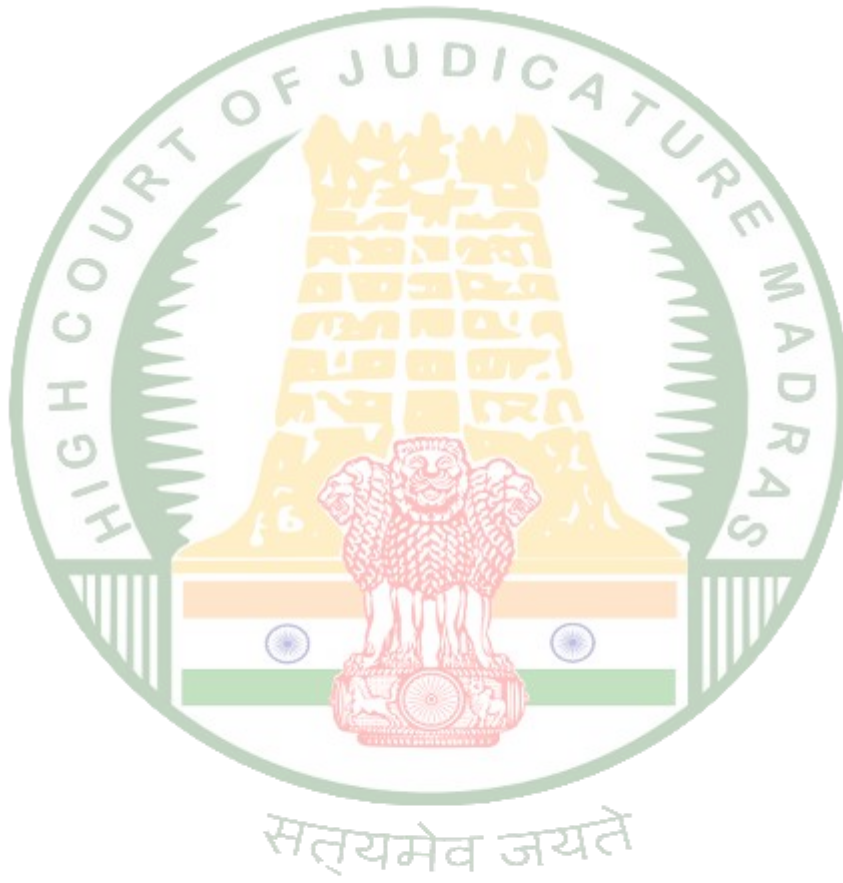
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