

HIGH COURT OF JUDICATURE AT MADRAS**DATED : 14.06.2019****CORAM :****THE HONOURABLE Mr.JUSTICE KRISHNAN RAMASAMY****C.S.No.253 of 2015
and
OA.Nos.349 & 350 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. Sri Sakthivel International (P) Limited
No.32, New Street,
Raja Kadai,
chennai- 600 018.

4. C.Rajapandian
5. Rajesh

... Defendants

Suit filed under order IV RULE 1 of the O.S.Rules R/W Sections 27,
134 & 135 of TRADE MARKS ACT, 1999, praying for a judgment and decree

(a) A perpetual injunction restraining the Defendants, their 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 SURF or SURF EXCEL or "Splat" device/trademark registered under No.1780462 and 1486107, by printing, stocking, manufacturing, selling, offering for sale, advertising directly or indirectly, any goods and in particular washing powder or washing bar, employing the trademark SURFF EXTRA and/or the device as contained in **plaint Document No.4** either per se or in combination with other mark, and/or any other mark or device either in English or any other language, which is identical/deceptively similar to the plaintiff's registered trademarks SURF or SURF EXCEL or "SPLAT" device/trademark registered under No.1780462 and 1486107 or in any other manner whatsoever;

(b) A perpetual injunction restraining the Defendant, its distributors, printers, 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 or any other product, employing the trademark SURF EXTRA and/or the device as contained in **Plaint Document No.4** or any other mark/device which is identical with or deceptively similar to the plaintiff's trademark SURF or SURF EXCEL or "SPLAT" device/trademark registered under No.1780462 and 1486107, so as to pass off the defendant's goods as and for the goods of the plaintiff. (c) The defendant be ordered to surrender to plaintiffs for destruction all packed goods, labels, dyes, blocks, moulds, screen prints, packing materials and other materials employing the trademark SURFF EXTRA and/or the device as contained in **Plaint Document No.4**; (d) A preliminary decree be passed in favour of the plaintiff directing the

defendants to render true and proper accounts of sales made by employing the trademark SURFF EXTRA and/or the device as contained in **Plaint Document No.4** 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 D5 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 trademarks SURF or SURF EXCEL or "Splat" device/trademark registered under No.1780462 and 1486107, by printing,stocking,manufacturing, selling, offering for sale, advertising directly or indirectly, any goods, and in particular washing powder or washing bar, employing the trademark SURF EXTRA and/or the device contained in **Plaint Document No.4** which is identical/deceptively similar to the Plaintiff's trademarks SURF or SURF EXCEL or "SPLAT" device.

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 had also conceived and adopted a unique "SPLAT" device in respect of its SURF EXCEL products and has also secured registration in respect of the same under nos.1486107 and 1780462, and the same are valid and subsisting till date. Copy of the registrations obtained by the plaintiff in respect of "Splat" device is filed **as Exhibit P3**. The Plaintiff states that the said "SPLAT" device has been continuously, consistently and extensively used in respect of all its SURF EXCEL detergent products since 2001, and by virtue of the extensive use, the said device has

attained distinctiveness individually amongst the public, and the public associate the "SPLAT" device with the plaintiff's SURF EXCEL products.

5. It is the further case of the Plaintiff that they have spent a huge sum towards the advertisement of its mark/label 'SURF' and 'SURF EXCEL' and in the year April 2011-March 2012 alone, Plaintiff have spent approximately Rs.14,146/- (Lakh) and has generated a sales turnover of approximately Rs.1,68,677 (Lakh). The statement evidencing the sales turnover and advertisement expenses, as certified by the chartered accountant are filed collectively as Exhibit **P4 (series)**.

6. The Plaintiff's trademark SURF/SURF EXCEL and its SPLAT device was being infringed by the defendants in as much as detergent power under the trademark SURFF EXTRA, which is identical/deceptively similar to the plaintiff's trademark SURF/SURF EXCEL. In addition thereto, the label/package also contained a device which was identical/deceptively similar to the plaintiff's "SPLAT" device. A sample infringing SURFF EXTRA detergent power pouch is filed as **Exhibit P5**.

7. It is further stated that a perusal of the infringing label SURFF EXTRA disclosed that one Heether Enterprises claimed to be the manufacturer of the product. A search undertaken on the Registrar of

Companies website reveals that no company under the said name exists as on date. A print out from the website of the Registrar of Companies in this regard has been filed as Exhibit **P.No.6**. The *malafide* of the Defendants may also be established from the fact that the domain name of 'Heether Enterprises' printed on the reverse of the SURFF EXTRA pack is a false domain name and the screen shot of the result when the said domain name is attempted to be reached is filed as **Exhibit P10**.

8. It is the further case of the Plaintiff that in addition to manufacturing detergent powder under the infringing trademarks SURFF EXTRA and SURF EXCEEL, 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 is filed collectively herewith as **Plaint Document No.8 (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 "SURFF EXTRA" which is identical/deceptively similar to the Plaintiff's trademark "SURF" and "SURF EXCEL";
- ii. The defendant has used a device which is identical/deceptively similar to the plaintiff's "splat" device consistently used in respect of its SURF EXCEL detergent products.

9. Further, the Defendants have indulged in a careful picking and choosing of the prominent and essential features from the registered marks/labels of the Plaintiff's detergent products and has used them with *malafide* intentions to create confusion in the minds of the consuming public and to partake in the goodwill and reputation that the Plaintiff enjoys in the market, being a market leader not only in India but worldwide for its quality products. The act of the defendants in adopting an identical label in respect of its SURFF EXTRA washing powder apart from amounting to the tort of passing off inter-alia actionable under Sec.27 of the Trademarks Act, 1999 and would also amount to infringement of the Plaintiff's registered trademark "SURF EXCEL".

10. 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 Compromise, 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 5, they have not chosen to appear before this Court and therefore, the defendants 3 to 5 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 5. Accordingly, the plaintiff is entitled to decree as prayed for.

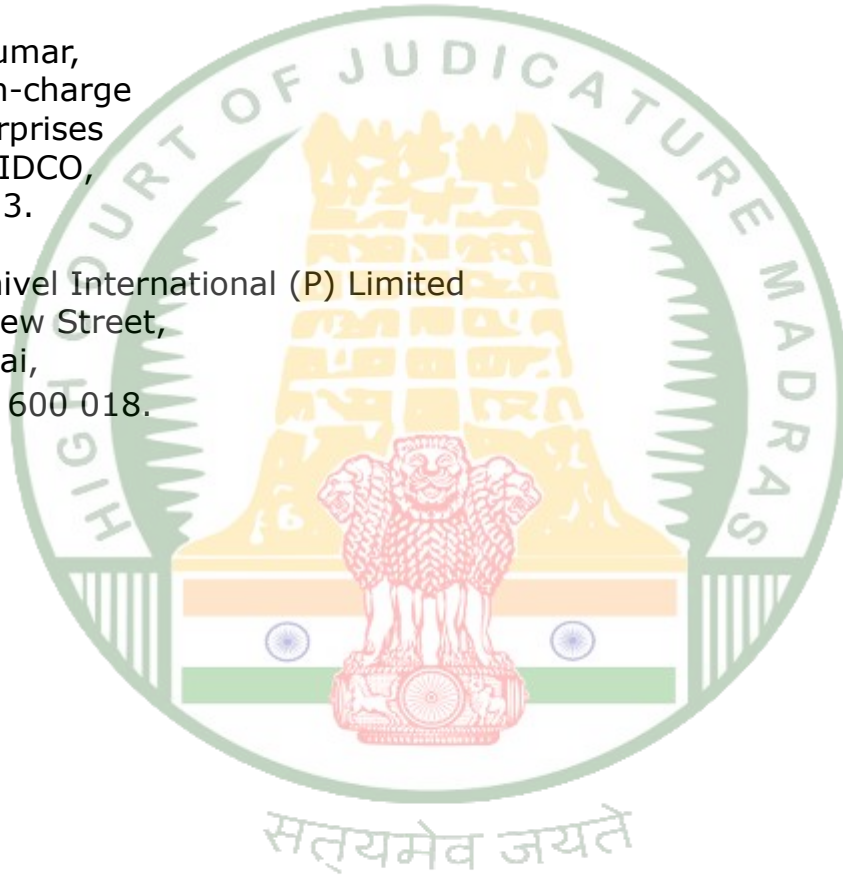
13. In the result, the suit is decreed as prayed for. No costs. Consequently, connected Applications are closed.

14.06.2016

arr
Index:Yes/No
Internet:Yes/No

To

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KRISHNAN RAMASAMY, J

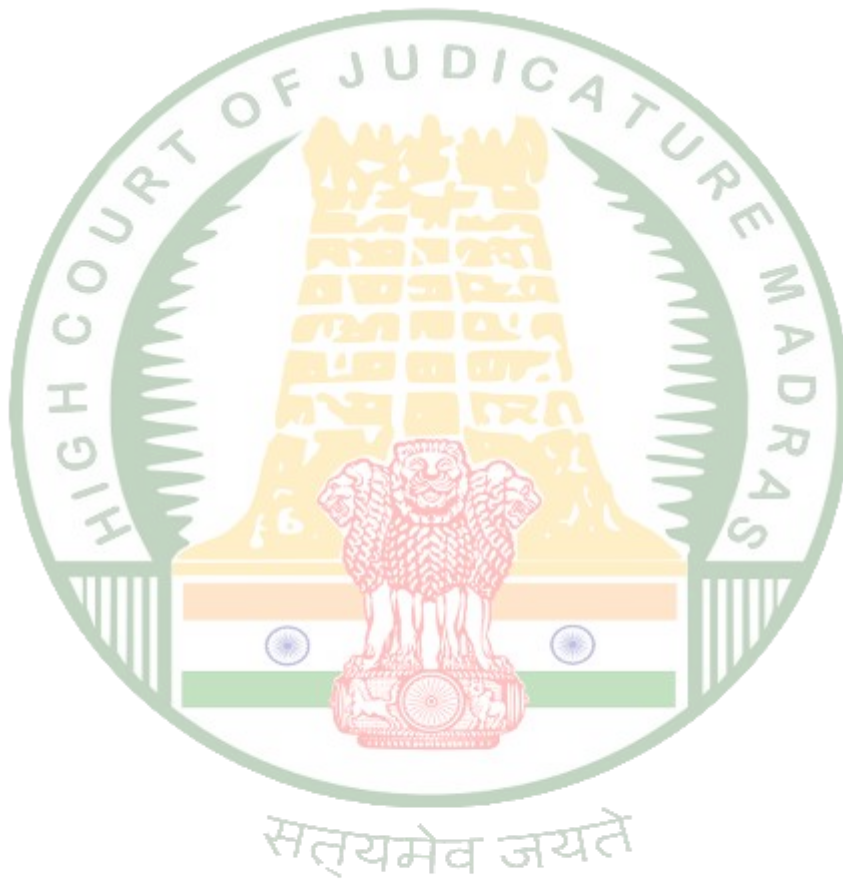
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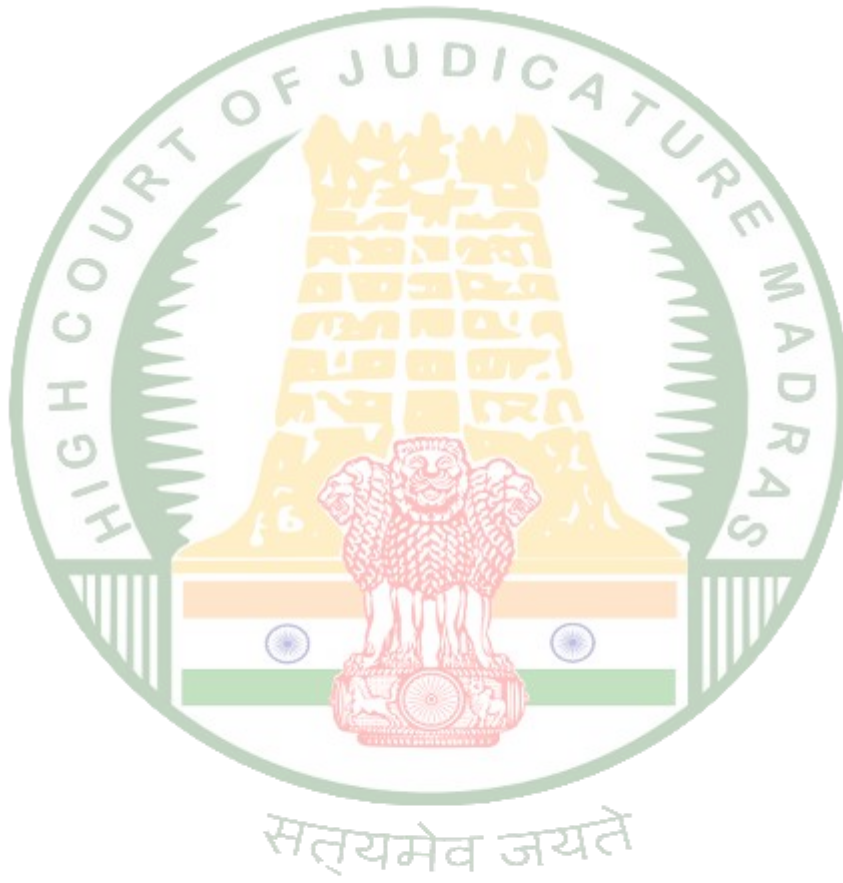
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