

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2019

CORAM:

The Hon'ble Mr.Justice Krishnan Ramasamy**C.S.No.514 of 2015
and
Application No. 3274 of 2016**

Hindustan Unilever Limited,
101, Santhome High Road,
Chennai – 600028.

Represented by its authorized signatory

.. Plaintiff

Vs.

Avaradhi Industries,
Mahalingapura Main Road,
Mahalingpur Post,
Mudhol Taluk,
Bagalkot – 587312.
Karnataka.

.. Defendant

Prayer : Complaint under Order IV Rule I of O.S. Rules read with Section 27, 134 and 135 of the Trade Marks Act, 1999 and Section 51, 55, 58 and 62 of the Copyright Act 1957 is praying to pass a judgment and decree for:

- a. A perpetual injunction restraining the Defendant, its 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 WHEEL and ACTIVE WHEEL by printing, stocking, manufacturing, selling, offering for sale, stocking, advertising directly or indirectly, any goods, and in particular washing powder or washing bar, employing the trademark A-1 ACTIVE WHAAL 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 WHEEL or ACTIVE WHEEL or in any other manner whatsoever;

b. A perpetual injunction restraining the Defendant, its distributors, 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, under the label/mark as contained in **Plaint Document No. 6** or any label/ mark which is identical with or deceptively similar to the plaintiff's label/ mark filed as **Plaint Document No. 3**, so as to pass off 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 Defendant, its 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/artistic work

as contained in **Plaint Document No. 6** or any other label/ artistic work or colour scheme which is identical with or deceptively similar to the plaintiff's artistic work as contained in **Plaint Document No. 3** or in any other manner whatsoever;

d. The defendant be ordered to surrender to the plaintiff for destruction of all banners, labels, dyes, blocks, moulds, screen prints, packing materials and other materials bearing the label/trademark/artistic work as contained in **Plaint Document No. 6**;

e. A preliminary decree be passed in favour of the plaintiff directing the defendant to render true and proper accounts of sales made by sale of goods under the infringing label finds as **Plaint Document No. 6** and a final decree be passed in favour of the plaintiff for the amount of sales generated found to have been made by the defendant after the latter have rendered accounts;

f. for costs of the suit.

For Plaintiff : Ms.R.Devi

For Defendant : for Mr.Sathish Parasaran
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JUDGMENT

The present suit has been instituted by the plaintiff for the relief, as mentioned in the prayer portion of this Judgment.

2. The plaintiff is a Company incorporated under the Companies

Act 1913. They are in the business of home and personal care products and foods and beverages with its portfolio of several well-known brands. The plaintiff is a multi-national company having an annual turnover for a sum of Rs.22,000/- crores.

3. The plaintiff is the proprietor of the trademarks 'WHEEL' and 'ACTIVE WHEEL' and has been extensively manufacturing and marketing washing powder and detergent bars under the said trademark in powder form as well as bar form continuously and uninterruptedly for now over several years. The plaintiff has obtained several registrations in respect of the said artistic work/labels/mark contained therein, and the same are valid and subsisting.

4. The trademark 'WHEEL' has been registered as early in 1960 under No.199466 with the Trademarks Registry and the same is valid and subsisting till date. Insofar as the trademark 'ACTIVE WHEEL' is concerned, the same was registered under the registration No.1686844 on 13.05.2008, which is marked as Ex.P2.

5. Whiles, during the month of May, 2015, the plaintiff was

informed that an infringement of plaintiff's WHEEL/ACTIVE WHEEL trademark/label were noticed in and around the District of Bagalkot. The plaintiff proceeded to investigate into the matter and has learnt that the defendant has lifted the mark/label/artistic label of the plaintiff's ACTIVE WHEEL and are passing off substandard detergent bars as and for that of the plaintiff's reputable goods. The defendant is manufacturing and selling substandard detergent bar under the trademark 'A-1 ACTIVE WHAAL' using an identical artistic work/ label as that of the plaintiff's ACTIVE WHEEL label/mark.

6. The plaintiff states that the defendant has adopted all the essential features of the plaintiff's ACTIVE WHEEL label such as the colour scheme, get-up, the devices of 'star burst', 'red font on a white background' and 'arrangement of jasmine flowers, lemon'. The plaintiff states that the name of the defendant's product is also phonetically and visually similar to that of the plaintiff's trademark 'WHEEL'. A copy of the defendant's A-1 ACTIVE WHAAL detergent bar in the offending label is marked as Ex.P.7.

7. The plaintiff states that the following are the instances of

unabashed infringement/ passing off that has been committed by the Defendant in respect of its products:

- i. Star burst device used by the Plaintiff in respect of its detergent powders for over 50 years;
- ii. The word 'A-1 ACTIVE WHAAL' appears in red bold letters and in the background the star burst device of the Plaintiff has been used;
- iii. There is an arrangement of jasmine flowers and slices of lemon on the lower right side of the pack, similar to that of the plaintiff's label
- iv. The colour scheme, get-up and trade-dress of the A-1 ACTIVE WHAAL label is identical/deceptively similar to the plaintiff's ACTIVE WHEEL label;
- v. The brand name 'A-1 ACTIVE WHAAL' being used by the Defendant is phonetically and visually similar to the Plaintiff's trademark 'WHEEL' and 'ACTIVE WHEEL'.

8. Under the circumstances, the plaintiff have no other option except to approach this Court for appropriate orders and has filed the present suit to restrain the defendant from using the word 'ACTIVE' and also using the colour, dress and get-up. This Court, had also passed an interim injunction

on 25.06.2015 and till date, the interim order is being extended. However, the defendant had to appear before this Court but he did not appear and therefore, the sole defendant was set *ex parte* vide order dated 28.02.2018; and therefore, this matter was posted before the Master and PW-1 was examined and marked as Exs.P1 to P8.

9. Heard the learned counsel appearing for the plaintiff and perused the averments in the plaint and also proof affidavit and the documents filed by the plaintiff in support of their claim.

10. On perusal of the averments in the plaint, proof affidavit, and also Ex.P.2/Trademark Registration Certificate, it is clearly seen that the plaintiff is the registered proprietor of the trademark 'Wheel/ACTIVE WHEEL' along with its reliable colour scheme, get up and design and label. The plaintiff also filed Ex.P3, photocopy of the deeds of assignment given in favour of the plaintiff in order to substantiate that they have the copyright to use the trademark 'ACTIVE WHEEL' which is inclusive of the work along with the device, which includes colour scheme, get up, label, design.

11. Further, the plaintiff filed Ex.P7 which is the defendant's label mark 'A-1 Active Whaal' and P4 which is plaintiff's label mark 'ACTIVE WHEEL'. On perusal of both the label mark of the defendant and plaintiff, it clearly seen that the defendant is copying not only the trademark but also the colour scheme, get up and label, design and the device mark of the plaintiffs, which amounts to infringement, in terms of Section 29 of the Trademarks Act, 1999, thereby causing confusion in the minds of the public and the trade. Either by changing the last three letters of the plaintiff's trademark 'WHEEL', into 'WHAAL' nor the addition of the word 'A-1' as prefix to the trademark 'WHAAL', would make difference or distinguish the plaintiff's trademark from that of the defendant's.

12. Thus, from the above facts, it is clear that the plaintiff is the registered owner of the trademark "WHEEL/ACTIVE WHEEL", and they have the exclusive right to use the trademark, along with get up, design and device mark, lable in respect of their product. **In view of the exclusive right to use the trademark, label, get up, design and device mark "WHEEL/ACTIVE WHEEL' " by the plaintiff, the adoption of both the trademark and label "A-1 Active WHAAL", by the defendant**

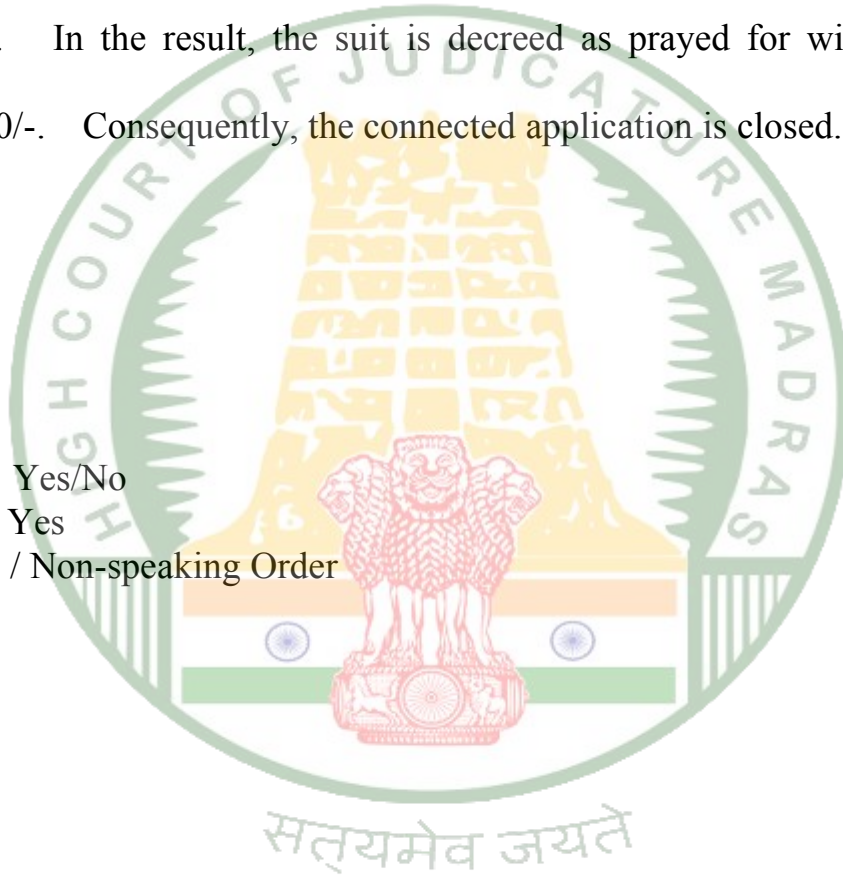
would clearly amounts to infringement, in terms of Section 29 of the Trademarks Act, 1999, as stated supra. Hence, the plaintiff Is entitled to the relief as prayed in the suit.

13. In the result, the suit is decreed as prayed for with costs of Rs.50,000/-. Consequently, the connected application is closed.

02.07.2019

Index : Yes/No
Internet : Yes
Speaking / Non-speaking Order

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**Krishnan Ramasamy,J.,
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