

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2019

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.S.No.287 of 2019
and
A.No.3276 of 2019 and
O.A.Nos.443 to 445 of 2019

M/s.Kaleesuwari Refinery Private Limited,
Represented by its Manager (Legal) A.Saravanan,
No.53, Rajasekaran Street,
Opp: Kalyani Hospital, Radhakrishnan Salai,
Mylapore, Chennai – 600 004. ... Plaintiff

Vs.

M/s.ABI & Co.,
No:284, Semmandampalayam Road,
Tirupur District,
Vellakovil – 638 111. ... Defendant

Plaint filed under Order VII Rule 1 C.P.C. read with Order IV
Rule 1 of the High Court Original Side Rules praying for:

(a) Permanent injunction to restrain the
defendant, their men, agents, associates and/or
assignees or any person claiming rights from them from
infringing the plaintiff's reputed and well known
registered trademark "Gold Winner" by using the
offending the trademark "Gold Power" or any mark or
word deceptively similar to the aforesaid trademark of
the plaintiff's for any edible oil marketed by the

defendant, their men, agents, associates and/or assignees or any person claiming rights from the defendant.

(b) Permanent injunction to restrain the defendant its men, agents, associates and/or assignees or any person claiming rights from therein from passing off the plaintiff's reputed and well known registered trademark "Gold Winner" by using the offending trademark "Gold Power" or any mark or word deceptively imilar to the aforesaid trademark of the plaintiff's for any edible oil marked by the defendant, their men, agents, associates and/or assignees or any person claiming rights from the defendant.

(c) Permanent injunction restraining the defendant from violating the plaintiff's registered copyright, A-68242/2005 dated 27.01.2005 in the artistic work used in the plaintiff's packing material/pouches used for packing refined edible sunflower oil and bearing its reputed registered trademark "Gold Winner" by substituting the trademark "Gold Winner" with the offending words "Gold Power" bearing same trade dress, color scheme and get up deceptively similar to that of the plaintiff's colour scheme and trade dress in the packing material/pouch bearing trademark "Gold Winner".

(d) For preliminary decree directing the defendant to render true account of profits made by the defendant by using the aforesaid offending label of "Gold Power".

(e) Directing the defendant , its men, agents, assignees, dealers and/or retailers, distributors, to surrender to the plaintiff all offending pouch/packing material, label, advertising materials, hoarding, letter heads, office stationary and all other material containing/bearing offending mark/label "Gold Power" with distinct color scheme, get up or any other mark visually or phonetically similar to the plaintiff's trademark "Gold Winner" label for destruction by an order of this Court.

(f) To pay for the costs of the suit;

(g) and pass such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and thus render justice.

For Plaintiff : Mr.Vijayan Subramanian

For defendant : Set ex-parte

vide order dated 22.07.2019

J U D G M E N T

The suit have been filed by the plaintiff for the relief of permanent injunction and such other reliefs more fully described in the prayer portion of this judgment.

2. Learned counsel submits that the plaintiff M/s.Kaleesuwari Refinery Private Limited is a private limited

company. The plaintiff is the market leader in the refined sunflower oil (RSO) and edible oil sector and has been marketing the product with its reputed brand "Gold Winner" over a period of 25 years since 1993. The plaintiff has been manufacturing these goods since 1993 in its factory Vengaivasal, Kancheepuram District. Plaintiff manufactures and packs various edible oils such as Sunflower oil, Groundnut oil, Palm oil, olive oil, lamp oil etc.

3. Plaintiff is the registered proprietor of the brand "GOLD WINNER" which is a reputed and well known trademark and has huge brand value in India and also internationally due to its distinctiveness and unique packing of the pouch and high quality of the product. The plaintiff maintains high standard and quality for its products since the inception and enjoys enviable reputation and goodwill among the consumers.

4. Plaintiff's mark "GOLD WINNER" is a registered mark having TM Registration No.605323. The trademark "GOLD WINNER" has become a very popular brand owing to its use and continued advertising through print, electronic and internet media. The trademark "GOLD WINNER" is so popular that it has become a

household name throughout India and there is extensive reference to its name even in TV shows and chat shows. The plaintiff's other products namely groundnut oil, refined sunflower oil etc., have also been registered under Trademarks Registry.

5. The plaintiff submits that some unscrupulous traders wanting to take legal advantage and enrich themselves at the popularity and reputation of plaintiff's trademark "GOLD WINNER". The present dispute arises on the account of unfair adoption of offending trademark "GOLD POWER" which is a deceptive imitation of the plaintiff trademark "GOLD WINNER" and having similar font, label, getup, trade dress and color scheme. The defendant's inferior and deceptively similar mark has thereby violated the registered trademark No.605323 and registered copyright A-68242/2005.

6. Learned counsel further submitted that the defendant has copied plaintiff's trademark and artistic work in the plaintiff's pouch by substituting the words "GOLD WINNER" with "GOLD POWER" with and identical name, similar script getup and trade dress, design, artwork and color scheme. The said copyright is valid and subsisting. The defendant has really intending the cause

confusion in the market to cheat the public and to trade on the goodwill associated with the plaintiff's trademark.

7. It is further submitted that the plaintiff has made huge expenditure in promoting and marketing the instant mark through various medium and channels thereby enabling the vast global outreach of the instant mark. The plaintiff has also undertaken promotional activities across the leading newspapers and television channels like SUN TV, VIJAY TV, ZEE TAMIL, COLORS TAMIL, STAR SUWARNA ETC. The plaintiff's mark "GOLD WINNER" has huge brand value in the International Market as well. The plaintiff has made huge expenditure towards advertising and marketing which amounts up to 404 crores approximately (Indian Currency) and the plaintiff makes a turnover of approximately 1800 crores per annum.

8. Further, it is submitted that the plaintiff sent a cease and desist notice dated 26.03.2019. However, the defendant has not replied for the same. With no other option, the plaintiff has approached this Court.

9. After the admission of the suit, the suit summons was served on the sole defendant on 01.07.2019. In spite of the service of the suit summons, the defendant failed to appear before this Court. Therefore, the sole defendant was set ex-parte vide order dated 22.07.2019 and the suit was directed to be placed before the learned Additional Master for recording ex-parte evidence. Before the learned Additional Master, on behalf of the plaintiff one Mr.A.Saravanan, Manager – Legal, was examined as P.W.1 and Exs.P1 to P8 were marked.

10. It has already been set out supra that as many as 8 exhibits, namely Exs.P1 to P8 have been marked and the details of the 8 exhibits are as follows:

Sl. No.	Exhibits	Description	Dated
1	Ex.P1	Photocopy of trademark Registration Certificate for plaintiff's "Gold Winner" Sunflower Oil having trademark No.605323.	27.08.1993
2	Ex.P2	Photocopy of trademark Registration Certificate for plaintiff's "Gold Winner" Sunflower Oil having trademark No.605323.	01.11.2002
3	Ex.P3	Photocopy of Extract from the Register of Copyright bearing Registration No.A-68242/2005 of the plaintiff for "Gold Winner".	27.01.2005
4	Ex.P4	Photocopy of trademark Registration Certificate issued by Registrar of trademark Singapore for trademark	23.03.2005

Sl. No.	Exhibits	Description	Dated
		No.T05/03792F in favour of plaintiff.	
5	Ex.P5	Photocopy of Legal Usage Certificate.	02.03.2018
6	Ex.P6	Photocopy of Legal Notice issued by plaintiff to defendant.	13.03.2019
7	Ex.P7	Photocopy of Comparison Table showing "Gold POWER" pouch and "Gold Winner" pouch.	
8	Ex.P8	Photocopy of the Board Resolution passed by the plaintiff.	06.07.2018

11. Heard the learned counsel for the plaintiff and also gone through the averments in the plaint and the proof affidavit and also perused the Exs.P.1 to P.8.

12. On a perusal of the documents, this Court find that trademark of the plaintiff namely "Gold Winner" got registered through Ex.P1 and also it was registered with the Copyright Board by order dated 27.01.2005, which is marked as Ex.P3. The plaintiff has also obtained legal usage certificate, which is marked as Ex.P5. This Court also compared the pouches of both the plaintiff's and the defendant's product, which has been filed at page No.9 of the typed set of papers, which is marked as Ex.P7. On comparison, it is clearly seen that the defendant has imitated not only the plaintiff's trademark but also copying the same font, label, getup, trade dress and color scheme.

13. It is made clear that the plaintiff is the registered owner of the trademark "Gold Winner" and though the word "Gold Winner" is descriptive in nature by virtue of the usage with the plaintiff's product, the plaintiff obtained the distinctiveness for the use of the word "Gold Winner" in respect of its product. Further, on comparison of Ex.P7, it is seen that the defendant is not only copying the trademark of the plaintiff 'GOLD WINNER' but also copying the same font, label, getup, trade dress and color scheme. Therefore, this Court find that the defendant's copying the plaintiff's trademark 'GOLD WINNER' will amount to infringement of the trademark, as stated in Section 29 of the Trademarks Act. Therefore, the plaintiff is entitled to the decree as prayed for.

14. Learned counsel for plaintiff requests this Commercial Division to consider imposing compensatory costs/exemplary costs on defendant in the light of conduct of the defendant which has been referred to supra. Reference to Section 35-A 'The Code of Civil Procedure, 1908' ('C.P.C.' for brevity) as amended by 'The Commercial Courts Act, 2015' ('said Act' for brevity) was also made. Section 35-A provides for compensatory costs in respect of false or vexatious defences. In the considered view of this Commercial

Krishnan Ramasamy,J.

Division will qualify as a vexatious defence (within the meaning of Section 35-A of amended CPC as amended by said Act) as it is a vexatious manner of defending a suit. Be that as it may, in the light of the trajectory and in the light of the defendant's approach to this suit, this Commercial Division is convinced that it is appropriate to impose compensatory costs of Rs.2 lakh (Rupees Two Lakh only) on the defendant.

15. Plaintiff will obviously be entitled to costs as the plaintiff has incurred substantial expenditure in carrying this suit to its logical end.

16. Suit is decreed with costs and compensatory costs as set out supra. Consequently, connected applications are closed.

16.08.2019

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