

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 30.09.2019**

**CORAM**

**THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

**C.S.No.285 of 2019**

**and**

**A.No.3274 of 2019**

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

.. Plaintiff

-VS-

M/s.Mythili Traders,  
D.No.9-1-90C, Selaikkariamman Trust Complex,  
Kallikudi Main Road, T.Kallupatti (PO),  
Periyar Taluk, Madurai District-625 702.

.. Defendant

Civil Suit filed under Order IV Rule 1 of the Original Side Rules  
r/w Order VII Rule 1 of Code of Civil Procedure r/w Sections 134(2) &  
135 of Trade Marks Act, 1999 r/w Sections 61 & 62 of the Copyright  
Act, 1957 for the following judgment and decree:-

(i) For 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 Trade Mark "Gold Winner" by using the offending Trade  
Mark "Sree Gold" or any mark or work deceptively similar to the  
aforesaid Trade Mark of the plaintiff for any edible oil marketed by the

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

(ii) For 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 Trade Mark "Gold Winner" by using the offending Trade Mark "Sree Gold" or any mark or word deceptively similar to the aforesaid Trade Mark of the plaintiff for any edible oil marketed by the defendant, their men, agents, associates and/or assignees or any person claiming rights from the defendant;

(iii) For 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 "Sree Gold" 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 trade Mark "Gold Winner";

(iv) For preliminary decree directing the defendant to render true account of profits made by the defendant by using the aforesaid offending label of "Sree Gold";

(v) To direct 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 "Sree Gold" 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; and

(vi) To pay for the costs of the suit.

For Plaintiff : Mr.Vijayan subramanian

Sole defendant was set *ex-parte* by this Court vide order dated 05.08.2019.

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### **JUDGMENT**

This suit has been filed for the following relief:-

"(i) For 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 Trade Mark "Gold Winner" by using the offending Trade Mark "Sree Gold" or any mark or work deceptively similar to the aforesaid Trade Mark of the plaintiff for any edible oil marketed by the defendant, their men, agents, associates and/or assignees or any person claiming rights from the defendant;

(ii) For 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 Trade Mark "Gold Winner" by using the offending Trade Mark "Sree Gold" or any mark or word deceptively similar to the aforesaid Trade Mark of the plaintiff for any edible oil marketed by the defendant, their men, agents, associates and/or assignees or any person claiming rights from the defendant;

(iii) For 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 "Sree Gold" 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 trade Mark "Gold Winner";

(iv) For preliminary decree directing the defendant to render true account of profits made by the defendant by using the aforesaid offending label of "Sree Gold";

(v) To direct 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 "Sree Gold" 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; and

(vi) To pay for the costs of the suit."

2.It is the case of the plaintiff that the plaintiff's trademark "Gold Winner" has become household name throughout India. They obtained RSO certification on 27.08.1993. The plaintiff have Registered Mark in various trademark numbers and application numbers, which read as follows:-

| <i>Sl.No.</i> | <i>Date</i> | <i>Trade Mark Nos.</i> | <i>Description</i>                      |
|---------------|-------------|------------------------|-----------------------------------------|
| 1             | 27.08.1993  | 605323                 | Gold Winner for "Sunflower Oil"         |
| 2             | 11.01.2002  | 1073117                | Gold Winner for "Refined Groundnut Oil" |
| 3             | 11.01.2002  | 1073118                | Gold Winner for "Refined Groundnut Oil" |
| 4             | 01.11.2002  | 1147963                | Gold Winner for "Refined Sunflower Oil" |
| 5             | 23.06.2003  | 1208513                | Gold Winner for "Vanaspati"             |
| 6             | 23.06.2003  | 1208514                | Gold Winner for "Vanaspati"             |
| 7             | 16.11.2005  | 1399086                | Gold Winner for "Refined Sunflower Oil" |

3.Other details of Registered Mark of the Plaintiff are as follows:-

| <i>Mark</i> | <i>Application Nos.</i> | <i>Class</i> | <i>Status</i> |
|-------------|-------------------------|--------------|---------------|
| Gold Winner | 1147963                 | 29           | Registered    |
| Gold Winner | 1208515                 | 29           | Registered    |
| Gold Winner | 2320408                 | 29           | Registered    |
| Gold Winner | 2320409                 | 29           | Registered    |
| Gold Winner | 2320410                 | 29           | Registered    |
| Gold Winner | 2934031                 | 29           | Registered    |
| Gold Winner | 2934030                 | 29           | Registered    |
| Gold Winner | 2934032                 | 29           | Registered    |
| Gold Winner | 3289982                 | 29           | Registered    |

4.The plaintiff have also secured international trademark registrations and the same are quoted hereinbelow:-

| <i>Country</i>                                  | <i>Mark</i> | <i>Application Nos.</i> | <i>Class</i> | <i>Status</i> |
|-------------------------------------------------|-------------|-------------------------|--------------|---------------|
| Singapore                                       | Gold Winner | T0526845F               | 29           | Registered    |
| Singapore                                       | Gold Winner | T0503379C               | 29           | Registered    |
| Singapore                                       | Gold Winner | T0503792F               | 29           | Registered    |
| Singapore                                       | Gold Winner | T05037961               | 29           | Registered    |
| Malaysia                                        | Gold Winner | 05021648                | 29           | Pending       |
| Malaysia                                        | Gold Winner | 05020758                | 29           | Pending       |
| International Application under Madrid Protocol | Gold Winner | 1234655                 | 29           | Registered    |
| US                                              | Gold Winner | 4848593                 | 29           | Registered    |
| Australia                                       | Gold Winner | 1674105                 | 29           | Registered    |

5.The defendant unfairly adopted the plaintiff's trademark "Gold Winner" with similar font, label, getup, trade dress and colour scheme for packing and marketing their inferior sunflower oil with the offending trademark "Sree Gold" and the trade dress is in violation of the plaintiff's registered trademark, and registered copyright dated 27.01.2005, besides, the defendant has already copied the plaintiff's trademark and artistic work in the plaintiff's pouch by substituting the words "Gold Winner" with "Sree Gold" with an identical name, similar script, getup and trade dress, design, art work and colour scheme for packing inferior grade refined palmoline oil with offending words "Sree Gold". Hence, this suit.

6.On the side of the plaintiff, the plaintiff himself was examined as P.W.1 and Ex.P1 to Ex.P8 were marked as follows:-

| <i>Sl.No.</i> | <i>Exhibits</i> | <i>P.W.1</i>                                                                                                                                          |
|---------------|-----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1             | Ex.P1           | The photocopy of the Trade Mark Registration Certificate for plaintiff's "Gold Winner" Sunflower Oil having Trade Mark No.605323 dated 27.08.1993.    |
| 2             | Ex.P2           | The photocopy of the Trade Mark Registration Certificate for plaintiff's "Gold Winner" Sunflower Oil having Trade Mark No.605323 dated 01.11.2002.    |
| 3             | Ex.P3           | The photocopy of the Extract from the Register of copyright bearing Registration No.A-68242/2005 of the plaintiff for "Gold Winner" dated 27.01.2005. |

| <b>Sl.No.</b> | <b>Exhibits</b> | <b>P.W.1</b>                                                                                                                                                                |
|---------------|-----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4             | Ex.P4           | The photocopy of the Trade Mark Registration Certificate issued by Registrar of Trade Marks Singapore for Trade Mark No.T05/03792F in favour of plaintiff dated 23.03.2005. |
| 5             | Ex.P5           | The photocopy of the Legal Usage Certificate dated 02.03.2018.                                                                                                              |
| 6             | Ex.P6           | The photocopy of the Legal Notice issued by plaintiff to defendant dated 03.04.2019.                                                                                        |
| 7             | Ex.P7           | The photocopy of the Comparison Table showing “Sree Gold” pouch and “Gold Winner” pouch.                                                                                    |
| 8             | Ex.P8           | The photocopy of the Board Resolution passed by the plaintiff dated 06.07.2018.                                                                                             |

7.The sole defendant was set *ex-parte*, vide order of this Court dated 05.08.2019.

8.On the side of the plaintiff, the plaintiff himself was examined as P.W.1 and Ex.P1 to Ex.P8 were marked. Ex.P1 is the photocopy of the Trade Mark Registration Certificate for plaintiff's “Gold Winner” sunflower oil having Trade Mark No.605323, dated 27.08.1993. Ex.P2 is the photocopy of the Trade Mark Registration Certificate for plaintiff's “Gold Winner” sunflower oil having Trade Mark No.605323, dated 01.11.2002. Ex.P7 is the photocopy of the comparison table showing “Sree Gold” pouch and “Gold Winner” pouch. Ex.P5 and Ex.P6 are filed to show that they are registered trademarks. P.W.1's evidence is the *ex-parte* evidence and he has stated that various

infringements were made by the defendant by unfairly adopting the trademark of the plaintiff with similar font, label, getup, trade dress and colour scheme for packing and marketing. Similarly, the plaintiff's trademark "Gold Winner" is also copied with "Sree Gold". Thus, the evidence of the plaintiff remained unchallenged, as the defendant has copied the plaintiff's trademark with similar font, label, getup, colour scheme for packing materials and also for other products that the consumers may consume.

9(i). In view of the above, this Court is of the view that the plaintiff have proved their claim. Accordingly, the suit is decreed with costs, insofar as prayers (i), (ii) and (iii) are concerned.

9(ii). In respect of other prayers, viz., prayers (iv), (v) and (vi), the plaintiff has not produced any evidence to show that the defendant has made out any profit by using the offending label. Accordingly, the suit is dismissed in respect of prayers (iv), (v) and (vi). Consequently, connected application is closed.

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30.09.2019

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C.S.No.285 of 2019

N.Sathish Kumar, J.

(abr)



C.S.No.285 of 2019

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