

## IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.01.2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.518 of 2018andA.Nos.6350 to 6352 of 2018andO.A.Nos.715 to 717 of 2018

1.M/s.Urban Clothing Co.

51, Kavari Street

Athipet, Ambattur

Chennai - 600 058

Represented by its Partner

Shanavas K.H.

Residing at Flat No 1101, Tower H

The Metro Zone

44, Jawaharlal Nehru Salai

Koyambedu, Chennai - 600 107.

2.Urban Enterprises

Ground Floor, Phoenix Market City

142, Velachery Main Road

Velachery

Chennai - 600 042.

Represented by its Partner Shanavas K.H.

.. Plaintiffs

Vs.

1.Elgee Fashions

Represented by its Partner

John P.Antony

59/559, 1st Floor

Sree Ram Mandir

Chittor Road, Cochin, Kerala.

## 2. United Apparels

Rep. by its Proprietor John P Antony  
D.No.42/1940, 1st Floor,  
Old Railway Station Road  
Cochin-18, Kerala.

.. Defendants

This Civil Suit is preferred, under Order IV Rule 1 of Original Side Rules read with Order VII Rule of CPC read with Sections 27, 28, 29, 134 & 135 of the Trade Marks Act, 1999 read with Sections 51, 55, 62 of the Copy Right Act, 1957, read with Section 7 of the Commercial Courts Act, 2015; praying for

a) A perpetual injunction, restraining the Defendants by themselves or their men, partners, proprietors, stockists, dealers, servants, agents, franchisees, successors in interest, licensees, assignees, representatives or under any them, from in any manner infringing the plaintiff's popular and registered Trademark No.3439275 'URBANTOUCH' more particularly by use of urban KITES Trade Mark and any mark that is similar/deceptively similar to the trade mark of the plaintiffs or in any other manner whatsoever;

b) A perpetual injunction restraining the Defendants by themselves or their men, partners, proprietors, stockiest, dealers, servants, agents, franchisees, successors in interest, licensees, assignees, representatives, branches or any of them claiming through or under them from in any manner infringing the plaintiffs' copyright over the artistic work, colour scheme, layout, get-up and lettering style, trade dress in URBANTOUCH label of which plaintiffs is the absolute owner and prior user or any mark/label deceptively similar to that of the plaintiffs artistic work/label more particularly by use of identical trade mark under the infringing mark urban KITES or in any other manner whatsoever;

c) A perpetual injunction restraining the Defendants by themselves or their men, partners, proprietors, stockists, dealers, servants, agents, franchises, successors in interest, licensees, assignees, representatives or any

of them from in any manner passing off or enabling passing off of the defendants' goods and/or service under the Trade and Service Mark 'urbanKites' or any other deceptively similar Trade and Service Mark as and for the goods of the plaintiffs under the Trade Mark 'URBANTOUCH', or by use of any deceptive trading style 'urban Kites' or in any other manner whatsoever;

d) The defendants be ordered to withdraw all references to urban KITES from Face Book/any Website/Email Address/Products/Services and any other connected Websites;

e) The defendants be ordered to surrender to the plaintiffs for destruction all goods, name boards, packing materials, printer bills, cartons, collar, tag, sachets, labels and other materials bearing the Trademark 'urbanKITES' which is identical with and/or deceptively similar to that of the plaintiffs' trade mark 'URBANTOUCH'.

f) The defendants be ordered to prepare and submit an account of profits made by them by the unlawful use of the Trade Mark urbanKITES or deceptively similar mark deceptive as that of the plaintiffs' popular trade mark and thereafter to pass a final decree upon ascertaining the accounts, in favour of the plaintiffs and against the defendants;

g) For the costs of the suit; and

h) grant such other relief or reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Plaintiffs : Mr.S.Patrick

For Defendants : Mr.Manoj Sreevalsan

### JUDGMENT

There are two plaintiffs and two defendants in this suit.

2. Mr.S.Patrick, learned counsel on record is before this Commercial Division on behalf of both plaintiffs and Mr.M.Manoj Sreevalsan, learned counsel on record is before this Commercial Division on behalf of both defendants.

3. I have heard learned counsel on both sides.

4. Vide proceedings of this Commercial Division dated 12.11.2018, this matter was referred to the 'Tamil Nadu Mediation and Conciliation Centre' ('TNMCC' for brevity) under the aegis of this Court.

5. Post Mediation, a Mediation Report dated 29.01.2019, has since been received. A perusal of the report shows that parties have arrived at a settlement, mediation has been completed and the duly signed Memo of Compromise entered into between the parties has also been enclosed.

6. Both the aforesaid learned counsel before this Commercial Division reiterated the aforesaid position. Both learned counsel also submit that the parties, i.e., authorised representatives of the plaintiffs company and the defendants company were present before TNMCC for recording the Memo of Compromise dated 29.01.2019, which reads as follows:

**'MEMO OF COMPROMISE**  
**FILED BY THE PLAINTIFF'S AND THE 1ST AND 2ND DEFENDANT**  
**UNDER**

**ORDER 23 RULE 1 CPC READ WITH SECTION 151 CPC**

1. The plaintiffs are **M/s.Urban Clothing Co.**, having address at 51, Kavarai Street, Athipet, Ambattur, Chennai - 600 058 represented by its Partner Shanavas K.H, residing at Flat No.1101, Tower H, The Metro Zone, 44, Pillaiyar Koil Street, Chennai and 2) **Urban Enterprises**, having address at Ground Floor, Phoenix Market City, 142, Velachery Main Road, Velachery, Chennai - 600 042 represented by its Partner Shanavas K.H. (which expression where the context admits shall include their successors, assigns and nominees)

2. The defendants are **M/s.Elgee Fashions**, having address at 59/559, 1<sup>st</sup> Floor, Sree Ram Mandir, Chittoor Road, Cochin represented by its Partner John P.Antony and 2) **United Apparels**, having address at D.No.42/1940, 1<sup>st</sup> Floor, Old Railway Station Road, Cochin-18 represented by Mr.John P Antony, (which expression where the context admits shall include their successors, assigns, nominees, partners, employees, representatives, dealers, distributors, manufacturers and agents).

3. The parties above named have arrived at a settlement on the following terms and conditions:

a) The Defendants admit and acknowledge that the first plaintiff is the prior adopter and registered proprietor of the Trademark **Urban Touch**, registered bearing trademark number under No.3439275 as also the proprietor of various other Urban touch Trademarks and undertake not to anytime resort to any proceedings in relation thereto including, opposing / applying for rectification thereto before the appropriate Forum.

b) The Plaintiffs admit and acknowledge that Mr.John P.Antony, representative of the Defendants has obtained trademark registration for the mark **URBANKIDS** having trademark registration number 2776928 for which the Plaintiffs

have no Objection.

c) The Defendants undertake not to use the Trade Mark 'URBAN KITES' [word per se] along with or without the Artistic work as a trademark in respect of any kind of services/ trade including the running of showrooms or display on products / packaging or advertise their goods using the Trademark **URBAN KITES** with immediate effect in relation to any existing company/firm or to be incorporated in the future. The undertaking shall also bind all the successors in interest of the Defendants of whatever nature.

d) The Defendant's communicate that there would be marginal left over of stocks under the infringing URBANKITES Trademark in the shelves of their Dealers and the Plaintiff's Understanding the practical difficulties of the Defendants agree and undertake that they would not in any manner act against their dealers purely in respect of Goods already sold by the Defendants to the dealers and lying unsold as on date. On the other hand, the balance of stock under the impugned Trademark lying in the Defendants own premises shall be disposed/removed not later than February 15, 2019 without exception.

e) The Defendants undertake to this Hon'ble Court not to advertise directly or indirectly or use the mark, or any other variations of the mark, artistic work and/or trade mark 'URBAN KITES' in their Name Boards, tags, Pamphlets, catalogues, Professional materials, labels, cartons, packing materials or in any other manner whatsoever.

f) The Plaintiffs hereby confirm and agree that they have no claims whatsoever against the Defendants including but not limited to, any claims in respect of, or based upon, any loss of interest, goodwill, business or profits, any inconvenience, mental agony, or any other damages or loss or other claims whatsoever,

and no such claims shall survive against the Defendants in connection with or arising from the alleged use of the Plaintiffs copyright and trademark.

g) The Defendants hereby undertake to withdraw / abandon the application for registration of their mark **URBAN KITES** that they have filed before the Registrar of Trade Marks, Chennai under No.2663004 and 2776929 and also undertake not to file any such applications for any identical or similar trademarks as that of the Plaintiffs at any time in future. Copy of the status of the said Trademarks and copy of the order of Abandonment passed by the Hon'ble Registrar of Trademark are appended hereto as **Annexure I and II**.

h) The 1<sup>st</sup> and 2<sup>nd</sup> Defendants who have already stopped sale of Goods covered by the order of injunction never the less undertake not to supply the subject goods under the objectionable mark Urban Kites as from the date of the present compromise.

i) The Defendants confirm having withdrawn permanently all references to the impugned mark "**URBAN KITES**" from the Face book account, email and website any and all other social media and undertake permanently to refrain from using the said mark as aforesaid with immediate effect.

j) The Plaintiffs do hereby state that they have incurred huge expenses and losses in recovering the dues from their defendants and in consideration and compensation of the same, the defendants in appreciation thereof do hereby undertake to pay the first plaintiff a token sum of Rs.2 Lakhs in final and full settlement and compensation of the same. The defendants have today paid a sum of Rs.2 Lakhs vide D.D.No.147404 dated 25.01.2019 drawn on Federal Bank, Ernakulam Branch and the Plaintiffs admit and acknowledges receipt of the same and both

*the plaintiffs and defendants hereby agree to waive, release, discharge and promise never to assert, institute or otherwise prosecute any and all claims, demands, causes of action and liabilities of whatever kind, whether known or unknown, which any party has, or had against the other party. Copy of the Demand Draft in this regard is appended as Annexure III hereto.*

*k) The plaintiffs and defendants agree and acknowledge that there are no further dues or outstanding payments owed by any of the party to the other.*

*l) Nothing stated herein shall be deemed to construe that rights of the parties shall be prejudiced in the event of alleged violation of any of the terms of the present compromise, the right to proceed in accordance with law and to claim damages remaining intact.*

*m) The Plaintiffs and Defendants acknowledge that they have read and understood this Memorandum of Compromise and agree to be bound by its terms and conditions. The Parties also agree that this Memorandum of Compromise represents the entire understanding of the Parties with respect to the subject matter hereof and supersedes all other proposals or prior agreements, oral or written, and all other communications between the parties relating to this subject.*

*n) This Memorandum of Compromise may not be modified or cancelled in any manner except by writing signed by all the Parties hereto.*

*o) This Memorandum of Compromise shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, Manufacturers and assigns.*

*p) The signatories hereto personally covenant that they are duly authorized to settle the issues between them in the*

manner set out herein above and to sign this Memorandum of Compromise.

q) The plaintiff's and the defendants agree that the suit may be Decreed in terms of this Memorandum of Compromise.

It is therefore prayed that the Memorandum of Compromise may be recorded and Decree may be passed in terms of the Memorandum of Compromise by this Hon'ble Court, incorporating the terms of the compromise as stated above and thus render justice.

Dated at Chennai on this the 29<sup>th</sup> day of January, 2019.

Sd/-

1<sup>st</sup> Plaintiff

Sd/-

2<sup>nd</sup> Plaintiff

Sd/-

1<sup>st</sup> Defendant

Sd/-

2<sup>nd</sup> Defendant

COUNSEL FOR PLAINTIFFS

COUNSEL FOR DEFENDANTS

ENCLOSURE

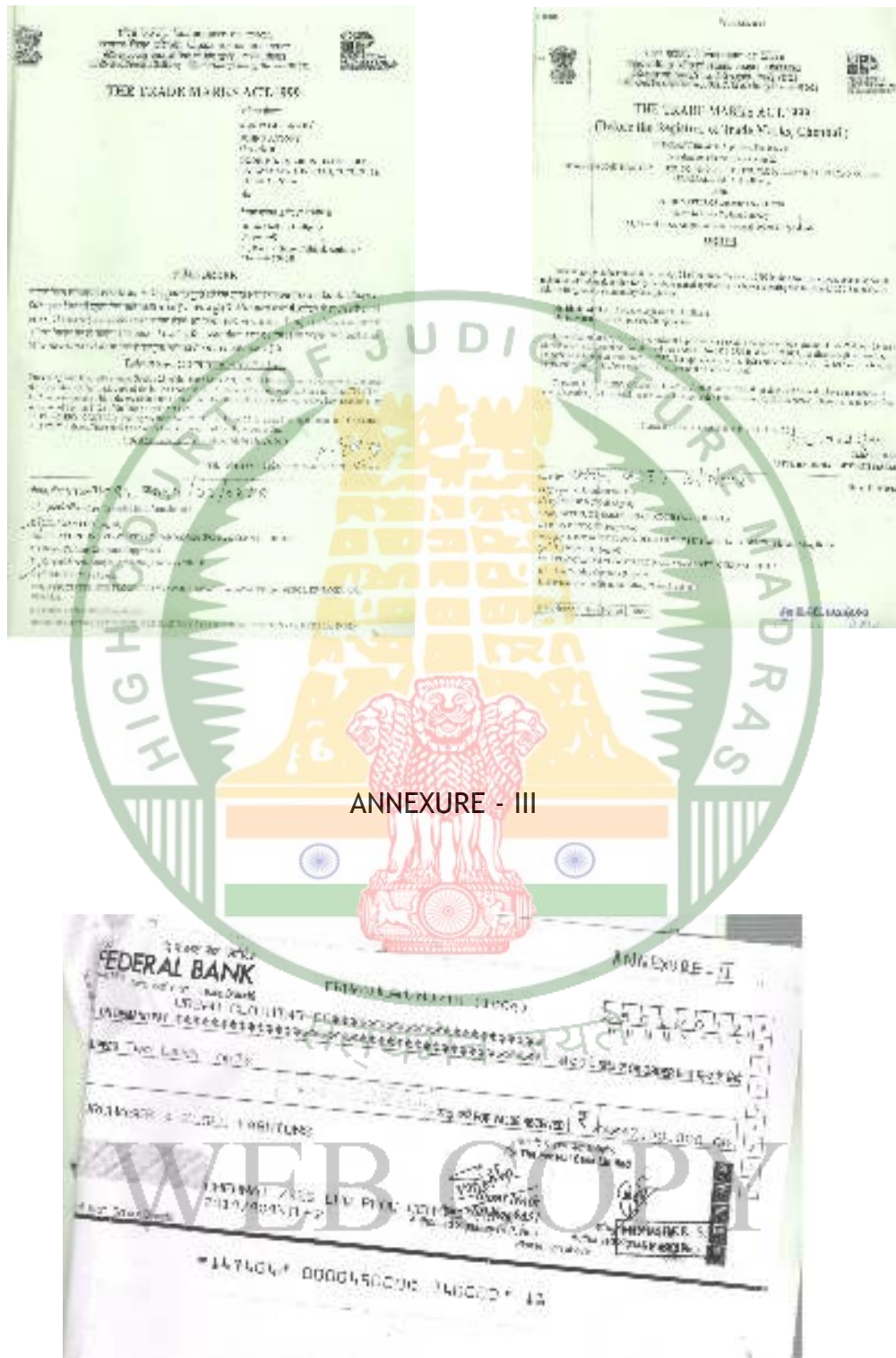
1. ANNEXURE I
2. ANNEXURE II
3. ANNEXURE III

ANNEXURE - I

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7. As both entities were represented before TNMCC through their authorised representatives for recording the Memo of Compromise both counsel request that this Memo of Compromise may please be recorded dispensing with the presence of the authorised representatives. In the light of their presence before TNMCC, their presence before this Commercial Division is dispensed with.

8. Both learned counsel submit and pray for a decree in the main suit in terms of the aforesaid Memo of Compromise dated 29.01.2019.

9. There shall be a decree in terms of the aforesaid Memo of Compromise dated 29.01.2019. The Memo of Compromise dated 29.01.2019 and the report of TNMCC dated 29.01.2019 shall form part of the decree.

10. This suit is decreed on above terms. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

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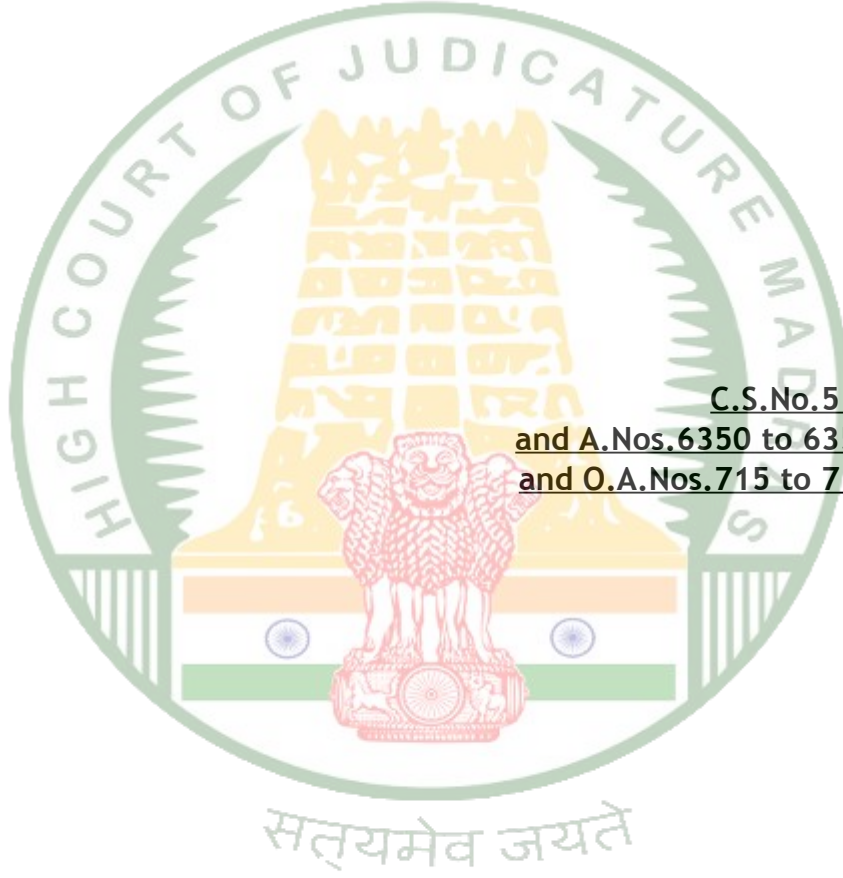
30.01.2019

Speaking/Non-Speaking order

Index : Yes/No

vsm

M.SUNDAR, J.  
vsm



C.S.No.518 of 2018  
and A.Nos.6350 to 6352 of 2018  
and O.A.Nos.715 to 717 of 2018

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