

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2019

CORAM:

The Hon'ble Mr.Justice KRISHNAN RAMASAMY

C.S.No. 628 of 2014  
and  
A.Nos.6116 & 6119 of 2014, O.A.Nos.765 to 767 of 2014

M/s.Kaleesuwari Refinery Pvt.Ltd.,  
Rep.by its Director Mr.K.Ashok Kumar  
No.53, Rajasekaran Street,  
Opp: Kalyani Hospital, Radhakrishnan Salai,  
Mylapore, Chennai - 600 004.

..Plaintiff

Vs

M/s.Pradeebha Trading Company,  
Rep.by its Proprietor Mr.Irudhayaraj  
609, 610, R.G.Street,  
Coimbatore - 01.

..Defendant

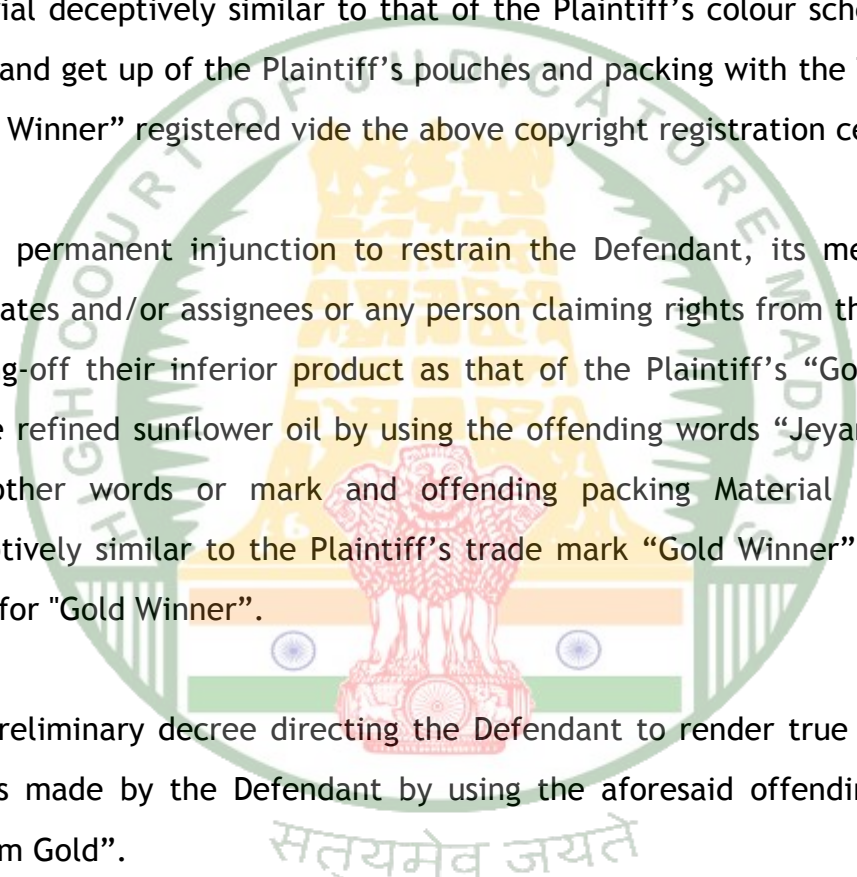
**Prayer :** Complaint filed under Order IV, Rule 1 of the Original Side Rules and Order VII Rule 1 of the C.P.C r/w Sections 134 & 135 of the Trade Marks Act, 1999 r/w Sections 61 & 62 of the Copyright Act, 1957 prays as follows:-

- i. 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 Trade Mark "Gold Winner" registered vide Trade Mark No.605323 dated 27/08/1993, Trade Mark No. 1147963 dated 01/11/2002, and Trade Mark No.1399086 dated 16/11/2005 for Sunflower oil and Refined Sunflower oil in class 29 of

the IV schedule to the Trade Marks Rules 1999 by using the offending Trade Mark “Jeyam Gold” or any mark or word deceptively similar to the aforesaid Trade Mark 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.

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- ii. For a Permanent injunction restraining the Defendant, its men, agents, assignee and/or associates or any person claiming rights from them from using the offending pouch/packing material bearing the offending words “Jeyam Gold” or any other mark or word and color scheme and get up deceptively similar to that of the Plaintiff packing material/pouch used for their refined edible sunflower oil with distinct color scheme, get up with their reputed and well known trade mark “Gold Winner” refined sunflower oil and other oil registered vide Trade Mark No.605323 dated 27/08/1993, Trade Mark No. 1147963 dated 01/11/2002 and Trade Mark No.1399086 dated 16/11/2005.
- iii. For a permanent injunction restraining the Defendant from violating the Plaintiff’s Copyright registered vide Copyright Registration No. A-63205/2003 dated 17/01/2003, Copyright Registration No.A-68242/2005 dated 27/01/2005, Copyright Registration No.A-68243/2005 dated 27/01/2005, Copyright Registration No.A-28244/2005 dated 27/01/2005, Copyright Registration No.78000/2006 dated 29/12/2006, Copyright Registration No.78004/2006 dated 29/12/2006, and Copyright Registration No.78063/2007 dated 09/01/2007, in the artistic work used in the Plaintiff’s

packing material and for pouches for refined edible sunflower oil and other edible products bearing the reputed and well known registered Trademarks “Gold Winner” by using the offending words “Jeyam Gold” with color scheme, trade dress and get up in the offending pouches and packing material deceptively similar to that of the Plaintiff’s colour scheme, trade dress and get up of the Plaintiff’s pouches and packing with the Trade Mark “Gold Winner” registered vide the above copyright registration certificates.

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- iv. For a permanent injunction to restrain the Defendant, its men, agents, associates and/or assignees or any person claiming rights from therein from passing-off their inferior product as that of the Plaintiff’s “Gold Winner” edible refined sunflower oil by using the offending words “Jeyam Gold” or any other words or mark and offending packing Material and pouch deceptively similar to the Plaintiff’s trade mark “Gold Winner” and Trade dress for “Gold Winner”.
- v. For preliminary decree directing the Defendant to render true account of profits made by the Defendant by using the aforesaid offending label of “Jeyam Gold”.
- vi. Directing the Defendant, its men, agents, assignees, dealers and/or retailers, distributor, 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 “Jeyam Gold” with distinct color scheme, get up or any other

mark visually or phonetically similar to the plaintiff's well-known trademark  
"Gold Winner" label for destruction by an order of this Court;

- vii. For erasure, removal or obliteration from all infringing goods, materials or articles in the possession or control of the Defendant with the offending mark /labels and pouches deceptively similar to the plaintiff's "Gold Winner" refined sunflower oil;
- viii. To pay for the costs of the suit;

For Plaintiff : Mr.R.Anish Kumar  
For Defendant : set exparte

**J U D G M E N T**

1. Plaintiff is one of the leading brand-holder in the market and leader in refined edible sunflower oil sector. Plaintiff has been marketing the products since 1991 with its reputed brand "Gold Winner" over a period of more than 25 years.

2. The Plaintiff manufactures and packs various edible oils such sunflower oil, groundnut oil, palm oil, olive oil, blended oil, etc with its well known trade mark namely "Gold Winner", "Gold Choice", "Cardia Life", etc.

3. The Plaintiff is having its factories at Vengaivasal and Palani in Tamil Nadu and at Tumkur in Karnataka. These factories have also been certified as ISO 9001:2008, HACCP and ISO 2200: 2005.

4. The Plaintiff maintains high standard of quality and enjoys enviable reputation and goodwill among consumers/customers.

5. The Plaintiff's label is very stylish and captivating. The artistic work of "Gold Winner" refined sunflower oil is unique and translated into stupendous success in the market. The Plaintiff's product "Gold Winner" refined sunflower oil is one of the highest purchased products in the market.

6. The public in general and consumers in particular are associated to the packing material with the Plaintiff's refined sunflower oil.

7. The Plaintiff is the registered proprietor of well known trademark "Gold Winner" for refined sunflower oil and other allied products falling under class 29 of IV Schedule to the Trade and Merchandise Rules, 1959 as amended by Trademark Rules, 2002 vide TM Nos. 605323, 1073117, 1073118, 1147963, 1208513, 1208514 & 1399086. The trademarks are valid and subsisting.

8. The Plaintiff also obtained copyright registration of the artistic work used along with trademark "Gold Winner" vide Copyright registration Nos. A-63205/2003, A-68242/2005, A-68243/2005, A-68244/2005, A-78000/2006, A-78004/2006 and A-78063/2007. These registrations are valid and subsisting.

9. The Plaintiff has also obtained registration certificate from Registrar of Singapore for the trademark "Gold Winner".

10. The present dispute arises on account of unfair adoption of offending trademark “Jeyam Gold” and deceptive imitation of Plaintiff’s getup, trade dress and colour scheme for packing and marketing its inferior sunflower oil with the aforesaid offending mark in violation of Plaintiff’s trademark and copyright in the artistic work in “Gold Winner” pouch, cover and other packing.

11. Cause of Action arose, during 4<sup>th</sup> week of August, 2014 when Plaintiff came to know that Defendant is trading in “Jeyam Gold” with offending label.

12. The Defendant’s product “Jeyam Gold” refined sunflower oil is deceptively similar to that of the Plaintiff’s “Gold Winner” refined sunflower oil and results in infringement of Plaintiff’s registered trademark and copyright. The Defendant is also guilty of for passing-off its products as that of the Plaintiff.

13. The Defendant appears to be engaged in packing and marketing refined sunflower oil in Coimbatore and in the neighbouring districts in the State of Tamil Nadu.

14. The Defendant intends to trade on the goodwill of the Plaintiff associated with the Plaintiff’s “Gold Winner” to cause confusion in the market to cheat consumers for unjust enrichment.

15. The Plaintiff has complied to various statutory requirements, viz. obtained license from Directorate of Health and Family Welfare Service, Food

and Drug administration, compliance to Legal Metrology Act, FSSAI Act, ISO and HACCP certification. The Plaintiff is registered with various tax departments and paying all necessary taxes and duties and also complying with portions of all applicable laws in the country.

16. So far the Plaintiff has spent more than 200 crores for its promotions and advertisements.

17. Therefore, the plaintiff filed the present suit and obtained the interim order. The suit summon was served on sole defendant and thereafter none appeared and set exparte on 31.07.2019. On behalf of the plaintiff PW-1 was examined and Ex.P-1 to P-18 were marked.

18. Heard the counsel appearing for the plaintiff. This Court also perused the evidence in the plaint, proof affidavit and also perused the Ex.P-1 to Ex.P-18. On the perusal of the exhibits, according to the plaintiff, they have registered the word mark "Gold Winner" with the Registrar of Trademark.

19. The plaintiff registered the word mark "Gold Winner" and the same is filed as Ex.P2. In respect of Sunflower oil the plaintiff also registered word mark and the same are marked as Ex.P3 to P-8. Further the plaintiff also registered the word mark "Gold Winner" with the Copy Right Board and obtained the Copyright Registration Certificate. In this regard, the plaintiff also marked the extract from the Register of Copyright as Ex.P-9. Further the plaintiff also marked various other documents with regard to the registration of the word mark "Gold Winner" under different classes. On the perusal of several documents, this Court finds that the plaintiff is the Proprietor of the trade mark "Gold Winner". Further the respondent also filed the defendant pouch for "Jeyam Gold" as Ex.P-18 along with plaintiffs pouch for "Gold Winner" as Ex.P-17. The registered word mark of the plaintiff and the defendant are different. However, the defendant copied the Colour scheme, get-up and design of the plaintiff's registered trade mark. This Court also compared Ex.P-17 and P-18, on the face of it appears that defendant is copying the entire colour scheme, get-up and design of the plaintiff. This clearly amounts to infringement under Section 29 of the Trade Marks Act.

20. Therefore, the plaintiff is entitled for the relief as prayed. The present Suit is decreed with the cost of Rs.50,000/-. Consequently, connected all the connected applications are closed.

28.08.2019

Pns

**List of Witnesses and Exhibits on the side of the Plaintiffs:-**

A.Saravanan (PW.1)

**LIST OF EXHIBITS**

| Exs. | DATED      | DOCUMENTS                                                                                                             | REMARKS   |
|------|------------|-----------------------------------------------------------------------------------------------------------------------|-----------|
| P1   | 06.07.2018 | Board Resolution passed by the Plaintiff Company.                                                                     | Photocopy |
| P2   | 27.08.1993 | Trade Mark Registration Certificate for Plaintiff's "GOLD WINNER" Sunflower Oil having Trade Mark No.605323           | Photocopy |
| P3   | 11.01.2002 | Trade Mark Registration Certificate for Plaintiff's "GOLD WINNER" refined groundnut oil having Trade Mark No. 1073117 | Photocopy |
| P4   | 11.01.2002 | Trade Mark Registration Certificate for Plaintiff's "GOLD WINNER" refined                                             | Photocopy |

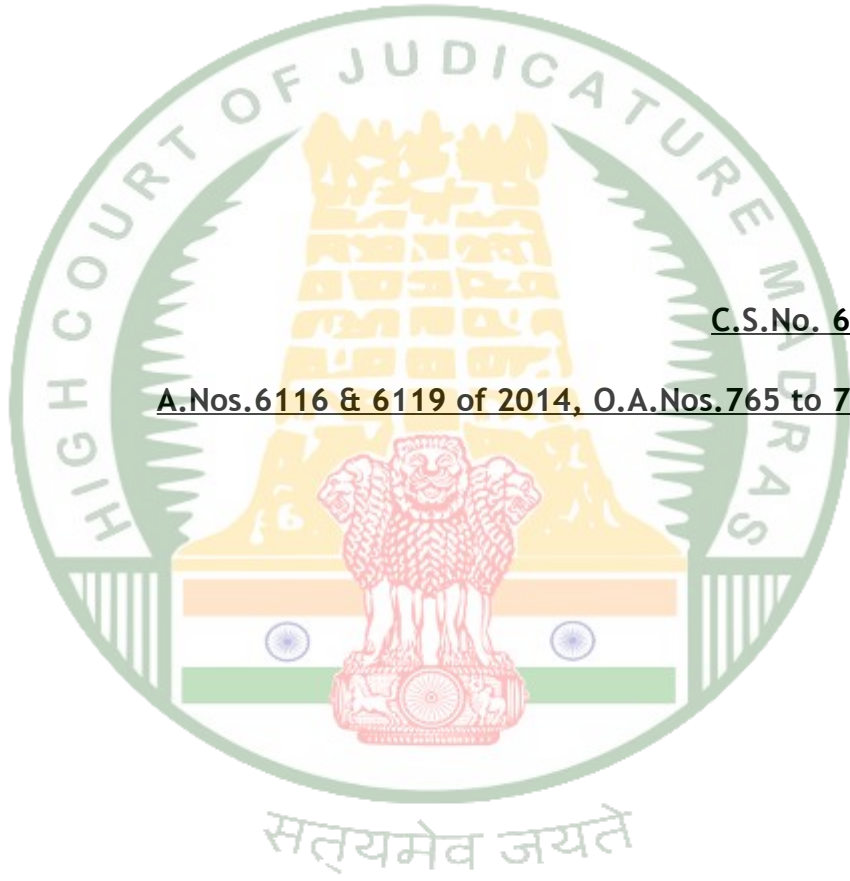
|     |            |                                                                                                                                                     |           |
|-----|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
|     |            | groundnut oil having Trade Mark No.1073118                                                                                                          |           |
| P5  | 01.11.2002 | Trade Mark Registration Certificate for Plaintiff's "GOLD WINNER" refined Sunflower Oil having Trade Mark No. 1147963                               | Photocopy |
| P6  | 17.01.2003 | Extract from the Register of Copyright bearing Registration No. A-63205/2003 of the plaintiff for "GOLD WINNER"                                     | Photocopy |
| P7  | 23.06.2003 | Trade Mark Registration Certificate for Plaintiff's "GOLD WINNER" Vanaspati having Trade Mark No. 1208513                                           | Photocopy |
| P8  | 23.06.2003 | Trade Mark Registration Certificate for Plaintiff's "GOLD WINNER" Vanaspati having Trade Mark No. 1208514                                           | Photocopy |
| P9  | 27.01.2005 | Extract from the Register of Copyright bearing Registration No.A-68242/2005 of the plaintiff for "GOLD WINNER" Refined Sunflower Oil (1 ltr) label  | Photocopy |
| P10 | 27.01.2005 | Extract from the Register of Copyright bearing Registration No. A-68243/2005 of the plaintiff for "GOLD WINNER" Refined Groundnut Oil (1 ltr) label | Photocopy |
| P11 | 27.01.2005 | Extract from the Register of Copyright bearing Registration No.A-68244/2005 of the plaintiff for "GOLD WINNER" Refined                              | Photocopy |

|     |            |                                                                                                                                       |           |
|-----|------------|---------------------------------------------------------------------------------------------------------------------------------------|-----------|
|     |            | Groundnut Oil (15 ltr) label                                                                                                          |           |
| P12 | 23.03.2005 | Trade Mark Registration Certificate issued by Registrar of Trade Marks Singapore for Trade Mark No. T05/03792F in favour of Plaintiff | Photocopy |
| P13 | 16.11.2005 | Trade Mark Registration Certificate for Plaintiff's "GOLD WINNER" Refined Sunflower Oil having Trade Mark No.1399086                  | Photocopy |
| P14 | 29.12.2006 | Extract from the Register of Copyright bearing Registration No.A-78000/2006 of the plaintiff for "GOLD WINNER SREE GOLD" ORID DHALL   | Photocopy |
| P15 | 29.12.2006 | Extract from the Register of Copyright bearing Registration No.A-78004/2006 of the plaintiff for "GOLD WINNER SREE GOLD" MOONG DHALL  | Photocopy |
| P16 | 09.01.2007 | Extract from the Register of Copyright bearing Registration No.A-78063/2007 of the plaintiff for "GOLD WINNER SREE GOLD" TOOR DHALL   | Photocopy |
| P17 | ----       | "Gold Winner" Pouch of Plaintiff                                                                                                      | Photocopy |
| P18 | ----       | "Jeyam Gold" Pouch of Defendant                                                                                                       | Photocopy |

**Krishnan Ramasamy, J.,**

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