

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2019

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

C.S.No.465 of 2019

and A.Nos.5538, 5539 and 5939 of 2019

and O.A.Nos.734, 735 and 736 of 2019

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

... Plaintiff

Vs.

M/s.Sri Kumar Traders,
Represented by Shri P.Madhaiyan,
No. 93/1, Murugan Koil Street,
Thiruvandarkoil,
Puducherry - 605 107.

... Defendant

Plaint filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 of CPC Rules read with Sections 134 & 135 of the Trade Marks Act, 1999 read with Sections 61 & 62 of the Copyright Act, 1957 praying for:

(a) Permanent injunction to restraining 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 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 restraining the defendant their men, agents, associates and / or assignees or any person claiming rights from them from Passing Off the plaintiff's reputed and well known Trade Mark "Gold Winner" by using the offending Trade Mark "Real 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.

(c) Permanent injunction restraining the defendant from infringing 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 "Read Gold" bearing same trade dress, color scheme and get up deceptively similar to that of the plaintiff's color scheme and trade dress in the packing material / pouch bearing trade mark "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 "Real Gold".

(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 material, hoarding, letter heads, office stationary and all other material containing/bearing offending mark/lable "Real God" 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 Court may deem fit and proper in the facts and circumstances of the case and thus render justice.

For Plaintiff : Mr.M.K.Sharath Kumar for
Mr.Vijayan Subramanian

For defendant : Mr.B.Manoharan

J U D G M E N T

When the matter was taken up for hearing, the defendant filed an affidavit stating that, as an authorized user of Trade Mark Real Gold, they will change the pouch design and he further submitted in the affidavit that, already they have stock in the old design and due to interim order passed by this Court, they are not able to sell the products from 05.08.2019. Hence, the learned counsel for the defendant prayed for time till 31.12.2019 to clear all the stocks.

2.The learned counsel for the plaintiff has no objection for the terms in the affidavit filed by the defendant. However, prayed that the defendant may be directed to clear all the stocks before 9th October 2019.

3.Heard both sides and perused the affidavit.

N. SATHISH KUMAR,J.

ssr

5.Since the defendant filed an affidavit that, he will not use the pouch design of the product of the plaintiff, the defendant is restrained from using the trade mark & design of the product of the plaintiff and the defendant shall remove the stocks on or before 09th October 2019.

6.Recording the affidavit filed by the defendant, this suit is disposed of. The terms of the affidavit will be part and parcel of this order. No costs. Consequently, connected applications are closed.

06.09.2019

Speaking order / Nonspeaking order

Index : Yes / No

Internet : Yes / No

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