

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.12.2020

Pronounced on : 23.12.2020

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

A.Nos.5473 of 2016 and 2399 of 2020

in

O.A.Nos.555 to 557 of 2015

in

C.S.(Comm.Div) No.427 of 2015

Hindustan Unilever Limited,
101, Santhome High Road,
Chennai - 600 028.

Represented by its Assistant Legal Counsel.

... Applicant/Applicant/Plaintiff
(in both Applications)

Vs.

1.Roopa Industries

Rep by Mr.Satish Honnahalli

Gadag Industrial Area,

Kanaganahalli Road,

Betageri, Gadag,

Karnataka.

2.New Hindustan Petro Chemicals

Gadag, Karnataka – 582 120.

... Respondent/Respondent/Defendant
(in both Applications)

Prayer in A.No.5473 of 2016:- This Application filed under Order XIV Rule 8 of Original Side Rules read with Order XXVI Rule 9 and Section 151 of C.P.C., praying to visit and inspect the premises of the respondents at Gadag Industrial Area, Kanaganahalli Road, Betageri, Gadag, Karnataka, its godowns, warehouse, stock points, billing centres and such other premises in the direct and indirect control of the Respondents, along with protection of police of the concerned jurisdiction, to break open if necessary, and seize and take into custody any goods, and in particular washing powder or washing bar, under the brand name 'DOUBLE WHALE' and/or the device and/or the label/trade dress and contained in Schedule Document No.2 or any label / mark / device / trade dress which is identical with or deceptively similar to the Applicant's WHEEL/ACTIVE WHEEL label / trade dress filed as Schedule Document No.1 and to take into custody any labels, dyes, blocks, pouches, boxes, books of accounts, invoices or other document containing information / entry regarding the respondents' use of the infringing mark / device as well as seal the entire premise wherein such infringing labels of the defendants are found.

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Prayer in A.No.2399 of 2020:- This Application filed under Order XIV Rule 8 of Original Side Rules read with Order XXVI Rule 9 and Section 151 of C.P.C., praying to appoint an Advocate Commissioner to visit and inspect the premises of the respondents at Gadag Industrial Area, Kanaganahalli Road, Betageri, Gadag, Karnataka, its godowns,

warehouse, stock points, billing centres and such other premises in the direct and indirect control of the Respondents, along with protection of police of the concerned jurisdiction, to break open if necessary, and seize and take into custody any goods, and in particular washing powder or washing bar, under the brand name 'DOUBLE WHALE' and/or 'DOUBLE WHEEL' and/or any label / mark / device / trade dress which is identical with or substantially and deceptively similar to the Applicant's WHEEL/ACTIVE WHEEL artistic label / trade dress filed as Plaintiff Document No.3 and to take into custody any labels, dyes, blocks, pouches, boxes, books of accounts, invoices or other document containing information / entry regarding the respondents' use of the infringing mark / device / label as well as seal the entire premise wherein such infringing labels of the defendants are found.

For Applicant : Mr.Satish Parasaran, Senior Counsel

For Respondents : Mr.ARL.Sundaresan, Senior Counsel

ORDER

Both these Applications have been filed primarily to enter upon the premises of the Defendants and take into custody any goods particularly, washing powder or washing bar under the name 'Double Wheel' or 'Double Whale'.

2. These Applications had been filed by the Plaintiff in the Suit. This Court had granted an order of interim injunction protecting the Plaintiff's product namely, 'Wheel' and 'Active Wheel' and also restraining the Defendants from passing off their products as if they are the products of the Plaintiff.

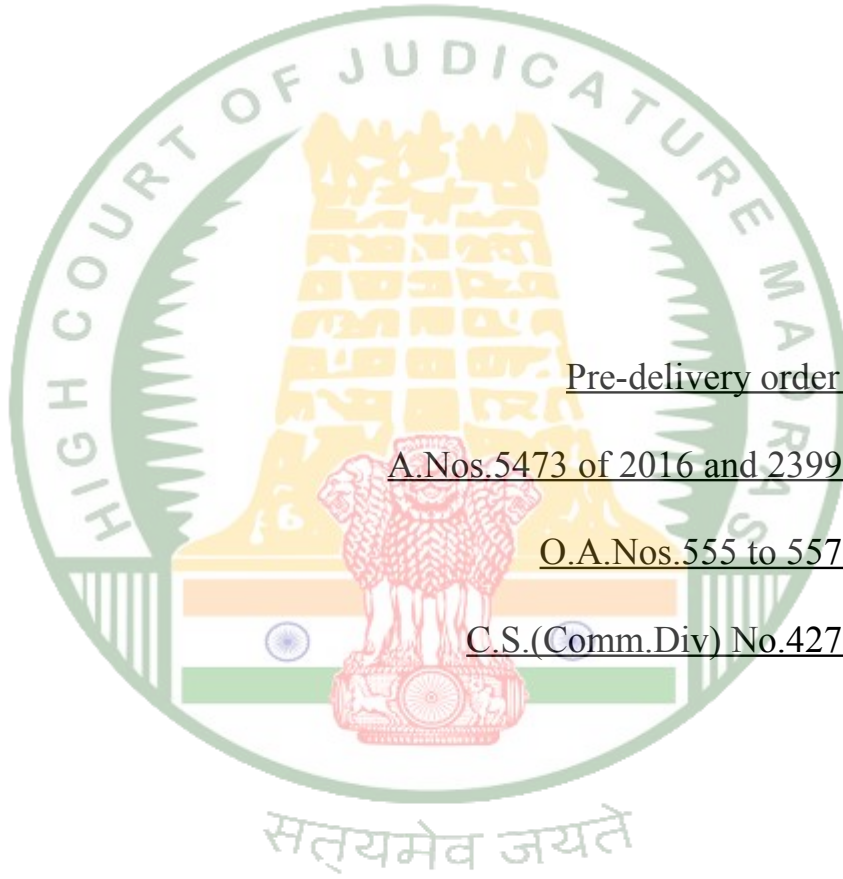
3. It is to be noted that the pleadings have been completed and the parties have been relegated to trial. It is further seen that this Court had earlier appointed an Advocate Commissioner. The Plaintiff will have to establish their case by adducing credible evidence. Repeated appointments of Advocate Commissioners may not be proper. The burden is on the Plaintiff to prove the case in manner known to law. Trial is the answer. Since pleadings had been completed, I hold that orders are not required in these two Applications and consequently, they are closed.

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smv

C.V.KARTHIKEYAN, J.,

smv



Pre-delivery order made in

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