

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.12.2020

CORAM:

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

C.S.(Comm. Div.) No.164 of 2020

and

O.A.Nos.259, 260 and 261 of 2020

M/s.Kaleesuwari Refinery Private Limited,
Represented by its Manager (Legal),
Mr.A.Saravanan (M-43 years),
No.53, Rajasekaran Street,
Opp: Kalyani Hospital, Dr. Radhakrishnan Salai,
Mylapore, Chennai – 600 004. .. Plaintiff

/versus/

M/s.Abi & Co.,
No.281, 284, Semmandampalayam Road,
Vellakovil - 638 111. .. Defendant

This Civil Suit is filed under Order IV Rule 1 of the O.S Rules
Order VII Rule 1 of the Code of Civil Procedure and read with sections
134 and 135 of the Trade Marks Act, 1999 read with Sections 61 and 62
of the Copyright Act, 1957, prayed for a Judgment and Decree:-

a).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 registered Trade Mark 'Gold Winner' by using the offending Trade Mark 'Gold Medal' 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.

b).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 'Gold Medal' 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'.

c).Permanent injunction restraining the Defendant from violating the Plaintiff's Copyright in the artistic work used in the Plaintiff's packing material / pouches used for packing refined edible sunflower oil and bearing its reputed and well known registered Trademarks "Gold Winner" by substituting the Trademark "Gold Winner" with the offending words "Gold Medal" 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 trademark "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 “Gold Medal”.

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 materials, hoarding, letter heads, office stationary and all other material containing / bearing offending mark / label “Gold Medal” with distinct colour 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).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.

g).To pay for the costs of the Suit.

For Plaintiff

: Ms.Suriya Sivakumar

for Mr.Vijayan Subramanian

For Defendant

: Mr.P.R.Yogesh

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JUDGMENT

A Joint Compromise Memo dated 30.11.2020 had been forwarded to the Registry, in which, the Authorized Signatory of the Plaintiff and the Proprietor of the Defendant have signed. It has also been signed by the learned counsels for the plaintiff and the defendant.

2.The terms of the Joint Compromise Memo are as follows:

“1.The Defendant undertakes not to use the Trademark of the Plaintiff, “Gold Winner” or any other mark which is similar or identical to the Plaintiff’s Trademark, and the Defendant has stopped using their mark as “gold medal” as projected in the design of the label attached with this memo in Annexure – A.

2.The Defendant undertakes not to use the get up, colour scheme, arrangement of the colour which are closely similar to it, get up and logo of the Plaintiff’s product “Gold Winner”.

3.The Defendant undertakes not to pass-off the goods as and for those of the Plaintiff's by adopting the similar or identical get up, colour scheme, arrangement of the colour, get up and logo of the plaintiff's product "Gold Winner" and its Pouch / Packing material.

4.The Defendant shall erase, remove, or obliterate from all infringing goods, materials or articles in his possession or control with the offending mark label, as described in Annexure-A and pouches claimed to be deceptively similar to the Plaintiff's "Gold Winner".

5.The Defendant shall not further violate the Plaintiff's Copyright in the artistic work used in the packing pouches of the Plaintiff from the date of signing this joint memo of compromise.

6.The Defendant undertakes to compensate the Plaintiff sufficiently with damages if it violates any of the clauses of this memo of compromise."

3.Since both the parties have agreed to the terms of the Joint Compromise Memo, the same is recorded and the suit is decreed accordingly. No order as to costs. Consequently, connected Applications are closed. The Joint Compromise Memo shall form part of the decree.

10.12.2020

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Internet : Yes / No

Index : Yes / No

Speaking Order : Yes / No



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C.V.KARTHIKEYAN,J.

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