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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 5TH DAY OF OCTOBER 2020

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

C.S.No.600 of 2019

and

O.A.Nos.922 to 924 of 2019

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

.. Plaintiff/Applicant
(in O.A.Nos.922 to 924 of 2019)

Vs

M/s.Sri Shakthi Refineries Private Limited,
No.157/158, Antharasanahalli Industrial Area,
2nd Phase, Tumkur, Karnataka – 572 106.

.. Defendant/Respondent
(in O.A.Nos.922 to 924 of 2019)

C.S.No.600 of 2019

Civil Suit praying that this Hon'ble Court be pleased to grant a judgment and decree:-

i) For a permanent injunction restraining the defendant, their men, agent, 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 Premier” 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.

ii) For a permanent injunction restraining 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 Premier" 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".

iii) 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 Premier" bearing same trade dress, colour scheme and get up deceptively similar to that of the plaintiff's colour scheme and trade dress in the packing material / pouch bearing trade mark "Gold Winner".

iv) For preliminary decree directing the defendant to render true account of profits made by the defendant by using the aforesaid offending lable of "Gold Premier".



v) 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 Premier” with distinct color scheme, get up or any other mark visually or phonetically similar to the plaintiff's trademarks “Gold Winner” label for destruction by an order of this Court.

vi) 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.

vii) To pay for the costs of the suit.

O.A.No.922 of 2019

Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction restraining the Respondent/Defendant its men, agents, associates and/or assignees or any person claiming rights from therein Passing off their inferior product as that of the applicant's/Plaintiff's “GOLD WINNER” edible refined Sunflower oil by using the offending words “GOLD PREMIER” or any other words or mark and offending packing Material and pouch deceptively similar to the



Winner” pending disposal of the suit.

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O.A.No.923 of 2019

Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction restraining the Respondent/Defendant from violating the Applicant's/Plaintiff's Copyright in the artistic work used in the Applicant's/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 PREMIER” bearing same trade dress, color scheme and get up deceptively similar to that of the Applicant's/Plaintiff's colour scheme and trade dress in the packing material/pouch bearing trade mark “Gold Winner” pending disposal of the suit.

O.A.No.924 of 2019

Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction restraining the Respondent/Defendant, their men, agents, associates and/or assignees or any person claiming rights from them from infringing the Applicant's/Plaintiff's reputed and well known registered Trade mark “GOLD WINNER” by using the offending

Trade Mark “GOLD PREMIER” or any mark or word deceptively similar to



the aforesaid TradeMark of the Applicant's/Plaintiff's for any edible oil marketed by the Respondent/Defendant, their men, agents, associates and/or assignees or any person claiming rights from the Respondent/Defendant pending disposal of the suit.

This suit along with these original applications coming on this day before this court for hearing in the presence of Mr.Vijayan Subramanian, Advocate for the plaintiff in C.S.No.600 of 2019 and for the applicant in O.A.Nos.922 to 924 of 2019 and Mr.R.Ramasubramanian Raja, Advocate for the defendant in C.S.No.600 of 2019 and for the respondent in O.A.Nos.922 to 924 of 2019 and upon reading the plaint filed in C.S.No.600 of 2019 and the order dated 24.09.2020 made in O.A.Nos.922 to 924 of 2019 and the Memorandum of Compromise signed by the plaintiff and the defendant with their advocates and the said advocates for the parties hereto pray this court to pass a decree in terms of Memorandum of Compromise morefully set out in the schedule hereunder, and this court doth recording the same, it is in terms thereof ordered and decreed as follows:-

That the defendant herein, as under taken shall not use the trademark of the plaintiff, “Gold Winner” or any other mark which is similar or identical to the plaintiff's trademark.



colour scheme, arrangement of the colour which are closely similar to it, get up and logo of the plaintiff's product "Gold Winner" and the trade dressing of the defendant's product shall be hereafter as projected in the design of label attached with the memo as Annexure-A. The defendant is entitled to sell the existing stock for their product "Gold Premier" on or before 30th September 2020.

3. That the defendant herein undertakes that shall use the trade dress, colour scheme and get up for their product "Gold Premier" as attached with the memo in Annexure-A.

4. That the defendant herein shall not 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.

5. That the defendant herein shall erase, remove, or obliterate from all infringing goods, materials or articles in his possession or control with the offending mark labels and pouches claimed to be deceptively similar to the plaintiff's "Gold Winner".

6. That the defendant herein shall not further violate the plaintiff's Copyright in the artistic work used in the packing pouches of the plaintiff. If violated the defendant shall be subjected to compensate the plaintiff for his



7. That the defendant herein, having given an undertaking, shall compensate the plaintiff sufficiently with damages if it violates any of the clauses of this memo of compromise.

8. That the parties hereto agree that the aforesaid terms constitute a full and final settlement of all disputes between the plaintiff and the defendant in relation to the subject matter of the suit.

9. That the parties herein, as agreed, shall have no further or other claims against each other in respect of the subject matter of the present suit.

10. That these O.A.Nos.922, 923 and 924 of 2019 do stand closed.

11. That there shall be no costs of this suit.

SCHEDULE - JMC



Skg

03.02.2021

C.S.No.600 of 2019
and
O.A.Nos.922 to 924 of 2019

DECREE

DATED: 05.10.2020

THE HON'BLE MR. JUSTICE
C.V.KARTHIKEYAN

FOR APPROVAL: 30/07/2021

APPROVED ON: 30/07/2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.10.2020

CORAM:**THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN**C.S.(Comm. Div.) No.600 of 2019andO.A.Nos.922, 923 and 924 of 2019

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

.. Plaintiff

/versus/

M/s.Sri Shakthi Refineries Private Limited,
No.157/158, Antharasanahalli Industrial Area,
2nd Phase, Tumkur, Karnataka – 572 106.

.. Defendant

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

i).For a permanent injunction restraining the defendant, their men, agent, 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 Premier” 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, 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 Premier" 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".

iii).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 Premier" bearing same trade dress, colour scheme and get up deceptively similar to that of the plaintiff's colour scheme and trade dress in the packing material / pouch bearing trade mark "Gold Winner".

iv).For preliminary decree directing the defendant to render true account of profits made by the defendant by using the aforesaid offending label of "Gold Premier".

v).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 Premier” with distinct color scheme, get up or any other mark visually or phonetically similar to the plaintiff's trademarks “Gold Winner” label for destruction by an order of this Court.

vi).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.

vii).To pay for the costs of the suit.

viii).and pass such further or other orders as this Court may deem fit and proper in the the facts and circumstances of the case.

For Plaintiff : Mr.Vijayan Subramanian

For Defendant : Mr.R.Ramasubramanian Raja

JUDGMENT

A Memo of Compromise had been forwarded to the Court signed by the Authorized Signatory of the plaintiff and the Director of the defendant and also by the learned counsels for the plaintiff and the defendant.

2.The terms of the Memorandum of Compromise are as follows:

“1.The defendant undertakes not to use the trademark of the plaintiff, “Gold Winner” or any other mark which is



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similar or identical to the plaintiff's trademark.

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" and the trade dressing of the defendant's product will be hereafter as projected in the design of label attached with this memo in Annexure-A. The defendant is entitled to sell the existing stock for their product "Gold Premier" on or before 30th September 2020.

3.The defendant undertakes to use the trade dress, colour scheme and get up for their product "Gold Premier" as attached with this memo in Annexure-A.

4.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.

5.The defendant shall erase, remove, or obliterate from all infringing goods, materials or articles in his possession or control with the offending mark labels and pouches claimed to be deceptively similar to the plaintiff's "Gold Winner".

6.The defendant shall not further violate the plaintiff's Copyright in the artistic work used in the packing pouches of the plaintiff. If violated the defendant



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is subjected to compensate the plaintiff for his malafide action.

7.The defendant undertakes to compensate the plaintiff sufficiently with damages if it violates any of the clauses of this memo of compromise.

8.The parties agree that the aforesaid terms constitute a full and final settlement of all disputes between the plaintiff and the defendant in relation to the subject matter of the suit.

9.The parties agree that they have no further or other claims against each other in respect of the subject matter of the present suit, and

10.The parties agree to bear their respective costs.”

3.The defendant had undertaken to market their products in the colour get up as shown in the following representation:





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4. Since both the parties have agreed to the terms of the Memorandum of Compromise, the same is recorded and the suit is decreed accordingly. No costs. Consequently, connected Original Applications are closed. The Memorandum of Compromise shall form part of the decree.

Sd/.C.V.K.J.
05.10.2020

//Certified to be a true copy//

Dated this the th day of 2020.

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.