

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2020

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

C.S.No.682 of 2019

and

O.A.Nos.1076 to 1078 of 2019

M/s.Kaleesuwari Refinery Private Limited,
Represented by its Manager (Lega)
Mr.A.Saravanan (M-42 years),
No.53, Rajasekaran Street,
Opp: Kalyanai Hospital,
Dr.Radhakrishnan Salai,
Mylapore, Chennai - 600004.

...Plaintiff

Vs.

M/s.SK Food Products,
Plot No.10,11 - Karaithitu Road,
Pudhupatinam, Kalpakkam,
Kanchipuram Dt. - 603102.

...Defendant

PRAYER: Civil Suit filed under Order IV Rule 1 of the O.S. Rules read with Order VII Rule 1 of C.P.C Rules read with Sections 134 & 135 of Trade Marks Act, 1999 read with Sections 61 & 62 of the Copyright Act, 1957 to pass judgement and decree

(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 registered Trade Mark "Gold Winner" by using the offending Trade Mark "SUN INDIA" 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 any person claiming rights from the defendant;

(ii) 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 "SUN INDIA" 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 "SUN INDIA" 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 trade mark "Gold Winner";

(iv) For preliminary decree directing the defendant to render true account of profits by the defendant by using the aforesaid offending label of "SUN INDIA";

(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 "SUN INDIA" 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;

(iv) 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 Hon'ble Court may deem fit and proper in the facts and circumstances of the case and thus render justice.

For Plaintiff : Mr. Vijayan Subramanian

For Defendant : Mr.A. Venkatesan

JUDGMENT

The suit is one for permanent injunction restraining the defendant from infringing the plaintiff's registered Trade Mark "Gold Winner" by using the offending Trade Mark "SUN INDIA" or any mark or word, which is deceptively similar to their trademark and for consequential reliefs.

2. According to the plaintiff, they are the registered trademark of "Gold Winner". Since the defendant's trademark "Sun India" is deceptively similar to that of the plaintiff's trademark, namely "Gold Winner", the present suit has been filed.

3. Pending the suit, the defendant herein has filed an affidavit dated 21.02.2020, admitting that they were manufacturing eatable oil in the brand name of "Sun India" and when the plaintiff had sent a legal notice on 11.10.2019, they had informed the plaintiff through their reply notice, dated 25.10.2019 that they have desisted and ceased all the

alleged products and have stopped the manufacturing activities of their product. They had also given an undertaking in the affidavit that they will not use the get up, colour scheme, design, phonetical and alphabetical font similarity and arrangement of the colour, which are closely similar to the plaintiff's product "Gold Winner".

4. In view of the affidavit filed by the defendant, no effective proceedings could be continued, when the result of the suit is inevitable. The relevant portions of the defendant's affidavit, dated 21.02.2020, reads as follows:

"1. I stated that I am the Managing Partner and Res/Defendant herein and as such I am well acquainted with the facts and circumstances of this case.

2. I state that I was running eatable oil firm in the name and style of SK FOOD PRODUCTS after getting the due approval from the concerned authorities. In which I had manufactured eatable oil in the brand name of "SUN

INDIA". Meanwhile, on 11.10.2019, the petitioner sent the legal notice instructing us to desist and cease the phonetically similarity letters and colour scheme.

3. I state that on 25.10.2019, I sent the reply notice, in which, I informed that I have desisted and ceased all alleged products. Therefore, as soon as I received the desist notice from the petitioner/plaintiff, I have stopped the manufacturing activities in my firm. Therefore kindly close the above suit.

4. I state that I undertake not to use the get up, colour scheme, design, phonetical and alphabetical font similarity and arrangement of the colour, which are closely similar to it, get up and logo of the plaintiff's product "Gold Winner".

5. I state that hereby, I undertake to desist to manufacturing the above mentioned alleged eatable oil. I undertake that if I continue to do so, I oblige the cost and consequences thereof."

5. Recording the statements made by the defendant in his affidavit

dated 21.02.2020, the present suit stands closed. The parties shall bare their own cost. Consequently, the connected applications are closed.

13.03.2020

Index: Yes/No
Internet: Yes/No
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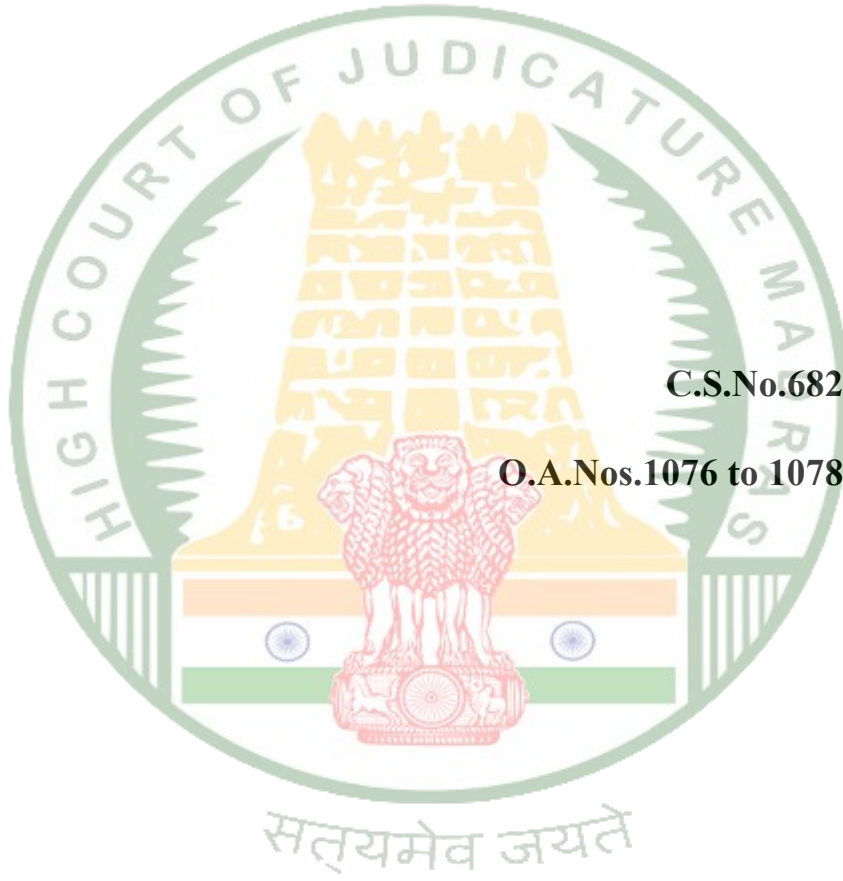


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