

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION (L) NO. 3162 OF 2021
IN
COMMERCIAL IP SUIT (ST.) NO. 3152 OF 2021

WITH
LEAVE PETITION NO.43 OF 2021
IN
COMMERCIAL IP SUIT (ST.) NO. 3152 OF 2021

Hindustan Unilever Ltd.

...Applicant/
Plaintiff

Versus

Panjwani Industries

...Defendant

Mr. Hiren Kamod a/w Mr. Vaibhav Keni, Ms. Neha Iyer, Mr. Prem Khullar and Mr. Anees Patel i/by Legasis Partners, for the Plaintiff.

Ms. Heena Mistry, for the Defendant.

Mr. H. R. Patel, Master (Adm.) of Court Receiver, High Court, Bombay.

CORAM : N. J. JAMADAR, J.

DATE : 15th DECEMBER, 2021.

P.C.:

1. Heard the learned counsel for the parties.
2. Ms. Heena Mistry, the learned counsel submits that, she has instructions to appear on behalf of defendant and undertakes to file Vakalatnama within a week's time.

The statement is accepted.

3. The action in the present suit is for infringement of the

plaintiffs registered trade marks, copyright combined with the action for passing off.

4. By order dated 16th February, 2021 interim reliefs were granted by this Court. The Court Receiver has executed the commission and filed Court Receiver's report bearing Court Receiver's Report No.256 of 2021.

5. The learned counsel for the plaintiff and defendant make a joint statement that in the intervening period they have amicably resolved the dispute.

6. The learned counsels have tendered the Minutes of the Order.

7. The Minutes of the order are signed by the counsels for the respective parties.

The Minutes of the Orders are taken on record.

8. Para Nos. 3 to 7 of the Minutes of the order reads as under :-

“ 3. Decree in terms of prayer clauses (a), (b), (c) and (e) to the plaint which are reproduced below and the Defendant undertakes to this Hon'ble Court to comply with the same forthwith in the manner as provided herein:

a.) the Defendant by itself, its proprietor, partners, directors, servants, agents, stockists, distributors, dealers, franchisees, licensees, assigns and all persons claiming through it or

acting on its behalf be restrained by an order and perpetual injunction of this Hon'ble Court from infringing the Plaintiff's copyright subsisting in the artistic works comprised in the Plaintiff's said SURF EXCEL artistic packaging / trade dress



at Exhibits "A" and "B", i.e.,  *and*  *, respectively, by reproducing, printing, publishing, using and/or communicating to the public the impugned packaging/*



trade dress at Exhibit "F", i.e.,  *and/or*  *, or any other work/ packaging/ trade dress which is an imitation and/or reproduction of the artistic works comprised in the Plaintiff's said SURF EXCEL artistic packaging / trade*



dress at Exhibits "A" and "B", i.e.,  *and*



, respectively or substantial part thereof or in any other manner whatsoever;

- b.) *the Defendant by itself, its proprietor, partners, directors, servants, agents, stockists, distributors, dealers, franchisees, licensees, assigns and all persons claiming through it or acting on its behalf be restrained by an order and perpetual injunction of this Hon'ble Court from infringing the Plaintiff's*

registered trade mark , , , , SURF and EXCEL bearing nos.1780462, 1486109, 1486106, 3912308, 132479 and 693541 all in class 3, respectively, by use of the impugned splat logo / impugned trade mark SURF and/or SURYA EXCEL and/or any other logo / trade mark identical with or deceptively similar to the Plaintiff's registered trade mark bearing nos.1780462, 1486109, 1486106, 3912308, 132479 and 693541 all in class 3 in respect of the goods covered by the Plaintiff's aforesaid registrations or in any other manner whatsoever;

- c.) the Defendant by itself, its proprietor, partners, directors, servants, agents, stockists, distributors, dealers, franchisees, licensees, assigns and all persons claiming through it or acting on its behalf be restrained by an order and perpetual injunction of this Hon'ble Court from using the impugned

packaging/ trade dress shown at Exhibit "F", i.e.,



and/or  and/or any other packaging/ trade dress which is identical with and/or deceptively similar to the Plaintiff's said SURF EXCEL artistic packaging / trade dress

shown at Exhibits "A" and "B", i.e.,  and



, respectively, and/or from using the impugned splat logo and/or any other logo which is identical with and/or deceptively similar to the Plaintiff's said splat logo shown at Exhibit "C" and/or the impugned trade mark SURF and/or any other trade mark containing the word SURF and/or any other trade mark identical with and/or deceptively similar to the Plaintiff's well-known trade mark SURF, so as to pass off or enable others to pass off the Defendant's goods as and for the Plaintiff's well-known goods or in any other manner whatsoever;

- e.) that the Defendant be ordered and decreed to deliver up to the Plaintiff for destruction the impugned goods, visiting cards, pamphlets, cartons, labels, wrappers, dies, blocks, stationery, packing material and things bearing the impugned



packaging / trade dress shown at Exhibit "F", i.e.,



and/or and/or any other packaging/ trade dress which is a substantial reproduction of and/or closely and deceptively similar to the Plaintiff's said SURF EXCEL artistic packaging/ trade dress shown at Exhibits "A" and



"B", i.e., and , respectively, and/or the impugned trade mark SURF / SURYA EXCEL and/or any

other trade mark which is identical with and/or deceptively similar to the Plaintiff's trade mark SURF and/or EXCEL;

4. The Defendant agrees and undertakes to this Hon'ble Court that it shall not manufacture, market, package, distribute or sell the impugned goods, like goods or any other goods, using the impugned artistic work / packaging / trade dress or any other work / packaging / trade dress, in any colour / colour combination, which is an imitation and/or substantial reproduction of and/or identical with and/or deceptively similar to any of the Plaintiff's artistic packagings / trade dresses or substantial part thereof, or in any other manner whatsoever.

5. The Defendant agrees and undertakes to this Hon'ble Court that it shall not manufacture, market, package, distribute or sell the impugned goods, like goods or any other goods, using the impugned splat logo or the impugned trade mark SURF or SURYA EXCEL or any other logo / trade mark identical with or deceptively similar to any of the Plaintiff's registered trade marks or part thereof, or in any other manner whatsoever.

6. The Defendant agrees and undertakes to this Hon'ble Court that it shall hand over all the impugned goods and other material, including machinery and cylinders, if any, of which inventory has been taken, details whereof have been recorded in the Court Receiver's report and which goods have been seized by the Court Receiver and are in the possession of the Defendant, at its cost, to the Plaintiff within a period of 14

days from today and the same shall be destroyed in the presence of the Plaintiff's representative. The Defendant also agrees that the Plaintiff shall be free to destroy all the packagings / labels / logos and other material, including machinery and cylinders, of which inventory has been taken by the Court Receiver or otherwise deal with the same in any manner that the Plaintiff deems fit. For the purpose of destruction, the representatives of the parties will be entitled to remove the seal placed by the Court Receiver.

7. The Defendant agrees and undertakes to this Hon'ble Court that it has not filed and shall not file any application for any trade marks / logos / labels / packagings / trade dress which are in any manner identical with or deceptively similar to or resembling with the Plaintiff's aforesaid trademarks / logo/ artistic packagings / trade dresses or any other trademarks/logos/ artistic packagings/ trade dresses or any features thereof either before the Trademark Registry or Copyright Office and in case of any such existing application/ registration, the Defendant shall file an application before the relevant authority to withdraw the same within 15 days of these consent terms and shall submit a copy of the such application duly acknowledged by the relevant authority to the Plaintiff and/or its attorney."

9. In view of the aforesaid statement and Minutes of the Order, the suit stands decreed in terms of prayer clauses 'a' 'b' 'c' and 'e'.

10. The undertakings given in the Minutes of the Order are accepted as undertakings to the Court.
11. Court fee refund be made as per Rules.
12. Court receiver stands discharged without passing accounts, subject to payment of costs by the plaintiff.
13. Leave Petition under Clause – XIV is made absolute.
14. In view of the disposal of the suit, the Interim Application also stands disposed of.

(N. J. JAMADAR, J.)