

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE **C.V.KARTHIKEYAN**

C.S.No.937 of 2003

M/s.Mc Dowell & Company Ltd.,

'Le Parc Richmonde'

No.51, Richmond Road,

Bangalore – 560 025.

Rep.by its controller - Legal

Mr.Mahesh Nedungadi.

.. Plaintiff

/versus/

Southern Agrifurane Industries Ltd.,

Valudureddy Village,

Villupuram Taluk.

.. Defendant

This Civil Suit is filed under Order IV Rule 1 of the High Court Original Side Rules, read with Section 22 of the Designs Act, 2000 and Section 51, 55 and 62 of the Copyright Act, 1957 and Section 27 read with 2(zb) of the Trade Marks Act, 1999 prayed for a Judgment and Decree against the defendant:-

a).A perpetual injunction restraining the defendant, its distributors, stockists, servants, agents, retailers, representatives or any other person claiming under them from in any manner manufacturing, selling, offering for sale, stocking bottles, and/or promoting directly or

indirectly liquor or like products, bearing the plaintiff's design in respect of its No.1 McDowell's Brandy or infringing the plaintiff copyright in the registered design in respect of bottles under Design No.187584 or in any manner using bottles identical or similar to the design of the bottle of the plaintiff.

b).A perpetual injunction restraining the defendant, its distributors, stockists, servants, agents, retailers, representatives or any other person claiming through them from in any manner manufacturing, selling, offering for sale, stocking bottles, and/or promoting directly or indirectly liquor or like products, bearing the plaintiff's design in respect of its No.1 McDowell's Brandy and in particular the shape of the bottle with the novel bulge in the neck, a cylindrical bulge at the bottom and a slight elevation on the body along its neck, so as to pass off their goods as and for that of the plaintiff's goods by employing design identical or deceptively similar to the design or shape of the plaintiff's bottle.

c).A direction to the defendant to surrender to plaintiff for destruction all bottled liquor and bottles, bearing any resemblance to the plaintiff's registered design No.187584 and in particular the novel shape in the neck of the bottle, a cylindrical bulge at the bottom of the bottle and a slight elevation on the body of the bottle along its neck.

d).A preliminary decree directing the defendant to render account of profits made by use of the impugned design in respect of 'DIAMOND' and 'SUPERSTAR' Brandy and or in any other name and a final decree in favour of the plaintiff for the amount of profits thus found to have been made by the defendant after the latter renders accounts.

e).for costs of the suit.

For Plaintiff : Mr.Madhan Babu

For Defendant : Mr.K.Ashok Kumar

JUDGMENT

A memo dated 24.03.2021 had been filed by the learned counsel for the plaintiff. The said memo is as follows:

“The plaintiff has informed that the defendant has ceased the infringing activity consequent to the institution of the present suit and interim orders granted by this Hon'ble Court. The plaintiff has further informed that it does not appear that the defendant would recommence the infringing activity.

In view of the above, the plaintiff is willing to withdraw the present suit with liberty to institute fresh action against the defendant in future in the even the defendant recommence the infringing activity complaint of the present suit.

Dated at Chennai on this the 24th March 2021.

Sd/-

Counsel for the plaintiff

C.V.KARTHIKEYAN,J.

smv

2.In view of the same, the suit is dismissed as withdrawn. No order as to costs. The memo dated 24.03.2021, shall form part of the decree.

3.However, liberty is granted to the plaintiff to institute a fresh suit on a fresh cause of action against either the defendant or anybody acting under the defendant or against any other third party with respect to any infringement of the design under complaint.

24.03.2021

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Internet : Yes / No

Index : Yes / No

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