



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY THE 26th DAY OF MARCH 2021

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

C.S. No.341 of 2020

and

O.A. Nos.645 to 647 of 2020

and

A.No.2868 of 2020

M/s.Kaleesuwari Refinery Private Limited,
rep. by its Manager (Legal),
Mr.A.Saravanan (M-44 years),
No.53, Rajasekaran Street,
Opp.Kalyani Hospital, Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004.

... Plaintiff/Applicant
(in all Applications)

-Versus-

M/s.Aadhav Food Corporation,
No.13, Tamil Nagar, Gobichettipalayam,
Erode District, Tamil Nadu.

... Defendant/Respondent
(in all Applications)

C.S.No.341 of 2020

Civil Suit praying that this Hon'ble Court be pleased to pass a
judgment 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 Trademark "**Gold**



Winner" by using the offending Trademark **"SUNRISE GOLD"** or any mark or word deceptively similar to the aforesaid Trademark 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 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 **"SUNRISE GOLD"** or any other words or mark and offending packing Material and pouch deceptively similar to the Plaintiff's trademark "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 **"SUNRISE GOLD"** bearing same trade dress, color scheme and get up deceptively similar to that of the Plaintiff's color scheme and trade dress in the packing material / pouch bearing trademark **"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 **"SUNRISE GOLD"**.

(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 **"SUNRISE GOLD"** 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.

(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.645 of 2020:-

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 trade marks "Gold Winner" by substituting the Trademark "Gold Winner" with the offending words "SUNRISE GOLD" bearing same trade dress, colour 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 above suit.

O.A. No.646 of 2020:-

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 from passing-off their inferior product, as that of the applicant's/plaintiff's "Gold Winner" edible refined sunflower oil by using the offending words "SUNRISE GOLD" or any other words or mark and offending packing material and pouch deceptively similar to the applicant's/plaintiff's trade mark "Gold Winner" and Trade dress for "Gold Winner", pending disposal of the above suit.

O.A. No.647 of 2020:-

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 "SUNRISE GOLD" or any mark or word deceptively similar to the aforesaid Trade Mark 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 above suit.

A.No.2868 of 2020

Application praying that this Hon'ble Court be pleased to grant leave to Applicant/Plaintiff to file a single suit for Joinder of Cause of Action and reliefs under Trade Marks Act, 1999 and Copyrights Act, 1957 against the Respondent/Defendant.

This suit alongwith 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.341 of 2020 and for the applicant in O.A. Nos.645 to 647 of 2020 and A.No.2868 of 2020 and Mr.S.Sivaraj, Advocate for the Defendant in C.S.No.341 of 2020 and for the respondent in O.A. Nos.645 to 647 of 2020 and A.No.2868 of 2020 and upon reading the Complaint filed in C.S.No.341 of 2020 and the Judge's Summons and the affidavit of A.Saravanan filed in A. No.2868 of 2020 and the order dated 16.03.2021 made in O.A.Nos 645 to 647 of 2020, and Joint Compromise



advocates and the said advocates for the parties hereto praying this court to pass a decree in terms of joint compromise memo morefully set out in the schedule hereunder, it is interms thereof ordered and decreed as follows:-

That the defendant herein, undertakes not to use the Trademark of the Plaintiff, "Gold Winner" or any other mark which is similar or identical to the Plaintiff's registered Trademark bearing registration numbers 605323, 2320409, 2934031 under class 29 or any other mark of the Plaintiff, and the Defendant has changed their mark as "SUNRISE" as a label with a colour combination as projected as a design of the label attached with this memo in Annexure-A.

2. That the defendant herein, 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", or any other mark which is similar or identical to the Plaintiff's registered Trademark bearing registration numbers 605323, 2320409, 2934031 under class 29 or any other mark of the Plaintiff, and the trade dressing of the Defendant's product shall be hereafter as projected in the design of label attached with this memo in Annexure-A.

3. That the defendant herein, undertakes to use the trade dress, colour scheme and get up for their product "SUNRISE/AFC SUNRISE" as attached with the memo in Annexure-A.



4. That the defendant herein, 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. 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, as described in Annexure-B 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 registered Copyright in the artistic work used in the packing pouches of the Plaintiff for commercialization in the market from the date of signing this Joint Memo of Compromise.

7. That the defendant herein, undertakes to compensate the Plaintiff sufficiently with damages if it violates any of the clauses of this memo of compromise.

8. That these O.A.Nos.645 to 647 of 2020 and A.No.2868 of 2020 do stand closed.

9. That there shall be no order as to costs of this suit.

SCHEDULE - JOINT COMPROMISE MEMO ALONGWITH
ANNEXURES A & B



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T-27.04.2021

C.S. No.341 of 2020
and
O.A. Nos.645 to 647 of 2020
and
A.No.2868 of 2020

DECREE

DATED : 26.03.2021

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

FOR APPROVAL: 01.10.2021

APPROVED ON: 04.10.2021



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2021

CORAM:

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

C.S.No.341 of 2020
and O.A.Nos.645, 646, 647 of 2020
and A.No.2868 of 2020

M/s.Kaleesuwari Refinery Private Limited,
Represented by its Manager (Legal),
Mr.A.Saravanan (M - 44 years),
No.53, Rajasekaran Street,
Opp: Kalyani Hospital, Dr.Radhakrishnan Salai,
Mylapore, Chennai - 600 004.

... Plaintiff

..Vs..

M/s.Aadhav Food Corporation,
No.13, Tamil Nagar, Gobichettipalayam,
Erode District, Tamil Nadu.

... Defendants

PRAYER : Complaint filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 of the Code of Civil Procedure Rules read with Sections 134, 135 of Trademarks Act, 1999 read with Sections 61 and 62 of the Copyright Act, 1957, prayed for a Judgment and Decree:-

(i) For a permanent injunction to restrain the Defendant, their

<https://hcservices.ecourts.gov.in/hcservices/>

men, agents, associates and / or assignees or any person claiming rights



from them from **infringing** the Plaintiff's registered Trademark "**Gold Winner**" by using the offending Trademark "**SUNRISE GOLD**" or any mark or word deceptively similar to the aforesaid Trademark 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 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 "**SUNRISE GOLD**" or any other words or mark and offending packing Material and pouch deceptively similar to the Plaintiff's trademark "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 "**SUNRISE GOLD**" bearing same trade dress, color scheme and get



up deceptively similar to that of the Plaintiff's color scheme and trade dress in the packing material / pouch bearing trademark "**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 "**SUNRISE GOLD**".

(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 "**SUNRISE GOLD**" 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.

(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.



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

For Plaintiff : Mr.Vijayan Subramanian

For Defendant : M/s.S.Sivaraj

J U D G M E N T

A Joint Compromise Memo dated 07.03.2021 signed by the Authorized Signatory of the plaintiff and by the Partner of the defendant and also by the learned counsels for the plaintiff and the defendant have been presented in Court on 23.03.2021.

2. Among the various terms in the Memo of Compromise the defendant had undertaken not to use of the trademark of the plaintiff, GOLD WINNER or any other similar mark. The defendant had also undertaken not to use the color scheme and arrangement of the color which would closely resemble with the plaintiff in their packaging. The changed label of the defendant had been presented in Annexure A to the Compromise Memo. The defendant had undertaken to use the said changed label for their products. The offending label which is now not being used of the defendant had been given in the Annexure B.

3. In view of the fact that the parties had entered into a



Compromise, suit is decreed in accordance with the Memo of Compromise.

The Memo of Compromise dated 07.03.2021 and the accompany Annexures

A and B shall form part of the decree. No order as to costs. Connected Applications are closed.

Sd./-C.V.K.J.

26.03.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.