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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 08TH DAY OF OCTOBER 2021

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

C.S. (Comm. Div.) No.315 of 2020 and
O.A. Nos. 591 to 593 of 2020 and
A.No.1290 to 1292 of 2021

HEALTH & GLOW PRIVATE LIMITED,
Rep.by its Senior Manager-Legal
Mr.J.Madhusudhan
Having Registered office at
Site No.32/5, 2nd Floor, Ganapa Towers,
Hosur Main Road, NGR Layout,
Roopena Agrahara, Bangalore-560068,
Karnataka, India.

... Plaintiffs

-Versus-

HEALTH & CARE
Rep.by Ms.Buvana &Ms.Suryakala,
No.3, 1st Floor, L.B.Road,
Thiruvanmiur, Chennai-600 041.
Tamil Nadu, India.

.....Defendant

C.S(Comm.Div.).No.315 of 2020

Civil Suit praying that this Hon'ble Court be pleased to pass a
judgment and Decree against the Defendants:

(a). A permanent injunction restraining the Defendant, their
proprietors, partners, directors, subsidiaries, affiliates, franchisees, officers,
employees, personnel, servants, agents, representatives including
wholesalers, distributors, stockists and anyone acting for or on their behalf



from in any manner directly or indirectly using the trade name and/or trademark '**Health & Care**' and/or and/or mark identical or similar to the Plaintiff's mark and/or '**Health & Glow**', amounting to **infringement** of Plaintiff's registered Trademarks as extracted in Paragraph 13 of the Plaint.

(b) A permanent injunction restraining the Defendant, their proprietors, partners, directors, subsidiaries, affiliates, franchisees, officers, employees, personnel, servants, agents, representatives including wholesalers, distributors, stockists and anyone acting for or on their behalf from in any manner directly or indirectly using the label and/or any mark / label identical or similar to the Plaintiff's label, amounting to **infringement** of Plaintiff's copyright vesting in the artistic work.

(c). A permanent injunction restraining the Defendant, their proprietors, partners, directors, subsidiaries, affiliates, franchisees, officers, employees, personnel, servants, agents, representatives including wholesalers, distributors, stockists and anyone acting for or on their behalf from in any manner directly or indirectly using the trade name and/or trademark '**Health & Care**' and/or and/or any mark identical or similar to the Plaintiff's mark' and/or '**Health**

& Glow', amounting to passing off the Defendant's services as that of the



Plaintiffs;

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(d). An order directing the Defendant to furnish all the data and accounts of any and all transactions undertaken, goods sold, services rendered and the profits obtained during the course of their business relating to the rendering of services under the impugned trademarks '**Health & Care**' and/or to the Plaintiff;

(e). An order directing the defendant to pay **preliminary damages** for a sum of Rs. 10,00,000/- (Rupees Ten Lakhs Only) to the plaintiff apart from such damages as calculated upon accounts being rendered by defendants.

(f). An order for **delivery up** of any and all finished and/or unfinished products, materials including signage, cards, stationary, accessories, labels, brochures, books, printed materials including hoardings and other material bearing the impugned trade name and/or trademark or being used in respect of the mark '**Health & Care**' and/or or any mark identical with or deceptively similar to the Plaintiff's trade mark and/or '**Health & Glow**', by the Defendant to the Plaintiff for the purpose of destruction;

(g) Costs

O.A.No.591 of 2020



grant an Ad-Interim injunction restraining the Respondent, their proprietors, partners, directors, subsidiaries, affiliates, franchisees, officers, employees, personnel, servants, agents, representatives including wholesalers, distributors, stockists and anyone acting for or on their behalf from in any manner directly or indirectly using the trade name and/or trademark '**Health & care**' and/or and /or any mark identical or similar to the Applicant's Mark and/or '**Health & Glow**' amounting to **passing off** the Respondent's Services as that of the applicant's.

O.A.No.592 of 2020

Original Application praying that this Hon'ble Court be pleased to grant an Ad-Interim injunction restraining the Respondent, their proprietors, partners, directors, subsidiaries, affiliates, franchisees, officers, employees, personnel, servants, agents, representatives including wholesalers, distributors, stockists and anyone acting for or on their behalf from in any manner directly or indirectly using the label, and/or any mark/label identical or similar to the applicant's label amounting to **infringement** of Applicant's copyright vesting in the artistic work.

O.A.No.593 of 2020

Original Application praying that this Hon'ble Court be pleased to



grant an Ad-Interim injunction restraining the Respondent, their proprietors, partners, directors, subsidiaries, affiliates, franchisees, officers, employees, personnel, servants, agents, representatives including wholesalers, distributors, stockists and anyone acting for or on their behalf from in any manner directly or indirectly using the trade name and/or trademark '**Health & Care**' and/or and/or any mark identical or similar to the Applicant's Mark and/or 'Health & Glow' amounting to **infringement** of Applicant's registered Trademarks as extracted in paragraph 12 of the present affidavit.

A.No.1290 of 2021

Application praying that this Hon'ble Court be pleased to order for appropriate action against the respondent for not obeying the interim orders of injunction dated 11th November 2020, 23rd November 2020 and 22nd January 2021 passed in OA Nos. 591, 592 and 593 of 2020 in the present suit which restrained their use of the impugned trademarks and trade name 'HEALTH & CARE' and

A.No.1291 of 2021

Application praying that this Hon'ble Court be pleased to order for appropriate action against the respondent for not obeying the interim orders of injunction dated 11th November 2020, 23rd November 2020 and 22nd January 2021 passed in OA Nos. 591, 592 and 593 of 2020 in the



present suit which restrained their use of the impugned trademarks and trade name 'HEALTH & CARE' and

A.No.1292 of 2021

Application praying that this Hon'ble Court be pleased to order for appropriate action against the respondent for not obeying the interim orders of injunction dated 11th November 2020, 23rd November 2020 and 22nd January 2021 passed in OA Nos. 591, 592 and 593 of 2020 in the present suit which restrained their use of the impugned trademarks and trade name 'HEALTH & CARE' and

This civil suit along with these applications coming on this day before this court for hearing in the presence of Mr. K. Premchandar, Advocate for the Plaintiff in C.S.(Comm.Div)No. 315 of 2020 and for the applicant in all the applications and Mr.P.Sankara Narayanan, advocate for the defendant in C.S.No. 315 of 2020 and for the respondent in all the applications and upon reading the plaint alongwith memorandum of compromise dated 07.10.2021 and the judges summons and the joint affidavits of J.Madhusudhan filed in A.Nos. 1290 to 1292 of 2021 and the order dated 23/12/2020 made in O.A. Nos. 591 to 593 of 2020 and the said memorandum of compromise signed by the plaintiff and the defendant herein and their respective advocates and the said advocates for the parties

hereto praying this court to pass a decree in terms of the memorandum of



compromise morefully setout in the schedule hereunder **and it is interms thereof ordered and decreed as follows.**

1. That the defendant herein agreed and undertakes not to use the plaintiff's registered Trade Mark HEALTH &GLOW, or any other trade mark or label which is similar or deceptively similar or identical, whether visually, phonetically or aurally to the name, get up, colour scheme, arrangement of the colour and logo of the plaintiff's Trade Mark

or any other trademark of the plaintiff

2. That the defendant herein undertakes not to infringe the plaintiff's copyright over the artistic work in the plaintiff's copyright or any other artistic work which shall be similar or identical whether visually, phonetically or aurally to the name get up, colour scheme, arrangement of the colour and logo of the plaintiff's copyright vesting in the artistic work and/or any other artistic work of the plaintiff.

3. That the defendant herein undertakes not to pass off their goods and services as and for those of the plaintiff's by using adopting the Trade mark and/or any other trade mark and label which is deceptively similar to the get up, colour scheme, trade dress of the plaintiff's trade mark and copyright vesting in the artistic work

4. That the defendant herein has confirmed having given up the



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offending Trade Mark and trading style HEALTH & CARE and
and undertakes that they shall not use the said
trademark/trading style or any other deceptively similar Mark herein after
for any of its business, directly or indirectly.

5. That Health & Care, rep by Ms. Buvana & M. Suryakala, the
defendant herein, their proprietors, partners, directors, subsidiaries, affiliates,
franchisees, officers, employees, personnel, servants, agents,
representatives including wholesalers, distributors, stockists and anyone
acting for or on their behalf be and are hereby restrained by an order of
permanent injunction from in any manner (a) directly or indirectly using the
trade name and/or trademark '**Health & Care**' and/or
and/or mark identical or similar to the Plaintiff's mark
and/or '**Health & Glow**', amounting to **infringement** of Plaintiff's register
Trademarks

(b) directly or indirectly using the label and/or any
mark/label identical or similar to the Plaintiff's label
amounting to **infringement** of Plaintiff's copyright vesting in the artistic
work.

(c) directly or indirectly using the trade name and/or trademark '**Health &**
Care' and/or and/or any mark identical or similar
to the Plaintiff's mark' and/or '**Health &**



Glow', amounting to passing off the Defendant's services as that of the Plaintiffs;

6) That subject to a aforesaid express undertaking by the defendant, the plaintiff agrees to give up on the other relief sought by them in the plaint being relief mentioned in paragraph 51 (d), (e) and (f)

7) That the above said terms of compromise shall be binding on the plaintiff and the defendants themselves as also on their proprietors, partners, Directors, Associates, Assignees, Successors in interest including subsidiaries and any other entity or person with which they shall be directly or indirectly associated.

8) That the parties herein represent and warrant the following:

- a) They have taken all necessary action to authorize the execution of and the performance of their obligations under this Memo of Compromise.
- b) That they have the power, authority, and full legal capacity, to enter into this Memo of Compromise and to perform their obligations hereunder;
- c) That this Memo of Compromise will constitute legal, valid and binding obligations on each party, enforceable against each other in accordance with the terms provided hereunder;

- d) That neither the execution of this Memo of Compromise nor the



performance of obligations contemplated hereby is in conflict with any applicable law or any instrument, contract or other agreement to which they are a party.

9) That these A.Nos. 1290 to 1292 of 2021 do stand closed.

10) That there shall be no order as to costs in this suit.

Memo of compromise



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C.S. (Comm. Div.) No.315 of 2020 and
O.A. Nos. 591 to 593 of 2020 and
A.No.1290 to 1292 of 2021

ORDER
DATED 08/10/2021

THE HON'BLE DR.JUSTICE
G.JAYACHANDRAN

FOR APPROVAL: 01/03/2022

APPROVED ON: 07/03/2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2021

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.S(Comm.Div.).No.315 of 2020
and
A.Nos.1290 to 1292 of 2021

HEALTH & GLOW PRIVATE LIMITED,
Rep.by its Senior Manager-Legal
Mr.J.Madhusudhan
Having Registered office at
Site No.32/5, 2nd Floor, Ganapa Towers,
Hosur Main Road, NGR Layout,
Roopena Agrahara, Bangalore-560068,
Karnataka, India.

... Plaintiff

Vs.

HEALTH & CARE
Rep.by Ms.Buvana &Ms.Suryakala,
No.3, 1st Floor, L.B.Road,
Thiruvanmiur, Chennai-600 041.
Tamil Nadu, India.

... Defendant

Prayer: The Civil Suit has been filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 of C.P.C, and Sections 2(1)(c)(xvii) read with Section 7 of the Commercial Court Act, 2015, Sections 11, 27, 29, 134 & 135 of Trade Marks Act 1999 and Sections 14, 51, 55 & 62 of the Copyright Act, 1957, praying for;



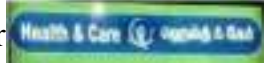
(a). A permanent injunction restraining the Defendant, their proprietors, partners, directors, subsidiaries, affiliates, franchisees, officers, employees, personnel, servants, agents, representatives including wholesalers, distributors, stockists and anyone acting for or on their behalf from in any manner directly or indirectly using the trade name and/or trademark '**Health & Care**' and/or  and/or mark identical or similar to the Plaintiff's mark  and/or '**Health & Glow**', amounting to **infringement** of Plaintiff's registered Trademarks as extracted in Paragraph 13 of the Complaint.

(b) A permanent injunction restraining the Defendant, their proprietors, partners, directors, subsidiaries, affiliates, franchisees, officers, employees, personnel, servants, agents, representatives including wholesalers, distributors, stockists and anyone acting for or on their behalf from in any manner directly or indirectly using the label  and/or any mark/label identical or similar to the Plaintiff's label '', amounting to **infringement** of Plaintiff's copyright vesting in the artistic work.

(c). A permanent injunction restraining the Defendant, their proprietors, partners, directors, subsidiaries, affiliates, franchisees, officers, employees, personnel, servants, agents, representatives including wholesalers, distributors, stockists and anyone acting for or on their behalf from in any manner directly or indirectly using the trade name and/or trademark '**Health & Care**' and/or  and/or any mark identical or similar to the Plaintiff's mark  and/or '**Health & Glow**', amounting to passing off the Defendant's services as that of the Plaintiffs;

<https://hcservices.ecourts.gov.in/hcse/cases/> (d). An order directing the Defendant to furnish all the data and accounts of any and all transactions undertaken, goods sold, services rendered and



the profits obtained during the course of their business relating to the rendering of services under the impugned trademarks '**Health & Care**' and/or  to the Plaintiff;

(e). An order directing the defendant to pay **preliminary damages** for a sum of Rs. 10,00,000/- (Rupees Ten Lakhs Only) to the plaintiff apart from such damages as calculated upon accounts being rendered by defendants.

(f). An order for delivery up of any and all finished and/or unfinished products, materials including signage, cards, stationary, accessories, labels, brochures, books, printed materials including hoardings and other material bearing the impugned trade name and/or trademark or being used in respect of the mark '**Health & Care**' and/or  or any mark identical with or deceptively similar to the Plaintiff's trade mark  and/or 'Health & Glow', by the Defendant to the Plaintiff for the purpose of destruction;

For Plaintiff : Mr.K.Premchandar

For Defendant : Mr.P.Sankaranarayan

J U D G M E N T

(Case has been heard through video conference)

The suit is filed for infringement of trademark, copyright and passing off.

2. Pending suit, the parties have entered into a compromise and filed a joint memo of compromise dated 07.10.2021, signed by the parties as well as their respective counsels.



3. In view of the memo of compromise dated 07.10.2021 filed by the parties, the suit is decreed in terms of compromise memo. The memo of compromise shall form part of the decree. In view of the terms entered between the parties, noting survives in the application Nos.1290 to 1292 of 2021, hence closed. No order as to costs.

Sd/ G.J.J
08/10/2021

//Certified to be true copy//
Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)
From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.