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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 08th DAY OF JULY 2021

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

C.S.No.42 of 2017

&

A.Nos.2418 & 7467 of 2017

Carborundum Universal Limited,
A Company incorporated under the
Provisions of the Indian Companies Act, 1913
Having its registered Office at Parry House,
No.43, Moore Street,
Chennai – 600 001.
Represented by its duly constituted Power of Attorney
Mr.K.Srinivasan
... Plaintiff/Applicant
(in A.No.2418 of 2017)

/versus/

1. Metabowerke GmbH,
Postfach 12 29,
D-72602 Nürtingen,
Hausanschrift,
Metabo-Alee 1, D-72622 Nürtingen,
Germany.
2. Hitachi Koki India Private Limited,
Plot No.9A, 1 Phase,
Peenya Industrial Area, Bangalore – 560 058,
India.
3. Hitachi Koki Japan,
Shinagawa Intercity Tower A,
20th Floor, 15-1, Konan 2-Chome
Minato-ku, Tokyo – 108-6020,
Japan.

... Defendants/Respondents
(in A.No.2418 of 2017)



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Civil suit praying that this Hon'ble Court be pleased to pass a judgment and decree in following terms:-

(a) permanent injunction restraining the defendants 1 to 3 and/or their agents and/or servants and/or affiliates and/or any other persons claiming through and/or under them from infringing the plaintiffs registered trade mark 'CUMI' by the use of the mark 'CUMI' separately or together with any other name of mark and/or any other mark identical and/or deceptively similar thereon;

(b) permanent injunction restraining the defendants 1 to 3 and/or their agents and/or servants and/or affiliates and/or any other persons claiming through and/or under them from passing off their proposed business as and for that of the plaintiffs, by the use of the mark 'CUMI', separately or together with any other name of mark, and/or any other mark identical and/or deceptively similar thereto;

(c). Permanent injunction restraining the defendants 1 to 3, their agents, servants, contractors or anybody claiming under them or in any manner from using the tagline “Partners in Productivity Solutions” and/or any other mark identical and/or deceptively similar thereto created and owned by the plaintiff;

(d). Permanent injunction restraining the defendants 1 to 3 jointly and severally from using, publishing, distributing or making available any of,



or any part thereof of the promotional material created and developed by the plaintiff, or any, and all, other material generated by the plaintiff and shared with the defendant No.1;

(e). Permanent injunction restraining the defendants 1 to 3, their agents, servants, contractors or anybody claiming under them or in any manner from approaching or using the plaintiff's employees, customers, agents, distributors, dealers, sub-dealers or other distribution partners of the plaintiff, or forming part of the Proprietary Information or introduced by the plaintiff to defendant No.1, for a period of at least 5 years;

(f). Permanent injunction restraining the Defendant No.1 from acting on the termination of the DA except in a manner agreed to with the plaintiff;

(g) Mandatory injunction directing the defendant No.1 to continue the business arrangement and existing relationship with the plaintiff for a period of at least 5 years;

(h). Direction that accounts of the defendants be taken and the defendants be ordered to pay such further sums as may be due and payable on account of offending and/or illegal acts committed by the defendants;

(i). Direct the defendants to pay cost of the present proceedings.

A.No.2418 of 2017:-

<https://hcservices.ecourts.gov.in/hcservices/> Application praying that this Hon'ble Court be pleased to pass an order declaring the respondents guilty of wilful disobedience of the orders



dated February 13, 2017 of this Hon'ble Court and consequently pass an order of attachment of the products, accessories and spare parts of Respondent No.1 stored by the Respondent No.2 in its premises detailed in the schedule herein.

A.No.7467 of 2017:-

Hitachi Koki Japan,
Shinagawa Intercity Tower A,
20th Floor, 15-1, Konan 2-Chome
Minato-ku, Tokyo – 108-6020,
Japan.

...Applicant/3rd Defendant

-VS-

1. Carborundum Universal Limited,
A Company incorporated under the
Provisions of the Indian Companies Act, 1913
Having its registered Office at Parry House,
No.43, Moore Street,
Chennai – 600 001.

Represented by its duly constituted Power of Attorney
Mr.K.Srinivasan

... Respondent/Plaintiff

2. Metabowerke GmbH,
Postfach 12 29,
D-72602 Nürtingen,
Hausanschrift,
Metabo-Alee 1, D-72622 Nürtingen,
Germany.

3. Hitachi Koki India Private Limited,
Plot No.9A, 1 Phase,
Peenya Industrial Area, Bangalore – 560 058,
India.

... Respondents/Defendants



leave granted in A.No.77 of 2017 in C.S.D.No.1275 of 2017.

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This Civil suit alongwith these Applications coming on this day before this court for hearing in the presence of Mr.K.Gowtham Kumar, Advocate for the Plaintiff in C.S.No.42 of 2017 and for the applicant in A.No. 2418 of 2017 and for the 1st respondent in A.No.7467 of 2017 and Mr.Vinodh Kumar, Advocate for the 1st Defendant in C.S.No.42 of 2017 and for the 1st respondent in A.No.2418 of 2017 and for the 2nd respondent in A.No.7467 of 2017 and Mr.Thiyambakh J.Kannan, Advocate for the 2nd and 3rd defendant in C.S.No.42 of 2017 and for the respondents 2nd and 3rd in A.No.2418 of 2017 and for the applicant in A.No.7467 of 2017 and upon reading the plaint filed in C.S.No.42 of 2017 and the judges summons and the affidavit of K.Srinivasan filed in A.No.2418 of 2017 and for the judges summons and the affidavit of Yasushi Fukui, filed in A.No.7467 of 2017 and the learned counsel for the plaintiff having stated that the dispute has been amicably settled between the parties out of court and settlement agreement has been executed between them, and It is ordered as follows:-

That the suit in C.S.No.42 of 2017 be and is hereby dismissed as withdrawn.

2. That the connected A.Nos.2418 & 7467 of 2017 be and are hereby



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

WEB COPY WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
08th DAY OF JULY 2021.

Sd./-

ASSISTANT REGISTRAR (Comm.Cases)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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16.08.2021

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C.S.No.42 of 2017
&
A.Nos.2418 & 7467 of 2017

ORDER :-
DATED :08.07.2021

THE HON'BLE DR. JUSTICE
G.JAYACHANDRAN

FOR APPROVAL: 6.9.2021

APPROVED ON: 08.09.2021

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

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Date : 08.07.2021

Coram::

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.S.No.42 of 2017
& A.Nos.2418 & 7467 of 2017

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A Company incorporated under the
Provisions of the Indian Companies Act, 1913
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Represented by its duly constituted Power of Attorney
Mr.K.Srinivasan

... Plaintiff

/versus/

1. Metabowerke GmbH,
Postfach 12 29,
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India.
3. Hitachi Koki Japan,
Shinagawa Intercity Tower A,
20th Floor, 15-1, Konan 2-Chome
Minato-ku, Tokyo – 108-6020,
Japan.

... Defendants

Prayer: Plaint is filed under Order IV Rule 1 of Original Side Rules read
with order VII Rule 1 of C.P.C and Section 134 of the Trademarks Act,



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(a) permanent injunction restraining the defendants 1 to 3 and/or their agents and/or servants and/or affiliates and/or any other persons claiming through and/or under them from infringing the plaintiffs registered trade mark 'CUMI' by the use of the mark 'CUMI' separately or together with any other name of mark and/or any other mark identical and/or deceptively similar thereon;

(b) permanent injunction restraining the defendants 1 to 3 and/or their agents and/or servants and/or affiliates and/or any other persons claiming through and/or under them from passing off their proposed business as and for that of the plaintiffs, by the use of the mark 'CUMI', separately or together with any other name of mark, and/or any other mark identical and/or deceptively similar thereto;

(c). Permanent injunction restraining the defendants 1 to 3, their agents, servants, contractors or anybody claiming under them or in any manner from using the tagline “Partners in Productivity Solutions” and/or any other mark identical and/or deceptively similar thereto created and owned by the plaintiff;

(d). Permanent injunction restraining the defendants 1 to 3 jointly and severally from using, publishing, distributing or making available any of, or any part thereof of the promotional material created and developed by the plaintiff, or any, and all, other material generated by the plaintiff and shared with the defendant No.1;



been amicably settled between the parties out of Court and settlement agreement has been executed between them.

2. In view of the settlement arrived between the parties out of court, the plaintiff seeks leave of the Court to withdraw the suit. Accordingly, the suit is dismissed as withdrawn. There shall be no order as to costs. Consequently, connected Applications are closed.

Sd./-(G.J.J.,)

08.07.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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