

C.S.(Com.Div.) No.680 of 2019
and O.A.Nos.1070 to 1072 of 2019
& A.No.872 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.04.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.S.(Com.Div.) No.680 of 2019
and O.A.Nos.1070 to 1072 of 2019
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M/s.Kaleesuware Refinery Private Limited,
Represented by its Manager (Legal),
Mr.A.Saravanan (M-42 years),
No.53, Rajasekaran Street,
Opp: Kalyani Hospital,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004.

.. Plaintiff

/versus/

M/s.SVN Agro Refineries,
1/66, Vengaivasal Main Road,
Selaiyur Post, Santhosapuram,
Chennai-600 073.

.. Defendant

This Civil Suit is filed under Order IV Rule 1 Original Side Rules read with Order VII Rule 1 of CPC and under Sections 134 and 135 of the Trade Marks Act, 1999, R/W Sections 61 & 62 of the Copyright Act, 1957, prayed for (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 Trade Mark "Gold Winner" by using the offending Trade Mark "Sun Elite" or any mark or word deceptively similar to the aforesaid Trade Mark 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 "Sun Elite" or any other words or mark and offending packing material and pouch deceptively similar to the plaintiff's trade mark "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 "Sun Elite" bearing same trade dress, color scheme and get up deceptively similar to that of the plaintiff's colour scheme and trade dress in the packing material / pouch bearing trade mark "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 “Sun Elite”.

(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 “Sun Elite” with distinct colour scheme, get up of 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;

For plaintiff : Mr.Vijayan Subramanian

For Defendant : Mr.P.C.N.Raghupathy

JUDGMENT

The suit is filed for the relief of permanent injunction restraining the defendant from infringing the plaintiff's registered trademark (Gold Winner) by using the offending trademark (Sun Elite) or any other deceptively similar trademark with identical or get up.

2. This Court, at the time of admission being prima facie satisfied that there is infringement of the plaintiff's trademark, had granted interim injunction. After notice, the defendants had appeared before this Court and reported that the get up and colour scheme adopted by the defendant had been changed.

3. The plaintiff and the defendant have also entered into joint compromise memo on 06.03.2021 and had filed copy of it before this Court, wherein the defendant had agreed not to use the trademark, colour scheme and get up which is similar or identical to that of the plaintiff.

4. In view of the compromise memo, the suit is decreed as prayed for. The terms of memo of compromise shall form part of the

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decree. Consequently, all other connected applications are closed. There shall be no order as to costs.

07.04.2021

Speaking Order / Non-Speaking Order
Index : yes/no
rpl

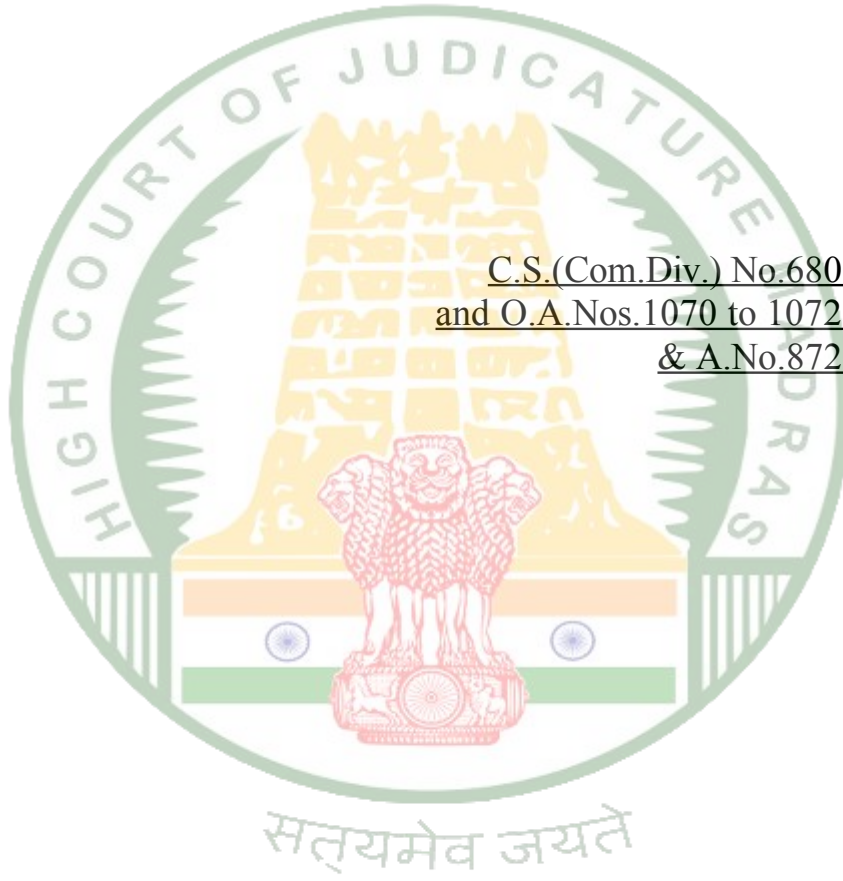


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Dr.G.JAYACHANDRAN,J.

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