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C.S.No.215 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2023

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THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

C.S(Comm.Div.)No.215 of 2020

M/s.Kaleesuwari Refinery Private Limited,

Rep. By its Manager (Legal)

Mr.A.Saravanan,

No.53, Rajasekaran Street,

Dr.Radhakrishnan Salai,

Mylapore, Chennai – 4.

.. Plaintiff

-VS-

M/s.South Indiaa Oil Corporation,

No.26, 4th main road,

New Tharagupet,

Bangalore – 560 002.

.. Defendant

PRAYER: Civil Suit is filed under Order IV Rule 1 of the O.S.Rules read with Order VII Rule 1 of CPC read with Sections 134 and 135 of the Trademarks Act, 1999, read with Sections 61 and 62 of the Copyright Act, 1957, praying:-



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(a) for 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 "GOLD PRIMME" 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;

(b) for a permanent injunction to restrain the defendant, their 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 "GOLD PRIMME" 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";

(c) for a 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 "GOLD PRIMME" bearing the 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";



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(d) for a preliminary decree directing the defendant to render true account of profits made by the defendant by using the aforesaid offending label of “GOLD PRIMME”;

(e) to direct 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 “GOLD PRIMME” 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;

(f) 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; and

(g) to pay the costs of the suit.

For Plaintiff : Mr.Vijayan Subramanian

For Defendant : Mr.S.Gopinath
for Mr.M.R.Gokula Krishnan

JUDGMENT



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On the last hearing date i.e., on 15.11.2023, the defendant had filed an affidavit of undertaking dated 08.11.2023 stating that the defendant shall not use the trademark “GOLD PRIMME” and/or the label which are deceptively or identically similar to that of the plaintiff's trademark “GOLD WINNER”. In the very same affidavit, the defendant has also given another undertaking, which is quoted below:-

“3. I submit that the defendant shall not 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”.

2. The learned counsel for the defendant on instructions would further clarify that the defendant has stopped using the trademark “GOLD PRIMME” or any other label, which are deceptively or identically similar to the plaintiff's trademark label “GOLD WINNER”.

3. The learned counsel for the plaintiff on instructions would submit that the plaintiff is satisfied with the affidavit of undertaking dated



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08.11.2023 filed by the defendant, which has been recorded by this Court.

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4. In terms of the affidavit of undertaking dated 08.11.2023 as well as the clarification given by the learned counsel for the defendant on instructions, this suit is disposed of. The affidavit of undertaking dated 08.11.2023 shall form part of this judgment. No Costs.

16.11.2023

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ABDUL QUDDHOSE, J.

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