



C.S.No.202 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 26.07.2023

PRONOUNCED ON: 02.08.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.S.No.202 of 2016

Hindustan Unilever Limited,
Pond's House,
No.101, Santhome High Road,
Chennai 600 028,
Rep by its Manager and Authorized Signatory/Power Agent
Mr.Saif Jamali ...Plaintiff

Vs

Andhra Detergents MAC Marketing Society Ltd,
Office:
15/282/4, Haranatha Press Road,
Satyanarayanapuram,
Gudivada,
District Krishna,
Andhra Pradesh, 521 301,
Factory
Mallayapalem,

1/21



C.S.No.202 of 2016

Gudivada Rural,
District Krishna,
Andhara Pradesh 521 301

... Defendants

Prayer: Civil Suit is filed under Section 27, 28, 29, 134 and 135 of the Trade Marks Act, 1999 read with Order VII Rule 1 of C.P.C, 1908 and Order IV Rule 1 of O.S.Rules, prayed to pass a judgment and decree in favour of the plaintiff and against the defendant.

a) granting a permanent injunction restraining the defendant, its partners or proprietor as the case may be, its principal officers, members, servants and agents, sister concerns, distributors, wholesalers, retailers and all others acting infringing the registered trademark by manufacturing, marketing, selling, offering for sale, distributing, advertising including on the internet and in any other manner using the trademark/trade dress and getup and packaging RINSO or any other mark deceptively and/or confusingly similar to the registered trademark/trade dress and getup and packaging RIN and its variants belonging to the Plaintiff

b) granting a permanent injunction restraining the defendant, its partners or proprietor as the case may be, its principal officers,



C.S.No.202 of 2016

members, servants and agents, sister concerns, distributors, wholesalers, retailers and all others acting on its behalf from manufacturing, marketing, selling, offering for sale, on the internet and in any other manner the or any distributing, advertising including t goods bearing trademark/trade dress and getup and packaging RINSO other goods bearing trademark/trade dress and getup and packaging deceptively and/or confusingly similar to the registered trademark/trade dress and getup and packaging RIN and its variants belonging to the Plaintiff;

c) granting a permanent injunction restraining the defendant, its partners or proprietor as the case may be, its principal officers, members, servants and agents, sister concerns, distributors, wholesalers, retailers and all others acting on its behalf from passing off the goods manufactured, marketed, advertised, 1. M distributed and/or sold by the defendant as the goods of the Plaintiff;

d) granting an order directing the defendant to deliver-up to an authorized representative of the Plaintiff for purposes of destruction, all goods in the defendant's possession including cartons, containers,



C.S.No.202 of 2016

tubes, caps, labels, films, wrappers and any other printed matter bearing any trademark/trade dress and getup and packaging deceptively and/or confusingly similar to the registered trademark/trade dress and getup and packaging RIN and its variants belonging to the Plaintiff;

e) granting an order directing the defendant to rendition accounts of profits earned by the defendant by the sale of the goods bearing trademark/trade dress and getup and packaging RINSO or any other goods bearing trademark/trade dress and getup and packaging deceptively and/or confusingly similar to the registered trademark/trade dress and getup and packaging RIN and its variants belonging to the Plaintiff:

f) directing the defendant to pay the Costs of the Suit:

For Appellants : Mr.Shivathanu Mohan
for Mr.S.Ramasubramaniam
and Associates

For Respondent : *Ex-parte*



WEB COPY



C.S.No.202 of 2016

JUDGEMENT

The above suit has been filed for the following reliefs:

- a) granting a permanent injunction restraining the defendant, its partners or proprietor, as the case may be, its principal officers, members, servants, and agents, sister concerns, distributors, wholesalers, retailers, and all others acting infringing the registered trademark by manufacturing, marketing, selling, offering for sale, distributing, advertising, including on the internet, and in any other manner using the trademark/trade dress and getup and packaging RINSO or any other mark deceptively and/or confusingly similar to the registered trademark/trade dress and getup and packaging RIN and its variants belonging to the Plaintiff;
- b) granting a permanent injunction restraining the



C.S.No.202 of 2016

defendant, its partners or proprietor, as the case may be, its principal officers, members, servants, and agents, sister concerns, distributors, wholesalers, retailers, and all others acting on its behalf from manufacturing, marketing, selling, offering for sale, on the internet, and in any other manner, including goods bearing trademark/trade dress and getup and packaging RINS and other goods bearing trademark/trade dress and getup and packaging deceptively and/or confusingly similar to the registered trademark/trade dress and getup and packaging RIN and its variants belonging to the Plaintiff;

c) granting a permanent injunction restraining the defendant, its partners or proprietor, as the case may be, its principal officers, members, servants, and agents, sister concerns, distributors, wholesalers, retailers, and all others acting on its behalf from passing off the goods manufactured, marketed, advertised, distributed, and/or sold by



C.S.No.202 of 2016

the defendant as the goods of the Plaintiff;

d) granting an order directing the defendant to deliver up to an authorized representative of the plaintiff for purposes of destruction all goods in the defendant's possession, including cartons, containers, tubes, caps, labels, films, wrappers, and any other printed matter bearing any trademark, trade dress, getup, or packaging deceptively and/or confusingly similar to the registered trademark, trade dress, getup, and packaging RIN and its variants belonging to the plaintiff;

e) granting an order directing the defendant to render accounts of profits earned by the defendant by the sale of the goods bearing trademark, trade dress, getup, and packaging RINSO or any other goods bearing trademark, trade dress, getup, and packaging deceptively and/or confusingly similar to the registered trademark, trade dress, getup, and packaging RIN and its variants belonging to the plaintiff:



C.S.No.202 of 2016

f) directing the defendant to pay the costs of the Suit.

2.It is the case of the plaintiff that they had established their business in India in the year 1933 as a subsidiary of Unilever PLC. Therefore, it was allowed to use the trademarks vested in its parent company. The plaintiff has a wide range of products in Home care, detergents, personal hygiene and personal care. It is the largest Packaged Mass Consumption Goods (PMCG) and Fast Moving Consumer Goods (FMCG) Company in India. The suit in question relates to the plaintiff's trademark, called RIN. It is the case of the plaintiff that this trademark RIN along with its trade dress and writing style has become a well-known mark in India as defined in Section 2(1)(zg) of the Trademarks Act.



C.S.No.202 of 2016

WEB COPY

3.The plaintiff would submit that the trademark, which is the subject matter of the present suit was adopted in the year 1960 by the plaintiff and they had immediately commenced the use of the said trademark in relation to washing bars. The trademark was registered in the year 1963 under Registration No. 76330 with the Trademarks Registry and the registration is subsisting to date. The plaintiff would further submit that the trademark RIN is an arbitrary mark and is inherently a distinctive mark, which is entitled to the highest level of protection and its adoption by anyone else would *prima-facie* be dishonest. The plaintiff would further submit that RIN had several variants. In 1994, the plaintiff had introduced a new range of detergent powders in the market under the brand name RIN. In 2007, they had introduced bleach and later RIN MATIC, which is the special detergent used only for washing machines. The plaintiff had also entered the liquid blue market by introducing RIN PERFECT SHINE.



C.S.No.202 of 2016

Therefore, it is the contention of the plaintiff that the word RIN has been identified as that of the plaintiff. The plaintiff would submit that the entire trade consisted of the device of thunder and also the STARBURST, all of which were the exclusive marks of the plaintiff.

4.The plaintiff had given its products wide publicity both in print and visual media and would also sponsor events where there products with their trademarks was widely published. All of this garnered a lot of public interest in the products of the plaintiff. The plaintiff has further set out the various trademarks that they have got registered in their pleadings.

5.It is also the case of the plaintiff that they had got the trademark RINSO registered in the year 1943, which is being renewed to date. The plaintiff would further submit that they have spent a



C.S.No.202 of 2016

sizeable amount on their advertisements. The plaintiff would further submit that the trademark RIN is synonymous with the plaintiff Company and any infringement of the same would result in grave prejudice to the plaintiff.

6.It is the case of the plaintiff that they came to learn that the defendant is doing business under the name and style "Andhra Detergents Mac Marketing Society Ltd." and that they are also engaged in the manufacture and sale of washing powder and detergent under the brand RINSO. The plaintiff would submit that the defendant has adopted the trademark/trade dress/copyright RINSO for their products and the packet has the same background, which is an essential part of the plaintiff's copyright/trademark registration. The trademark/trade dress/copyright RINSO are deceptively and



C.S.No.202 of 2016

confusingly similar to the plaintiff's product RIN and its other variants. The plaintiff would also submit that the defendant is supplying poorer quality products by adopting the trade dress/trademark and copyright RIN of its products which is to the detriment of the plaintiff. The defendant is attempting to confuse the consumers and boosting their sale by using the goodwill that the plaintiff's trademark has earned in the market. The plaintiff would submit that the defendant has illegally derived financial benefit from the use of the plaintiff's trademark. Therefore, the plaintiff has come forward with the above suit. They have also sought a rendition of accounts and damages stating that the defendant had made a profit from the use of the plaintiff's trademark/trade dress and the copyright RIN.

7.The defendant, who was also served and who had initially



C.S.No.202 of 2016

entered an appearance through counsel, had subsequently not filed the written statement. A perusal of the notes papers would also indicate that on 31.07.2023, the learned counsel for the defendant informed the Court that the defendant had abandoned the trademark (RINSO) and he was asked to file an affidavit to that effect on 14.02.2023. On 14.02.2023, neither the learned counsel for the defendant was present nor was the affidavit filed. Therefore, this Court proceeded to set the defendant *ex-parte* and directed the learned Additional Master II to adduce *ex-parte* evidence.

8.In pursuance of the said order, the plaintiff has let in oral evidence by examining P.W1 and marking P1 to P20.

9.The learned counsel for the plaintiff has filed written arguments on 30.03.2023. When the matter came up on 26.07.2023, when asked by this Court, the learned counsel for the plaintiff



C.S.No.202 of 2016

submitted that there were no oral arguments to be adduced and that the written arguments can be treated as oral arguments. A perusal of the plaint and the evidence gives rise to the following issues:

- (i) *Whether there is an infringement of the plaintiff by the defendant?*
- (ii) *Whether the defendant's mark RINSO is deceptively similar to the plaintiff's mark with its trademark/trade dress/copyright?*
- (iii) *Whether the plaintiff is entitled to the relief as prayed for?*
- (iv) *To what relief, the plaintiff is entitled for?*

10.The written arguments is nothing but a repeat of the plaint and proof affidavit. However, a perusal of all these, namely, the



C.S.No.202 of 2016

plaint, the proof affidavit and the written arguments, sets forth the following case of the plaintiff.

a) That the defendant has packaged its product RINSO in a trade dress similar to the artistic work of the plaintiff's product RIN and its variants. This similarity amounts to an infringement of the trademark of the plaintiff and passing off of the products of the defendant as that of the plaintiff.

b) The infringement alleged is twofold.

a) Plaintiff's registered trademark of RIN and its variants and the copyright in the artistic work (label).



WEB COPY



C.S.No.202 of 2016

*b) Visual similarity of the plaintiff's product
and defendant's product.*

11.This is the sum and substance of the plaintiff's case against the defendant. The contention of the plaintiff is that they have a registration with reference to the mark RIN and the defendant, by adopting the RINSO and copying the trade dress, trademark, and copyright of the plaintiff, has attempted to ride upon the goodwill that the plaintiff had developed over a long period of time. To prove their contention, the plaintiff has marked the certificate of Registration of trademarks as Exs.P3 to P9 and the assignment of copyrights as Exs.P11 to P16. Only xerox copies of the Exhibits have been marked and there is no explanation as to why the originals have not been marked. A reading of the proof affidavit of P.W.1 does not throw light as to why xerox copies had been marked. There is also nothing to



C.S.No.202 of 2016

show that xerox copies have been marked after the originals have been produced and compared before marking. It is also the contention of the plaintiff that the copyrights have been assigned to them under Exs.P11 to P16 by the artist. It is no doubt true that the defendant has not appeared and objected to the marking of these xerox copies or cross-examined P.W1, however Section 61 of the Evidence Act sets out that the contents of a document can be proved either by primary or secondary evidence. Section 62 talks about the primary evidence and Section 63 talks about when the secondary evidence can let in. However, this Court cannot ignore the provisions of Section 65 of the Evidence Act, which deals with when and how secondary evidence has to be given. Nowhere in her proof affidavit has the P.W.1 given evidence as to why the plaintiff has not marked the originals of the Exhibits or at least produced the originals and marked xerox copies after comparing the same. To prove the factum of similarity, the



C.S.No.202 of 2016

plaintiff has marked Exhibits P18 to P20, all of which are on-line printouts of the photographs. However, these documents are not accompanied by the certificates under Section 55 of the Evidence Act.

12.Be that as it may, a perusal of two marks does not reflect any similarity. There are several dissimilarities between the two, and the scope of one being confused by the other even to the naked eye does not exist. The plaintiff has come forward with case that the marks are deceptively similar, which this Court feels is not correct. The plaintiff's trade dress is dark blue, purple, and white combination, with the trademark RIN in red in the center against a white backdrop, there is a thunder bolt on the right corner and a white and red T-shirt on the left corner, and below the T-shirt are the words bright and new running across it. There are sparkles surrounding the name RIN. The font of the writing is also slanting in nature. That apart, even the



C.S.No.202 of 2016

quantity of the product appears to be dissimilar to the defendant's product which shows that it is Rs.10 product. The defendant's trade dress consists of the word 'NEW Rinso' with a white and blue backdrop, below which is a word 'OXY FRESH' and a yellow circular band on the top right-hand side and there appears to be something inside the band, which is not clearly visible. Therefore, even with reference to the distinct features, there is a sea of difference between the two, and it cannot be said that the two are similar. The plaintiff has also not produced any documents to show how the defendant has profited from the goodwill of the plaintiff in market their product. No accounts are shown to prove that the defendant has earned considerable income by using the mark of the plaintiff. Therefore, issues 1 to 3 are answered against the plaintiff. Consequently, the plaintiff is not entitled to the relief claimed and therefore, issue No.4 is also answered against them. Accordingly, the plaintiff is not entitled



C.S.No.202 of 2016

to the decree as prayed for and the Civil Suit is dismissed. There shall be no order as to costs.

02.08.2023

Index : Yes/No

Speaking order/non-speaking order

srn

20/21



WEB COPY

J.



C.S.No.202 of 2016

P.T.ASHA,

srn

C.S.No.202 of 2016

02.08.2023

21/21