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C.S.No.340 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2023

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.S. No.340 of 2020

M/s.Kaleesuwari Refinery Pvt. Ltd.,
Represented by its Manager (Legal),
Mr.A.Saravanan,
No.53, Rajasekaran Street,
(Opp: Kalyani Hospital, Radhakrishnan Salai),
Mylapore, Chennai - 600 004.

... Plaintiff

Vs.

M/s.SST AGENCIES,
Erode, Tamil Nadu.

... Defendant

PRAYER: Complaint filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule I of C.P.C. read with Sections 134 and 135 of Trademarks Act, 1999 read with Sections 61 & 62 of the Copyright Act, 1957 to pass judgment and decree:

(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 "GOBI WINNERS" 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;



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(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 "GOBI WINNERS" 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 "GOBI WINNERS" 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 "GOBI WINNERS";

(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 "GOBI WINNERS" 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;



(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

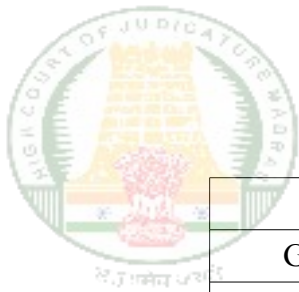
For Defendant : exparte

JUDGMENT

The suit has been filed for infringement and passing off.

2.The plaintiff is the registered proprietor of the Trademark "Gold Winner". They have obtained registration under various classes for the said Trademark as seen from paragraph 11 of the plaint. The details of the registered mark of the plaintiff as disclosed in paragraph 11 of the plaint are as follows:

<i>Sl.Nos.</i>	<i>Date</i>	<i>Trademark Nos.</i>	<i>Description</i>
1	27.08.1993	605323	Gold Winner for "Sunflower Oil"
2	11.01.2002	1073117	Gold Winner for "Refined Groundnut Oil"
3	11.01.2002	1073118	Gold Winner for "Refined Groundnut Oil"
4	01.11.2002	1147963	Gold Winner for "Refined Sunflower Oil"
5	23.06.2003	1208513	Gold Winner for "Vanaspati"
6	23.06.2003	1208514	Gold Winner for "Vanaspati"
7	16.11.2005	1399086	Gold Winner for "Refined Sunflower Oil"



Mark	App #	Class	Status
Gold Winner	1147963	29	Registered
Gold Winner	1208515	29	Registered
Gold Winner	2320408	29	Registered
Gold Winner	2320409	29	Registered
Gold Winner	2320410	29	Registered
Gold Winner	2934031	29	Registered
Gold Winner	2934030	29	Registered
Gold Winner	2934032	29	Registered
Gold Winner Vita D3+	3289982	29	Registered

3.The plaintiff has also obtained International Trademark Registrations for its mark "Gold Winner". The same has also been disclosed in paragraph 12 of the plaint. The disclosure made by the plaintiff in paragraph 12 of the plaint is reproduced hereunder:

Country	Mark	App#	Class	Status
Singapore	Gold Winner Vanaspati	T0526845F	29	Registered
Singapore	Gold Winner	T0503379C	29	Registered
Singapore	Gold Winner	T0503792F	29	Registered
Singapore	Gold Winner	T05037961	29	Registered
Malaysia	Gold Winner	05021648	29	Registered
Malaysia	Gold Winner	05020758	29	Registered
International Application under Madrid Protocol	Gold Winner	1234655	29	Registered
US	Gold Winner	4848593	29	Registered
Australia	Gold Winner	1674105	29	Registered



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4. The plaintiff has also claimed in the plaint that their products has obtained tremendous goodwill and positive market reception. According to them, their trademark "Gold Winner" is a well known trademark. They are using the trademark extensively in respect of various types of edible oils and vanaspati. It is also the case of the plaintiff that "Gold Winner" pouch is stylish and captivating. According to them, the artistic work in the "Gold Winner Refined Sunflower Oil" pouch is unique and has also translated into stupendous success in the market for the plaintiff, which makes it one of the highest purchased product in the market. According to the plaintiff, they coined and adopted the term "Gold Winner" in the year 1990 and the same has been used extensively without any interruption since then. It is also the case of the plaintiff that articles have been published in various newspapers/ advertisements about the special and unique products of the plaintiff's trademark "Gold Winner". According to the plaintiff, the trademark and the trading style "Gold Winner" are being associated exclusively with the plaintiff's company alone. The plaintiff has also stated that by the long usage, the trademark "Gold Winner" has acquired a secondary meaning to denote and connote the produce of the plaintiff. According to the plaintiff, the trademark "Gold Winner" assures the public a unique high quality in the



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plaintiff's product, namely, Refined Sunflower oil under the name "Gold Winner". In the plaint, the plaintiff has also disclosed the various awards that have been given by various associations and statutory authorities. The plaintiff has also disclosed the turnover and the sales turnover in the plaint, which run to several crores of rupees. They have also disclosed the advertisement expenditure incurred by them for the promotion of their trademark and the products, which also runs to several crores of rupees. The plaintiff has also disclosed in the plaint the suits filed by them against the similar infringers and injunction granted by this Court in those suits protecting the interest of the plaintiff. The plaintiff had also issued cease and desist notice to the defendant on 03.08.2020 prior to the institution of the suit, calling upon the defendant not to use the mark "Gobi Winners" and the colour scheme, which according to the plaintiff is deceptively similar to the plaintiff's trademark "Gold Winner" and the colour scheme of the plaintiff has been patently copied. Despite the cease and desist notice, no reply has been received from the defendant. According to the plaintiff, the defendant is continuing to use the offending mark "Gobi Winners", which is deceptively similar to the plaintiff's registered trademark "Gold Winner". The defendant was served with the suit summons, but the



defendant has chosen not to defend the suit. Hence, the defendant was set
exparte by this Court.

5.Before the learned Additional Master II, the plaintiff's witness A.Saravanan was examined as P.W.1. He has also filed a proof affidavit in respect of the plaint averments. Before the learned Additional Master II through P.W.1, the following documents were marked as exhibits on behalf of the plaintiff:

<i>Sl.Nos.</i>	<i>Exhibits</i>	<i>Description of documents</i>
1	Ex.P1	Trademark Registration Certificate for plaintiff dated 27.08.1993
2	Ex.P2	Trademark Registration Certificate dated 23.04.2012
3	Ex.P3	Renewal Registration Certificate of trademark registration certificate dated 08.09.2017
4	Ex.P4	Trademark Registration Certificate dated 01.04.2015
5	Ex.P5	Board Resolution Certificate dated 06.07.2018 and 07.08.2023
6	Ex.P6	Legal Usage Certificate dated 18.10.2019
7	Ex.P7	Legal Usage Certificate dated 18.10.2019
8	Ex.P8	Legal Usage Certificate dated 18.10.2019
9	Ex.P9	Legal Notice issued by the plaintiff dated 03.08.2020
10	Ex.P10	Comparison Table

6.As seen from the aforementioned exhibits, the plaintiff has obtained registrations under various classes under the Trademarks Act for the trademark "Gold Winner". The trademark registrations obtained by the plaintiff have been marked as Exs.P1 to P4. The Legal Usage Certificates



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issued under the Trademarks Act in favour of the plaintiff, which have been marked as Exs.P6 to P8, also confirm that the plaintiff is the exclusive owner of the trademark "Gold Winner". The infringing mark of the defendant is "Gobi Winners", which in the considered view of this Court is phonetically similar to that of the plaintiff's registered trademark "Gold Winner". The colour scheme of the defendant's pouch "Gobi Winners" is also deceptively similar to that of the plaintiff's "Gold Winner" pouch. A comparison showing "Gobi Winners" pouch and "Gold Winner"s pouch of the plaintiff is reproduced hereunder and the said comparison is also marked as Ex.P10:



7.As seen from the comparison of the "Gold Winner" and "Gobi Winners" pouches respectively, it is clear that the colour scheme and get up of the defendant's pouch, namely, "Gobi Winners" pouch is deceptively similar to the plaintiff's pouch, namely, "Gold Winner". The name of the mark of the defendant, namely, "Gobi Winners" is also phonetically similar to that of the plaintiff's registered trademark "Gold Winner". The cease and



desist notice sent by the plaintiff is dated 03.08.2023 and the same has been marked as Ex.P9. The defendant has also not obtained any registration for its mark "Gobi Winners".

8.All the aforementioned factors will prove that the defendant has blatantly copied the plaintiff's trademark, colour scheme and get up of the plaintiff's pouch. As seen from the documents filed along with the plaint, which have been marked as exhibits before the learned Additional Master II, it is clear that the plaintiff's trademark "Gold Winner" is reputed and well known mark. Being reputed and well known mark and on account of the fact that the name "Gobi Winners" is phonetically similar to that of the plaintiff's registered trademark "Gold Winner" and on account of the fact that the colour scheme and get up of the defendant's pouch is deceptively similar to that of the plaintiff's pouch, the relief sought for in the plaint has to be granted in favour of the plaintiff.

9.For the foregoing reasons, a judgment and decree is passed in favour of the plaintiff against the defendant by granting the following reliefs:

a)Permanent injunction is granted to restrain the Defendant, its men,



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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 "GOBI WINNERS" or any mark or word deceptively similar to the aforesaid Trade Mark of the Plaintiff for any edible oil marketed by the Defendant, its men, agents, associates and/or assignees or any person claiming rights from the Defendant;

(b)Permanent injunction is granted 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 "GOBI WINNERS" 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)Permanent injunction is granted to restrain 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 "GOBI WINNERS" bearing same trade dress, colour 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".

10. In view of the blatant copying of the plaintiff's colour scheme and get up by the defendant, it is clear that the artistic work of the plaintiff over the pouch has been infringed by the defendant, which will amount to infringement of copyright by the defendant.

11. Insofar as the reliefs sought for in prayer column iv, v and vi are concerned, the learned counsel for the plaintiff is not pressing for the same and therefore, this suit is dismissed as not pressed insofar as prayer column iv, v and vi are concerned.

12. The defendant is directed to pay the costs of the suit to the plaintiff.

11.12.2023

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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C.S.No.340 of 2023

List of witness:

A.Saravanan (PW.1)

List of the exhibits marked on the side of the plaintiff:

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C.S.No.340 of 2020

ABDUL QUDDHOSE, J.

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C.S.No.340 of 2020

11.12.2023