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C.S. No.681 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.S. No.681 of 2019

M/s. Kaleesuwari Refinery Private Ltd.,

Represented by its Manager (Legal)

A. Saravanan

...

Plaintiff

vs.

M/s.Sri Ganeshmurugan Oil Industries,

Seemandampalayam Road,

Vellakovil,

Tirupur District - 638 111.

...

Defendant

Prayer : Plaintiff has been filed under Order IV Rule 1 of the O.S. Rules r/w Order VII Rule 1 of C.P.C. Rules r/w Sections 134 and 135 of Trade Marks Act, 1999 r/w Sections 61 & 62 of the Copyright Act, 1957. praying 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 "**GOLD KING**" 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



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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 **"GOLD KING"** 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 **"GOLD KING"** 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".

iv) For preliminary decree directing the defendant to render true account of profits made by the Defendant by using the aforesaid offending label of **"GOLD KING"**.

v) Directing the Defendant, its men, agents, assignees, dealers and / or retailers, distributors, to surrender to the plaintiff all offending pouch



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/ packing material, label, advertising materials, hoarding, letter heads, office stationary and all other material containing / bearing offending mark / label **"GOLD KING"** with distinct colour 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

JUDGMENT

This suit has been filed for infringement and passing-off. The plaintiff claims to be a leading market leader in the refined sunflower oil (RSO) and edible oil sector. The plaintiff is having a registered Trade Mark by name **"Gold Winner"** and the said mark is also registered under the Copyrights Act. The logo of the plaintiff which is filed along with the plaint has also been registered under the Trade Marks Act, 1999. The package of the plaintiff which has been filed along with the plaint has also been registered under the Trade Marks Act. The plaintiff's



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turnover as seen from the plaint is huge running to several crores of rupees. The plaintiff has registered its word mark **“Gold Winner”** under various classes, which is detailed hereunder and is also found in paragraph No.11 of the plaint.

Sl. No	Date	Trade Mark No.	Description
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	2934010	29	Registered



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Gold Winner	2934031	29	Registered
Gold Winner	2934030	29	Registered
Gold Winner Vita	2934032	29	Registered
Gold Winner Vita D3+	3289982	29	Registered

2. The plaintiff has also secured international Trade Mark registration for its mark “**Gold Winner**”, which is detailed hereunder and has also been extracted by the plaintiff in paragraph No.12 of the plaint :

Country	Mark	App#	Class	Status
Singapore	Gold Winner	T0526845F	29	Registered
	Vanaspati			
Singapore	Gold Winner	T0503379C	29	Registered
Singapore	Gold Winner	T0503792F	29	Registered
Singapore	Gold Winner	T0503796I	29	Registered
Malaysia	Gold Winner	05021648	29	Pending
Malaysia	Gold Winner	05020758	29	Pending
International Application under Madrid Protocol	Gold Winner	1234655	29	Registered
US	Gold Winner	4848593	29	Registered



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Australia	Gold Winner	1674105	29	Registered
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3. The advertisement cost has been furnished by the plaintiff in respect of the Trade Mark “**Gold Winner**” from the year 2002-03 to 2016-17, which is extracted in paragraph No.32 of the plaint which is reproduced hereunder :

Sales Details of Plaintiff (in Crores)			
Years	Sale	Advt. & Promotional Expenses	% (Percentage)
2002-03	397.08	8.28	2.09
2003-04	382.13	11.1	2.91
2004-05	401.24	5.92	1.48
2005-06	402.85	7.76	1.93
2006-07	596.91	9.59	1.61
2007-08	815.39	18.85	2.31
2008-09	858.69	13.7	1.6
2009-10	690.51	21.1	3.06
2010-11	1007.45	25.86	2.57
2011-12	1401.02	23.24	1.66
2012-13	1934.29	23.61	1.22
2013-14	2375.55	36.86	1.55
2014-15	2345.85	64.57	2.75
2015-16	2223.46	63.96	2.88
2016-17	2230.00	70.24	3.15
Total	18062.42	404.64	2.24

4. According to the plaintiff, they came to know that the defendant



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has adopted the same name, layout and colour scheme for its offending pouch and has projected its brand “GOLD KING” in a similar orange background and pale yellow shades at the side of the label containing the image of “Sunflower” which is deceptively similar to that of the plaintiff's trademark, logo and the package. The plaintiff has sent a Cease and Desist Notice on 01.10.2019 to the defendant and the defendant has also replied to the same by its reply dated 10.10.2019 stating that they have changed their brand name and also the trade dress. According to the plaintiff the defendant continues to infringe its registered trademark and copyright. As seen from the plaint in respect of other offenders of the plaintiff's Trade Mark, the plaintiff had filed suits against the said offenders and in some cases, the suit has been decreed and in some cases interim injunctions were granted and in some cases, the suits were settled out of court. The details of the suits filed by the plaintiff against similar offenders is disclosed in paragraph No.26 of the plaint and the same is extracted hereunder :-

Sl. No	Product Name	C.S. No.	Status
1	Good Winner	327/2013	Suit decreed as prayed.
2	Gold Star	679/2013	Pending for compromise.
3	Winner Gold	680/2013	Memo of Compromise filed case



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			settled.
4	Gold minister	683/2013	Pending for compromise
5	Sunrich	381/2014	Reserved for order in interim injunction application. Judge who reserved the order was retired. May be taken up for fresh hearing in injunction petition.
6	Jeyam Gold	628/2014	No one filed vakalat. Case pending for recording exparte evidence.
7	Jothi Brand	630/2014	Memo of compromise filed case settled.
8	SKS Gold	647/2014	Memo of compromise filed case settled.
9	Gold-o-Gold	816/2015	Offending pouch changed. Case decreed based on their adoption to new pouch.
10	Aarun Gold	839/2015	Took time to file counter in our interim injunction application. Interim order extended until further order. Willful disobedience application is filed against them for adopting another similar pouch to that of Gold Winner, they have to file their counter.
11	Kasturi Gold	390/2014	Interim order extended until further order during the hearing on 06/07/2016.
12	Sunpure	858/2015	Written statement filed. Our interim injunction application was dismissed. We moved appeal before division bench against the said dismissal order. The appeal was admitted. During pendency compromise was arrived. We are in discussion on the draft Memo of Compromise with opposite counsel. It will be settled by this month.
13	Gold Roja	859/2015	Case settled based on their undertaking no to use the offending pouch.
14	Win Gold	898/2015	Case settled based on their undertaking not to use the offending pouch.



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15	Sunland	740/2016	Interim order granted against the offending comparative advertisement. This advertisement claims that freebies are inclusive of price.
16	Sunland	745/2016	Interim order granted against the offending advertisement until further order. This advertisement claims that other oils are contain wax.
17	Son Gold	100/2017	Heard both sides and interim injunction granted against the Defendant as prayed. Written statement filed.
18	Gold King	977/2017	Memo of Compromise filed case settled.
19	Maha Dheepam	407&414/2015	Case settled compromise recorded.
20	Apasara Plastics	693/2015	Case settled compromise recorded.
21	Dheepa Olee	852/2015	Case settled compromise recorded.
22	Nava Jyoti Deepam Oil	30/2018	Memo of Compromise filed case settled.
23	Gold Fresh	202/2019	Suit decreed as prayed.
24	Ilavarasi Gold	253/2019	Suit decreed as prayed.
25	R.G. Winner	254/2019	Suit decreed as prayed.
26	Gold Wonder	278/2019	Suit decreed as prayed.
27	Dhivya Dheepam	187/2019	Exparte evidence marked. Case pending to report settlement.
28	Gold Wins	258/2019	Case Pending to report settlement.
29	Wings Gold	286/2019	Case Pending to report settlement.
30	Maha Deepam	308/2019	Exparte evidence marked. Case pending for Final disposal.
31	Olee Olee Deepam	309/2019	Memo of Compromise filed case settled.
32	Gold Power	287/2019	Case pending to mark Exparte evidence.
33	Sree Gold	285/2019	Counsel entered appearance for



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			the Defendant. Case pending to file counter.
34	Golden Sun	215/2019	Private notice has been sent to the Defendant. Case pending.
35	The Gold Drops	425/2019	Private notice has been sent to the Defendant. Case pending.
36	Sakthy Gold	426/2019	Private notice has been sent to the Defendant. Case pending.
37	Gold Drops	432/2019	Counsel entered appearance for the Defendant. Case pending to file Counter.
38	Shree Gold	435/2019	Counsel entered appearance for the Defendant. Case pending to file Counter.

39	SPS Gold	436/2019	Counsel entered appearance for the Defendant. Case pending to file Counter.
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5. In the aforementioned circumstances, the plaintiff has filed this suit seeking for the reliefs prayed for in the plaint and the relief sought for in the plaint is for infringement of Trade Mark and passing off and for infringement of copyright. The defendant has already been set exparte by this Court on 25.02.2020. Till date the defendant has not filed any application to set aside the exparte order. The plaintiff has let in oral and documentary evidence before the learned Additional Master IV. Before the learned Additional Master – IV, the following documents were marked as Exhibits on the side of the plaintiff :-



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Ex.P1	Ex.P1 is the Printout of the Trademark Registration Certificate for Plaintiff's "Gold Winner" having Trade Mark No.605323 dated 27.08.1993.
Ex.P2	Ex.P2 is the Printout of the Trade mark Registration Certificate for Plaintiff's "Gold Winner" having Trade Mark No.2320409 dated 11.02.2017.
Ex.P3	Ex.P3 is the Printout of the Renewal registration certificate of trade mark registration certificate of Plaintiff's "Gold Winner" Sunflower Oil having trade mark No.605323 dated 08.09.2017.
Ex.P4	Ex.P4 is the Printout of the Trade Mark Registration Certificate for Plaintiff's "Gold Winner" having Trade Mark No.2934031 dated 27.10.2017.
Ex.P1 to Ex.P4	Ex.P1 to Ex.P4 are the Printouts taken from the computer for which Certificate Under Section 65B of Indian Evidence Act is filed.
Ex.P5	Ex.P5 is the Original Legal Notice issued by Plaintiff to Defendant dated 01.10.2019.
Ex.P6	Ex.P6 is the Photocopy of the Reply notice issued by the Defendant to Plaintiff dated 10.10.2019. Ex.P6 is marked subject to Proof and Relevancy.
Ex.P7	Ex.P7 is the Photocopy of the Legal Usage Certificate for trade mark No.605323 dated 18.10.2019.
Ex.P8	Ex.P8 is the Photocopy of the Legal Usage Certificate for trade mark No.2320409 dated 18.10.2019.
Ex.P9	Ex.P9 is the Photocopy of the Legal Usage Certificate for trade mark No.2934031 dated 18.10.2019.
Ex.P10	Ex.P10 is the Photocopy of the Comparison Table Showing "Gold Kind" Pouch and "Gold Winner" Pouch. Ex.P.10 is marked subject to Proof and Relevancy.
Ex.P11	Ex.P11 is the Original Board Resolution passed by the Plaintiff dated 06.07.2018.

6. Mr.A.Saravanan, the Manager-Legal of the plaintiff Company was examined as a witness on the side of the plaintiff (PW1). As seen from the documents marked as Exhibits, which has been extracted supra, it is clear that the plaintiff's trademark **“Gold Winner”** has been



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registered under the Trade Marks Act, 1999 on 27.08.1993 and has been renewed periodically. Ex.P1, Ex.P2, Ex.P3 and Ex.P4 confirms the same. The logo and the package of the plaintiff has also been registered along with the wordmark **“Gold Winner”**. A Cease and Desist notice, dated 01.10.2019 has also been issued by the plaintiff to the defendant, which has been marked as Ex.P5. A reply has also been sent by the defendant, dated 10.10.2019 to the plaintiff which has been marked as Ex.P6. As seen from the said reply, the defendant has agreed to change the wordmark of the plaintiff. But according to the plaintiff as seen from the averments contained in the plaint, the defendant is continuing to use the brand name “Gold King” with the same colour combination. Ex.P7 is the Legal Usage Certificate for the trademark registration obtained by the plaintiff in respect of the brand name **“Gold Winner”**. Ex.P8 is the Legal Usage Certificate for the logo / device mark of the plaintiff. Ex.P9 is the Legal Usage Certificate for the package of the plaintiff. A comparison table has also been filed which has been marked as Ex.P10 to confirm that the defendant's package is deceptively similar to that of the plaintiff's package. As seen from the aforementioned documents, the plaintiff has proved that they are the registered owner of the Trademark, **“Gold Winner”** and the defendant has copied the plaintiff's trademark



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by using the brand name “Gold King” and also by using a similar logo and colour scheme of the plaintiff. The colour scheme of the plaintiff as well as the defendant is scanned & reproduced hereunder :-



7. As seen from the Exhibits, the plaintiff has established that they are the registered owner of the Trade Mark “**Gold Winner**” and they are



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also the registered Copyright owner and the defendant has infringed the plaintiff's Trade Mark/Copyright by using the name “Gold King” which is deceptively similar to the plaintiff's Trade Mark. It is also seen from their Exhibits as well as from the averments contained in the plaint as well as from the Comparison Table (Ex.P10) that the package and the logo of the defendant is deceptively similar to that of the plaintiff's Trade Mark. The general public will certainly get confused, if the defendant is allowed to use their name “Gold King” along with the logo and package which is disclosed in the Comparison Table (Ex.P10). The plaintiff has established by oral and documentary evidence as well as from the pleadings that the defendant has copied their Trade Mark and Trade Dress.

8. For the foregoing reasons, the suit claim has been proved and the suit is decreed as prayed for with costs.

12.10.2023

Index: Yes/ No
Speaking order / Non speaking order
Neutral citation : Yes / No
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APPENDIX

List of Witness Examined on the side of the Plaintiff:

1. P.W.1 – Mr.A. Saravanan



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S. No.	Exhibits	Description of documents
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10.	P10	Ex.P10 is the Photocopy of the Comparison Table Showing "Gold Kind" Pouch and "Gold Winner" Pouch. Ex.P.10 is marked subject to Proof and Relevancy.



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11.	P11	Ex.P11 is the Original Board Resolution passed by the Plaintiff dated 06.07.2018.
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ABDUL QUDDHOSE, J.



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