HIGH COURT OF JUDICATURE AT BOMBAY

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
NOTICE OF MOTION (L) NO. 1908 OF 2018
IN
COMIP (L) NO. 1070 OF 2018

B. D. Textile Mills Private Limited …Plaintiff

Versus

V. D. Textile Mills …Defendant

Mr. Hiren Kamod, Advocate alongwith Ms. Poonam Teddu Advocate instructed by Mahesh A. Mahadgut, Advocate for the Plaintiff

CORAM: S. J. KATHAWALLA, J.
DATE: 10th AUGUST, 2018

P.C. :

1. The Plaintiffs seek to move without notice for the reasons set out in paragraph 23 of the Plaint. This is an action for infringement of Plaintiffs' registered trade marks and copyright combined with a cause of action for

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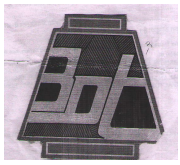
passing off. Mr. Kamod submits that since leave under Clause XIV of the Letters Patent (Bombay) to combine the cause of action for passing off with the cause of action for infringement of trade mark and infringement of copyright is not obtained, the Plaintiff is presently not pressing for relief in passing off and that the Plaintiff will press the reliefs for passing off after obtaining such leave.

2. According to the Plaintiff, the Plaintiff is a Company incorporated under the Companies Act, 1956 carrying on business under the trade mark / trading style 'B. D. Textile' as its prominent and most memorable and leading feature ; that the Plaintiff is dealing in blouse Material, poplin, dress material, textile, readymade garments of all types in India ; that the product of Plaintiff is sold under a house mark and/or logo  which is conspicuously displayed on each and every product of the Plaintiff alongwith its trade mark / trading style 'B. D. Textile' including on its stationery and packaging material.

3. According to the Plaintiff, it is the subsequent proprietor of the logo which forms an essential part of several of Plaintiffs registered Trade Marks; that way back in the year 1975, founder-Director of the Plaintiff, one Mr. Ganpatraj K. Shah alias Ganpatraj K. Chopra started the business under

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trade mark / trading style 'B. D. Textile Mills' which was initially a proprietary concern and later formed two Partnership Firms namely M/s. B. D. Textile Mills and M/s. Shah Bachraj Devichand ; the Partnership firms comprised of family members of Mr. Ganpatraj K. Shah. According to the Plaintiff, the partnership firm was later on incorporated into a private limited company being the Plaintiff Company vide Memorandum of Association and Articles of Association dated 30/03/1988. The said private limited company was formed by taking over the business and the assets of the partnership firm. Thereafter the partnership firm did not carry out any business since 1988 and got ultimately dissolved in the year 2007 vide Deed of Dissolution dated 19/07/2007. Accordingly, the trade mark of the firm came to be vested in the Plaintiff Company. Since the Plaintiff Company was also a family enterprise, it has continuously used the registered logo since its incorporation.

4. Mr. Kamod submitted that in so far as use of the logo is concerned there is a connection in the course of trade between the Plaintiff Company and Mr. Ganpatraj K. Shah who had designed the said logo and who had also started the Plaintiff's business and expanded the same by taking within its fold his family members. It is also clear from affidavit of Mr. Ganpatraj K. Chopra alias Mr. Ganpatraj K. Shah the Founder - Director of the Plaintiff at Exhibit E to the Plaint that he has relinquished his rights in the said logo in favour of Plaintiff. The Plaintiff is thus the proprietor of the trade mark as well as in the

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copyright subsisting in the artistic logo and the same constitutes original artistic work under Section 2(c) of the Copyright Act, 1957.

5. According to the Plaintiff, it is producing 2 x 2 Rubia, 2 x 1 Rubia Cotton coth, Poplin, cambric etc. which are mainly ladies wear items, the quality of fabrics dyed and processed by the Plaintiff is of standard quality and is accepted by the classes of the customers in the market. The Plaintiffs' product are sold under the trade mark / trading style 'B. D. Textile' and they are also using other Trademarks namely PLATINUM, IMAGINATIONS, CORONATION, PANCHOLI, ROSE QUEEN, PAKEEZA, 4689, INVITATION. Certificate of registration of logo and other trade marks used by the Plaintiff to sell their products are at Exhibit C, F-1 to F-8 to the Plaint. In support of Plaintiff's reputation and goodwill it their marks, Plaintiff has produced CA certificates for sales turnover and promotional expenses at Exhibit I and J to the Plaint.

6. According to the Plaintiff, sometime in July, 2018, Plaintiff came across the Defendants' identical product under the impugned mark V. D. Textile and bearing a virtually identical logo. A representation of the Defendant's impugned product pack is at Exhibit M to the Plaint. Mr. Kamod submitted that a bare perusal of the Plaintiff's logo, packaging and that of Defendant would reveal that the Defendant has copied each and every element of Plaintiff's Trade Marks, logo. He further submitted that Defendant has also

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copied the trade dress of polythene bag of Plaintiff. He submitted that use of the impugned logo, trade mark and trade dress amounts to infringement of Plaintiffs Copyright , trade mark and leads to passing off.

7. Mr. Kamod submitted that the Defendant is not only violating the Plaintiffs rights but is also cheating the consumers as on the Defendant's products the measure of the blouse piece is mentioned as 0.80 cm, which is the standard measure for the blouse piece material, however, the Defendant's product actually measures only upto 0.77cm only. He further submitted that Defendant is not incorporated as either a limited or a private limited company but with an intention to come as close as possible to the Plaintiff's trading style, it is representing itself in some places as V.D.Textile Mills Ltd. and in some places as V.D.Textile Mills Pvt Ltd. He submitted that though the Defendant has no place of business in Mumbai, it is using the same Pin Code as that of Plaintiff on its product packs to mislead the customers. He submitted that in such circumstances it is absolutely just and necessary that an ex-parte ad-interim order be passed restraining the Defendant from committing infringement and passing off. He submitted that considering the dishonest conduct of the Defendants', Plaintiff apprehend that if the Defendant is given notice of the present application, there is a strong likelihood that the Defendant would remove the impugned goods from its possession, custody and / or control and sell or part with possession thereof or dump its goods in the market and the purpose of making the present

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application will be defeated. He submitted that considering the dishonest conduct of the Plaintiff, it is in the interest of general public alongwith the Plaintiff that the ad-interim reliefs prayed herein be granted without notice to the Defendants.

8. I have heard the submissions in detail and perused the record. I have also seen the actual products which were produced before me during the hearing. The Plaintiff has secured statutory rights in its various Trade Marks and from the documents annexed to the Plaint, it is evident that the same has acquired goodwill and reputation. A comparison of the rival products hardly leaves any doubt about the manner in which Defendant has blatantly copied the Plaintiff's Trade Marks, Copyright and trade dress as well. Apart from the similarities pointed out by Mr. Kamod, I have also noticed that Defendant has mentioned its phone number as its registered trade mark number on its products. Photographs of rival products are reproduced below:

Plaintiff's Logo	Defendant's Logo

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Plaintiff's Product	Defendant's Product

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9. There is no manner of doubt that the rival marks, logos and trade dress are all almost identical. Defendant has systematically copied every essential element of Plaintiff's product with a view to deceive the customers. The adoption by Defendant of its Trade Mark, logo and trade dress cannot be mere coincidence. It is deliberate and dishonest. In the circumstances, a strong prima facie case for the grant of ad-interim reliefs is made out. The balance of convenience is also in favour of the Plaintiff. Unless reliefs as prayed for are granted, the Plaintiff is likely to suffer injury.

10. In view of what is stated in paragraph 23 of the Plaint and in view of the above, I am satisfied that the object of granting the following reliefs would be defeated if notice of this application is given to the Defendant. There shall accordingly be an ad-interim order in terms of prayer clauses (a) , (b) and (d) of the Notice of Motion, which read as follows:

> (a) that pending the hearing and final disposal of the Suit the Defendant by itself, its servants, dealers, distributors, stockiest, agents, sister concerns, subsidiaries, representatives, and/or successors in title, affiliates and/or assigns and all persons acting for and on its behalf be restrained by a temporary order and injunction of this Hon'ble Court from in any manner manufacturing, marketing, selling, distributing, exporting and/or using in relation to textile goods and/or such allied and cognate

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goods the impugned trade marks , 'V. D. Textile'; imagination, invitation, or any other mark deceptively similar to the Plaintiff's mark 'B. D. Textile' , imaginations, invitation, Platinum, Coronation, Pancholi, Rose Queen, Pakeeza, 4689 so as to infringe the Plaintiff's registered trademarks bearing Nos. 354788, 1670789, 1670790, 1671168, 1671170, 1671171, 1671172, 3238039 and 2420383 all in class 24 or otherwise howsoever.

(b) that pending the hearing and final disposal of the Suit the Defendant by itself, its servants, dealers, distributors, stockiest, agents, sister concerns, subsidiaries, representatives, and/or successors in title, affiliates and/or assigns and all persons acting for and on its behalf be restrained by a temporary order and injunction of this Hon'ble Court from in any manner manufacturing, marketing, selling, distributing, exporting and/or using the impugned logo being Exhibit "M" to the Plaint, the impugned trade dress being Exhibit "N" to the Plaint , the impugned art work being Exhibit "O-1" to "O-3" to the Plaint or use any other logo Packaging/artwork/trade dress similar to that of Plaintiff's Logo / packaging /art work/ trade dress being Exhibits "D", "G-1" to "G-8" and "H-1" to "H-3" to the Plaint or which is reproduction and/ or substantial reproduction of Plaintiff's logo Packaging/artwork/trade dress so as to infringe the Plaintiff's Copyright in the original artistic work or by reproducing the same in any material form or

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using the same or any colour imitation thereof or otherwise howsoever;

(d) that pending the hearing and final disposal of the Suit, the Court Receiver, High Court, Bombay or such other fit and proper person as this Hon'ble Court thinks fit be appointed Receiver with all powers under O. XL Rule 1 of the C.P.C., 1908 in order to attend at and/or enter either by force or by breaking open the lock or by removing the obstruction or barrier or otherwise into the Defendants premises including godown, warehouse premises of the Defendants where the goods bearing the logo as shown in Exhibit "M" to the Plaint; the Trade Marks 'V. D. Textile', imagination, invitation, and all goods and packaging material bearing the artwork as shown in Exhibit "N" , O-1 to O-3 to the Plaint or any other mark deceptively similar to the Plaintiff's mark 'B. D. Textile', imaginations, invitation, Platinum, Coronation, Pancholi, Rose Queen, Pakeeza, 4689 are stocked, lying, retailing or manufactured and to make inventory of the impugned products packed or unpacked and/or in the process of manufacturing, packing , labeling, re-labeling or retailing and the Defendant by itself , its servants, agents and distributors be ordered and directed to deliver up the aforesaid goods articles and documents including invoices, sales and excise registers bills, and all materials relating to thereto to the Court Receiver, High Court, Bombay with all powers under Order XL of the Code of Civil Procedure, 1908

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including power to take physical possession thereof with police protection.

11. The Court Receiver, High Court Bombay shall keep the impugned goods under his seal in the safe custody of the Defendant. The Court Receiver is authorized to take the assistance of the local Police Authorities. The Police Authorities concerned are directed to render all possible assistance to the Court Receiver on production of an authenticated copy of this order. The Court Receiver is directed to submit a report to this Court on the next day of hearing i.e. 28th August, 2018.

12. This order is not to be uploaded until the Court Receiver executes his commission.

13. The Plaintiff is to comply with the provisions of Order XXXIX Rule 3 of the Code of Civil Procedure, 1908 within four working days of the Court Receiver executing this commission.

14. The order of injunction is to continue till 29th August, 2018. List the matter on 28th August, 2018 for further ad-interim reliefs.

15. Liberty to the Defendant to apply for variation of this order with 48 hours prior notice to the Plaintiff.

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16. All parties including the Court Receiver are directed to act on an ordinary copy of this order, duly authenticated by the Associate of this Court / Personal Assistant.

(S.J. KATHAWALLA, J.)

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