
**BEFORE THE SPECIAL JUDGE, COMMERCIAL COURTS AND
PRINCIPAL DISTRICT JUDGE, DEVBHUMI DWARKA AT
KHAMBHALLIA.**

TRADE MARK SUIT NO.01 OF 2021

Plaintiff :-

M/s. A.G. Pabari & Company
Earlier & Also Known as M/s. A.G. Pabari,
A Sole Proprietary Concern,
By and through its Sole Proprietary,
Amrutlal Govindjibhai Pabari,
Having address at Opp. Gandhiji Statue,
Jodhpur Gate, Dist. Devbhumi Dwarka,
Khambhalia-361 305,
Gujarat State, India.

V E R S U S

Defendant :-

M/s. Ravi Enterprise,
A Partnership Firm,
Having Address at Plot No.11,
Hapa Udhyognagar,
Dist. Jamnagar,
Hapa-361 120,
Gujarat State, India.

**ORDER BELOW EXH.5- APPLICATION FOR TEMPORARY
(AD-INTERIM) INJUNCTION APPLICATION UNDER ORDER-
XXXIX, RULE-1 & 2 READ WITH SECTION 151 OF C.P.C.,
AND SECTION 142 OF THE TRADE MARKS ACT, 1999,
SECTION 60 OF THE COPY RIGHT ACT, 1957.**

APPEARANCE :-

Mr. Rajendra H. Bhansali, Learned Advocate for the Plaintiff.

Mr. C.N.Nayak, Learned Advocate for the Defendant.

J U D G M E N T

1. This is an application filed by the plaintiff praying for an interim injunction restraining the defendant, their partners, servants, agents, dealers, associates, sister concern and distributors by order of temporary injunction from issuing illegal, groundless and unjustifiable threats and restrain to interfering with the business activities of the plaintiff under trade mark/art work/lable of AMI AMRUT GOLD, which is not identical and/or deceptively similar nor substantial and material reproduction of trade mark/art work/lable of RAVI and/or RAVI GOLDEE of the defendant pending disposal of the suit.
2. The plaintiff has filed an application along with his affidavit submitting that the suit has been filed under Section 142 of the Trade Marks Act, 1999, for a declaration that the threat contained in the notice dated 02-02-2021 issued by the defendant contains threats which are not justifiable and for an injunction against the continuance of the threats. Since 2006 the plaintiff has adopted the trade/art 'AMI AMRUT GOLD' as a part of his name, his trade name and his trade mark 'AMI AMRUT GOLD'. He become eligible to proprietors of the mark with respect to his product from the date of his adoption.

Contrary to that right the defendant claiming to have used the mark since 1992 on similar products has threatened legal action.

3. The defendant duly served with the notice and appeared before the Court and filed its Written Statement vide Exh.10, inter-alia, contending that, the contents of the application / affidavit filed by the plaintiff are not admitted and the plaintiff is put to strict proof of the contents thereof. The defendant has denied the allegations levelled and submissions made against the defendant in toto. It is also submitted that, the defendant got his trade mark RAVI and RAVI GOLDEE registered to distinguish his goods tea. The defendant deals with the goods as said and adopting the trade mark RAVI and RAVI GOLDEE honestly and bonafide and the defendant has applied for registration fully complying with the mandatory provisions of the Trade Marks Act, 1999, which was registered (1) No.2176349 in Class 30, (2) No.2176350, Class 30, (3) No.2176351 Class 30, (4) No.2176352 Class 30, (5) 2716353 Class 30 and (6) 3968895 Class 30 Registration in Process. In respect of the above said goods, consequently the same was accepted. In view of the said application, the Hon'ble Registrar caused the application of the defendant advertised in the Trade Mark Journal for waiting opposition to the registration under Section 21 of the Act, the plaintiff did not oppose the registration of the defendant's trade mark RAVI and RAVI GOLDEE and consequently, the trade mark RAVI and RAVI GOLDEE of

the defendant was granted registration vide A-129907/2019 and issued certificate of registration. When the defendant came to know that the plaintiff is using the trade mark GOLD, which is nearly similar to the trade mark of the defendant, the defendant issued Notice dated 02-02-2021 to the plaintiff calling upon him to forbid the use of the said word GOLD. The said notice was replied by the plaintiff stating that, his trademark GOLD is not unauthorized, but the same is also registered under the Trade Marks Act, 1999. The defendant is being registered proprietor of the trade mark RAVI and RAVI GOLDEE and he has exclusive right to use and apply the same in relation to the said his goods and the question of adversely affecting reputation, prestige and goodwill of the plaintiff does not arise as a matter of fact the prestige and goodwill and reputation of the defendant is being affected by the use of trademark AMRUT GOLD by the plaintiff. Thus, in view of the above facts and circumstances, it is prayed to dismiss the Suit as well as injunction application of the plaintiff.

4. On behalf of the plaintiffs, L.A. Mr. Rajendra H. Bhansali has It has been submitted that the proprietary concern and decided the use the word 'AMRUT GOLD' as HIS mark, trade name and trade mark to affix the same on all his products. As regards the said contention, it may be pointed out that there is no indication in the plaint as to when a search was made with the Registry maintained by the Registrar of Companies. The plaintiff has also

submitted that they are proposing to apply for registration of the mark. It is not in dispute that a notice was sent on behalf of the defendant to the plaintiff on 02-02-2021, which according to the plaintiff, is the threat by the defendant regarding which the suit has been filed. The defendant has put forward the case that since 1992 the defendant has been regularly using connection with tea the trade mark "RAVI GOLDEN" and "RAVI GOLDEE" and they have acquired exclusive title to the mark and they have also applied for registration. After issuing notice the defendant filed suit against plaintiff in the District Court, Mirzapur, Ahmedabad and prayed for interlocutory injunction, which was rejected. In support of the above arguments, Learned Advocate for the plaintiff has relied upon the following reported judgments, which are read over.

1. PTC(Suppl)(2) 558 (Mad)(DB), High Court of Madras, O.S.A. Nos.17, 18 & 19/88 in C.S. No.797/86, Exxon Corporation, U.S.A. V/s. Exxon Packing System Pvt., Ltd., Hyderabad.
2. 2002(25) PTC 475 (Mad)(DB), High Court of Madras, O.S.A. Nos.364 and 373 of 1997, Mehta Unani Pharmacy & Co., Rajkot and another V/s. Amrutanjan Limited, Madras.
3. (1991-PTC-226) Punjab and Haryana High Court, M/s. Kores (India) Ltd., Bombay V/s. M/s. Mona Stationary, Dundahera (Gurgon).

4. O.A. No.744 of 2011 in C.S. No.586 of 2011, Madras High Court.
 5. C.S. No.586 of 2011, Madras High Court, Value Invest Wealth Management (India) Private Limited V/s. Mr. B.G. Kishore Kumar.
5. On behalf of the defendant, Learned proxy Advocate Mr. C.N.Nayak has stated that, the defendant is doing its business throughout India since 1992. The defendant has produced Trademark Certificate “RAVI and RAVI GOLDEE”, user from 1992 and label original sample vide Exh.13 in relation to tea included in Class-30. That the notice sent by the defendant cannot be said to be unjustifiable having regard to the facts; and taking into consideration the fact that the defendant had been using the name since 1992 and has also applied for registration, the threat cannot at all be said to be unjustifiable and thus there is no cause of action for the suit and in such circumstances, there could be no order of temporary injunction as prayed for by the plaintiff. On the other hand, the Learned Counsel for the plaintiff submitted that the plaintiff decided to use the word 'GOLD' much earlier and the erstwhile the plaintiff-firm had used the word 'GOLD' and thereafter the plaintiff firm decided to use that name. The Learned Counsel for the defendant further submitted that incorporation of the plaintiff-company does not confer rights to use the word 'GOLD' and there is no provision in the Trademark Act to use the word 'GOLD' in the trading side and the use of the

word 'GOLD' over their products was objected to and there is no objection for the use of the named for the firm, and Learned Counsel for the defendant also pointed out that the defendant-partnership company was registered since 1992 was prior in point of time to the incorporation of the plaintiff and the plaintiff cannot claim any right from the previous accruing to the plaintiff. In this regard, the Learned Counsel for the defendant also submitted that the defendant has given the sales turnover, and the plaintiff has not given the sales turnover. The defendant is the lawful proprietor of trademark RAVI GOLDEN as well as artistic work, colour get up, arrangement and colour scheme and has right to restrain others including plaintiff from using/reproducing the identical and /or deceptively similar colour get up, arrangement, colour scheme, artistic work. The word RAVI and RAVI GOLDEE is the registered trade mark of the defendant. The primary facts have been mentioned in the Written Statement filed at Exh.10. The defendant has not illegally issued notice from restrain his trademark RAVI and RAVI GOLDEE. The trademark RAVI and RAVI GOLDEE is unique and distinctive from others in relation to defendant's goods and business. In support of the said arguments, the Learned Advocate for the defendant has reproduced and relied upon herewith Section 142 of the Trade Mark Act, 1999 and Section 60 of the Copy Right Act. Perusing the Section 2 (m) of the Act, the RAVI and RAVI GOLDEE name mark in English alphabetical letter and therefore it is within the legal periphery of this definition. The defendant

has demonstrated the original sample of defendant's label and plaintiff's label during the course of hearing, and the plaintiff has not objected this specific above point of argument in their pleadings. The plaintiff has pleaded and argued that they are user of copyright since 1992, then how the plaintiff says that they are using the copyright since 2006 when they have applied in the year 1999. The plaintiff has no cause of action to file the present Suit. The defendant has got registration of his trademark RAVI and RAVI GOLDEE in relations to their goods and uses the same with full bona-fide. The plaintiff failed to prove his prior user, his reputation and/or his goodwill on their trademark JK associated with their goods. In support of this argument, Learned Advocate for the defendant has relied upon the judgment (1) Bakemans Industries Limited V/s. Parle Products Limited, MISC Petition No.14 of 2000, Bombay High Court, (2) 2019(80) PTC 378(Del), Chartered Institute of Taxation V/s. Institute of Chartered Tax Advisers India Ltd., and (3) 1997(17) PTC 187 (DB), High Court of Delhi, Arjies Aluminium Udhdyog Vs. Sudhir Batra. The defendant is dealing in the business of selling Tea since 1992, therefore, plaintiff cannot claim any exclusive rights over the words or name based on the said registration and the plaintiff cannot stop anyone from using the colour, schemes, fonts, formats, logos which are not only descriptive / generic but also common to trade. In view of the arguments canvassed by the defendant on all corners, the plaintiff, is therefore, not entitled to any

relief as prayed for and prayed to reject the Suit of the plaintiff.

6. The plaintiff produced following documentary evidence :-

Sr. No.	<u>Documentary evidence:</u>	<u>Mark</u>
1.	Copy of Shop Establishment Certificate.	3/1
2.	Copy of G.S.T. Registration Certificate.	3/2
3.	Copy of Trade Tax Office.	3/3
4.	Copy of License issued by Food & Drugs Department.	3/4
5.	Copy of License issued by Food & Drugs Department.	3/5
6.	Copy of GST Registration Certificate.	3/6
7.	Copy of VAT Registration Certificate.	3/7
8.	Copy of Certificate of Analysis.	3/8
9.	Copy of Professional Tax Receipt.	3/9 to 3/20
10.	Copy of Sales Turn Over.	3/21
11.	Copy of Sales Invoices.	3/22 to 3/57
12.	Copy of Sales Invoices and Debit Memo.	3/58 to 3/94
13.	Copy of Advertisement in Lohana Pragti and Lohana Mahajan Book.	3/95 to 3/96
14.	Copy of Calendar, Target Scheme Catalouge and Promotional materials.	3/97 to 3/103
15.	Copy of Search Certificate " Ami Amrut GOLD TEA".	3/104
16.	Copy Certificate issued under Copy Right Act.	3/105

17.	Copy of Cease and Desist Notice Given by the defendant to plaintiff.	3/106
18.	Copy of Various Labels.	3/107
19.	Copy of Labels of the defendant.	3/108
20.	Copy of Labels of the plaintiff.	3/109
21.	Copy of application for registration of trademark.	3/110
22.	Copy of Status report of trademark application.	3/111
23.	Copy of Trademark application.	3/112
24.	Copy of examination report of trademark application.	3/113
25.	Copy of reply of examination report of trademark application.	3/114
26.	Copy of Trademark application for "RAVI GOLDEE TEA."	3/115
27.	Copy examination report for Trademark application for "RAVI GOLDEE TEA."	3/116
28.	Copy reply of examination report for Trademark application for "RAVI GOLDEE TEA."	3/117
29.	Copy of FORM TM-O examination report for Trademark application for "RAVI GOLDEE TEA."	3/118
30.	Copy of FORM TM-O(counter statement).	3/119
31.	Copy of (Form-TM-1) Trademark application for "RAVI GOLDEN CHA".	3/120
32.	Copy of examination report for Trademark application for "RAVI GOLDEN CHA."	3/121
33.	Copy of examination report, reply, order and application of Trademark "RAVI GOLDEN CHA" and "Amrut GOLD TEA."	3/122

34.	Copy of order of registrar for Trademark "RAVI GOLDEN CHA".	3/123
35.	Copy of Form TM-1 of Trademark "RAVI GOLDEN CHA" of the defendant.	3/124
36.	Copy of examination of report of Trademark of "RAVI GOLDEN CHA" of the defendant.	3/125
37.	Copy of reply of examination report Trademark "RAVI GOLDEN CHA" of the defendant.	3/126
38.	Copy of Form TM-1 of Trademark "RAVI GOLDEN CHA" of the defendant.	3/127
39.	Copy of examination of report of Trademark of "RAVI GOLDEN CHA" of the defendant.	3/128
40.	Copy of reply of examination report Trademark "RAVI GOLDEN CHA" of the defendant.	3/129
41.	Copy of Form TM-1 of Trademark "RAVI GOLDEN CHA" of the defendant.	3/130
42.	Copy of examination of report of Trademark of "RAVI GOLDEN CHA" of the defendant.	3/131
43.	Copy of reply of examination report Trademark "RAVI GOLDEN CHA" of the defendant.	3/132
44.	Copy of Form TM-1 of Trademark "RAVI GOLDEN CHA" of the defendant.	3/133
45.	Copy of examination of report of Trademark of "RAVI GOLDEN CHA" of the defendant.	3/134
46.	Copy of reply of examination report Trademark "RAVI GOLDEN CHA" of the defendant.	3/135

47.	Copy of reply of examination report Trademark "Ami Amrut GOLD TEA" of the Plaintiff.	3/136
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7. The defendant has produced following documentary evidence :-

Sr. No.	<u>Documentary evidence:</u>	<u>Mark</u>
1.	Copy of Trademark Status.	13/1 to 13/7
2.	Copy of Registration Certificate.	13/8 to 13/11
3.	Copy of Copyright Certificate.	13/12
4.	Copy of Original Lable of "Ravi Golden Tea" and C.T.C. Tea.	13/13 to 13/16
5.	Copy of Original Lable of "Ami Amrut Gold Tea"	13/17
6.	Copy of Original Lable of "Ami Amrut Gold Tea" No.9	13/18

8. On the basis of the pleadings of the parties, the following issues were arisen for determination of this application of the plaintiff.

:- ISSUES :-

- Whether the plaintiff proves that he has prima facie case ?

2. Whether the plaintiff proves that balance of convenience is in his favour ?
 3. Whether the plaintiff proves that if interim injunction is not granted in favour of the plaintiff, he shall suffer irreparable loss ?
9. My findings to the above issues are as under :-

Issue No.1	:	In the affirmative.
Issue No.2	:	In the affirmative.
Issue No.3	:	In the affirmative.

ISSUE NO.1. to 3 :-

10. It is to be argument that the defendant partnership firm had been registered even in the year 1992, but no his deed of partnership firm produced before this court and also prima facie fails to proved that they have been selling their Tea products for the past many years but applying registration of his trademark after year-2011. The plaintiff has come to the market 2006. No doubt, it is being claimed by the plaintiff that they had decided as regards the name much earlier. But that is a matter to be established by evidence. It is also to be seen that the defendant had already applied for registration of the trademark and it is said to be registered. In such circumstances, I find the notice issued on behalf of the defendant as such may not be a prima facie unjustifiable threat. No doubt, it is for the plaintiff to establish the

same in the suit. But taking into consideration the fact that the defendant has already applied for registration and the defendant also submits that they had file an application for registration, that is a matter that could be decided by the Registrar of Trade Marks. Pending disposal of the application. I feel the defendant could be directed not to the issue any circular, or advertisement regarding the plaintiff's products.

11. The decision reported in Dolphin Laboratories Pvt. Ltd. v. Kaptab Pharmaceuticals, AIR 1981 Cal 76. In that decision the facts reveal that a manufacturer of drug had applied for registration of mark on drug long before the defendant who applied for registration of identical drug with similar trade mark. The plaintiff was threatened with legal proceeding by defendant on his continuance of sale of drug under the mark. The defendant intended to file suit for passing off. The plaintiff filed suit for injunction restraining the defendant from continuance of threats by filing suit for passing off. It was held that the defendant could not be restrained from instituting suit for passing off in the court. It has been further laid down that while restraining a person from making unjustified threats it is not open to the court to restrain him from taking the matter to a court of law and from agitating his rights there. Section 120 is not intended to prevent a person from instituting a suit alleging off. Section 27(2) clearly upholds the right of a person to file a suit for passing off irrespective of any other provisions in the Act. Having

regard to the fact that the trade mark has not been registered either by the plaintiff or the defendant, but taking into consideration that the defendant has applied for registration and the plaintiff having registration. From the above discussions, it became crystal clear that the plaintiff has been successful in making out a prima-faciely case in its favour. It is further prima-faciely established that if interim injunction is not granted in favour of the plaintiff, he shall suffer irreparable loss and balance of convenience also lies in favour of the plaintiff and not in favour of the defendant. Accordingly, I answered reply of the issue No.1 to 3 in the affirmative and passed following order.

-: O R D E R :-

- The defendant, their partners, servants, agents, dealers, associates, sister concern and distributors are restraining by this interim injunction from issuing illegal, groundless and unjustifiable threats and restrain to interfering with the business activities of the plaintiff under trade mark/art work/lable of AMI AMRUT GOLD, which is not identical and/or deceptively similar nor substantial and material reproduction of trade mark/art work/lable of RAVI and/or RAVI GOLDEE of the defendant till the final disposal of the suit, with condition to this order will not affect the final or/and interim decision in plaintiff's Suit No.9 of 2022, pending before Learned Special Commercial Court, Ahmedabad (Rural) At Mirzapur, Ahmedabad.

- Both the parties have to bear their own cost.

Signed and Pronounced in open Court Today on 30th Day of August, 2022.

Place: Khambhalia
Date: 30.08.2022

[Prakashchandra Samartabhai Kala]
Special Commercial Judge and
Principal District Judge,
Devbhumi Dwarka @ Khambhalia
Code- GJ 00436