

Order below Exhibit 6 application.

1. The Present EXh. 6 applicant has been preferred by Plaintiff in the TradeMark suit bearing no. 1/2020 Under Order 39 Rule 1 & 2 and under section 151 of CPC, for getting relief of temporary injunction against the Defendant.

2. The brief facts of present application are as under
: -

2.1 The plaintiff is a duly incorporated entity under company law, operating under the **name and style** of **"CHAMUNDA LASSI PVT. LTD.,"** Plaintiff is the **registered proprietor of the trademark 'CHAMUNDA' and various variants of the "CHAMUNDA' mark.** The plaintiff is actively engaged in the business of **manufacturing and marketing Lassi, various dairy products and ready to eat items since 1981,** through its predecessor. It is crucial to note that the plaintiffs' predecessor initially used the "CHAMUNDA" mark as a trademark and trade name to distinguish their products and services

from others. Since its inception in 1981, the plaintiff through its predecessor, has embarked on a remarkable journey characterized by continuous expansion growth and unwavering dedication to maintaining unmatched taste and uncompromising quality. Over the years, the plaintiff has achieved significant milestones and has developed a strong presence in the market. The plaintiff currently operates exclusive "CHAMUNDA" outlets including franchise locations throughout Gujarat. The plaintiff takes immense pride in its reputation for delivering high quality products and services which are well recognized and trusted by both consumers and the trade. Furthermore, it stated by the plaintiff that the Plaintiff actively participates in marketing activities that have contributed to raising awareness about the "CHAMUNDA" branch among various segments of the population. It is noteworthy that all of the registration of Plaintiff trademarks are up to date and remain valid as on today. The same have been obtained in the category / **class 28,29,30,43** and for that the plaintiff has obtained certificates of appropriate authority. The plaintiff is committed to maintaining and protecting its intellectual property rights associated with the "CHAMUNDA" mark and endeavors to uphold the integrity and reputation of its brand. In written arguments Exh. 36, the Plaintiff has

described the details of his registered trade mark as under : -

Sl . No .	Status	Application No.	Class	Trade Mark	Renewed and Valid Upto
1.	Registered	1846231	29	Chamunda	31.7.2029
	Goods	Syrup of Curds Or Milk included in Class-29			
2.	Registered	2165532	29	Chamunda	27.6.2031
	Goods	Yoghurt, Lassi, milk and Milk Products			
3.	Registered	4637118	29	Chamunda	2.9.2030
	Goods	Lassi, Milk, Cheese, Butter, Yoghurt and other Milk Products in Class-29			
4.	Registered	2165533	30	Chamunda	27.6.2031
	Goods	Yoghurt Frozen, Ice Cream			
5.	Registered	4637119	30	Chamunda	2.9.2030
	Goods	Ice Cream, Kulfi (Ice Cream), Dairy ice Cream, Ice Cream Cakes, Fruit Ice Cream in Class - 30			
6.	Registered	2168091	43	Chamunda	30.6.2031
	Goods	Services for providing food and Drink temporary accommodation, Restaurant included in Class-43			
7.	Registered	4637121	43	Chamunda	2.9.2030
	Goods	Services for providing food and drink temporary accommodation included in Class - 43			

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It is further stated by the Plaintiff that the trademarks of Plaintiff **include Trademark types words/Phrase and Trademark types device / logo.**

2.2 In written argument Exh.36 at Page 10, the Plaintiff has stated that The shop located immediately adjacent to Defendant's shop is owned and operated by a franchisee of the Plaintiff. The address of Defendant shop has been shown in the title clause of plaint as **Wah Chamunda Lassi Shop, Near railway Phatak, opposite Vaibhavi Hotel, Vanthali Darvaja at Junagadh.** It is stated by Plaintiff that the Defendant is doing business of milk product items, in the name of **"Wah Chamunda"**. Defendant has not taken permission from the Plaintiff for using this name. The name "Wah Chamunda" is deceptively similar to the name of the "chamunda" trade mark. The Defendant is supplying substandard product in the nearly resemble name of "chamunda" to customers of Plaintiff, and therefore by doing so the Defendant is harming the reputation of Plaintiff. The Defendant is committing the offense of cheating with the customers. The customers purchase the product of Defendant under the wrong impression that they are purchasing the said product of "Chamunda" company of

plaintiff, which has been registered under Trademark Act. Plaintiff has further stated that his trademark is a registered trade mark and so as per section 31 of the trade mark act 1999, it is a prima facie evidence of validity.

2.3 The Defendant is using the name "Wah chamunda" for his business. He is unauthorizedly using the mark that is identical or deceptively similar to the registered trademark in a way that is likely to be perceived as a trademark of plaintiff. Therefore the registered trademark of plaintiff is **infringed** by the defendant **under section 29 of the trade marks act 1999**. Therefore the plaintiff has a prima facie case.

2.3 It is further argued by plaintiff that if the injunction is granted then there will not be any harm to Defendant. But if it is refused then that will adversely affect the business of Plaintiff. So that the balance of convenience unequivocally favors the plaintiff and weight against the defendant.

2.4 It is further argued that the act of Defendant is harming the reputation of Plaintiff and so if the temporary injunction is not granted then that will cause irreparable loss to the Plaintiff.

Therefore it has been prayed to allow the present application and to grant interim injunction against the defendant.

3. Notice of this application has been served upon the defendant. **Defendant has filed his W. S. vide Exh.- 19 and 31.** It is contended by Defendant that "chamunda" is generic **Name of Indian goddess.** Plaintiff does not have sole rights upon it. It is further stated by Defendant that **Plaintiff is trying to claim monopoly** over the business of lassi and Edible Food items, which is not permissible under law. It is also contended that **there is Family Dispute in the Plaintiff's family.** It is also contended that **there is difference between label mark as well as device.** It is also contended that **various third parties have been utilizing the term "Chamunda" in different contexts.** The defendant supported this argument by presenting some internet search results related to "Chamunda". Under the guise of aforesaid facts it is argued by Defendant that Defendant has not infringed the trademark of the Plaintiff and so the suit of the Plaintiff may be dismissed.

4. Plaintiff and Defendant has produced following documents in this case : -

EVIDENCES OF PLAINTIFF :

Mark 5/1	True Copy of Certificate of Incorporation
Mark 5/2	True copy of Trademark Registration Certificate Application No. 1846231, Class-29 of Plaintiff Trademark / Label Trade Name Chamunda
Mark 5/3	True copy of Trademark Registration Certificate Application No. 2165532, Class-29 of Plaintiff Trademark / Label Trade Name Chamunda
Mark 5/4	True copy of Trademark Registration Certificate Application No. 2165533, Class-30 of Plaintiff Trademark / Label Trade Name Chamunda
Mark 5/5	True copy of Trademark Registration Certificate Application No. 2168091, Class-43 of Plaintiff Trademark / Label Trade Name Chamunda
Mark 5/6	True copy of Masterpiece Chamunda Copyright Registration Certificate No. A-92045
Mark 5/7	True copy of Aadhar Card of Director of Plaintiff Comp.
Mark 5/8	Photographs 1 to 5
Mark 5/9	Photographs of Signboard of plaintiff shop
Mark 5/10	Online Portal put for business by the defendant
Mark 5/11	Notice
Mark 5/12	Window slip of Reg. A.D. for Notice
Mark 5/13	Acknowledgement of Reg. A.D. for Notice received by defendant
Mark 5/14	Notice and answer given by defendant to plaintiff

Mark 26/1	Copy of Trademark Registry of Government of India
Mark 26/2	Copy of Letter by Registrar of Trademark, Ahmedabad dt. 31.12.2020
Mark 26/3	Copy of Form - A
Mark 26/4, 5 & 6	Copy of Form - E
Mark 29/1	Examination report of Defendant
Mark 29/2	Form TM-A
Mark 29/3	Copy of Power of Attorney
Mark 29/4	Annexure - C
Mark 29/5	Word Mark Search Report application No. 4789620
Mark 29/6	Annexure D - Letter
Mark 29/7	Form TM-M
Mark 29/8	Copy of Trade Mark Act Deed
Mark 29/9	Form TM-M
Mark 29/10	Copy of Interlocutory Petition
Mark 29/11	Annexure - A
Mark 29/12, 13 & 14	Renewal request in prescribed form
Mark 29/15, 16, 17 & 18	Certificate of Reg. of Trade Mark
Mark 29/19	Annexure - B
Mark 29/20	Annexure - C
Mark 29/21	Word Mark Search Report application No. 4789620
Mark 29/22	Annexure - D
Mark 29/23	Copy of Trade Mark Act Deed
Mark 29/24	Order of Virtual Hearing Cell
Mark 29/25	Annexure - I

Mark 29/26	Copy of Application No. 5780018
Mark 29/27	Word Mark Search Report application No. 4789620
Mark 29/28	Phonetic Search Report of Application No. 5780018
Mark 29/29, 30 & 31	Computer generated TM-Search Report

EVIDENCES OF DEFENDANT :-

Mark 30/1	Application dt. 17.12.2020 to Commissioner, Mahanagarपालिका, Junagadh
Mark 30/2	Letter dt. 15.12.2020 regarding details of shop branch
Mark 30/3	Registration Certificate - Food and Drugs Control Adm.
Mark 30/4	Registration Certificate - Form C
Mark 30/5 & 6	Stamp duty certificate
Mark 30/6	Power of Attorney
Mark 30/7	Application for TM-M
Mark 30/8	General Receipt Application for TM .
Mark 30/9	Earlier application containing 28 pages for registration of TradeMarks.
30/10	Death Certificate of Advocate of defendant who was looking into the registration.
Mark 32/1	Online Application for Trademark No. 5780018
Mark 32/2	Trademark Receipt No. 3520225
Mark 32/3	Trademark Status of Another Company - Shri Chamunda Krupa Restaurant
Mark 32/4	Trademark Status of Another Company - Jay Shri Chamunda Foods
Mark 32/5	Trademark Status of Another Company - Shri Chamunda Micro Ind.

Mark 32/6	Symbol of famous Chamunda Lassi Shop
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5. From the aforesaid facts following Issues are raised in the present case : -

(a) Whether the plaintiff has a prima facie case?

(b) Whether the balance of convenience is in favor of the plaintiff?

(c) Whether the plaintiff would suffer irreparable injury if his prayer for temporary injunction is disallowed?

(d) What order?

6. My answer to aforesaid issues are as under : -

(a) In the Affirmative.

(b) In the Affirmative.

(c) In the Affirmative.

(d) As per final order.

Reasons

Issue no. 1.

7. Present suit has been filed under trademark Act. Trademark law is a part of the Intellectual Property Rights (IPR). A trademark is a word, phrase, symbol, or

design, or a combination of words, phrases, symbols, or designs that identifies and distinguishes the goods of one manufacturer or seller from those of others who may also sell that kind of goods. The primary purpose is to identify the source of goods rather than to describe their qualities. In other words, trademarks are used to distinguish one company's products from others on the market. Trademark assures that the effort to serve the consumers pays back. It Provides legal protection and guards against counterfeiting and fraud of a particular brand. Trademarks are used to differentiate the product from others. This is the distinguishing factor that falls under distinctiveness. Registration of trade mark confers exclusive right to the use of the trade mark in connection with the goods in respect of which it is registered and if there is any invasion of this right by any other person using a mark which is the same or deceptively similar to his trade mark, he can protect his trade mark by an action for infringement in which he can obtain injunction , damages or an account of profits made by the other person. These rights have been conferred under **section 28** of The Trade Mark Act 1999. **Section 29 of the Act deals with the infringement** of registered trademarks. **Section 135** of the Act confers power to the District court to grant relief by the way of injunction, incase of infringement of

trademark or passing off.

8. In the present case it has come on record that plaintiff is the registered proprietor of the trademark/ wordmark 'CHAMUNDA' and various variants of the 'CHAMUNDA' mark. The registrations have been renewed in the year 2021 for further ten years. The Plaintiff has produced copies of certificate vide mark 29/15 to 29/18. As per **section 31** of the Act these registrations are prima facie evidence of validity. Perusing the documents produced by Plaintiff vide mark 29/11 to Mark 29/14, the type of trademark is Device/ logo. As per section 2(2) of the Act the trademark includes collective mark, certification of mark, use of mark, as reference to the use of printed or other visual representation of the mark. Going through the documents produced by Plaintiff, it appears that his **trademark has been registered under class 26- for Syrup of curds or milk, YOGURT, Lassi milk and milk products, Class- 30 - for YOGHURT FROZEN ICE CREAM as well as class - 43- for services for providing food and drink, temporary accommodation, restaurant.**

It has also come on record that Plaintiff has been actively engaged in the business of manufacturing and marketing Lassi and various dairy products and ready to eat items since 1981. The Plaintiff used the phrase as

"Chamunda the lassi shop". It is also undisputed fact that the shop of Defendant is situated adjacent to the Franchisee shop of Plaintiff. It is an admitted fact that Defendant is doing business in the name of **"WAH CHAMUNDA LASSI & FARALI SHOP"**. Plaintiff has produced the 5 color photographs of Defendant shops vide Marks 5/8. Plaintiff has also produced 4 color photographs of his shop vide Mark 5/9.

Considering the trademark and device of the Plaintiff and comparing it with the mark, logo, color and style of the Defendant shop, it appears that the mark of Defendant is deceptively similar to the registered trademark of Plaintiff. Therefore prima facie it appears that the Defendant has committed infringement of Registered trade mark of the Plaintiff, as stipulated under section 29 of the Act. Moreover Plaintiff has produced an **order of Senior Examiner of Trade Mark dated 02/01/2023, vide mark 29/24**. Senior Examiner of Trade Mark has refused to register the mark of Defendant on the ground given below-

" The mark applied for registration is identical with / similar to earlier trademarks on record, as mentioned in the examination report and by similarity of marks as well as similarity of goods and services covered under such marks , there exists a likelihood of confusion in the mind of the public. As such the registration of the

mark is objectionable under section 11(1) of the trade mark act 1999."

This order shows that the application for registration of marks by the Defendant has been rejected by the authority on the ground that it is deceptively similar. A trademark is infringed if a similar or identical mark is used on different goods services, especially if the registered trademark has a reputation in the territory, and the usage takes unfair advantage or is detrimental to the trademarks character or reputation. Plaintiff has relied upon the case law of **Midas Hygiene Industries P. Ltd and others Vs Sudhir Bhatia and others, Passed in Cr. A. No. 107 of 2002 dated 22/01/2004.**

In this case law it has been held that -

"Para 2(ii) The plaintiff's prior and prominent use of the phrase Laxman Rekha as a part of the description of crazy lines as shown by the documents i.e. advertisements at least of 1991 produced by the plaintiff showing prominent user of the phrase Laxman Rekha.

Para 2(v) The defendant has not chosen to give an explanation why he adopted 'Magic Laxman Rekha'.

Para 5. The law on the subject is well settled. In cases of infringement either of trade mark or of

copyright, normally an injunction must follow. Mere delay in bringing action is not sufficient to defeat grant of injunction in such cases. **The grant of injunction also becomes necessary if it prima facie appears that the adoption of the mark was itself dishonest.**

Para 6. In this case it is an admitted position that the respondents used to work with the appellants. The advertisements which had been issued by the appellants in the year 1991 show that at least from that year they were using the mark LAXMAN REKHA on their products. Not only that but the appellants have had a copyright in the marks KRAZY LINES and LAXMAN REKHA with effect from 19-11-1991. The copyright had been renewed on 23-4-1999. A glance at the cartons used by both the parties shows that in 1992 when the respondent first started he used the mark LAXMAN REKHA on cartons containing colors red, white and blue. No explanation could be given as to why that carton had to be changed to look almost identical to that of the appellant at a subsequent stage. This prima facie indicates the dishonest intention to pass off his goods as those of the appellants."

This case law of the honorable supreme court is applicable in the instant case. In the Present case, as

discussed above the trademark chamunda is a registered trademark of Plaintiff. The Defendant has started a shop of similar milk products in the name of Wah chamunda. The color of the logo / Phrases are similar. Syllable of the work mark is similar. Defendant has failed to give any plausible reason for using that mark which is deceptively similar to the registered trademark of Plaintiff. And therefore it is decided that Plaintiff has succeeded to prove that he has prima facie case and so answer to Issue no. 1 is given in the Affirmative.

Issue no. 2.

8. As discussed in answer to Issue no.1, In present case Plaintiff has succeeded to prove issue no.1. Prima facie it appears that the trademarks of Plaintiff are registered trademarks. If the defendant sells Milk products under the guise of deceptive similar marks then that may harm the reputation and business of the Plaintiff. On the other hand if the Defendant may do his business by adopting some other name, which is not bearing word resemble to trademark chamunda, then that will not do any harm in the business of Defendant and so it is decided that Plaintiff has succeeded to prove that the balance of convenience is in favor of the plaintiff and accordingly answer to Issue no. 2 is

given in the Affirmative.

Issue no. 3.

9. It has prima facie come on record that Defendant has infringed the trademark of Plaintiff. Reputation and goodwill of a business does not build in one day. By utilizing the deceptively similar mark by the Defendant, the Defendant may adversely affect the goodwill and reputation of Plaintiff in the market and so the same loss can not be compensated in the terms of money. Therefore it is decided that the plaintiff would suffer irreparable injury if his prayer for temporary injunction is disallowed and accordingly answer to Issue no. 3 is given in the affirmative.

10. Grounds of Defendant.

A.It is contended by Defendant that "chamunda" is Name of an Indian goddess.

This contention of Defendant is not in consonance with the law. The Trademark Act 1999 does not prohibit anyone from registering any mark in the name of deity. The Act confers the right to the Plaintiff for doing business under registered trade mark under section 28 of the Act and so this objection of the defendant is not tenable in the eyes of law.

B. It has been contended by Defendant that Plaintiff does not have sole rights upon it. It is further stated by Defendant that Plaintiff is trying to claim monopoly over the business of lassi and Edible Food items, which is not permissible under law.

This contention of the Defendant is also not tenable in the eyes of law. The Plaintiff in the present suit has never said that Defendant should stop his business. The Plaintiff has come before this court with prayer to restrict the defendant from doing business by using the mark which is deceptively similar to registered trade mark of Plaintiff and therefore this ground of Defendant is not tenable.

C. It is also contended by Defendant that there is Family Dispute in the Plaintiff's family.

It is not the business of Defendant to raise such objection in which he is stranger to the said dispute. Family dispute of Plaintiff's family does not confer right to the Defendant for breaching the provisions of trademark Act and so this plea is also not tenable.

D. It is also contended that there is difference between label mark as well as device.

As discussed above, it has come on record that Trademarks of the Defendant are deceptively similar and

may deceit the customer of plaintiff and so this ground of the Defendant is also not acceptable in the eyes of law.

E. various third parties have been utilizing the term "Chamunda" in different contexts.

This ground of defendant is also not tenable in the eyes of law. If others are doing wrong then law does not give license to Defendant to also do wrong or his wrong will be converted into right.

Therefore the aforesaid objections of Defendant are baseless and against the principle of law and therefore hereby rejected.

11.

Plaintiff has relied upon following case laws

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1. **In S.C. of India**
Civil Appeal No. 404 of 2022 (Arising out of
SLP (C) No. 21428 of 2019)
Decided on 19.1.2022
Appellants : Renaissance Hotel Holding Inc.
Vs.
Respondent : - B. Vijara Sai and Ors.

2. IN THE SUPREME COURT OF INDIA
Cr.A.NO. 107 OF 2002
Decided on 22.1.2004
Appellants : Midas Hygiene Industries
Pvt.Ltd., & Ors.,
Vs.
Respondent : Sudhir Bhatia and Ors.
3. IN THE SUPREME COURT OF INDIA
Civil Appeal Nos. 8266-8267 of 2001
Decided on 4.12.2001
Appellants : Laxmikant V. Patel
Vs.
Respondent : Chetanbhai Shah & Ors.,
4. IN THE SUPREME COURT OF INDIA
Civil Appeal No. 1051 of 1967
Decided on 28.1.1972
Appellants : Parle Products (P) Ltd.,
Vs.
Respondent : J.P. & Co., Mysore
5. IN THE HIGH COURT OF MADRAS
A. Nos. 1313 and 1314 of 2010 in
A. Nos. 1099 and 1100 of 2009
Decided on 3.8.2011
Appellants : Murigan IDLI Shop
Vs.
Respondent : Murgun IDLI Shop
6. IN THE HIGH COURT OF DELHI
L.A. Nos. 8609/1994 and 10285/1994
Decided on 6.1.1999
Appellants : Automatic Electric Ltd.,
Vs.

Respondent : R.K. Dgawan and Ors.

7. IN THE HIGH COURT OF DELHI
LA NO. 9707/2008 in SC (OS) 1690/2008
Decided on 11.12.2008
Ford Motor Company of Canada Ltd., & Ors.
Vs.
Ford Service Centre,
8. IN THE S.C. OF INDIA
Civil Appeal Nos. 6314-15 of 2001
Decided on 3.3.2011
T.V.Venugopal
Vs.
Ushodaya Enterprises Ltd., & Ors.

The principles laid down in these case laws have been considered in this order and so the same is not discussed in detail.

12. Issue no. 4

As per aforesaid discussion the answer to Issue no. 4 is given as under : -

ORDER.

- 1.The present Exh. 6 application for interim injunction is hereby allowed. Defendant is hereby restrained from infringing/ using the registered trademark "Chamunda" , " Chamunda The Lassishop" ,

“ચામુંડા” and “ચામુંડા દિ લસી સોપ” or deceptively similar mark in connection with Lassi, Dairy products, edible food items etc. which falls under the classes 29,30,35 and 43 of the schedule provided in Trademark Act/ rules, till final outcome of this suit.

The Defendant is hereby also ordered to remove the sign board of wah chamunda lassi shop from his shop till final outcome of this suit.

2. The cost of this application will follow the suit.

Pronounced today in open court on 12th february 2024.

Date - 12/02/2024.

Place Junagadh.

R. D. Pandey,

5th Adj, Junagadh,

Judge code- GJ00813.