



COMMERCIAL TRADE MARK CIVIL SUIT - NO. 01 of 2024

ORDER BELOW EXHIBIT - 23

1. The Defendant No.4 has filed the present application under Section 151 of The Code of Civil Procedure Code, for modifying/clarifying the order dated 25.01.2024.
2. The defendant no.4 has stated that vide order dated 25.01.2024, this Hon'ble Court has directed to the defendant no.4 that *"So far as, defendant nos. 4 and 5 are e-commerce platform who are directed to remove the URL of defendant nos. 1,2 and 3, from their website and not to allow the said defendants from showing and selling any product design which is deceptively similar designs with that of the plaintiff"*. Thus, by way of present application, the defendant No.4 prays for modification/clarification of the order dated 25.01.2024. It is submitted that the defendant no.4 has no role in

listing/selling/pricing/offering for sale any products on its website but, merely provides a platform where seller, on a principal basis, list and sell their products to the buyers. It is submitted that defendant no.4 does not have any right or control to add or modify the details regarding the product listed by the sellers. It is submitted that merely by providing a platform for listing of third party products, the defendant no.4 is merely an intermediary under the provision of Information Technology Act, 2000. The defendant no.4 has utmost respect for intellectual property rights of its registered sellers. As an intermediary, the defendant no.4 does not by itself, possess the means/competence to identify and take down allegedly infringing content. The defendant no.4 can only take down any URLs upon knowledge from the plaintiff. Therefore, the plaintiff need to supply infringing URLs to comply with the court's orders. It is prayed that if the order is not modified/clarified, it would cause grave consequences for the defendant no.4, as there is also a risk of losing its intermediary status and the safe harbour as granted under Section-46 of the IT Act and also no prejudice will be caused to the plaintiff if

the application of the defendant no.4 is allowed. Hence, it is prayed that necessary modify/clarify be carried out with respect to direction issued to defendant no.4.

3. On the other hand, Ld. Advocate for the plaintiff has filed its reply vide Exhibit 26. It is submitted by the plaintiff that application filed by the defendant is not maintainable in the eyes of law, devoid of merits and contrary to the well settled principle of law. It is submitted that defendant no.4 is liable for infringement of design of the plaintiff as the defendant no.4 has allowed user to sell/display the infringing product of plaintiff. It is submitted that prayer of the modification by the defendant no.4 is required to be rejected as the defendant no.4 is joined herein as intermediaries who are allowing the sellers online with the identical and deceptively similar products as that of the plaintiff on their online platforms without any due diligence in respect of the registration of the design, authenticity of the products or list the said product on line. Further, the plaintiff denies all the contentions, averments and statements made by the defendant no.4 and prays to reject the application filed by the defendant no.4.

4. I have heard Ld. Advocates for the respective parties and perused the entire record of the case.
5. First of all, it is required to be noted that defendant no.4 is an on line e-commerce platform on which thousands of buyers and sellers transact in various products. It further appears that defendant no.4 has no role in listing, selling, pricing, offering for sale any products on its website but, only provide a platform where sellers list and sell their products to the buyers. Further, it appears that defendant no.4 has no any right to control or modify any details regarding products listed by the seller. It appears that if any seller listing his any products on website of defendant no.4 then, how can defendant no.4 came to know that such product is infringing product of plaintiff as, defendant no.4 does not have any right to add or modify the description regarding the product listed by the sellers. It is submitted that it can be possible only on that condition that plaintiff informs to the defendant no.4 and defendant no.4 can remove the said URLs from the website. Further, it appears that the defendant no.4 has also already taken down the infringing URLs provided by the plaintiff. Hence, it appears

that the prayer of the defendant no.4 appears to be genuine which requires consideration. Hence, I pass the following order in the interests of justice :

ORDER

1. The present application is hereby **allowed**.
2. The direction given to defendant no. 4 that "*So far as, defendant nos. 4 and 5 are e-commerce platform who are directed to remove the URL of defendant nos. 1,2 and 3, from their website and not to allow the said defendants from showing and selling any product design which is deceptively similar designs with that of the plaintiff*", is hereby **modify**.
3. The defendant no.4 is directed that when the plaintiff inform to defendant no.4 regarding showing and selling any product design which is deceptively similar designs with that of plaintiff, the defendant no.4 shall remove the URLs from their website.
4. No order as to costs.

Date : 06-06-2024
Place : Surat.

(**ASHISH J.S. MALHOTRA**)
Special Commercial Judge &
5th Additional District Judge,
District & Sessions Court, Surat
(Unique ID Code: GJ01504)