
**BEFORE THE SPECIAL COMMERCIAL JUDGE & 5TH ADDITIONAL
DISTRICT JUDGE, SURAT.**

IN COMMERCIAL TRADE MARK CIVIL SUIT - NO. 08 of 2024

ORDER BELOW EXHIBIT - 5

1. The Plaintiff has filed the present suit alongwith application under Order 39, Rule I & II of The Code of Civil Procedure Code.
2. The plaintiff has prayed for following reliefs which are as under :
 - a) *The defendant no.1 to 7 their proprietors/partners/directors/heirs, agents, dealers, distributors, stockiest, servants, manufacturers and other business personnel are hereby temporarily restrained from manufacturing, marketing, selling, using, promoting and advertising in any manner any products that have identical and deceptively similar designs to the plaintiff's Saree and Blouse (Set) with ornamental surface patterns, get-up and concept as represented in paragraphs 6 and 21 above and the respective annexures. This includes any products that are identical or deceptively similar to the plaintiff's prior adopted and used designs with unique and novel design along with ornamental surface patterns and get-up with specific concept as represented in paragraph 6 above and the annexures. This Hon'ble Court may*

hereby pass appropriate order to grant a temporarily injunction restraining the defendants from infringement of registered design [Saree Blouse (Set)]

b) *The defendant nos. 1 to 7, their proprietors/partners/directors/heirs, agents, dealers, distributors, stockiest, servants, manufacturers and other business personnel are hereby temporarily restrained from manufacturing, marketing, selling, using promoting and advertising in any manner any products that have identical and deceptively similar designs to the plaintiff's saree and blouse (set) with ornamental surface patterns, get-up, and concept as represented in Paragraphs 6 and 21 above and the respective annexures. This includes any products that are identical or deceptively similar to the plaintiff's prior adopted and used designs with unique and novel design along with ornamental surface patterns and get-up with specific concept as represented in paragraph 6 above and the annexures. This Hon'ble Court may hereby pass appropriate order to grant a temporarily injunction restraining the defendants from passing off their products as those of the plaintiff's design [Saree and Blouse (Set)]*

c) *Pass an temporary order of issuance of direction to the defendant no.8 and 9 to take down/suspend all infringing URL links where*

the infringing design products of the defendant no.1 to 7 are displayed/advertised on their e-commerce platforms, as highlighted in paragraph no.19 annexed with the list; and further not market, sell, use, promote, or advertise in any manner products having identical and deceptively similar designs with copies/imitated/infringing Saree and Blouse (Set) along with ornamental surface, patterns, get-up, concept as represented in paragraphs 6 and 21 above and respective Annexure with and further not engage in any activity that infringes upon the plaintiff's prior adopted and used designs with unique and novel design along with ornamental surface patterns, get-up with specific concept as represented in Paragraph 6 above and Annexure with.

- d) *Plaintiff respectfully prays that this Hon'ble Court may also pass an order of temporary direction to defendant no.8 and 9 to comply with the removal of the URL links from their platforms as represented in paragraph 6 above and annexure with list and also as & when the plaintiff intimates about the identical and/or deceptively similar design on their platform. It is also prayed that this Hon'ble Court may direct the intermediaries to take necessary steps to prevent any further infringement of the plaintiff's intellectual property rights.*

- e) *The Hon'ble Court may be pleased to grant an ex-parte ad interim injunction in terms of para 35(a), 35(b) & 35 (c), 35(D) & hereinabove.*
- f) *The Hon'ble Court be pleased to order defendant to pay cost of present suit to the plaintiff.*
- g) *The Hon'ble Court may be pleased to grant such other and further relief/s as may be deemed fit, just and proper in the interest of justice.*

3. Notices were issued to the defendants which were duly served upon defendant nos. 1 to 7. None has appeared on behalf of defendant no. 1, 7 & 9. On behalf of Defendant no.2, Ld. Advocate has filed his vakalatnama. Whereas, defendant nos. 3, 4, 5, 6 have orally sought time for filing their vakalatnama at Exhibit-8. An application/undertaking vide Exhibit-7 has been filed by the Ld. Advocate for the applicant no.8 stating that original Vakalatnama will be submitted in the Hon'ble Court by the next date.

4. It is required to be noted that it is an injunction application under Order 39, Rule I & II where, both the parties should be heard on merits of the application, however, as defendants have orally sought time and without hearing them, the application cannot be decided

on merits and injunction cannot be passed *ex parte*. Therefore, in view of the interest of justice, the defendant nos. 1 to 7 are hereby restrained from infringement, passing off the registered designs of the Saree and Blouse (set) under the Copied designs/articles/trade-dress as claimed by the plaintiff as its own registered design in the application till the next date of hearing. Further, as the defendant nos.8 & 9 are e-commerce platform, therefore, the defendant nos.8 & 9 are directed that when the plaintiff inform to defendant no.8 & 9 regarding showing and selling any product design which is deceptively similar designs with that of plaintiff, the defendant no.8 & 9 shall remove the URLs from their website till the next date of hearing. It is further required to be noted that this court shall not be influenced by the *prima facie* observations made in the present order.

Date : 02-07-2024

Place : Surat.

Himanshu/pps

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