

**IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE,
UDUPI DISTRICT, UDUPI**

Dated this the 17th day of June, 2021

Present

Sri J.N.Subramanya, B.A.,L.L.M.

Prl. District & Sessions Judge,
Udupi.

O.S. No.1/2020

Plaintiff:

M/s. Sumukha Surgicals India Pvt. Ltd.,
Kanchikan Road,
Uppunda, Kundapura Taluk,
Udupi District – 576 232.
Represented by its Managing Director,
Mr. Suresh Shetty,

(By Sri. H.K.S.H. Adv.)

Versus

Defendant:

M/s. Dhrithi Surgical Solutions Pvt. Ltd.,
Door No.5-10-1-42/8, Alke,
Kambla Cross Road,
Mangalore – 575003.
Represented by its Director,
Mr. Sharath Kumar Shetty.

(By Sri.G.K.J. Adv.)

ORDER ON I.A.NO.I

On 14-12-2020 plaintiff presented plaint seeking
following reliefs:

i) Granting permanent injunction restraining defendant, their servants or agents of distributors or any one claiming through them in any manner infringing the plaintiff's well established registered trademark DHATRI by using offending mark DHRITHI or any other trademark which are no way deceptively similar to plaintiff's trademark DHATRI for surgical gowns, adult diapers, disposable bed sheets, pillow covers, skin blade & facemasks, bouffant cap, shoe covers, dressing pads, Gauze Swabs-x-rays plain, Gamjee Roll, Ribbon Gauze, Gauze Tampon and eye dressing pad;

ii) Granting permanent injunction restraining defendant, their servants or agents of distributors or any one claiming through them in any manner passing of plaintiff's well established registered trademark DHATRI or any other trademark which are no way deceptively similar to plaintiff's trademark for Surgical gowns, adult diapers, disposable bed sheets, pillow covers, skin blade & facemasks, bouffant cap, shoe covers, dressing pads, Gauze Swabs-x-rays plain, Gamjee Roll, Ribbon Gauze,

Gauze Tampon and eye dressing pad by using offending name DHRITI;

iii) Directing the defendant to surrender to plaintiff, the entire stock of unused offending bills, negatives, positives, transparencies, blocks for destruction.

iv) Directing the defendant to render honestly and faithfully true account of the profit that defendant have derived by promoting their company by using offending trademark/trading style and directing payment of such profits to the plaintiff by way of damages for infringing trademark/trading style/copy right of plaintiff.

v) Directing defendant to pay damages of Rs.25,000/- per month from the date of filing this suit for infringing plaintiff's registered trademark DHATRI by using offending trading style DHRITI;

2. Along with plaint Plaintiff filed I.A.No.1 under Order XXXIX Rule 1 and 2 of C.P.C. praying to pass an ad-interim temporary injunction order restraining the defendant in any manner infringing the plaintiff's well established registered trademark 'DHATRI' and passing off the same by using offending mark 'DHRITHI' for manufacture and sale of

Surgical gowns, adult diapers, disposable bed sheets, pillow covers, skin blade, facemasks, bouffant cap, shoe covers, dressing pads, Gauze Swabs - X-rays plain, Gamjee Roll, Ribbon Gauze, Gauze Tampon and eye dressing pad, or any other deceptively and confusingly similar trademark and grant such other further relief as may deem fit in the circumstances of the case.

3. In support of I.A.No.1 plaintiff filed an affidavit asserting the following facts:

a) Since 2012 plaintiff under registered trademark manufacturing and selling surgical products i.e. Medical/Health services equipments i.e. Surgical gowns, adult diapers, disposable bed sheets, pillow covers, skin blade, facemasks, bouffant cap, shoe covers, dressing pads, Gauze Swabs etc., The plaintiff is a certified company bearing No.ISO9001:2008, plaintiff using the brand name DHATRI along with font style, colour combination and unique logo since 26.01.2012. The plaintiff obtained registration of the trademark

DHATRI under No.2369861 under Trade Marks Act, 1999.

b) The brand name DHATRI has been associated with plaintiff from the year 2012 on account of long, continuous and extensive use the trademark DHATRI has become well known throughout India, the promotional activities carried out by the plaintiff through literatures, novelties and the media reports through advertisements by spending huge money for focusing products and made the mark DHATRI as well-known mark.

c) The brand name DHATRI has acquired enviable goodwill and impeccable reputation among the public and become exclusively identified and associated with plaintiff and its products. The plaintiff started manufacture of PPE kits to be used for COVID-19 pandemic.

cc) In para 8 of the affidavit plaintiff noted his turn over from the year 2014 in the following terms:

Sl.No.	Year	Turnover in lakhs (Rs.)
1.	2014-15	4,06,69,382
2.	2015-16	5,16,91,812
3.	2016-17	5,37,14,290
4.	2017-18	6,61,72,299
5.	2018-19	5,56,70,431

d) The plaintiff recently came to know that the defendant started using the mark DHRITHI surgical solution Pvt. Ltd. and thereby infringing plaintiff's trademark DHATRI , further passing off the goods as that of plaintiff. Since plaintiff and defendant are engaged in common field of activity, confusion is bound to occur and amounts to erosion of plaintiff's goodwill, apart from the deceptive trademark adopted by defendant, there are various other discrepancies which is with the obvious intention of deceiving the public.

e) The plaintiff made list of fraudulent acts alleged to have been done by the defendant which reads as under:

1). Brand names are very similar when looked upon by a common man;

2). The brand names Dhatri and Dhrithi are phonetically, visually and structurally similar.

3). Both marks DHATRI and DHRITHI are being used for marketing surgical equipments and therefore, confusion is bound to occur.

4). The Director of the defendant namely Mr. Sharath Kumar Shetty being an ex-employee of the plaintiff is misleading the customers by misrepresenting that defendant's products are manufactured by plaintiff only.

f) Use of an identical trade mark and trade dress-up, with respect of the same products is obviously with the deliberate intention of infringing plaintiff's trademark DHATRI and thereby piggy back upon reputation of plaintiff's goodwill and reputation in the market and the use of identical mark and name is clearly to take advantage of plaintiff's goodwill and reputation.

g) The plaintiff issued legal notice dated 01.03.2019 to defendant calling upon to cease and desist from using trademark DHRITHI, the defendant sent reply on

15.03.2019 wherein denied the allegation and refused to comply with the demands enumerated in the notice.

h) The plaintiff asserted that he has made out a prima facie case for grant of injunction, the defendant has been infringing plaintiffs trademark and also liable for passing off an action, the defendant has no manner of right or authority to adopt trademark of plaintiff firm, as a result of infringement of trademark by defendant plaintiff has been put to great loss and irreparable injury which cannot be compensated in terms of money. The plaintiff asserted that balance of convenience is also lies in his favour and if temporary injunction as prayed is not granted plaintiff will be put to great hardship and loss.

4. In response to the notice the defendant appeared through his Advocate and filed objection asserting following grounds:

(a) The application is not maintainable in law, facts and circumstances of the case, the application is

liable to be dismissed in limine without going into the merits of the case.

- (b) The affidavit filed along with the application by the plaintiff is defective, the plaintiff sought interim order restraining the defendant infringing the trademark 'Dhatri' for sale and manufacturing Agarbathis. The defendant neither used the trademark Dhatri nor manufacturing Agarbathis.
- (c) The defendant denied the allegation that brand name adopted by the defendant will cause confusion and/or deception among the traders, consumers and general public. The class of customers were doctors and hospital authorities who all are literate, well informed and educated and they can easily differentiate and distinguish from plaintiff's trade mark. The defendant has neither intention nor there is any necessity of Peggy back the reputation and goodwill of the plaintiff. The brand name Dhriti of the defendant has become synonymous with the defendant due

to high quality of the product, extensive marketing and innovative promotional activities, even otherwise the plaintiff kept quite which amounts to acquiescence on the part of the plaintiff and also well aware that the trade mark is totally different and it will not cause any confusion. When the defendant's products are in high demand in the market due to their high quality, out of trade jealousy initiated false and frivolous suit delayed to establish defendant's business. The suit is filed with sole intention of harassing defendant out of trade jealousy with ulterior motive to stop the defendant to do his business.

- (d) The balance of convenience is in favour of the defendant rather than plaintiff since the defendant has been continuously using the said trademark Dhrithi from 2017, therefore the defendant will be put to great loss and irreparable injury, if the defendant is restrained from using

the trademark Dhrithi which is nowhere similar to the trademark adopted by the plaintiff.

- (e) Even though the plaintiff caused notice dated 01.03.2019 the plaintiff has chosen to file the suit after delay of 3 years, therefore suit filed by the plaintiff is hit by delay, laches and acquiescence.
- (f) The use of trademark Dhrithi by defendant does not create any confusion and deception in the minds of customers as alleged. In any event the plaintiff has not produced any evidence to show that the use of trademark Dhrithi is causing confusion amongst the customers. If the defendant is restrained by an order of injunction, the defendant will be put to great loss and irreparable injury, injunction prayer is liable to be rejected. There is no cause of action arises in the jurisdiction of the Court.

5. In the affidavit plaintiff and in the objection defendant requested to consider the facts pleaded in the

plaint and written statement respectively as part and parcel of their affidavit and objection.

6. Along with the plaint/application the plaintiff has produced 17 documents. Along with the written statement/objection the defendant has produced 9 documents.

7. I heard the argument submitted on behalf of both the parties and perused the records. On 07.06.2021 and 09.06.2021 learned advocate appearing for the plaintiff and defendant filed notes of argument (On I.A.No.1 and 2). On the basis of the materials on record the following points would arise for my consideration:

1. Whether the plaintiff made out prima facie case ?
2. Whether balance of convenience lies in favour of the plaintiff?
3. Whether plaintiff will suffer irreparable loss or injury in case of refusal to grant temporary injunction order?
4. What order?

8. On the basis of the material available on record, my finding on the above points are as under:

Point No.1 to 3: In the negative

Point No.4: As per final order,
for the following reasons:

REASONS

9. **Point Nos.1 to 3**:- In the lengthy argument learned Advocate appearing for the plaintiff requested to pass temporary injunction order as sought in I.A.No.I by relying on a judgment of Hon'ble High Court of Delhi dated 15.10.2014 passed on I.A.No.11376/2014 in CS (OS) No.1808/2014 Sanofi India Ltd. & Anr. Vs. Universal Neutraceuticals Pvt. Ltd.,

10. In the lengthy argument learned advocate appearing for the defendant submitted that this Court is not having territorial jurisdiction to entertain the suit and the plaintiff is not entitle for the relief of temporary injunction by relying on the following judgments:

1. Civil Appeal No.10643-10644/2019 (DD -01.07.2015)

Indian Performing Rights Society Ltd., Vs. Sanjay Dalia And Another.

2. 1996(36) DRJ 662 (Hon'ble High Court of Delhi)

P.M. Diesels Ltd., Vs. Patel Field Marshal Industries

3. Appeal (civil) 6248 of 1997 (D.D.-15.12.2005)

M/s. Dhodha House Vs. S.K. Maingi

4. CS (COMM) 819/2018 & Ias 5616/2018, 14586/2018 (D.D.31.01.2019)(Hon'ble High Court of Delhi)

M/s. Allied Blenders and Distillers Pvt. Ltd., Vs. Govind Yadav & Anr.

5. FAO (OS) No.352/2010 (01.11.2020) (Hon'ble High Court of Delhi)

Marico Limited Vs. Agro Tech Foods Limited.

11. In the light of the above cited judgments and submissions made on behalf of both the parties, I have appreciated the evidence available in the file.

12. In the affidavit filed in support of I.A.No.I and plaint the plaintiff has asserted that since 2012 in the name and style of M/s. Sumukha Surgicals India Pvt. Ltd., engaged in manufacture and sale of surgical products/equipements i.e. Surgical gowns, adult diapers, disposable bed sheets, pillow covers, skin blade, face masks, bouffant cap, shoe covers, dressing pads etc., under registered trademark Dhatri No.2369861. The plaintiff further asserted that from 2012 the brand name Dhatri on account of long, continuous and extensive use, become well-known throughout India, promotional activities carried out through literatures, novelties, media reports, advertisements by spending huge money. The plaintiff further asserted that the defendant was earlier shareholder and director of the plaintiff company, who resigned from the plaintiff company after selling his shares and formed defendant company along with relatives during 2017 and started using the mark Dhrithi thereby infringing plaintiff's trademark Dhatri, further passing of their materials as that of plaintiff. The plaintiff asserted that the trademark adopted by the defendant is deceptively similar to the plaintiff's trademark and copy right, while trademark of the

plaintiff is Dhatri and the defendant has adopted phonetically, visually and structurally similar trademark Dhrithi, the only difference is alphabet 'A', since both the defendant and plaintiff are engaged in common field of activity, confusion bound to occur and amounts to erosion of goodwill of the plaintiff.

13. In the written statement and objection the defendant denied the allegation about increasing the business of the plaintiff from 2012. The defendant submitted ignorance about allegation made by the plaintiff with respect to similarity of the trademark adopted by the defendant as Dhrithi compared with the trademark of the plaintiff Dhatri.

14. The defendant admitted that previously he was a shareholder and director of the plaintiff company, during September, 2017 resigned from the directorship of the plaintiff company and during November, 2017 formed defendant company and got ROC for the defendant company from the trademark registry.

15. In the written statement and objection the defendant has asserted several grounds with respect to procedural aspects, jurisdictional point and other technical points.

16. In this case there are no dispute with respect to the contents of the documents placed and relied by both the parties.

17. The documents placed by the plaintiff shows that since 2012 the plaintiff company engaged in manufacture and marketing surgical equipments i.e. surgical gown, adult diapers, disposable bed sheets etc., and promoting business by publishing in literatures, novelties, media etc. in the name and style of M/s. Sumukha Surgicals India Pvt. Ltd., in the trademark Dhatri with a leaf as its font style.

18. The allegation made by the plaintiff, defence asserted by defendant documents placed by both parties shows that since November, 2017 the defendant started manufacture and sale of medical/ surgical equipments in the name and style of Dhrithi Surgical Solution Pvt. Ltd., and marketing the same with the trademark Dhrithi with a font logo of a leaf.

19. Compared to the trademark and font style of both the parties, both trademark and font style seems to be similar.

20. It is undisputed fact that plaintiff got issued notice dated 01.03.2019 intimating the defendant about the similarities of the product name and font style of his company as well as the defendant i.e. Dhatri and Dhrithi and insisted to stop the manufacturing and marketing the medical / surgical equipments in the name and style of Dhrithi deceptively similar of Dhatri with font style of a leaf.

21. The defendant through reply dated 15.03.2019 denied the allegation made by the plaintiff in the notice about similarities of the trademark and font style of his company i.e. Dhrithi and refused to stop manufacture and marketing of the equipments in the name and style under the trademark Dhrithi.

22. As referred above, it is undisputed that since 2012 to September, 2017 defendant was one of the director of the plaintiff company, during September, 2017 defendant resigned the directorship of the plaintiff company by selling the shares and then during November, 2017 established

defendant company and started manufacturing and marketing of the similar equipments in the name and style of Dhrithi which seems to be similar to that of the plaintiff.

23. Comparing to the trademark and phonetic symbol of both the parties it is clear that the symbol of the leaf used by the parties are similar, therefore a confusion may occur in the customers of the parties about the product intended to be purchased.

24. Hence, I have inferred that the plaintiff has made out a case about allegation regarding similarities of the trademark, logo and font of both the companies/products.

25. Evidence shows that since 2012 the plaintiff is engaged in manufacturing and sale of the surgical/ medical equipments in the name and style of Dhatri. The defendant being a former director of the plaintiff company during November, 2017 established the defendant company and started to manufacture and sale of the similar surgical products/ medical products in the name and style of Dhrithi which seems to be similar of plaintiff,

26. At this stage, it is important to note that on 15-03-2019 defendant through reply notice denied the allegation made by the plaintiff in the notice dated:1-03-2019 and refused to stop manufacture and marketing of the equipments in the name and style of DHRITI. Since, 15-03-2019 till 7-09-2020 (date of the presentation of the suit before Prl.District and Sessions Court, Mangaluru) with the knowledge of the plaintiff , defendant has continued the production and marketing of the equipments. As on today, there is no material about either the turnover of the plaintiff for the period 1-03-2019 to 7-09-2020 or decrease in the turnover of the plaintiff company due to the production and sale of the equipments by the defendant. The plaintiff who remained silent for the period of approximately 1 ½ years suddenly approached the court requesting to temporarily restrain the defendant from manufacture and sale of the equipments in the name and style of DHRITI . Since March, 2020 due to Corona Pandemic entire society suffering in several aspect. It is undisputed fact that both parties have spent huge money to manufacture and sale the equipments. Hence, I have inferred that the balance of convenience does

not lie in favour of the plaintiff comparing to the time when plaintiff came to know the manufacture and sale of the equipments by the defendant and refusal by the defendant to stop manufacture and sale of the equipments in the name and style of DHRITI.

27. In the plaint and affidavit the plaintiff has asserted that in case of refusal to grant temporary injunction he will suffer much hardship and injury comparing to the defendant.

28. In the written statement and objection in several words the defendant has asserted that in case of granting temporary injunction order he will suffer much hardship and injury compared to the plaintiff on the ground that he has spent huge money in establishing his company and even though on 15-03-2019 through reply notice refused the demand of the plaintiff to stop manufacture and sale of the equipments in the name and style as DHRITI the plaintiff remained silent for the considerable period.

29. It is undisputed fact that there are several methods in sale of medical / surgical equipments to doctors and hospital

authorities i.e. offer of foreign trip, offer for more percentage / margin in the sale price etc.,

30. At this stage it is important to note that in the plaint plaintiff has sought damages of Rs.25,000/- per month from the date of filing of the suit for alleged infringing his trade mark by the defendant. Hence, it is clear that if plaintiff succeeds in establishing the allegation of the damages alleged to have been suffered due to the activities of the defendant, the plaintiff can be suitably compensated.

31. Considering the allegation made by both the parties, evidence place by both the parties, nature of the articles manufactured and sold by both the parties and relief sought by the plaintiff in the suit I have inferred that in case of refusal to grant temporary injunction order the plaintiff will not suffer much hardship and injury comparing to the defendant.

32. As this is a interim stage, I have restrained myself from expressing opinion on technical points.

33. Hence, I came to the conclusion that the plaintiff has failed to make out prima facie case, balance of convenience does not lies in favour of the plaintiff and in case of refusal to

grant temporary injunction order, plaintiff will not suffer much hardship and injury comparing to the defendant. Hence, I answer Point No.1 to 3 in the negative and pass the following:

ORDER

I.A.No.1 filed under Order 39 Rule 1 and 2 of C.P.C. is hereby rejected.

There is no order as to costs.

Call on 17.07.2021 for hearing under section 89 of C.P.C., issues etc.,

(Dictated to the Stenographer, who transcribed & computerized, then corrected by me, print taken, pronounced in the open court on 17th day of June, 2021)

(J.N.Subramanya)
Prl. District Judge, Udupi.