

IN THE COURT OF THE DISTRICT JUDGE, KALPETTA, WAYANAD

Present : Sri.Ayyoobkhan E., District Judge, Kalpetta.

Wednesday, the 14th day of January, 2026
24th day of Pousha, 1947

INTERLOCUTORY APPLICATION No. 03/2025
ORIGINAL SUIT No.02/2025

Perfetto Naturals Private Ltd.,
Building No.8/329, Anhannikunnu, Neervaram
Post, Panamaram, Wayanad, Kerala 670 721.

}
Petitioner/ Plaintiff
Vs.

1. M/s. Chikoff Trading Private Ltd.,
5A, Earle Street, Ground Floor,
Kolkata, West Bengal 700 026.
2. M/s Perfetto Coffee Private Ltd.,
5A, Earle Street, Kolkata,
West Bengal – 700 026.

}
Respondents

This Interlocutory Application is coming on this day for hearing before me in the presence of Smt.P.C.Chithra, Sri.Sharan Shahier and Sri.Mohammed Febin S., Advocates for the petitioner and Sri.P.Suresh, Advocate for the respondents and upon hearing both sides and perusing the petition on the same day, the court passed the following:

ORDER

This is a petition filed under Order 39 Rule 1 and 2 r/w Section 151 of Code of Civil Procedure, along with injunction petition, seeking an order of temporary prohibitory injunction restraining the defendants or their people from using, selling, soliciting, exporting, displaying, any other mode or manner or dealing or using the deceptively similar word mark “PERFETTO” and device

mark “Perfetto” or any other identical or deceptively similar word and device mark from doing any other acts or deeds amounting to or likely to amount to infringement of plaintiff’s registered trade mark “PERFETTO NATURALS”.

2. The averments in brief is as follows:- The plaintiff, a leading organic products manufacturer and exporter based in Wayanad, Kerala, works with over 6,000 farmers cultivating 6,000 hectares through structured units of 400 farmers each. This model ensures direct engagement and adherence to organic and sustainable practices. Under the brand “**Perfetto Naturals,**” the plaintiff markets a wide range of chemical-free products including coffee, nuts, oils, fruits, vegetables, spices, and herbs across domestic and international markets. The plaintiff is the registered proprietor of several trademarks, including the word mark “**PERFETTO NATURALS**” under Class 35, in continuous and exclusive use since 16 March 2020 (application filed 17 March 2021). Through substantial investment and promotional efforts, including its website and social media presence, the plaintiff has built significant goodwill and consumer recognition. The mark is now exclusively associated with the plaintiff’s organic offerings. The plaintiff asserts that any unauthorized use of “**PERFETTO NATURALS**” or a deceptively similar mark constitutes infringement. On discovering that the 1st defendant filed Trademark Application No. 4872056 for “**PERFETTO**” under Class 30 on 20 February 2021, the plaintiff filed Opposition No. 1174297 on 20 June 2022, which remains pending. The Plaintiff contends that the impugned mark is phonetically and visually similar to its own, creating a likelihood of consumer confusion. The Defendant’s adoption is alleged to be dishonest and intended to exploit the Plaintiff’s goodwill. Further, the 1st Defendant, through its subsidiary (the 2nd Defendant), has filed two additional applications under Class 30: Application No.6291738 (7 February 2024) and Application No.6421890 (7 May 2024). The latter (2nd defendant) claims use from 6 January 2020, despite earlier applications stating “proposed to be used,” suggesting an attempt to backdate use and pre-empt

opposition. The Defendants also operate the domain <https://perfettocoffee.in>, selling coffee under the disputed mark. The Plaintiff alleges this constitutes trademark infringement, unfair competition, dilution, and false designation of origin. A legal notice issued on 4 April 2024 received a response that failed to address prior usage. The Plaintiff submits that continued use of **“PERFETTO”** will cause irreparable harm and therefore seeks appropriate relief through this petition.

3. Notices were issued to the respondents and they filed counter statement.

4. Respondents’ contentions in the counter statement are that - the petition is not maintainable either by law or facts, the plaint or the documents have not been served upon them as the respondents are based in Kolkatta and require sufficient time to get instructions along with the documents. According to them, the defendants have been actively contesting the opposition proceedings before the Trade Marks Registry since 2020 at Kolkatta, which is the appropriate statutory authority vested with jurisdiction to determine the proprietary rights. The suit is misconceived and filed as an afterthought. The Trademarks Registry is the appropriate statutory authority vested with jurisdiction to adjudicate and determine the proprietary rights in the impugned mark after examining all filings. It is further contended that as the subject matter of the suit is for Trademark infringement, as per section 2(1)(c)(xvii) of the Act, it purely comes under the Commercial Courts Act and thereby only the Commercial Courts are having the jurisdiction. According to the them, as per the valuation claimed in the suit is below Rupees Ten Lakhs, the petition is to be handled by the Munsiffs Courts. Hence, they challenged the jurisdiction also. According to them, the plaintiff has willfully undervalued the suit at ₹1,000/- (Rupees one thousand only) in violation of Section 12A of the Commercial Courts Act, 2015, which mandates that commercial suits relating to intellectual property be valued based on the true market value of the subject matter and appropriate ad valorem court fee be paid and thereby the plaintiff attempted to

evade the procedural requirements of the Commercial Courts Act. It is further contended that the plaintiff failed to show any sufficient cause for granting the reliefs that he sought. Moreover, the suit is premature one. Case is filed after an unexplained delay of more than three years counting from 20.06.2022. The plaintiff is fully aware of the use of the mark by the defendants since 2022, which shows their failure to take timely legal steps. Hence the respondents claim to dismiss the application.

5. The only point to be considered is whether the petitioner is entitled to get an order of temporary injunction as prayed for?

6. **The Point:-** Here, although the respondents challenged the jurisdiction of this Court, it is true that under section 2(i)(c)(xvii) of the Commercial Courts Act, 2015, any dispute relating to “Intellectual Property Rights relating to registered and unregistered trademarks” is explicitly defined as a “Commercial Dispute”. As per the notification issued by the Kerala Government – GO(MS) No. 74/2022/Home, designating all Subordinate Judges’ Courts (Sub Courts) in the State as Commercial Courts. It is to be remembered that the dispute before the Commercial Court, depends on the pecuniary limit. In other words, the Commercial Courts have jurisdiction only in such matters which pass the twin test i.e., of a “Commercial Dispute” as defined under section 2(1)(c)(xvii) and the “Specified Value” as defined under 2(c)(i) r/w Section 12 of the 2015 Act. In the present petition, although the suit involves a Commercial Dispute, the subject matter of the suit is less than the Specified Value. (As per the decision in Director vs SKETCHERS USA Inc. WP No. 23009 of 2019, 2019 KHC 7520). If the value is above Rupees Ten Lakhs, the case has to be filed before the Commercial Courts, if otherwise, it has to be considered as a Trademark dispute and have to be filed before the District Court alone, until the present legal anomaly is cured. (*Hindustan Petroleum Corporation, Mumbai and Another v. Muhammed Illiyas and Others*, 2022 (6) KHC 68).

7. Regarding the contention of the respondents as to undervaluation of the suit, it is to be noted that the present petition is for temporary injunction. In a suit for injunction simplicitor, it is the value of the relief claimed and not the value of the property involved, that has to be considered. It is not the value of the thing affected that determines the value of relief sought, rather it is the value of the relief sought that determines the jurisdiction. (***Kalla Yadagiri v. Khotadal Rediliy, 1999 (1) ALT 211 FB- High Court of Andhra Pradesh***)

8. Pertaining to the claim in the petition, the petitioner/plaintiff is a leading company engaged in the manufacturing and exporting of organic products. It is submitted that the petitioner has been using the word “PERFETTO NATURALS” as its trade mark and had applied for registration of trade mark, even they have under the exclusive use since 16.03.2020. As per the application No.4908510 and other related applications, the petitioner applied for registration on 17.03.2021 and obtained registration which is valid until 17.03.2031. It is submitted that the petitioner/plaintiff has obtained goodwill and reputation in respect of the brand name ‘PERFETTO NATURALS’ and said the mark ‘PERFETTO NATURALS’ was conceived and adopted by the plaintiff and has been continuously and extensively used by them in an uninterrupted manner.

9. According to the petitioner, the respondents/ defendants are using a similar deceptive mark by name ‘PERFETTO’ and selling coffee under the disputed mark. For the infringement committed by the respondents, though issued legal notice on 04.04.2024, no proper response received from them.

10. In contra, the respondent No.2 in his counter claim stated that, Perfetto Coffee Pvt. Ltd., is a duly incorporated entity under the Companies Act, 2013, and has been engaged in the business of trading, importing, exporting and blending coffee and allied products since its inception in 2022. At the same time, the first defendant, Chickoff Trading Pvt. Ltd., is also a duly incorporated entity

under the Companies Act, doing business of trading, importing, exporting and blending coffee and allied products since its inception in 2019. But, on going through the petition it is seen that the second respondent alone is contesting for himself and on behalf of the first respondent. The second defendant claimed that, through a lawful assignment deed dated 24.05.2024, the second defendant lawfully assigned the trademark of the first defendant and thereby he got the trademark 'Perfetto coffee' and using the same, wherein, he applied for getting a new registration number from a registering authority. Here, as far as the second defendant is concerned, he has no registration to use trademark "PERFETTO". According to him, only the first defendant has the trade mark registration. So, until he gets the registration from the lawful authority to use the trade mark PERFETTO, he has no right to imitate the plaintiff's trademark "PERFETTO". Here, though he claimed that the first defendant has a registered trademark for the PERFETTO, he did not produce any document in this regard, all these are the matters to be considered at the time of evidence.

11. The petitioner alleges that the respondents/defendants are using a similar deceptive mark by name "PERFETTO". The defendants have not disputed the use of the mark "PERFETTO". It is also submitted by the plaintiff that the impugned mark have similarity to the trademark adopted by the respondents and there exists likelihood of confusion on the part of public. It is seen that here both the plaintiff and the respondents are dealing with similar goods ie., coffee, tea, spices etc. The defendants have blatantly imitated the plaintiff's mark by copying the essential features of it and has applied the impugned mark for the similar description of goods as that of the plaintiff's adopted mark, he applied for registration and it is pending. It is not justifiable, using a trademark after applying for the registration before getting it registered.

12. As per section 2(m) of the Trademarks Act “*mark*” includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof. On going through the label of the petitioner and the respondents, it is seen that the spelling of the term “PERFETTO” adopted by both the parties are same, which may arise likelihood of confusion.

13. On going through the petition and the rival contentions, it is seen that the petition is one for an ad-interim injunction in a matter relating to trademark infringement. The primary factor to be considered at this stage is whether the defendants are using a trademark similar to that of the petitioner. There is no necessity to examine the issue of prior user without evidence at this stage. It is not permissible to allow two different persons to use the same trademark, as such use would affect the rights and dignity of one party at the instance of another. Particularly, it is noted that a trademark application filed by the 2nd respondent (Application No. 4872056) is still pending before the Trademark Authority. In ***Robin Sebastian v. Shyjumon Joseph* [ILR 2023 (4) Kerala]**, it was held, with reference to Section 29 of the Trade Marks Act, that “Crucial test to be applied for an infringement action or a passing off action is to see whether a customer of average intelligence and of imperfect recollection is likely to be confused on the first impression”. In the present case, such infringement is apparent and stands admitted. The question as to who obtained registration first is a matter to be decided at the stage of evidence. It is settled law that once a prima facie case has been found that there is an infringement and a suit is maintainable, the injunction should follow, otherwise irreparable injury and hardship will be caused to the plaintiff.

14. Here, there is nothing on record to show who among the plaintiff and the first respondent obtained registration first. The second respondent is contesting the case for himself and on behalf of the first respondent. The claim that the company of the second respondent was amalgamated with that of the first

respondent, are all factors to be considered later. As far the second respondent is concerned, he just applied for registration. In a case of infringement of registered trade mark, the only question to be examined is whether the defendants have used the trade mark which is identical or similar to the registered trade mark of the plaintiff and if it is found that essential features of the registered trade mark has been copied by the defendant, irreparable injury or loss that plaintiff would suffer, has to be presumed. (***Ramesh Khatanmal Lulla Vs. Mohammad Yusuf Abdul Gaffar, 2018 KHC 4777- Bombay High Court***). In the present case, it is evident that the second defendant, by joining with the first defendant, is using the trademark “**PERFETTO**”, which amounts to an act of infringement. In such circumstances, once it is proved that the petitioner has a prima facie case supported by evidence, an injunction should necessarily follow. Here, it is seen that the second defendant by joining with the first defendant are improperly using the trademark of the plaintiff.

15. While considering the above said facts and circumstances of the case, it is proved that the petitioner has a prima facie case against the respondents. The registered trade mark obtained which is under dispute, is used by the respondents arising confusions to the general public. Moreover, the goods and services offered by both the parties are same. It is also seen that the reputation and goodwill of the plaintiff is at stake. It is evident that irreparable injury and loss would be caused to the petitioner. The balance of convenience is also found in favour of the petitioner. Hence, the petitioner is entitled to get an order of temporary injunction as prayed for until further order.

In the result, the petition is allowed. Temporary injunction is passed by restraining the respondents/defendants or their people from using, selling, soliciting, exporting, displaying, any other mode or manner or dealing or using the deceptively similar word mark “PERFETTO” and device mark

“Perfetto” or any other identical or deceptively similar word and device mark from doing any other acts or deeds amounting to or likely to amount to infringement of plaintiff’s registered trade mark “PERFETTO NATURALS”, till the further order of the Court.

(Dictated to the Personal Assistant, typed by her, corrected and pronounced by me in open court, on this, the 14th day of January, 2026.)

DISTRICT JUDGE

Appendix :- Nil

DISTRICT JUDGE