

Order below application Ex.5 in Civil Suit (Trade Mark)
No.02 of 2022

01. The plaintiff has filed the present application alongwith the suit under the provision of Order-39, Rule 1 & 2 read with section 151 of Code of Civil Procedure, 1908 and section 135 of The Trade Marks Act, 1999 and section 55 of The Copyright Act, 1957, for granting interim injunction against the defendant till the final disposal of the suit restraining the defendant from using the offending trade mark or any other trade mark deceptively similar to that of the plaintiff till the final disposal of the suit.
02. Heard the learned advocate Mr.R.H.Bhansali for the plaintiff.
03. Considering the plaint and document mark 4/1 which is copy of the registered trade mark 'Tractor' and affidavit Ex.1/1 wherein it is stated on oath that the plaintiff is one of the partner of the trade mark 'Tractor' in respect of the ready-made lime paste. The plaintiff has averred that it is using the said trade mark since the year 1989 in respect of lime, which is covered in Class - 19 of the Trade Marks Act. It is further averred that plaintiff applied to the Registrar of Trade Marks for registration of the said trade mark 'Tractor' vide application No.634781 on 22.07.1994 and after following procedure as prescribed under law, the said trade mark 'Tractor' is registered with the Registrar and since then the plaintiff is registered proprietor of the said trade mark and is exclusively entitled to utilize the said trade mark and also to restrain the others from using the said trade mark in respect of lime. The plaintiff has further averred that as per provisions of

The Copyright Act, 1957, the plaintiff has exclusive copyright in the said artistic work in any material form exclusively and plaintiff is entitled to restrain others from imitating or copying or publishing the said trade mark in any form or manner.

04. It is pertinent to note that in para - 5 of the plaint, the plaintiff has described the trade-dresses of artistic work, trade-mark label printed on the polythene bags of lime since the year 1989, like that the word 'super white' is printed at the top, the device of tractor in square below the words 'super white' are printed, the word Tractor brand below the device of tractor, and there is also other descriptive matter printed on the packing material of the plaintiff's product, lime.
05. It is to be noted that in the past, M/s.Tirupati Lime of Upleta had infringed the registered mark 'Tractor' of the plaintiff, hence, plaintiff filed REG. Civil Suit No.2 of 1999 in the Court of Extra Assistant Judge, Gondal praying for permanent and interim injunction against the said Tirupati Lime of Upleta wherein exparte injunction has been granted by the learned Extra Assistant Court, Gondal in favour of plaintiff on 22.09.1999. Being aggrieved by the said exparte interim injunction, the defendant of the said suit filed Appeal from Order No.512 of 1999 before the Hon'ble High Court of Gujarat with Civil Application No.12022 of 1999, wherein the Hon'ble High Court of Gujarat (Coram : Hon'ble Mr.Justice A.R.Dave) has upheld the exparte interim injunction granted in favour of plaintiff and issued certain directions vide order dated 26.10.1999.
06. Further in the year 2022, the plaintiff contraint to file a suit being

Regular Civil Suit No.1 of 2022 in the Hon'ble District Court at Dhoraji at Dhoraji against Saurashtra Trading Co., Dhoraji-360 410 and Super Lime Corporation, Ahmedabad-382 427 and got interim Injunction Order on 30.04.2022.

07. The plaintiff has averred that the defendant is the proprietor of business being run in the name of defendant which has filed an application for registration of label mark of Builder Brand containing and consisting of identical art work, lay out, get up and placement of features including the trade dresses as those of the prior used and registered trade mark and lable of the plaintiff and that too in respect of the identical goods i.e. lime including in class - 19 of the Trade Mark Act. The plaintiff has averred that it came to know about this from the web site on Internet. The plaintiff has averred that the defendant is doing the business of lime from Bhavnagar under the deceptively similar trade mark 'Builder' and artistic work and trade mark lable of 'Builder' and has applied to the Registrar of Trade Marks for registration of trade mark 'Builder' under Class - 19 of the Trade Marks Act.
08. That the plaintiff has averred in order to avoid any litigation with the defendant, the plaintiff herein through his advocate issued a Cease and Desist Notice dated 06.09.2011 by registered post A.D. and thereby called upon the defendant to desist from committing illegal acts of violation of vested property right of the plaintiff. The defendant have received the said cease and desist notice of the plaintiffs, but the defendant has not replied the same. However, the defendant has once against started packing and selling the lime packed in polythene bags bearing the mark 'Builder' brand

printed with identical and deceptively similar artistic work having identical lay-out, get-up and placement of various features and also the identical colour scheme of yellow background with black letters as that of the trade mark label and artistic work of 'TRACTOR' brand of the plaintiff with the sole intention of defraud the purchasers in selling their goods.

09. The plaintiff further submitted that the defendant is having address, residing, carrying on business and working for gain with impugned trade mark/art work/label/packaging/trade dress of BUILDER with yellow and black colour combination. That the defendant is manufacturing, selling, marketing and publishing impugned goods with impugned mark/art work/label/packaging/trade dress BUILDER with yellow and black colour combination. Under the provisions of section 134 of The Trade Marks Act, 1999 and under the provisions of Section 62 of The Copyright Act, 1957, this Hon'ble Court is empowered to entertain the present plaint/suit further, the Hon'ble Court is empowered to grant relief, as prayed herein.
10. That the plaintiff has filed this suit against the defendant praying for perpetual injunction to restrain the defendant from infringement of plaintiff's trade mark 'Tractor' and to restrain the defendant, its agents, servants, dealers, distributors and all other persons connected with them from using the trade mark label and artistic work of Builder Brand Lime as per annexure 'B' to the plaint, having identical colour scheme of yellow background with black letters and deceptively similar art work, design, get-up, lay out, placement and arrangement of various features as that of the

trade mark label and artistic work on poly pack pouch of 'Tractor' brand of the plaintiff as per annexure-A to the plaint Copyright and passing of and also for the rendition of accounts as narrated in the plaint.

11. Along with the plaint, the plaintiff filed this application for interim injunction to restrain the defendant, his agents, proprietors, partners, servants, agents, dealers, distributors, printers and publishers by order of permanent injunction from printing, publishing and using the trade label and artistic work 'Horse' Brand lime as per Annexure-B and also background with black letters and deceptively similar art-work, design, got-up, lay-out, placement and arrangement of various features as that of the trade mark label and artistic work on poly-pack pouch of 'Tractor' brand of the plaintiff or any other identical and/or deceptively similar trade mark, label and artistic work in respect of their lime and to restrain the defendant from passing off or enabling others to pass off their lime as and for the true goods of the plaintiff and also from violating the vested property rights including the trade mark rights and copy rights of the plaintiff in any manner and also to restrain the defendants from disposing of or dealing with their assets in a manner which would adversely affect the plaintiff to recover damages accounts of profits etc. that may be awarded to plaintiff.
12. In support of its case, the plaintiff has relied on the documents described at mark 4/1 to 4/123.
13. I have gone through the plaint, application Ex.5 and the documentary evidence referred to hereinabove.

14. I have heard the arguments of learned advocate Mr.R.H.Bhansali for the plaintiff. Mr.Sarfaraj Abdul Rehman Nathani, Partner of plaintiff has filed an affidavit, I have also gone through the same.
15. The learned advocate Mr.R.H.Bhansali for the plaintiff has relied on the provisions of Section 135(1) and 135(2) of The Trade Marks Act, 1999 and also cited judgment of the Hon'ble Supreme Court of India in the case of T.V.Venugopal vs. Ushodaya Enterprises Ltd. reported in (2011)4 - SCC- 85 wherein, the Hon'ble Supreme Court has held that non-grant of interim injunction would amount to permitting the defendant to carry on their business under the impugned packaging.
16. The learned advocate Mr.R.H.Bhansali for the plaintiff has relied on the following judgments ;
 - (1) National Garments, Kaloor, Cochin, vs. National Apparels, Ernakulam, Cochin, AIR 1990 Kerala 119,
 - (2) Ruston and Hornby Ltd., vs. Zamindara Engineering Co., AIR 1970 Supreme Court 1649 (v 57 C 350),
 - (3) Laxmikant V.Patel vs. Chetanbhai Shah and another, (2002) 3 Supreme Court Cases 65,
 - (4) Century Traders, vs. Roshan Lal Duggar & Co. and others, AIR 1978 Delhi 250,
 - (5) Sun Pharmaceutical Industries Limited In the matter between Sun Pharmaceutical Industries Limited, vs. Glide Chem Pvt. & Anr., NMCD (L) No.226 of 2018 In Comm. Suit (L) No.143 of 2018, decided on February 05, 2018, In the High Court of Judicature at Bombay, Ordinary Original Civil Jurisdiction, In it's Commercial Division,
 - (6) Parle Agro Private Limited In the matter between : Parle Agro Private Limited vs. Gulam Moinuddin Khan and another, Notice of Motion (L) No.596 of 2018 In Commercial IP (L) No.336 of 2018,

decided on 28th March, 2018, In the High Court of Judicature at Bombay, Ordinary Original Civil Jurisdiction, In it's Commercial Division,

(7) Franco Indian Pharmaceuticals Pvt. Ltd. vs. Micro Labs Limited & Anr. With Leave petition (L) No.209 of 2021 In Commercial IP Suit (L) No.12337 of 2021, decided on 14th June, 2021, In the High Court of Judicature at Bombay, Ordinary Original Civil Jurisdiction, In it's Commercial Division.

I have considered the entire above judgments submitted by the learned advocate for the plaintiff.

17. From the averments of plaint Ex.1, application Ex.5 and from the document mark 4/4, which is certificate of registration of trade mark label 'Tractor' brand under No.634781 in Class-19 issued by the Registrar of Trade Marks, it appears that the plaintiff trade mark Tractor in respect of lime is registered in Class-19 under No.634781 on 22.07.1994 for sale in the State, plaintiff has therefore, prima facie case. Ld.Advocate Mr.Bhansali also submitted that the plaintiff is registered proprietor of above registered trade mark and as per provisions of the Trade marks Act and Copyright Act, plaintiff has right to protect his interest in intellectual properties, hence, plaintiff is entitled to get ad-interim injunction as prayed for in 69 of the application Ex.5.
18. On considering the entire above material at this stage, I am of the opinion that the plaintiff has prima facie case. As stated above, the plaintiff is the registered proprietor of trade mark 'Tractor' brand in respect of lime which falls in Class-19 of The Trade marks Act, hence, the plaintiff has legal right to prevent infringement of its trade mark and plaintiff is at this stage to ad-interim injunction against the defendant.

19. Therefore, in view of above discussion, I find this to be a fit case to exercise my discretion as provided in Section 135(1) and (2) of The Trade marks Act and also under Order 39, Rule 3 of The Civil Procedure Code, because if the defendant is not restrained by exparte and interim injunction, the defendant would continue its illegal business by using the identical label mark of 'BUILDER' brand unauthorizedly and would cause damage to goodwill and reputation of the plaintiff and innocent customers would be deceived and confused and hence, I pass the following order :

:: ORDER ::

The present application filed by the plaintiff is hereby allowed and interim injunction is hereby granted in favour of the plaintiff firm and against the defendant firm in terms of para-69(A) of the present application till the final disposal of the suit.

The cost shall be the cost in cause.

Pronounced in Open Court today, i.e. on 9th Day of **September, 2022.**

Bhavnagar.

Date:09.09.2022

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[Bhadresh Nanalal Parmar]

6th Addl.District Judge,

Bhavnagar.

Code No. GJ00772.