

Order No.3
23.04.2018

T o d a y is fixed for hearing the adinterim prayer of injunction.

Ld. Advocate appearing for the Plaintiff moves the applicartion for injunction along with the prayer for issuance of adinterim relief in the context of the prayer of temporary injunction.

In gist, the sum and substance of the application is that the Plaintiff is the partnership firm carrying business of manufacturing and marketing and exporting of all kinds of *Agarbatties (Incense sticks), scents,perfumes,attars, dhoop (Incense),Heena, Hair Colour etc.* having Trade mark as ZED BLACK and Ld. Advocate further submits by long standing business and having experience the Trade Mark ZED BLACK becomes house mark of the Plaintiff and this Plaintiff day by day expanding its business depending upon its goodwill, while the Defendant No.1 and 2 are engaged in the business of manufacturing and marketting incense sticks with an art work/label of ZED BLACK + at Siliguri area and other parts of this State.

It is also stated by the Ld. Advocate for the Plaintiff that Defendants are manufacturing and selling its impugned good i.e incense stick under impugned identical and deceptively under similar Trade Mark ZED BLACK or ZED BLACK + which is similar and identical to the Plaintiff's product and its packaging. Plaintiff further submits that Plaintiff is the Proprietor of ZED BLACK and Plaintiff is the exclusively ture and lawful Proprietor of the said Trade Mark. It is also highlighted during submission that Plaintiff Partnership Firm has authorised Brand Ambassadors and one of them is Mr. Mahendra Singh Dhoni, the famous Cricketer of India, whose photograph appears in the label of ZED BLACK 3 In 1 packaging and this Brand Ambassador is attached with this partnership since 2017. It is also stated that lower quality of products has been labelled and packed by the Defendant Company and selling in the market utilising Plaintiff's goodwill which has turn over in the year 2016-2017 about 231 crore. It is argued that if the Defendants are allowed to manufacture or sell in the same and identical packaging with such sub-standard product ultimately there would be injury upon the goodwill of the product of the Plaintiff Partnership firm. So injunction prayer is made for restraining the Defendants and its sister concerns, associates, servants,agents,retilers,stockist,dealers,distributor,printers and publishers from selling the impugned goods i.e incense stick under the Trade Mark of ZED BLACK or ZED BLACK + which appears to be identical or deceptively similar with the Plaintiff's Trade Mark ZED BLACK 3 In 1.

In order to justify the submission, Ld. Advocate appearing for the Plaintiffs submits that Court has ample power to pass an order including the injunction u/s 135 of Trade Marks Act and such oder of injunction under sub-section (2) of Section 135 (1)of Trade Mark Act may include an exparte injunction.

In this context Ld. Advocate appearing for the Plaintiff cited Case Law *Report in AIR-1986-Delhi-343 wherein it has been observed that "an injunction restraining user of mark by Defendant -Court has to protect the registered trade mark and in that prespect principles of governing injunctions in other types of cases do not apply."*

Another decision has been cited in AIR-1990-Kerala-Page 119 *wherein it has been oberved that "the prima -facie case that is required to be shown must be something more than a case that will avoid the action being struck out as frivolous or vexatious. Generally stated "even if the chance of success at the trial are only 20 per cent" the interim relief sought for is required to ge granted."*

There are other decisions. Ld. Advocate for the Plaintiff also cited other 2 cases to take ratios which are reported in (2002) 3 Supreme Court Case 65 Laxmikant V. Patel-versus- Chetanbhai Shah and another and (2004) 3 Supreme Court Cases 90 Midas Hygiene Industries Private Ltd.and another -versus-Sudhir Bhatia and Others.

Having heard the Ld. Advocate for the Plaintiffs and on consideration of the issues placed before this Court and on perusal of the documents this Court finds that u/s 63 and 65 of Copy Right Act, a case has been registered before Siliguri P.S being Case No.154/18 dated 07.03.18 wherein 1 Kg. of printed pouch packet styled as 2B premium Agarbati has been seized from the possession of the Defendant along with other items which are related and similar to the product of the Plaintiff. This Court has carefully scrutinised the Plaintiffs packaging as well as the defendant packaging of incense sticks which is artistically appears to be similar having sort of dis-similarity.

In view of the circumstances this Court passes an order that adinterim injunction be issued without giving Notice to the Defendant. At this stage the Defendants and its sister concerns, associates, stockist,dealer,distributor,printer and publisher are restrained from selling or marketing incense stick covering packaging of ZED BLACK or ZED BLACK + and or using art work/label containing trade mark ZED BLACK or ZED BLACK + which appears to be substantial and material reproduction of Plaintiff's art work/label in the packaging of ZED BLACK 3 In 1 till 23rd May, 2018.

Plaintiff shall comply the provision of Rule 3(a) and 3(b) of Order 39 C.P.C.

Issue Notice upon the Defendant asking them *to show cause asto why the interim injunction passed by this Court shall not be made absolute till disposal of the temporary injunction*, within 15 days from the date of receipt of the Notice complied under Order 39 Rule 3(a) and 3(b) of C.P.C.

This interim order shall remain operative till 23.05.2018.

Dictated and corrected

by me,

(P.K Bhattacharjee)
District Judge
D a r j e e l i n g

District Judge
D a r j e e l i n g