

**Present: Sri Utpal Misra (JO Code:WB00659)**  
**Judge, Commercial Court at Alipore**  
**Title Suit 28/2023**  
**CNR No. WBSP18-000135-2023**

**Order No.** 04

**Date:** 21.09.2023

**In the matter of:**

Suit for infringement of Trademarks under section 134 of the Trade Mark Act, 1999, infringement of Copyright under Section 62 of the Copyright Act, 1957, passing off and perpetual injunction valued at Rs. 10,00,00,000/-.

**AND**

**In the matter of:**

SAJ Food Products Pvt. Ltd.

**Vs.**

Anmol Industries Limited.

**Appearance for the Petitioner/ Plaintiff:**

Mr. Debnath Ghosh

Mr. B. Mukherjee

Mr. Satyaki Mukherjee

Mr. Abhijit Sankar

Mr. Abhik Chitta Kundu.

...Ld. Advocates

## **Order**

The instant record is put up today on the prayer of the Plaintiff intending to move the applications being I.A. No. 01 of 2023 and I.A. No. 03 of 2023.

Plaintiff files hazira.

### **I.A. No. 03 of 2023**

Plaintiff/Petitioner moves the present application seeking for exemption from pre-institution mediation and settlement by grating of leave under Section 12A of the Commercial Court Act, as amended from time to time, on the ground that some urgent relief is sought for in order to protect the interest of the Petitioner.

I have heard the submission as made by the Ld. Counsel in respect of this present application being no. I.A. No. 03 of 2023 at great length and perused and considered.

On *prima facie* contemplation, it appears that the suit contemplates an urgent relief by filing necessary application under Order XXXIX Rule 1 and 2 read with Section 151 of CPC. Therefore, the leave as sought for by the Plaintiffs in this instant interlocutory application is granted.

Accordingly, the instant interlocutory application being no. 03 of 2023 is hereby **disposed of**.

**I.A. No. 01 of 2023**

1. This is an action for infringement of trademark of the Plaintiff/Petitioner by the Defendant/Respondent.

2. The Plaintiff is a well known and reputed manufacturer of the biscuits snacks and bakery products, marketing and selling such products, *inter alia*, under the well known brand “BISK FARM”. Throughout the years the Plaintiff/Petitioner has launched various biscuits and traded in a marketed then under a specific mark, each separate and distinct from one another and all products of the Plaintiff/Petitioner manufactured, traded and advertised under the various marks have been well received by the public at large.

3. *Inter alia*, the Plaintiff/Petitioner has adopted the mark ‘PETIT BEURRE’ in 2010 in class 30, in respect of its butter biscuits and has been regularly, extensively and continuously using the same since 1<sup>st</sup> July, 2010 and Plaintiff has also obtained statutory protection of its mark ‘CLASSIC PETIT BEURRE’ by obtaining registration as of 6<sup>th</sup> August, 2010. Then Plaintiff has modified and/or embellished its wrappers in relation to its butter biscuits sold under the mark ‘PETIT BEURRE’ or ‘PETIT BEURRE ZERO ADDED SUGAR’, where ‘PETIT BRURRE’ forms the dominant part thereof. The Plaintiff has applied for and obtained registration of the same in Class 30, with user from 1<sup>st</sup> October, 2019, in relation to “flours and preparations made from cereals, biscuits, cookies, bread, rusks, cake, pastry, confectionery, backing powder, salt, mustard and savories, spices, coffee and tea”. More so, the Plaintiff has also applied for registration of the word-mark ‘PETIT BEURRE’ in Class 30, claiming user from 1<sup>st</sup> July, 2010 and such application is pending adjudication. Plaintiff had also filed an application for registration of another label ‘SUGAR FREE PETIT BEURRE’ where the term ‘PETIT BEURRE’

forms the dominant part of the mark, which is also a pending adjudication due to certain objection of Britania Industries in lieu of using the pair of words 'SUGAR FREE'.

4. It is claimed by the Petitioner that Petitioner is selling its biscuits under the mark 'PETIT BEURRE' in a distinctive get up/packaging/trade dress which is predominantly yellow and brown in colour and the mark 'PETIT BEURRE' forms an essential and/or predominant feature therein.



5. Therefore, the residue is that Petitioner has statutory protection upon the marks 'PETIT BEURRE', 'PETIT BEURRE ZERO ADDED SUGAR', and 'CLASSIC PETIT BEURRE' and the mark 'SUGAR FREE PETIT BEURRE' and the word-mark 'PETIT BEURRE' have not yet been obtained any registration in favour of the Petitioner.

6. Petitioner has given the figures of all India annual sale of products containing the mark 'PETIT BEURRE' under the 'BISK FARM' brand name and also given the figure of expenses incurred by the its company in respect of promotion and/or advertisement of the Petitioner's butter biscuits under the mark 'PETIT BEURRE' and/or various other products.

7. The alleged case of the Petitioner/Plaintiff is that in August, 2023, the Petitioner was shocked to learn for the first time that the Respondent/Defendant is wrongfully and illegally selling, marketing, trading and advertising biscuits identical to that of the Petitioner, under the identical mark 'PETIT BEURRE', in an identical and/or deceptively similar trade dress/packaging/get up as that of the Petitioner, having an identical or deceptively similar colour combination as that of the Petitioner's subject trade

dress/packaging/get up. The Respondent's packaging also contains identical depiction of pictures as that of the Petitioner.

8. Ld. Counsel appearing for the Petitioner submits that the act of the Respondent in using the 'PETIT BEURRE' mark along with an identical trade dress of the Petitioner in respect of identical goods constitutes an act of infringement of the Petitioner's copyright and trademark in the same and also tantamount to an act of passing off. Such acts of infringement and passing off cannot be permitted to subsist and/or continue. It is further stated that the Petitioner is a prior user of the mark 'PETIT BEURRE' having been regularly, continuously and extensively using the said mark since 1<sup>st</sup> July, 2010. The Respondent is using the mark 'PETIT BEURRE' and the accompanying packaging subsequent to the Petitioner and so far as the Petitioner has been able to ascertain, the Respondent has not used the mark 'PETIT BEURRE' or the accompanying packaging/trade dress/get up until August, 2023. It is only in August, 2023 that the Petitioner came across the Respondent's products sold under the mark 'PETIT BEURRE' in the deceptively similar/identical trade dress/packaging/get up. The Respondent is thus a subsequent user of the impugned marks including the 'PETIT BEURRE' mark.

9. The further contention of the Ld. Counsel is that the Respondent is a subsequent user and has not used the mark 'PETIT BEURRE' or the impugned packaging prior to August, 2023. The Petitioner is the prior adopter and user of the mark 'PETIT BEURRE' and the distinctive and unique trade dress in an eye-catching colour scheme. Thus, the Petitioner is entitled to restrain the Respondent from using and applying the mark 'PETIT BEURRE' in relation to biscuits and other products.

10. In view of the Ld. Counsel the key function of a trade mark is to indicate the source or origin of goods or services. The Respondent has committed the acts of infringement by purporting to use and apply the Petitioner's well known and established trade mark 'PETIT BEURRE' as well as the trade dress.

11. The get up of the Respondent's product is shown hereinbelow:



12. The packet of the product of the Petitioner and the infringing wrappers of the Respondent are produced before this Court. Fact remains that the Plaintiff/Petitioner has registration upon the label mark of the product and does not have the registration of the word mark Petit Beurre.

13. Mr. Ghosh, Ld. Counsel appearing for Petitioner/Plaintiff cites a decision of the Hon'ble Supreme Court of India in the case of the *Ramdev Food Products (P) Ltd. v. Arvindbhai Rambhai Patel and Ors*<sup>1</sup>. wherein the Hon'ble Supreme Court of India held that “..A person may be held to be permitted to carry on business in spices as contradistinguished from the permission to carry on manufacturing goods which are similar to that of the appellant, but in terms of statutory provisions, the respondents were not legally permitted to sell their products in packages or labels which would be deceptively similar to that of the registered owner of a trade mark. The right to manufacturer masasla and to sell the same with the registered logo, it will bear repetition to state, was assigned as far back in 1991. If the contention of the Senior Counsel is accepted, the said purpose would be lost. In a case of his nature, therefore, ordinarily an injunction would issue. 72. By reason of interpretation of MoU, trade mark be infringed and further when the right of user has been relinquished, the same could not have been claimed by the respondents”. It is further held that “The right conferred in terms of Section 28 of the 1958 Act although is required to be read with Sections 15 and 17 thereof but it is difficult to accept that each part of the logo was required to be separately registered. Section 28 of the 1958 Act confers an exclusive right of using trade mark to a person who has got the trade mark registered in his name. Such right is, thus, absolute. Sub-section (3) of Section 28 raises a legal fiction for the purposes specified therein but we are not concerned therewith in the instant case. Sub-section (2) of Section 29 inter alia provides for defences”.

Ld. Counsel Mr. Ghosh, further states that although the word “PETIT BEURRE” has been coined from France, but there is no cumbersome before any company to use the word in their products which sells within a demarked territorial jurisdiction. As regards he cites a decision of the Hon'ble High Court

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<sup>1</sup> Reported in (2006) 8 SCC 726.

at Calcutta in the case of *Patton International Ltd. v. Patton Electronics (I) Pvt. Ltd.*<sup>2</sup>.

14. However, Mr. Ghosh prays for granting only prayer (b) at this stage.

15. On comparison of two packets of two different companies, it, *ex facie*, appears that mark engrossed on the Respondent's infringing product is structurally, phonetically and/or deceptively similar with and/or identical to the 'PETIT BEURRE' mark of the Petitioner, and is used in relation to identical goods, i.e. biscuits, for which the trade mark of the Petitioner is registered. The affixation of Respondent's infringing mark 'PETIT BEURRE' mark on a get up/packaging/trade dress which is deceptively similar and a slavish and colourable imitation of the Petitioner's get up/packaging/trade dress bearing the mark 'PETIT BEURRE', and it is certain before any layman to be confused.

16. On the aforesaid contention, in my view, a protective order is required to be passed on *ex parte*, otherwise the infringing packets may be removed out of reach of the Court and as a consequence, the Plaintiff will be deprived of from getting justice in furtherance. In view thereof, there shall be an interim order in terms of prayers of the instant application.

17. Hence, the relief is granted by way of *ad interim* form in respect of prayers (b) as expounded in the injunction application being I.A. No. 01 of 2023 herein. Other prayers will be considered after hearing of other sides.

18. Issue notice calling upon the Defendant/Respondent to show cause as to why the prayer of the Plaintiff/Petitioner shall not be allowed.

19. The Petitioner is directed to serve a copy of this application along with a copy of this order upon the Respondent by any accepted mode of service and shall file affidavit of service within 48 hours (excluding holiday).

20. The interim order shall continue till the next returnable date or until further orders, whichever is earlier. The Respondent shall be at liberty to apply

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<sup>2</sup>Reported in 2008 SCC Online Cal 968.

for vacation, variation and/or modification of the interim order upon notice to the Petitioner.

To date i.e 11.10.2023 at 11:30 a.m. for S/R and appearance of all parties.

Both the parties are to act forthwith on the basis of the downloaded copy of this Order.

Dictated and corrected by me

Sd/-

Judge, Commercial Court at Alipore,  
For South 24 Parganas, Purba Midnapore,  
Paschim Midnapore & Jhargram

Sd/-

Judge, Commercial Court at Alipore,  
For South 24 Parganas, Purba Midnapore,  
Paschim Midnapore & Jhargram