

Present: Sri Dev Kumar Sukul (JO Code- WB00766)

Judge, Commercial Court at Alipore.

Title Suit 18/2022

(CNR no. WBSP18-000156-2022)

Order no. 01

28.09.2022

In the matter of :

*Suit for infringement of
trademark under the Trade
Marks Act, 1999, and for
infringement of copyright
under the Copyright Act,
1957, valued at
Rs. 5,00,00,000/-*

And

In the matter of :

Tata Consumer Products Ltd.

Vs.

In the matter of :

*Radhey Salt Trading
Company & 02 ors.*

Appearance for the Plaintiffs/Petitioners:

Mr. Soumya Roy Chowdhury .. Ld. Sr. Counsel.

Ms. Chhaya Das ... Ld. Counsel.

Mr. Ramanuj Ray Chaudhuri ... Ld. Counsel.

Mr. Satyaki Mitra ... Ld. Counsel.

ORDERED

*Plaintiff files a suit for infringement of trademark under the
Trade Marks Act, 1999, and for infringement of copyright under the
Copyright Act, 1957, valued at Rs.5,00,00,000/- alongwith
Vokalatnama and Court Fee of Rs.50,000/- which is paid correct.*

Requisites put in alongwith Process Fees.

Let the application be tentatively registered as Title Suit.

Note in the register.

Issue summons relating to the instant suit alongwith the plaint, all annexures and all relevant documents at once within 24 hours preferably through Email or Whatsapp or any other mode as prescribed by the Hon'ble Supreme Court of India.

Affidavit of service within 48 hours.

Postal receipts at once.

*Plaintiffs also file an application for granting of leave under Section 12A of the Commercial Courts Act, 2015, on the prayers stated therein. Let the same be registered as **I.A. no. 01/2022.***

I.A. no. 01/2022

- 1. The Ld. Counsel appearing on behalf of the Plaintiff/Petitioner, moves the present application for granting of leave under Section 12A of the Commercial Courts 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 Plaintiff/Petitioner.*
- 2. Heard. Considered.*
- 3. It is pertinent to mention here that the Hon'ble Apex Court in **SLP(C) no. 14697 of 2021** has been pleased to hold that pre-institution mediation under Section 12A of the Commercial Courts Act, 2015 is mandatory and suits filed violating the same are liable to be rejected, except in cases where urgent relief is sought for.*
- 4. However, it appears that the suit contemplates an urgent relief by filing necessary application under Order XXXIX Rules 1 & 2 read with Section 151 CPC and also since the allegation relates to an infringement and/or passing off trade mark and copyright, therefore, the leave as sought for is granted.*

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5. Accordingly, the instant I.A. is disposed of.

I.A. No. 02/2022

1. At this stage, the Ld. Counsel of the Plaintiff/Petitioner moves the application under Order XXXIX Rules 1 & 2 read with Section 151 CPC, being registered as I.A. no. 02/2022, in terms of prayers of the said application.
2. Office noted that there is no caveat against any party in the instant case.
3. I have heard the Ld. Counsel for the Plaintiff/Petitioner as well as perused all relevant documents as annexed with the plaint as well as with the instant application.
4. Perused and considered the present application.
5. From the submission of the Ld. Counsel for the Petitioner, it appears that:
 - i. The Plaintiff is an associate company of the Tata Group and focuses on fast moving consumer goods and with a long history and experience in the beverages market and a heritage of innovation and development, has evolved into a marketing and brand focused global organization.
 - ii. The Plaintiff's predecessor was initially incorporated on 18.10.1962 as Tata Finlay Pvt. Ltd. and thereafter, the said name was changed to Tata Tea Ltd. on 02.07.2010 and once again, the said name was further changed to Tata Global Beverages Ltd. and finally the said name was once again changed to the current name of the Plaintiff.

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iii. *The Plaintiff has a strong portfolio of brands including Tata Salt, Tata Water Plus, Tata Gluco Plus, Tata Gluco+, Tata Tea (in various flavours) etc. and their business has diversified and expanded significantly over the last decade, with the Company now having brand presence in 40 countries worldwide and the Plaintiff also has a website at www.tataconsumer.com.*

iv. *On account of its highly distinctive nature, the name and trademark "Tata" has acquired an excellent reputation down the decades and the said brand is currently associated with high quality of products.*

v. *The Plaintiff is one of the co-owners of the iconic "Tata" brand and its associated trademarks and trade dresses which have attained pre-eminence via prior adoption and long, continuous and extensive usage as well as widespread advertising and the Plaintiff have exclusively used the trademark "Tata" for decades and accordingly, holds exclusive rights in the said trademarks and is entitled to take legal action for any infringement.*

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vi. *By virtue of an order passed by the NCLT, Kolkata Bench on 08.01.2020, the Plaintiff merged with another subsidiary of the Tata Group, namely Tata Chemicals Ltd. i.e. the Respondent no. 3 herein and such merger also envisaged a perpetual transfer of all intellectual property rights including trademarks in favour of the Plaintiff and accordingly, the Plaintiff became the owner of the copyright registered and subsisting in the trade dress and overall artistic arrangement of the package/receptacle corresponding to the well known "Tata Salt" Product. The*

said trade dress uses a visually striking red-white-black colour scheme which is immediately identifiable by an average Indian consumer.

vii. It further appears from Paragraph-17 of the plaint that the Plaintiff has incurred huge amount of expenses to promote its "Tata Salt" trademark and also have huge sales figures for such products atleast for the last five years.

viii. On or about 14.09.2022, the Petitioner came to know that certain entities/persons are selling inferior quality salts under a deceptively similar Trademark "Taza Salt" in deceptively similar packaging and/or get-up bearing a deceptively similar artistic work and also that a consignment carrying approximately upto 30 MT of the said inferior product had secretly arrived at Chitpur Railway Yard of Kolkata by Railway.

ix. Immediately upon receipt of the above information, the Petitioner engaged an independent investigation agency who surveyed the said area and thereafter submitted a report on 15.09.2022 observing that the Respondents no. 1 & 2 have brought the offending consignment under the name and style "Taza Salt" which are deceptively similar and/or identical to the widely recognized trade dress/artistic get-up of the "Tata Salt" Package of the Petitioner.

x. Accordingly, the Plaintiff/Petitioner has filed the instant injunction application praying for an order of ad-interim injunction restraining the Respondents/Defendants and/or its men, agents, assigns from infringing the copyright subsisting in the artistic work of the trade dress/get-up of


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the "Tata Salt" product of the Plaintiff/Petitioner alongwith other reliefs.

xi. In this regard, the Plaintiff/Petitioner has further filed another application under Order XL Rule 1 read with Section 151 CPC being **I.A. no. 03/2022** for appointment of a Local Commissioner to make an inventory and to take possession of all the goods and packages of the Defendants/Respondents bearing the impugned "Taza Salt" trade dress as shown in Annexure-"B" to the instant application and/or any other artistic work of the Defendants/Respondents which are identical and/or deceptively similar to the "Tata Salt" trademark of the Petitioner.

xii. In course of hearing, Ld. Counsel for the Petitioner referred the decision of the Hon'ble Supreme Court of India in **Midas Hygiene Industries (P) Ltd. & anr. vs. Sudhir Bhatia & ors.** as reported in **(2004) 3 SCC 90**.

6. I have heard the Ld. Counsel on behalf of the Petitioner and also perused and considered all the annexures attached with the present application.

7. At this stage, it appears that the Petitioner is the owner of the registered trademarks with copyrights in respect of the "Tata Salt" product and they have been using the said mark for decades.

8. It further appears to me on the very first look that the impugned packaging and/or trade dress of the Respondents' product "Taza Salt" which is under challenge is identical and

deceptively similar to the registered trademark in respect of packaging and colour combination of the Petitioner and it has been apprehended by the Petitioner that the alleged unauthorized use of such mark by the Respondents may cause confusion in the minds of the general public and will ultimately hamper the goodwill and reputation of the Petitioner.

9. *On perusal of the decision as cited by the Ld. Counsel for the Petitioner in **Midas Hygiene case (supra)**, I find that the Hon'ble Apex Court has been pleased to observe therein that in cases of infringement either of trade mark or of copyright, normally an injunction must follow and mere delay in bringing action is not sufficient to defeat grant of injunction in such cases. The Hon'ble Court further held that the grant of injunction becomes necessary if it prima-facie appears that the adoption of a mark was itself dishonest.*

10. *At this stage, the record shows that the Petitioner is the prior users and adopters of the unique and disntinctive packaging of the "Tata Salt" product and use of such mark by the Respondents without prior permission or license of the Petitioner, shall amount to infringement and/or passing off and accordingly, the Petitioner is entitled to restrain the Respondent from using the registered marks of the Petitioner.*

11. *At this stage, the Petitioner is able to establish a triable issue which requires trial by this Court and the balance of convenience and inconvenience is also in favour of the Petitioner as the sales figures of the Petitioner Company shows the Petitioners as leaders in the business world. There is also an urgency in this matter, as the purported unauthorized use of the identical and deceptively similar mark in respect of packaging*


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and colour combination by the Respondents would cause confusion in the minds of the general public which would damage the goodwill and reputation of the business of the Petitioner.

12. *The use of a deceptively similar mark by the Respondents in respect of identical products provided by the Petitioner is an act of infringement under the Trademarks Act, 1999 and also amounts to passing off as it appears from the record. So, being the prior users and also the registered trademark holders, the Petitioners have exclusive rights to use the said trademark and any unauthorized invasion of such rights needs to be prevented to avoid any confusion and infringement of trademark is also a very serious issue.*

13. ***Accordingly, ad-interim order of injunction as prayed for by the Plaintiff/Petitioner in terms of prayers-(a) & (b) read with prayer-(i) of the present application is allowed till 18.11.2022, due to intervention of the Puja Vacation.***

14. ***However, regarding the prayer for appointment of Local Commissioner in terms of I.A. no. 03/2022, I am not inclined to pass any such order without giving an opportunity of hearing to the other side.***

15. *Both sides have the liberty to make necessary application for modification of this order in case of emergency after service of notice upon the other side.*

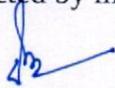
16. *Issue notice accordingly to show cause as to why the instant application shall not be allowed alongwith plaint, injunction*

application as well as the application under Order XL Rule 1 read with Section 151 CPC being I.A. no. 03/2022 and all annexures within 24 hours and the Plaintiff/Petitioner is also directed to file the affidavit of service within 48 hours.

*17. Fix **18.11.2022 at 1 p.m.** for S/R, appearance, filing affidavit-in-opposition, if any, and also for hearing of I.A. nos. 02/2022 & 03/2022.*

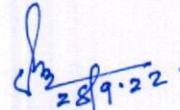
18. Both sides shall act on the basis of downloaded copy of this order from the website / Ecourts App.

Dictated and corrected by me,



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

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