

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

NOTICE OF MOTION NO. OF 2008
IN
SUIT (LODG.) NO.228 OF 2008

Dabur India Ltd. ..Plaintiff.
Vs.
Daxal Cosmetics Private Limited and another ..Defendants.
and
Commissioner of Customs and another ..Respondents.

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Dr. Virendra Tulzapurkar, Senior Advocate with Mr. Prakash Shah
and Mr. Sumit Raghani i/b PDS Legal for the Plaintiff.
None for the Defendants.

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CORAM: DR. D.Y. CHANDRACHUD, J.

22nd January, 2008.

P.C. :

The Plaintiff is the registered proprietor of the marks 'MISWAK' and 'MESWAK' in class 3 inter alia in relation to toothpaste, tooth powder and other oral preparations of the like nature. The Defendants are using the same mark viz. MISWAK with the addition of the words 'AL HIJAZ'. A prima facie case of infringement has been made out. In paragraph 34 of the Plaint it has been averred that an application has been made without furnishing a notice to the Defendants since the goods are meant for

export and the purpose of the application would stand defeated if exports are completed in the meantime. The Commissioner of Customs at JNPT and Mumbai have been impleaded as Respondents and consequential directions have also been sought against them. There shall be an ad interim order in terms of prayer clauses (b) and (d).

The Notice of Motion is made returnable in due course.

Liberty to the Defendants to apply for modification of the order with due notice to the Plaintiff.