

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION (L) NO. 24015 of 2023
IN
COMMERCIAL (IP) SUIT No. 23473 OF 2023**

Aabid Paper Cones	.. Applicant
Versus	
Mohd. Azhar	.. Respondent

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Mr.S.S. Kanetkar i/b V.H. Narvekar for the applicant.
Mr.Ankit Jain for the respondent.

**CORAM: BHARATI DANGRE, J.
DATED : 6th FEBRUARY, 2024**

P.C:-

1 The plaintiff, the sole proprietary concern is engaged in the business of manufacturing, trading and providing services, inter alia, in respect of speakers and parts thereof, such as audio diaphragms, audio paper cones, audio lead wires, audio spiders and likewise goods and products.

 It is also engaged in the advertisement, marketing, import, export, promotion of sales, wholesaling in respect of the said goods. It claims that it has earned the reputation and goodwill, owing to the hard and utter dedication in the business.

The plaintiff claim to have adopted the mark 'ATONE' for the aforesaid products manufactured by him and has secured registration under the Trade Marks Act, 1995 on 14/10/2020 under Class 35 and used the same in advertising, marketing, import, export, sales promotion, etc.

Apart from this, on 11/7/2021, the trade mark also received registration under class 16 as regards the paper and card board, printed matter, bookbinding material, photographs etc.

2 The plaintiff has placed reliance upon the annual sales and advertisement of the promotional expenses incurred by it in respect of the subject trade mark for the year 2013-14 upto the year 2021 and 2022, and claim to have acquired valuable proprietary, statutory and common law rights in the mark. Apart from this, it is also its claim, that the said trade mark fall within the purview of earlier trade mark as contemplated u/s.11 of the Trade Marks Act, 1999 and the applicant is entitled to its exclusive use and any use of the same and/or deceptively similar mark, by any person or identity, in respect of similar goods or business and/or cognate, allied or complimentary goods or business shall amount to infringement and wrongful use of its trade mark, as it solely belong to the plaintiff, along with an action of passing off.

3 The plaintiff around November 2022, came to know that the defendant/respondent is carrying on the business similar

to that of the applicant by infringing the subject trade mark and its business is being conducted by using the mark 'A-Tone India', it being imprinted and affixed on every product dealt by the respondent.

4 The comparison of the original product of the plaintiff and that of the defendant is provided in the plaint as well as in the Interim Application and it is evident that the impugned mark contains, the whole of the applicant's trade mark i.e. the mark 'ATONE' as its memorable, essential and leading feature. The addition of the word 'India' to the impugned trade mark and also the image of the speaker, is inconsequential as the impugned trade mark is intended to convey a similar idea and impression that is covered by the subject trade mark which is duly registered in the name of the plaintiff.

The creation of the impugned mark by the defendant amounts to deceptively similar mark to that of the plaintiff which definitely, is likely to mislead the customers and though Mr.Kanetkar has filed the Interim Application seeking an injunction, the learned counsel for the defendant on being confronted with the aforesaid situation, make a statement that it shall stop use of the infringing mark and is ready to be subjected to a decree.

Let him obtain necessary instructions, to that effect, within a period of two weeks from today and it is expected that on

the next date, he shall come up with an affidavit recording an undertaking and also his payment of amount of compensation. However, in the interregnum, till he files an affidavit, defendant shall not use the infringing mark of the plaintiff on any of its product either directly in the market or via any trade channel.

Let the affidavit be filed on or before 23/2/2024.

List for hearing on 29/2/2024.

(SMT. BHARATI DANGRE, J.)