

Sharayu Khot.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INTERIM APPLICATION (L) NO. 26339 OF 2024

IN

COMMERCIAL IPR SUIT (L) NO. 26173 OF 2024

Light And Shade Electricals Pvt. Ltd

**...Applicant/
Plaintiff**

Versus

Ramdev Electricals & Hardware and Ors.

...Defendants

Mr. Atmaram Patade a/w Mr. Pranav Manjarekar, Mr. Suraj Naik, Mr. Rohit Rao, Mr. Vedant Chorge, Mr. Aditya Patil i/by Atmaram Patade for the Plaintiff.

CORAM : R.I. CHAGLA J

DATE : 20 September 2024

ORDER :

1. Heard Learned Counsel for the Applicant/ Org. Plaintiff.

2. The Plaintiff seeks to move with notice. Mr. Atmaram Patade, Learned Counsel for the Applicant/ Org. Plaintiff submits that the Plaintiff has served Defendant No.1 to Defendant No.4 on their respective addresses and the Affidavit of Service dated 19-09-2024 in

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PANDURANG
KHOT

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respect of service upon the Defendants is filed in that effect and the same has been taken on record. Despite the service upon the Defendants, none of the Defendants appeared. There are sufficient disclosures in the Plaint to support the prayer for ad-interim reliefs. This is an action for trade mark and copyright infringement as well as for passing off.

3. At this stage, Mr. Patade submits that since the Application for leave under Clause XIV of the Letters Patent to combine the cause of action for passing off with the cause of action for infringement of trade mark and copyright is pending, the Plaintiff is only pressing for reliefs today in respect of infringement of trade mark and copyright infringement (as also the consequent prayer for disclosure).

4. Mr. Patade submits that the Plaintiff is a business established in the year 1966 and was incorporated as a company in 1994. Since inception, the Plaintiff has been engaged in the business of manufacture, sale and marketing of various electronic wiring devices consisting of the conventional, mini modular and modular range of electrical switches and other accessories etc. The mark '**LISHA**' was adopted in respect of the said business in 1966 and

thereafter in the year 2014 Plaintiff adopted the device mark '**SPECIAL 7**' under which it sells various electronics appliances and accessories.

5. The Plaintiff further submits it has applied for and obtained various registrations under the Trade Marks Act, 1999 in respect of both its "**LISHA**" and "**SPECIAL 7**" marks (including devices / labels / variations thereof) in relevant classes, the earliest of which in respect of "**LISHA**" date back to June 1966, with a user claim dating back to 1966, and the earliest of which in respect of "**SPECIAL 7**" date back to January 2016 with a user claim dating back to April 2014. The relevant trade mark certificates and their current status as available on the website of the Trade Marks Registry have been annexed at Exhibits B to B7 and Exhibit C to C6 of the Plaintiff.

6. Mr. Patade draws my attention to paragraph 10 of the Plaintiff and submits that in order to further distinguish and differentiate its marks, the Plaintiff's in-house one Mr. Ketul Soni conceptualized and created, distinct original labels/artistic works bearing the trademarks/ device marks '**LISHA**' and '**SPECIAL 7**' as their prominent / essential feature, used along with a distinct/original artistic

work/labels. The same has been annexed at Exhibit D.

7. The Plaintiff submits it has also maintained its website under the domain name www.lishaswitches.com (i.e. incorporating the name/mark “**LISHA**”) wherein information about the Plaintiff’s business operated under the various ‘**LISHA**’ and ‘**SPECIAL 7**’ marks as also its contact information is made available to the public at large. The relevant screenshot of the said website is at Exhibit E to the Plaintiff.

8. Mr. Patade further submits that it has cultivated a reputed business with over 100+ esteemed clients including well-known brands like Toyota, Taj hotels, State bank of India, Mercedes Benz, Wipro, Coca- Cola, TATA, Hero Honda, Voltas, Siemens, Bacardi, Motilal Oswal, HP, Tvs, Skoda, Jp Morgan, BPL, BHEL, The Oberoi etc., as evident and identified at Exhibit I to the Plaintiff.

9. The Plaintiff also points out that its products are sold across various renowned e-commerce platforms such as Flipkart, Amazon, Justdial etc. Mr. Patade further draws my attention to the fact that the Plaintiff has extensively promoted and publicized its products

online as also offline. Material in this regard is at Exhibits D1 to D22, E, F to F5, G & G1, H to H15 and J to J3 to the Plaintiff.

10. The Plaintiff submits that on account of conducting its business continuously, openly and extensively over the last nearly 6 decades under the various '**LISHA**' and '**SPECIAL 7**' marks, its trademarks/ device marks and label marks/artistic work have acquired tremendous goodwill and reputation. The excellent quality of products afforded by the Plaintiff has further accentuated its reputation. The Plaintiff submits its popularity is evident from its yearly sales turnover, which for the FY 2022-23 alone is approximately Rs. 237 crores. Exhibits L to the Plaintiff sets out relevant information about the sales turnover data of the Plaintiff.

11. Mr. Patade invites my attention to paragraph 23 of the Plaintiff and submits that the Plaintiff is vigilant towards his Intellectual Property and has observed measures to safe guard his Intellectual Property. Mr. Patade draws my attention to the order dated 29-04-2024 passed by this Court and submits that this Court has taken the cognizance in protecting the Plaintiff's Intellectual Property and restraining the infringers, third parties from misusing the plaintiff's

intellectual property (emphasis supplied).

12. Mr. Patade further draws my attention to paragraph 25 of the Plaint, where the Plaintiff states that on or about first week of June, 2024, the Plaintiff's representative learned that there are several other shops selling the duplicate and/or counterfeiting goods under the Plaintiff's trademarks/ device marks and their artistic works on the trade dress/packaging.

13. Mr. Patade invites my attention to paragraph 26 of the Plaint and submits that upon conducting due-diligence and reasonable inquiry, on the instructions of the Plaintiff, the Plaintiff's respective investigators/representatives lodged various FIRs' bearing FIR No. 0089/2024, FIR No. 0061/2024 and FIR No. 0129/2024, visited and raided the Defendant No.1 to Defendant No.4's shops with police and procured and seized (duplicate) impugned counterfeiting products bearing the impugned marks "LISHA & SPECIAL 7". The material in that regard are annexed as Exhibit M to M3.

14. Mr. Patade drawn my attention to paragraph 28 and submits that from a mere glance at the impugned products, it is evident that

the impugned products sold by the said Defendants are *ex-facie* counterfeit (duplicate) goods, and the Defendants are attempting to mislead consumers /purchasers into believing its products are those of the Plaintiff by misappropriating the Plaintiff's marks/works including "LISHA", "SPECIAL 7" and the artistic work on the packaging of the goods. He further submits Defendants have adopted identical impugned marks which are visually, structurally and phonetically identical to the Plaintiff's registered device marks/word marks. Even the colour scheme and sizing used on the packaging is near-identical, which speaks to the dishonesty of the Defendants' enterprise dealing in identical goods. The Defendants' dishonesty is clear from the fact that everything down to the tagline of the Plaintiff's products *viz.* "Touched by Trust" has been imitated by the Defendants. It is only minor discrepancies between the original and impugned goods, evident on a close inspection, which betray the counterfeit nature of the latter. It is further submitted that the Defendants have further resorted to printing the name of the plaintiff's company/trade name, its registered address on its impugned trade dress/packaging. A visual representation of the Defendants' impugned products are annexed at Exhibit M4.

15. Mr. Patade drawn my attention to paragraph 29 of the Plaint and submits that after the complete perusal of the impugned goods, the Plaintiff learned that the Defendants are blatantly arranging and placing all the fundamental and essential/prominent features and elements of the plaintiff in the counterfeiting products as such that the overall appearance/get up / style/ trade dress / layout/ arrangement is almost identical and/or deceptively similar to that of the Plaintiff. The Plaintiff also conducted a detailed perusal and prepared an analysis report stating the comparison of the Plaintiff's LISHA products and the Defendants' impugned counterfeiting products. The analysis report is annexed at Exhibit N.

16. Mr. Patade invites my attention to paragraph 30 of the Plaint and submits that in the month of the August, 2024, the Plaintiff through their sources learned that the Defendants despite the FIRs, are still engaged in the mala fide and dishonest acts of counterfeiting the goods and distributing the impugned counterfeiting goods/products as that of the Plaintiffs'.

17. The Plaintiff submits that the Defendants are knowingly engaged in the continuous and recurring counterfeiting acts and

every deceitful act attracts a fresh cause of action. The infringing and counterfeiting acts of the Defendants are continuous in nature. The reliance of averments in that regard are at paragraph 31 of the Plaintiff.

18. The Plaintiff submits that given the Plaintiff's long and open/extensive/continuous presence in the market under its marks/works in respect of the suit goods, the Defendants were evidently aware of the Plaintiff, its marks, and its original artistic works as also its reputation and goodwill. A pictorial depiction of the Plaintiff's marks along with the unique artistic works of the Plaintiff and the impugned counterfeiting product of Defendants is set out at paragraph 36 of the Plaintiff.

19. The Plaintiff additionally submits that its products are sold on a widespread basis and even at the smallest retail stores and purchased by consumers who are from across socio-economic strata. The Plaintiff's products are not of expensive nature and it is likely that Defendants product will be mistaken for Plaintiff's product.

20. The Plaintiff submits that it has spent extensive money and resources on the development of their products, on the repute of

which Defendants are now taking undue advantage. A summary of the Plaintiff's submissions are set out at paragraph 43 of the Plaintiff's submissions.

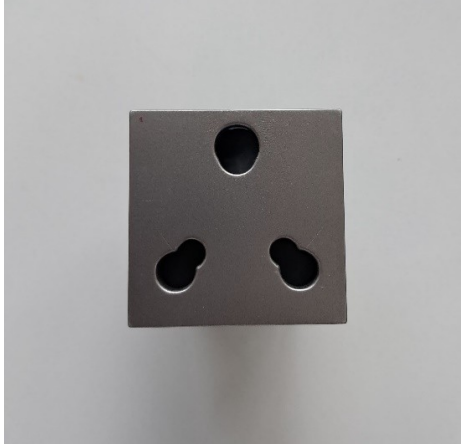
21. Mr. Patade also submits that the essential, prominent and central features of the Plaintiff, which are also appearing on every products of the Plaintiff is deliberately adopted and/or inserted by the Defendants on their impugned/counterfeiting products. Mr. Patade further submits that all the vital ingredients/elements including the color scheme/ layout/ get up/ overall appearance of the Plaintiff's trade marks/device marks along with the artistic works/labels is adopted and arranged by the Defendants in such manner as to come as close as possible to the Plaintiff's and it is a clear imitation of the Plaintiff's trade marks/device marks and unique artistic works/labels and the Defendants' products are complete counterfeit.

22. I have heard the submissions of Mr. Patade and have perused the record. The Plaintiff has secured registrations in respect of its trademarks/device marks. The long and continuous user as well as statement of sales show that the Plaintiff has painstakingly cultivated proprietary rights in its trademarks / device marks/ artistic works /

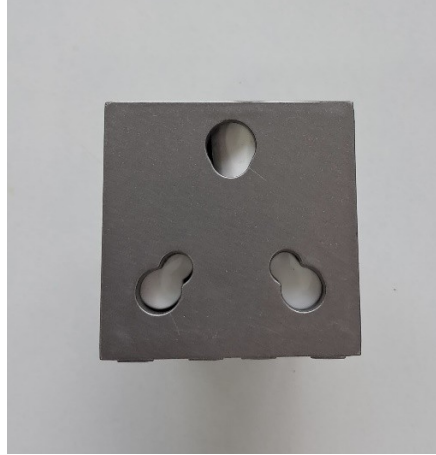
packaging, and enormous goodwill and reputation has been built up in this regard which insures to the benefit of the Plaintiff.

23. From documents annexed to the Plaintiff, the comparison charts at paragraphs 36 of the Plaintiff, it is prima facie evident that the Plaintiff's marks and artistic works are being slavishly copied by the Defendants in an attempt to sail as close to the Plaintiff as possible. The said comparison charts are also reproduced as below:

PLAINTIFF'S PRODUCTS	DEFENDANTS' COUNTERFEIT- ING PRODUCTS
	



(FRONT VIEW)



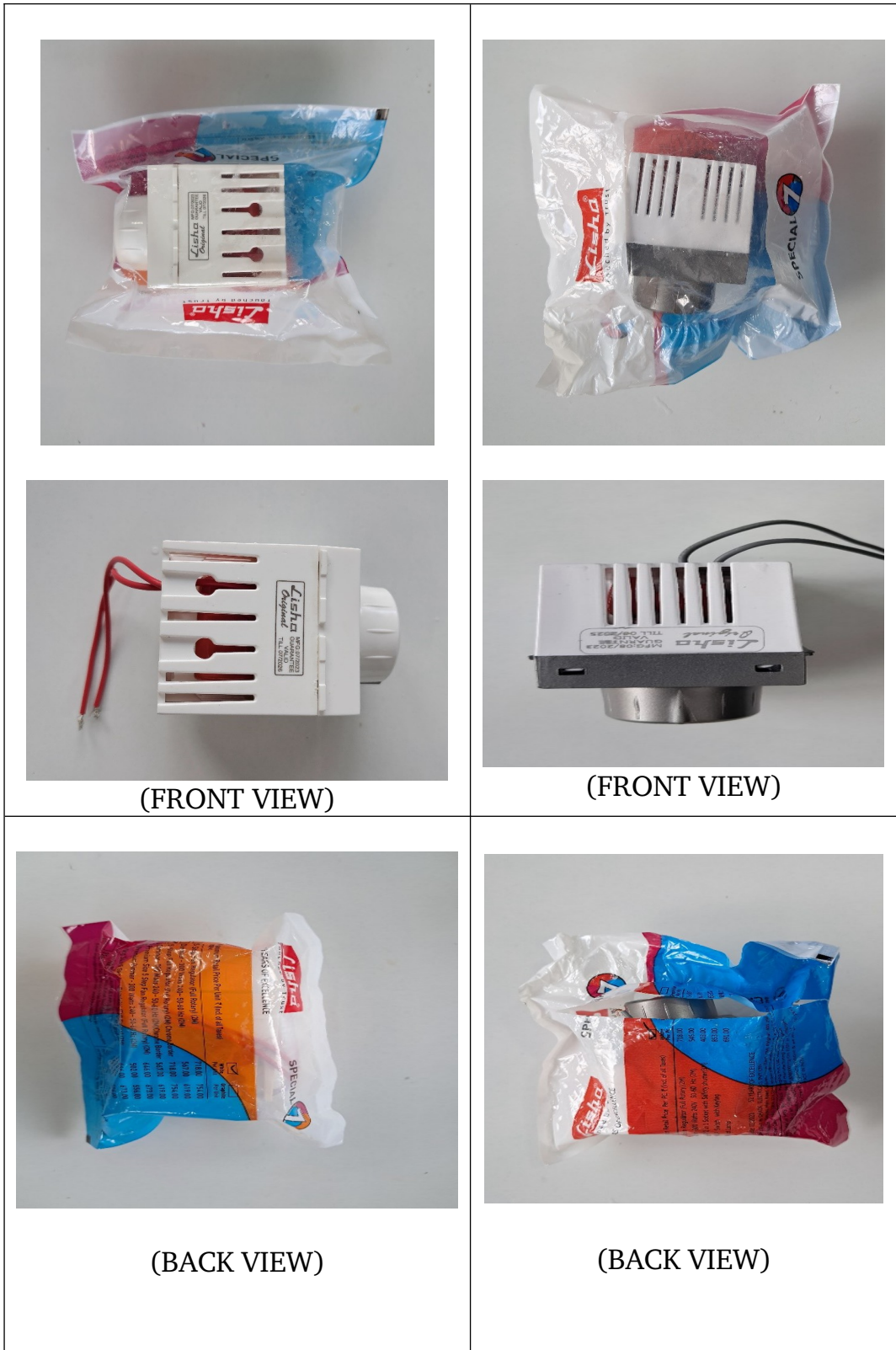
(FRONT VIEW)



(BACK VIEW)



(BACK VIEW)



24. I have perused the documents annexed to the Plaintiff and

from a bare comparison of the rival products which is set out in the Plaintiff and also reproduced herein above, it *prima facie* appears that the Defendants have slavishly imitated each and every essential and central features of the trademarks/device marks along with the original artistic work of the Plaintiff and has also used colour scheme, layout/getup/trade dress, appearance/arrangement on their impugned counterfeiting product. I am of the view that the Defendants' adoption is dishonest and a mere imitation of the Plaintiff's trademarks/device marks and the artistic works/labels.

25. On the basis of the material placed on record, the Plaintiff appear to have made out a strong *prima facie* case. The mere look and appearance of the Defendants impugned products are identical and/or deceptively similar to the Plaintiff's. The Defendants have deliberately adopted the central and essential features of the Plaintiff and the dishonest adoption in the impugned product appears to have been placed and arranged in a manner identical to the manner in which the registered trademark/device mark LISHA & SPECIAL 7 is depicted on the product of the Plaintiff. The font appears to be similar, and the colour scheme used therein i.e. red colour with white border also appears to be similar. The Defendants have further

resorted to printing the name of the Plaintiff's company/trade name, its registered address on its impugned trade dress/packaging. The Defendants have tried to come as close as possible to the registered trademark of the Plaintiff. This Court is convinced that a strong *prima facie* case is indeed made out by the Plaintiff in their favour, in so far as subsisting trademark/device mark, copyright and original artistic work is concerned.

26. In my *prima facie* view the Defendants have dishonestly, knowingly and deliberately adopted the impugned marks along with copying the original artwork/packaging down to almost the very last detail (with minor discrepancies which betray the counterfeit nature of the goods on a close inspection), so as to derive unfair gain and take advantage of the goodwill and reputation acquired by the Plaintiff in its device mark and the unique artwork. The rival marks / works are *ex-facie* actionably similar and the Defendant's impugned products clearly appear to be counterfeit in nature. I find merit in Mr. Patade's submission that the Defendants are deliberately engaged in the continuous counterfeiting activities. I am also of the view that the cause of actions is continuous and recurring in nature.

27. I find from paragraph 26 of the Plaint that there are various FIRs' filed against the same Defendants and the said criminal proceedings are pending. In addition to the above the Plaintiff's have served the entire papers and proceedings in the captioned matter upon the Defendants. Despite the service it appears that the Defendants are intentionally evading from the clutches of law and it also indicates that the Defendants are trying to evade the proceedings which itself speaks volumes of the ulterior motive and mischief on the part of the Defendants. The deliberate ignorance by the Defendants indicates the knowledge of being guilty of infringing and counterfeiting the Plaintiffs' trademarks/ device marks and artistic works as set out in the Plaint. Thus, it is necessary that the disclosure needs to be filed to identify the source of the counterfeiting entities and their activities. Thus it appears that the Defendants are continuous counterfeiters and unless the Defendants are directed to file true and fair disclosure, irreparable loss and great harm will be faced by the Plaintiff. Thus, I am inclined to grant the prayer for Disclosure of such information and details on oath which is set out herein below.

28. In these circumstances, a compelling and strong *prima facie*

case is made out in favour of Plaintiff for grant of ad-interim reliefs for trade mark and copyright infringement. Given the nature of the goods, the equities and larger public interest also favour grant of reliefs in favour of the Plaintiff at this stage.

29. This Court is convinced that unless ad-interim reliefs as prayed for are granted, the Plaintiff is likely to suffer grave and irreparable loss, thereby indicating that the balance of convenience is also in favor of the Plaintiff.

30. In the view of the above, there shall be ad-interim reliefs in terms of prayer clauses (a), (c) and (d) of the Interim Application, which read as follows:

- (a) pending hearing and final disposal of the suit, Defendants by themselves, their, servants, agents, directors, partners, proprietors, employees, dealers, distributors, exporters, manufacturers, marketers, stockists, and/or successors in title, affiliates and/or assigns and all persons acting for and on their behalf including e-commerce platform but not limited to

websites and/or other e-platforms be restrained by a temporary order and injunction of this Hon'ble Court from using the impugned marks "LISHA & SPECIAL 7" (which is set out at "Exhibit M to M4") and/or any other mark identical and/or deceptively similar and/or confusingly similar to the Plaintiff's "LISHA & SPECIAL 7" marks in any manner whatsoever so as to infringe the Plaintiff's registered "LISHA & SPECIAL 7" marks bearing nos. 236032, 1152313, 1152864, 1306456, 2633608, 2633609, 3153627 and 3170439 (Exhibit B to B7 and Exhibit C to C6) and/or dilute and/or counterfeit and/or take unfair advantage and/or debase the distinctive character or repute of the Plaintiff registered trade mark/s.

- (c) pending hearing and final disposal of the suit, Defendants by themselves, their, servants, agents, directors, partners, proprietors, employees, dealers, distributors, exporters, manufacturers, marketers, stockists, and/or successors in title, affiliates and/or assigns and all persons acting for and on their behalf

including e-commerce platform but not limited to websites and/or other e-platforms be restrained by a temporary order and injunction of this Hon'ble Court from using the impugned device marks "LISHA & SPECIAL 7" (which is set out at "Exhibit M to M4") and/or any other device marks and/or label identical and/or deceptively similar and/or confusingly similar to the Plaintiff's artistic works set out at (Exhibit C3 to C6 & Exhibit D) so as to infringe Plaintiff's copyright therein;

- (d) that pending the hearing and final disposal of the Suit, the Defendants by themselves, (their proprietors, employees, partners, directors, servants, agents, franchisees, dealers, manufacturers, licensees and all persons claiming under), a fully and fair disclosure of all the sales reports, C.A. reports, invoices, turnovers, production details, inventories, catalogues, registers, records, accounts, catalogs, portfolios, rosters, stocks, supplies, holdings as engaged or entitled in the engagement of the

production, buying and selling of the said impugned/
counterfeiting goods,

31. The Plaintiff will serve the copy of this order upon the Defendants. Since in my prima facie observation the Defendants are counterfeiting the Plaintiff's products, I am inclined to direct the Defendants/their representatives to remain present before this Court on the next date i.e. 15.10.2024.

32. This order will continue until 16.10.2024 and the Interim Application along with Leave Petition No. 26415 of 2024 will be listed for further consideration on 15.10.2024.

[R.I. CHAGLA J.]